

NEW YORK STATE  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
207 GENESEE STREET  
UTICA, NEW YORK 13501

In the Matter

-of-

the Application of

Binghamton Hardware & HVAC Supply Corp.

For certification as a Woman-owned Business Enterprise  
pursuant to Executive Law Article 15-A.

NYS DED File ID NO.: 623

**RECOMMENDED ORDER ON DEFAULT**



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David A. Murad  
Administrative Law Judge  
June 26, 2023

**STATE OF NEW YORK**  
**DEPARTMENT OF ECONOMIC DEVELOPMENT**

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In the Matter of the Appeal of:

BINGHAMTON HARDWARE & HVAC SUPPLY CORP.  
Appellant,

- against -

NEW YORK STATE DEPARTMENT OF  
ECONOMIC DEVELOPMENT,  
Respondent.

**RECOMMENDED  
ORDER  
ON  
DEFAULT**

FILE ID: 623

To review a determination denying an application for  
for certification as a Woman-owned Business Enterprise  
pursuant to Executive Law Article 15-A.

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**APPEARANCES**

David A. Murad, Administrative Law Judge, New York State Department of Economic  
Development, and Amy O'Connor, Esq., for Respondent.

**WHEREAS:**

1. The above proceeding was commenced by the filing of an appeal, pursuant to New York Executive Law Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York Parts 140-144, by Binghamton Hardware & HVAC Supply Corp. to challenge the determination of the Division of Minority and Women's Business Development ("Division") that the applicant does not meet the eligibility requirements for certification as a Woman-owned Business Enterprise; and
2. The application for certification was received on November 2, 2017. The application was denied by the Division by a letter dated October 21, 2020. The Appellant thereafter appealed the denial by a letter dated November 20, 2020; and
3. Upon notice to the parties sent via electronic mail and regular mail, dated May 19, 2023, a pre-hearing conference was scheduled for June 7, 2023. The notice advised the Appellant that they would be considered in default if they did not appear for the pre-hearing conference and failed to request a new date on or before the date of the pre-hearing conference; and

4. The video conference invitation was sent via electronic mail on May 25, 2023 and was not accepted by the Appellant; and
5. Appellant failed to appear at the pre-hearing conference, and did not contact either counsel for the Division or the Administrative Hearings Unit; and
6. On administrative appeal, the Appellant bears the burden of proving that the Division's denial of Appellant's Women's Business Enterprise certification is not supported by substantial evidence (5 NYCRR §145.2(b)); and
7. At the June 7, 2023 pre-hearing conference, the Division made a motion to dismiss the review of the application, based on the Appellant's failure to appear.

### **RECOMMENDATION**

Based upon the Appellant's failure to appear at the pre-hearing conference, the Appellant should be deemed in default, the motion of the Division to dismiss the review of the application be granted and the application for review dismissed in accordance with State Administrative Procedure Act §301.5.