



New York State
Department of Economic Development
Division of Minority and Women's
Business Development

In the matter of the appeal of

**Ernest R. Kimball, Inc. D.B.A. Kimball
Trucking**

FINAL ORDER 23-07

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

This order arises from an administrative appeal brought on behalf of Ernest R. Kimball, Inc. D.B.A. Kimball Trucking (“Kimball Trucking” or “Appellant”) pursuant to section 144.2 of Title 5 of the New York Codes, Rules and Regulations.¹ Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated January 9, 2020, to deny Kimball Trucking’s December 28, 2017, recertification application as a Woman-owned Business Enterprise (“WBE”).

Appellant initiated its appeal by sending a notice of appeal letter dated January 20, 2020, to the Division, requesting to appeal the denial determination via written submission. On February 3, 2020, the Division sent a notice to proceed by written appeal to the Appellant. Ms. Sharon Kimball Zimmerman thereafter submitted a written appeal on behalf of Kimball Trucking dated February 26, 2020. The Division responded to the written appeal submission with its Memorandum of Law dated February 22, 2023, and an Affidavit of Raymond Emanuel, Certification Director for the Division, with attached Exhibits. Administrative Law Judge (“ALJ”) David A. Murad presided over the appeal.

The issues on appeal were whether Appellant sufficiently demonstrated that the woman owner relied upon for certification (1) made contributions proportionate to her equity interest in the business enterprise, as required by 5 NYCRR §144.2(a)(1); (2) makes decisions pertaining to

¹ The Division’s January 9, 2020, denial determination and Appellant’s January 20, 2020, request to appeal pre-date the December 2, 2020, amendments made to 5 NYCRR Parts 140 et al. Accordingly, the eligibility criteria set forth under the former regulations are referenced throughout this final order.

the operation of the business enterprise, as required by 5 NYCRR § 144.2(b)(1); (3) has adequate managerial experience or technical competence to operate the business enterprise, as required by 5 NYCRR § 144.2(b)(1)(i); (4) has the working knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR § 144.2(b)(1)(ii); and (5) is permitted to make decisions without restriction as granted in the relevant business agreements, as required by 5 NYCRR § 144.2(b)(2).

On June 6, 2023, the Division received a Recommended Order from ALJ Murad that recommended affirmation of the Division's denial of the application to certify Kimball Trucking, Inc. as a WBE on the grounds set forth in the Division's January 9, 2020, denial letter.

After considering the appeal record, I accept the recommendation of the Administrative Law Judge as it pertains to the facts of this case. Incorporation by reference is hereby made with respect to the findings and conclusions of the Recommended Order.

It is hereby **ORDERED** that the decision to deny certification, dated January 9, 2020, is affirmed. Accordingly, Ernest R. Kimball, Inc. D.B.A. Kimball Trucking will be removed from the Division's directory for Minority and Women-owned Business Enterprises.

July 10, 2023



Jason M. Clark
Executive Vice President and Executive Director
Division of Minority and Women's Business Development