

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

In the Matter

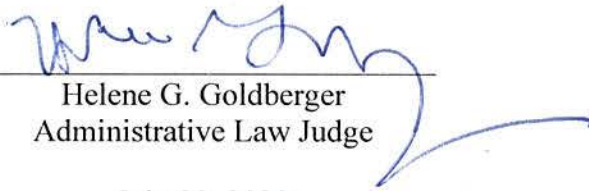
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the Application of **COOPERATIVE TECHNOLOGY OPTIONS, LLC**  
for Certification as a Woman-owned Business Enterprise  
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 55747

RECOMMENDED ORDER

- by -

  
\_\_\_\_\_  
Helene G. Goldberger  
Administrative Law Judge

July 30, 2020

## SUMMARY

The determination of the Division of Minority and Women's Business Development (Division) of the New York State Department of Economic Development to deny Cooperative Technology Options, LLC (CTO or applicant) recertification as a woman-owned business enterprise (WBE) should be affirmed for the reasons set forth below.

## PROCEEDINGS

In a letter dated May 30, 2019, the Division determined that CTO does not meet the eligibility requirements to be recertified as a woman-owned business enterprise and denied CTO's application. *See*, WBE Exhibit 2.

Janet D. Persons, President and Managing Member of CTO owning 85% of applicant's shares, wrote to the Division requesting the opportunity to file a written appeal. In response, by notice dated July 22, 2019, Cathy Powers provided the requirements for the appeal due on September 20, 2019. WBE Exhibit 3; CTO Exhibit 1. Ms. Persons filed a timely letter appeal dated September 16, 2019. With the appeal, Ms. Persons included copies of three State of New Jersey Certifications under that state's Small Business Set-Aside Act and Minority and Women Certification Program; her revised resume; and a letter supporting applicant's appeal dated August 26, 2019 from CPA Craig R. Johnson who is CTO's accountant. I have not marked these as exhibits and I am not considering them in making this determination as they were not before the Division staff when the review was made on CTO's application.

Stephen Gawlik, Esq., Counsel for New York State Division of Economic Development, filed the Division's response dated July 13, 2020 (Response). With the Response, the Division also submitted the affidavit of Raymond Emanuel, the Certification Director of the Division, dated July 8, 2020. Attached to Mr. Emanuel's affidavit are six exhibits, which are identified in the attached exhibit chart. Among the exhibits included with the Response is a copy of CTO's completed application for WBE certification (WBE Exhibit 1 [Application No. 5398450, submitted January 13, 2016]), as well as other application materials related to the bases for the Division's May 30, 2019 determination.

## ELIGIBILITY CRITERIA

The eligibility criteria pertaining to certification as a woman-owned business enterprise are established by regulation. *See*, Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (5 NYCRR) § 144.2. To determine whether an applicant should be granted WBE status, the Division assesses the ownership, operation, and control of the business enterprise on the basis of information supplied through the application process. The Division reviews the enterprise as it existed at the time that the application was made, based on representations in the application, information presented in supplemental submissions and, if appropriate, from interviews conducted by Division analysts. *See*, 5 NYCRR 144.5(a).

## STANDARD OF REVIEW

On this administrative appeal, CTO, as applicant, bears the burden of proving that the Division's denial of its application for 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

### The Division

In the May 30, 2019 denial letter (WBE Exhibit 2), the Division determined that the application failed to meet the WBE certification criteria related to Janet Persons's role in the company based upon its determination that women do not make decisions pertaining to the operation of the business enterprise pursuant to 5 NYCRR § 144.2(b)(1) and women relied upon for certification have not demonstrated managerial experience or technical competence to operate the business enterprise; and minority group members or women relied upon for certification have not demonstrated the working knowledge and ability needed to operate the business enterprise pursuant to 5 NYCRR §§ 144.2(b)(1)(i) and 144.2(b)(1)(ii).

