NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
633 THIRD AVENUE
NEW YORK, NY 10017

In the Matter

- of -

the Application of
Complete Spiral Manufacturing, Inc.
For Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 49583

RECOMMENDED ORDER

- by -

P. Nicholas Garlick
Administrative Law Judge

March 1, 2019

SUMMARY

This report recommends that the determination of the Division of Minority and Women's Business Development ("Division") of the New York State Department of Economic Development to deny the application of Complete Spiral Manufacturing, Inc. ("applicant") for certification as a woman-owned business enterprise ("WBE") be affirmed for the reasons set forth below.

PROCEEDINGS

This matter involves the appeal, pursuant to New York State Executive Law ("EL") Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") Parts 140-144, by Complete Spiral Manufacturing, Inc. challenging the determination of the Division that applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Complete Spiral Manufacturing, Inc.'s application was submitted on January 6, 2015 (Exh. DED2).

The application was denied by letter dated February 7, 2017, from Bette Yee, Director of Certification Operations (Exh. DED1). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet three separate eligibility criteria related to Karen Vassallo's ownership and operation of applicant.

In a two-page letter dated February 23, 2017, Karen Vassallo submitted an appeal. Attached to the appeal were two exhibits described in the exhibit chart as A1 & A2.

In a four-page memorandum dated January 25, 2019, the Division responded to applicant's appeal. Included with the Division's papers were six exhibits described in the attached exhibit chart as DED1-DED6.

On January 28, 2019, this matter was assigned to me.

ELIGIBILITY CRITERIA

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status,

regulatory criteria regarding the applicant's ownership, operation, control, and independence are applied on the basis of information supplied through the application process.

The Division reviews the enterprise as it existed at the time the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and interviews that are conducted by Division analysts.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proving that the Division's denial of applicant's WBE certification is not supported by substantial evidence (see State Administrative Procedure Act § 306[1]). The substantial evidence standard "demands only that a given inference is reasonable and plausible, not necessarily the most probable," and applicant must demonstrate that the Division's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate" (Matter of Ridge Rd. Fire Dist. v Schiano, 16 NY3d 494, 499 [2011] [internal quotation marks and citations omitted]).

POSITIONS OF THE PARTIES

Position of the Division

In its denial letter, the Division asserts that the application failed to meet three separate criteria for certification.

First, the Division found that applicant failed to demonstrate that woman owner, Karen Vassallo, shares in the risks and profits in proportion with her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2).

Second, the Division found that applicant failed to demonstrate that the woman owner, Karen Vassallo, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

Third, the Division found that the woman owner relied upon for certification, Karen Vassallo, does not have adequate

managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i).

Position of the Applicant

Complete Spiral Manufacturing, Inc. asserts that it meets the criteria for certification and that the Division erred in not granting it status as a woman-owned business enterprise pursuant to Executive Law Article 15-A.

FINDINGS OF FACT

1. Complete Spiral Manufacturing, Inc. is in the business of: fabricating and installing heating/ventilation and air conditioning (HVAC) sheet metal duct work; fabricating spiral and oval pipes and fittings; and fabricating fire dampers, fire smoke dampers, and louvers (Exh. DED2 at 3). The firm has a business address of 515 Tiffany Street, Bronx, New York (Exh. DED2 at 1).

2. Complete Spiral Manufacturing, Inc. was formed on February 22, 2002 and Karen Vassallo is the sole shareholder in the corporation (Exh. DED2 at 2-3).

3. Complete Spiral Manufacturing, Inc. was certified as a WBE by the Division in 2007 and this certification was renewed in 2010 (Exh. A1 & A2).

4. The W-2 Wage statements for Complete Spiral Manufacturing, Inc. show Mr. Harry Vassallo, Karen Vassallo's husband, was paid significantly more than she was during 2012, 2013, and 2014. Specifically, in 2012, Mr. Vassallo was paid [redacted] and his wife was paid [redacted] in 2013, Mr. Vassallo was paid [redacted] and his wife was paid [redacted]; and in 2014, Mr. Vassallo was paid [redacted] and his wife was paid [redacted] (Exh. DED3).

