

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

In the Matter

-of-

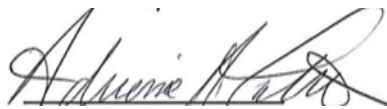
the Application of

Empire Distribution & Supply, Inc.

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

NYS DED File ID NO.: 64795

RECOMMENDED ORDER ON DEFAULT



Adrienne R. Lotson
Administrative Law Judge
June 26, 2023

STATE OF NEW YORK
DEPARTMENT OF ECONOMIC DEVELOPMENT

-----x

In the Matter of the Appeal of:

EMPIRE DISTRIBUTION & SUPPLY, INC.
Appellant,

- against -

**RECOMMENDED
ORDER
ON
DEFAULT**

NEW YORK STATE DEPARTMENT OF
ECONOMIC DEVELOPMENT,

Respondent.

FILE ID: 64795

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

x

APPEARANCES

Adrienne R. Lotson, Administrative Law Judge, New York State Department of Economic Development, and Michael Livolsi, 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 Empire Distribution & Supply, Inc., 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 Minority-owned and Woman-owned Business Enterprise; and
2. The application for certification was received on April 9, 2018. The application was denied by the Division by a letter dated December 30, 2019. The Appellant thereafter appealed the denial by a letter dated January 29, 2020; and
3. Upon notice to the parties sent via electronic mail and regular mail, dated May 25, 2023, a pre-hearing conference was scheduled for June 13, 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 26, 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 Minority and Women's Business Enterprise certification is not supported by substantial evidence (5 NYCRR §145.2(b)); and
7. At the June 13, 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.