The Division found in its review of the 2016 application that Ms. Persons performed administrative functions within the company and did not have the education or technical expertise in the core enterprise of CTO – the support of customer computer systems. Based on the Division's conclusion that Ms. Persons did not have the technical expertise and also did not demonstrate involvement in the company's core services such as network security, maintenance, enterprise printer management, training, communications, enterprise store/backup, data center solution, infrastructure and IT project staffing solution, it also concluded that she could not make the decisions pertaining to CTO's operation. *See*, Emanuel Affidavit (Aff.), ¶¶ 12-14.

### OTC

On her appeal, Ms. Persons questions the Division's determination based upon the company's initial certification approval in 2013 and the New Jersey certification. She points to her resume attached as Exhibit 6 to her letter appeal which provides that she is the President/Owner of CTO and explains that her position as stenographer is only supplemental income. She maintains that a large portion of CTO's business is IT staffing with which Mr. Person has little experience. She points to her experience since 1995 with client contact, recruitment, tracking time and payroll. She states that she has taken several IT courses and provided training to employees as well as been involved in troubleshooting and repairs. She states additionally that she works with the accounting and legal professionals on behalf of the company. In her conclusion, Ms. Persons provides that she has been involved in all aspects of the company since 1995 both in administrative and IT capacities.

## FINDINGS OF FACT

1. Cooperative Technology Options, LLC is located at 2275 W. County Line Rd., Suite 6-102, Jackson, New Jersey. WBE Exhibit 1 at p. 1E.
2. Janet Persons is president and owns 85% of CTO. Anderson Persons owns 15% of OTC and is Vice-President of Sales. *See*, WBE Exhibit 1 at p. 3A. The rationale behind the allocation of 15% to Mr. Persons his credit history. WBE Exhibit 4.
3. Ms. Persons applied to recertify CTO as a WBE on January 13, 2016. *See*, WBE Exhibit 1.
4. CTO is engaged in computer hardware and software consulting services. *See*, WBE Exhibits 1 at 5.C and 4, p. 3.
5. The Persons established CTO in 2007. WBE Exhibit 4, p. 1. Ms. Persons's background is primarily in administrative functions with experience in payroll, preparation of documents, and WordPerfect training. WBE Exhibit 5. Her educational background is an associate degree in Office Systems Technology. *Id.*
6. Anderson Persons began a career in computer sales in 1988 and in that capacity installed a variety of computer systems. From 1989 through 1992, Mr. Persons was responsible for customizing system configurations, providing database management, spreadsheet, word processing and other business software to clients. He continued to do extensive sales and hardware/software consulting in many different systems between 1993 and 2007.
7. Ms. Persons duties at CTO are focused on administrative functions including billing and payment processes; working with banks to set up and administer accounts; working with insurance companies and attorneys when necessary; approving new hires and terminations and payroll; reconciling accounts; payment of taxes; approval of equipment purchases; and negotiation of vendor contracts. WBE Exhibit 4.
8. Mr. Persons is responsible for all sales and meeting with clients; proposing new vendors; supervising employees' negotiation of vendor contracts; designing marketing campaigns; and consultation with clients regarding networking, security, maintenance, enterprise printer management, training, communications, enterprise storage/backup, data center solutions, infrastructure, IT project/staffing solutions, and creation of all proposals. WBE Exhibit 4.

## DISCUSSION

This recommended order considers CTO's September 16, 2019 appeal and the response of Division staff including Exhibits 1-6. I am not relying upon CTO's Exhibits 3-7 as these records were not before the Division at the time of the application. The bases identified in the Division's May 30, 2019 denial letter (*see* WBE Exhibit 2) are addressed below.

### I. Control

Section 144.2(b)(1) of 5 NYCRR requires that “[d]ecisions pertaining to the operations of the business enterprise must be made by minority group members or women claiming ownership of that business enterprise.” In consideration of this criterion, the Division examines whether the minority group members or women have adequate managerial experience or technical competence in the enterprise and must demonstrate the working knowledge and ability to operate the enterprise. 5 NYCRR §§ 144.2(b)(1)(i), (ii). While Ms. Persons's description of her role in the company is an important one by tending to all the administrative details such as payroll, insurance and keeping track of bills and bank balances, the certification requires that the woman owner makes the decisions with respect to the core functions of the company. *See, Upstate Electrical, LLC v. New York State Department of Economic Development*, 179 AD3d 1343, 2020 WL 239040, \*2 (3d Dep't 2019). On CTO's appeal, there is no information noted that was submitted with the application rebutting the Division's decision that Ms. Persons is not the decisionmaker.<sup>1</sup>

In contrast, Mr. Persons is described in the May 8, 2018 business narrative as the individual in charge of all sales and consultations with clients. WBE, Exhibit 4.