5. Harry Vassallo is solely responsible for estimating, preparing bids, and negotiating contracts, while Mark Robins, the firm's field supervisor, is solely responsible for supervising field operations (Exh. DED2 at 3-4, and Exh. DED6 at 2-3). Ms. Vassallo's resume states that she is responsible for accounts receivable, accounts payable, employee benefits,

employee evaluations, banking, and vendor accounts (Exh. DED6 at 1).

6. Prior to starting Complete Spiral Manufacturing, Inc., Ms. Vassallo had no experience in the sheet metal fabrication and installation industry and still relies heavily on her husband's expertise (Exh. DED5 at 1:30 & 26:30). Her resume does not indicate any technical knowledge or managerial experience relevant to the business (Exh. DED6 at 1).

DISCUSSION

This report considers the appeal of applicant from the Division's determination to deny certification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The Division's denial letter set forth three bases related to the Ms. Vassallo's ownership and operation of Complete Spiral Manufacturing, Inc. Each basis is discussed individually, below.

Ownership

In its denial, the Division found that applicant failed to demonstrate that the woman owner, Karen Vassallo, shares in the risks and profits in proportion with her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2). The relevant fact cited in the denial letter is that male individuals associated with the business, including vice-president Harry Vassallo, receive significantly greater compensation form the firm than does Karen Vassallo.

On appeal, Ms. Vassallo states that she is the sole owner of Complete Spiral Manufacturing, Inc. and that the firm was certified as a WBE in 2007 (Exh. A1) and again in 2010 (Exh. A2). She clarifies that the firm is a sheet metal fabricator and installer, a narrow section of the overall HVAC industry. She explains that as a union shop and because of the business's expansion, that she put all her profits into the firm and did not take any personal income. She concludes that since all of the firm's equipment is fully paid for, if she chose to sell the business, she would enjoy all the revenue.

In its response, the Division states that Ms. Vassallo does not enjoy the benefits from the business in proportion with her

100% ownership of its stock. The Division points to W-2 Wage Statements provided by applicant which show Mr. Harry Vassallo, Karen Vassallo's husband, was paid significantly more than she was during 2012, 2013, and 2014. Specifically, in 2012, Mr. Vassallo was paid [redacted] and his wife was paid [redacted]; in 2013, Mr. Vassallo was paid [redacted] and his wife was paid [redacted]; and in 2014, Mr. Vassallo was paid [redacted] and his wife was paid [redacted] (Exh. DED3). This disproportionate allocation of the benefits from the firm, the Division concludes, is inconsistent with the requirements for certification as a WBE.

Based on the evidence in the record, specifically the fact that Mr. Vassallo is paid nearly twice what his wife, the firm's owner earns, Ms. Vassallo has failed to show that the woman owner, Karen Vassallo, shares in the risks and profits in proportion with her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2). The Division's denial on this ground was based on substantial evidence.

Operation

In its denial letter, the Division found that applicant failed to demonstrate that the woman owner makes decisions pertaining to the operation of the enterprise, as required by 5 NYCRR 144.2(b)(1). The relevant facts cited in the denial letter were: (1) the firm is primarily engaged in providing fabrication and installation services in the HVAC industry; and (2) Mr. Vassallo and field supervisor Mark Robins are primarily responsible for managing significant operations of the business related to estimating and supervising field operations.

On the appeal, Ms. Vassallo asserts that she finds it very difficult to understand how her competence has become an issue after ten years as a certified WBE business. She argues that the fact that she does not labor in the shop or the field should make no difference in the Division's certification determination.

