



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

---

In the Matter of the Appeal of

**Empire Distribution & Supply, Inc.**

FINAL ORDER 23-06

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

---

This order arises from an administrative appeal brought by Empire Distribution & Supply, Inc., ("Empire Distribution" or "Appellant") pursuant to New York Executive Law Article 15-A and Title 5 of the New York Codes, Rules and Regulations. Appellant seeks reversal of the decision of the Division of Minority and Women's Business Development (the "Division"), dated December 30, 2019, to deny Empire Distribution's April 9, 2018 certification application as a Minority and Woman-owned Business Enterprise ("MWBE").

Appellant requested an administrative hearing by submission of a letter dated January 29, 2020, and upon notice to the parties via electronic mail and regular mail, dated May 25, 2023, a pre-hearing conference was scheduled for June 13, 2023, using the Zoom videoconferencing platform. The notice of the pre-hearing conference advised the Appellant that failure to appear and failure to request a new date on or before the date of the pre-hearing conference would be considered a default. The video conference invitation was sent by the Administrative Hearings Unit to the Appellant on May 26, 2023. The Appellant failed to accept the meeting invitation, failed to appear at the pre-hearing conference, and failed to contact Division counsel or the Administrative Hearings Unit to request a new date. The Division was represented by Michael Livolsi, Esq., and Administrative Law Judge ("ALJ") Adrienne R. Lotson presided over the proceeding. During the pre-hearing conference, the Division made a motion to dismiss the review of the application based on the Appellant's failure to appear.

On June 26, 2023, the Division received a Recommended Order from ALJ Lotson affirming the Division's denial of certification, based upon the Appellant's failure to appear at the pre-hearing conference. ALJ Lotson found the Appellant in default and granted the Division's motion to dismiss the review of the Appellant's certification application.

After considering the appeal record, I accept the recommendation to affirm the denial determination. As noted in the Recommended Order, the Appellant in an administrative appeal bears the burden of proving the Division's denial of its MWBE certification was not supported by substantial evidence. *See* 5 NYCRR § 145.2(b). Here, the Appellant failed to meet this burden of proof by failing to attend the pre-hearing conference. Further, "unless precluded by statute, disposition may be made of any adjudicatory proceeding by...default." New York State Administrative Procedure Act § 301(5). As such, the Division accepts the ALJ's recommendation to affirm the denial of certification based on Appellant's failure to appear.

It is hereby **ORDERED** that the decision to deny certification, dated December 30, 2019, is affirmed.

June 28, 2023



---

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