

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
207 GENESEE STREET
UTICA, NEW YORK 13501

In the Matter

- of -

**the Application of G & E Officeworld, Inc., dba Fern Office Supplies
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 45582

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
October 16, 2023

This matter considers the written appeal by G & E Officeworld, Inc. dba Fern Office Supplies (“G & E” or “applicant”) pursuant to New York State Executive Law Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for certification as a woman-owned business enterprise (“WBE”).

PROCEDURAL HISTORY

1. On November 29, 2019, Ms. Pearl Landau, as President, applied on behalf of G & E for certification as a woman-owned business enterprise (“WBE”) (DED Exhibit 1).
2. On July 19, 2022, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) Minority group members or women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required under 5 NYCRR §144.2(c)(2); and
 - (b) Minority group members or women relied upon for certification must devote time on an ongoing basis to the daily operation of the business enterprise, as required under 5 NYCRR §144.2(c)(3).
3. G & E timely filed a Request to Appeal on August 10, 2022 (APP Exhibit 1).
4. A notice to proceed via written appeal was sent to G & E on October 5, 2022 (DED Exhibit 3).
5. The Division filed an Affidavit of Raymond Emanuel, Certification Director, dated July 6, 2023, and a brief of Anequa Pond, Esq., counsel for the Division, dated July 12, 2023.

FINDINGS OF FACT

6. G & E is engaged in the business of brokering office furniture and office supplies (DED Exhibit 1).
7. Ms. Pearl Landau is the President and 51% owner of G & E. Her husband, Eli Landau is the Vice President and 49% owner of G & E (DED Exhibit 1).
8. Ms. Landau's resume indicates that she is responsible for purchasing, timely delivery of products, linking business strategies with technological solutions and holding monthly staff meetings (DED Exhibit 4). The Application indicates that Ms. Landau dedicates 22 hours per week to the business (DED Exhibit 1).
9. Mr. Eli Landau's resume indicates that he is an expert in computer design layout of furniture. He is responsible for balance sheet and auditing functions and ensures the proper performance of accounts. He provides financial reports and analyses and is responsible for all control functions (DED Exhibit 5). The Application indicates that Mr. Landau devotes 30 hours per week to the business (DED Exhibit 1).
10. Mr. Jacob Landau, the sales and operations manager dedicates 40 hours per week to the business (DED Exhibit 1).
11. All managerial functions of the business, including financial decisions, estimating, preparing bids, negotiating bonding and insurance, marketing and sales are shared between the owners and other employees (DED Exhibit 1).

APPLICABLE LAW

5 NYCRR §144.2(c) states in relevant part as follows:

Minority group members and women relied upon for certification must make day-to-day decisions concerning the operation of the business enterprise for which certification is sought. The division shall evaluate whether minority group

members or women operate a business enterprise for which certification is sought based upon the following criteria:

(2) Minority group members and women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise for which certification is sought. The critical functions of a business enterprise shall be determined by the division based upon the following factors, but is not limited to:

- (i) The products or services the business enterprise provides to clients; and
- (ii) The means by which the business enterprise obtains contracts or orders.

(3) Minority group members and women relied upon for certification must devote time on an ongoing basis to the daily operation of the business enterprise for which certification is sought.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by G & E for certification as a WBE 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 Division staff's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]).

The review is limited to such information that was before the division at the time of the denial determination (5 NYCRR 145.2(b)(1)). Evidence that seeks to clarify and explain previously submitted materials will be considered, however new evidence will not be considered. *See Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

DISCUSSION

I. Operation

5 NYCRR §144.2(c)(2) states that “... women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise for which certification is sought. The critical functions of a business enterprise shall be determined by the division based upon the following factors but is not limited to: (i) the products or services the business enterprise provides to clients; and (ii) the means by which the business enterprise obtains contracts or orders”.

The woman-owner “must exercise independent operational control over the core functions of the business in order to establish the requisite control for WBE certification”. See *J.C. Smith, Inc. v. New York State Department of Economic Development*, 163 AD3d, 1517 (4th Dept. 2018).

G & E’s critical functions are to estimate and bid jobs to generate revenue by brokering office furniture and office supplies. Mr. Landau’s resume indicates that he is an expert in computer design layout of furniture. Mr. Landau’s experience demonstrates his expertise in the core operations of the business. He is responsible for balance sheet and auditing functions and ensures the proper performance of accounts. He provides financial reports and analyses and is responsible for all control functions (DED Exhibit 5). Ms. Landau’s resume indicates that she is responsible for administrative functions such as purchasing, timely delivery of products, linking business strategies with technological solutions and holding monthly staff meetings (DED Exhibit 4). These duties do not manage the core revenue generating functions of the business.

All managerial functions of the business, including financial decisions, estimating, preparing bids, negotiating bonding and insurance, marketing and sales are shared between the

owners and other employees (DED Exhibit 1). Ms. Landau failed to show that she makes operational decisions on a day-to-day basis with respect to the critical functions of the business.

The application was also denied on the ground that the woman-owner does not devote sufficient time on an ongoing basis to the daily operation of the business, as required by 5 NYCRR §144.2(c) (3). According to the application, Ms. Landau dedicates 22 hours per week to the business. Mr. Eli Landau dedicates 30 hours per week, and Mr. Jacob Landau dedicates 40 hours per week to the business (DED Exhibit 1). Ms. Landau stated that “Eli, Esther and Jacob” perform the “legwork” and she approves “everything” “before finalizing” (APP Exhibit 1). Mr. Eli Landau and the employees perform the day-to-day functions and Ms. Landau approves their work. Substantial evidence supports the determination that Ms. Landau does not devote sufficient time on an ongoing basis to the daily operation of the business.

CONCLUSION

G & E did not meet its burden to demonstrate that the Division’s determination to deny its application for certification as a woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(c)(2) and 144.2(c)(3) was not based on substantial evidence.

RECOMMENDATION

For the reasons set forth above, I recommend that the Director affirm the Division’s determination to deny G & E’s application for certification as a woman-owned business enterprise.

In the Matter of G & E Officeworld, dba Fern Office Supplies
DED File ID No. 45582
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Notice to Proceed Via Written Appeal	Y	Y
DED 4	Ms. Pearl Landau's Resume	Y	Y
DED 5	Mr. Eli Landau's Resume	Y	Y
APP 1	Request to Appeal	Y	Y