



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

---

In the matter of the appeal of

**First Choice Group CNY, Inc. D/B/A First  
Choice Staffing**

FINAL ORDER 23-07

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

---

This order arises from an administrative appeal brought on behalf of First Choice Group CNY, Inc. D/B/A First Choice Staffing (“First Choice” or “Appellant”) pursuant to section 144.2 of title 5 of the New York Codes, Rules and Regulations.<sup>1</sup> Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated April 28, 2017, to deny First Choice certification as a Woman-owned Business Enterprise (“WBE”).

Appellant initiated its appeal by letter dated May 5, 2017, along with two invoices and a document titled “vendor information”. On November 10, 2017, Lynn Loomis sent an email to the Division, indicating that the May 5, 2017, letter should serve as First Choice’s written appeal submission. Ashley Lherisson-Fortune, Esq. filed the Division’s Brief, dated February 15, 2023, Affidavit of Francisco Guzman, a Certification Analyst with the Division, and Exhibits 1-4 further described in the Exhibit List appended to the Recommended Order, in support. Administrative Law Judge Richard A. Sherman presided over the appeal.

The issue on appeal was whether Appellant sufficiently demonstrated that (1) First Choice is a small business pursuant to 5 NYCRR R § 140.1(tt)(1)(vi).

On March 21, 2023, the Division received a Recommended Order from Administrative Law Judge Sherman that recommended affirmation of the Division’s denial of the application to

---

<sup>1</sup> The Division’s April 28, 2017 denial determination pre-dates 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.

certify First Choice as a WBE on the grounds set forth in the Division's April 28, 2017 denial letter. Although the case is not specifically mentioned in the Recommended Order, it is important to note that under *Scherzi Sys., LLC v. White*, information that was before the Division as part of its review at the time of the application as well as materials which seek to clarify and explain are in fact relevant to whether the DED's denial determination was supported by substantial evidence. *Scherzi Sys., LLC v. White*, 197 A.D.3d 1466 (3d Dep't 2021). While an agency is required to consider the testimony offered at an administrative hearing in rendering its determination, only evidence which seeks to clarify and explain previously submitted materials will be considered and new evidence shall not be considered. Here, the owner relied upon for certification does not offer clarification materials, instead, Ms. Loomis provides new information not mentioned in Appellant's application or supporting documents.

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 April 28, 2017, is affirmed. Accordingly, First Choice Group CNY, Inc. D/B/A First Choice Staffing will not be listed in 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