CTO failed to demonstrate in its application or on its appeal enough information to rebut staff's conclusions to the contrary that Ms. Persons was in control of the significant operations of CTO. Accordingly, based on the record before me, I find that the Division reasonably concluded that Ms. Persons failed to demonstrate control of the business.

### II. Expertise

As noted above, in deciding whether a minority or woman owner is in control of the relevant enterprise, the Division examines the managerial experience or technical competence of the individual and whether she has demonstrated the working knowledge and ability to operate the enterprise. 5 NYCRR §§ 144.2(b)(1)(i), (ii). Ms. Persons' resume indicates that she has experience in many different aspects of the administrative or “back room” duties of an enterprise. WBE Exhibit 5. She has performed many clerical functions for other employers including a placement firm and a law partnership. *Id.* With respect to computer experience, the resume indicates that at the placement services she would “[t]roubleshoot and fix

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<sup>1</sup> As noted above, I cannot consider the revised resume of Ms. Persons nor the firm's accountant's letter in support as these were not submitted with the application. 5 NYCRR § 144.5(a). With respect to the New Jersey certifications, these too were not submitted with the application and in any case, the Division is not bound by another state's certification program determinations. *See, Sunrise Credit Services, Inc. v. Zapata*, (unreported), 57 Misc 3d 1225 (A) (Sup. Ct., NY County 2017).

computer problems. Call computer tech when I couldn't fix the problem myself." Her work at CTO is summarized in the first line of her resume – "[a]ll duties related to running the office on a daily basis . . ." In contrast, Anderson Persons's resume catalogues a depth of experience in the core function of CTO – computer services – of over thirty years. WBE Exhibit 6.

Ms. Persons notes that CTO was certified by the Division in 2013. A certification is valid for three years and the Division has the obligation to carefully review every application and ensure that approved companies meet the criteria set forth in the applicable statute and regulations. Given the program's purpose in addressing past racial and gender discrimination, it is narrowly tailored to be sure only eligible companies receive this benefit. *Matter of Empire Air Specialties, Inc. v. New York State Department of Economic Development*, 2016 NY Slip Op. 81609 (U) (7/29/16) (3d Dep't).

Based upon the record before me, I conclude that the Division reasonably found that Ms. Persons does not have the technical competence to operate the enterprise.

### **CONCLUSION**

1. With respect to the control criterion at 5 NYCRR § 144.2(b)(1), CTO did not meet its burden to show that the Division's May 30, 2019 determination to deny the application for WBE certification is not based on substantial evidence.

2. With respect to the expertise criteria at 5 NYCRR §§ 144.2(b)(1)(i) and (ii), CTO did not meet its burden to show that the Division's May 30, 2019 determination to deny the application for WBE certification is not based on substantial evidence.

### **RECOMMENDATION**

The Division's determination to deny CTO's application for certification as a woman owned business enterprise should be affirmed for the reasons stated in this recommended order.

Attachment: Exhibit Chart

**MATTER OF COOPERATIVE TECHNOLOGY OPTIONS, LLC**  
**NYS DED FILE ID No. 55747**  
**EXHIBIT LIST**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>
WBE 1	Application for Certification dated January 13, 2016
WBE 2	Denial Letter dated May 30, 2019
WBE 3	Notice to Proceed Via Written Appeal dated July 22, 2019
WBE 4	Business Start-Up Narrative dated May 8, 2019
WBE 5	Resume of Janet D. Persons
WBE 6	Resume of Anderson J. Persons
CTO 1	Notice to Proceed Via Written Appeal dated July 22, 2019
CTO 2	Empire State Development WBE Certification dated January 30, 2013