In its response, the Division contends that Ms. Vassallo delegates the core managerial functions of the business to non-minority male individuals, thus making the firm ineligible for certification as a WBE. The Division regards managerial

functions associated with estimating and supervising field operations as core functions of a business because these are how a firm obtains business and delivers services and products to its customers. The Division notes that the application states that Mr. Vassallo is solely responsible for estimating, preparing bids, and negotiating contracts, while Mark Robins, the firm's field supervisor, is solely responsible for supervising field operations (Exh. DED2 at 3-4). This information is confirmed by the resumes provided with the application. Mr. Vassallo's resume states that he is responsible for the firm's production, estimating, and field requirements (Exh. DED6 at 2). Mr. Robins's resume states that as field foreman/mechanic he supervises and participates in the installation of HVAC systems (Exh. DED6 at 3). In contrast, Ms. Vassallo's resume states that she is responsible for accounts receivable, accounts payable, employee benefits, employee evaluations, banking, and vendor accounts (Exh. DED6 at 1). These documents, the Division concludes, show that Ms. Vassallo has delegated the core functions of the business to her husband and Mr. Robins, making the firm ineligible for certification as a WBE.

Based on the evidence in the record, specifically the fact that Ms. Vassallo has impermissibly delegated the core functions of the business to her husband and Mr. Robins, applicant failed to demonstrate that the woman owner makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1). The Division's denial on this ground was based on substantial evidence.

The Division also found that the woman owner relied upon for certification, Karen Vassallo, does not have adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i). The relevant facts cited in the denial letter were: (1) Ms. Vassallo has not demonstrated any training or technical competence in the HVAC industry; (2) she has not demonstrated experience in managing estimating or supervising field operations in the HVAC industry; (3) Mr. Vassallo has over forty years of relevant managerial experience in the HVAC industry; and (4) Mr. Robins has over thirty years of relevant

managerial experience, completed a sheet metal apprenticeship, and obtained various relevant certifications.

On the appeal, Ms. Vassallo states she finds it very difficult to understand how her competence has become an issue after ten years as a certified WBE business. She argues that the fact that she does not labor in the shop or the field should make no difference in the Division's certification determination. During her telephone interview with Division staff, Ms. Vassallo acknowledged that when she started the business she had no relevant experience but through a process of osmosis she had become knowledgeable about the industry because her father, brothers, son-in-law, daughter, and husband had all worked in the construction and HVAC industries (Exh. DED5 at 1:30).

In its response, the Division argues that Ms. Vassallo lacks any technical or managerial expertise in the sheet metal industry, thus making the firm ineligible for certification as a WBE. The Division notes that her resume does not indicate any technical knowledge or managerial experience specific to the sheet metal fabrication and installation business (Exh. DED6 at 1). In addition, during her interview she acknowledged having no experience in the industry and that she relies heavily on her husband's expertise (Exh. DED5 at 1:30 & 26:30).

Based on the evidence in the record, specifically the lack of any claim of technical competence or relevant managerial experience, the applicant failed to demonstrate that the woman owner relied upon for certification, Karen Vassallo, has adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i). The Division's denial on this ground was based on substantial evidence.

CONCLUSIONS

1. Applicant failed to demonstrate that the woman owner, Karen Vassallo, shares in the risks and profits in proportion with her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2).

2. Applicant failed to demonstrate that the woman owner, Karen Vassallo, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

3. Applicant failed to demonstrate that the woman owner, Karen Vassallo, relied upon for certification has adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i).

RECOMMENDATION

The Division's determination to deny Complete Spiral Manufacturing, Inc.'s application for certification as a woman-owned business enterprise should affirmed for the reasons stated in this recommended order.

Matter of
Complete Spiral Manufacturing, Inc.

DED File ID No. 49583
Exhibit List

Exh. #	Description
DED1	Denial letter
DED2	Application
DED3	W2 forms
DED4	Appeal
DED5	Recording of interview
DED6	Resumes
A1	2007 WBE certification letter
A2	2010 WBE certification letter