

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

In the Matter

- of -

the Application of GPN Electric Corp.
for Certification as a Woman-Owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 65677

RECOMMENDED ORDER

-by-



Deidre A. Chuckrow
Administrative Law Judge
November 14, 2023

This matter considers the written appeal by GPN Electric Corp., (“GPN Electric” 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 June 8, 2021, GPN Electric applied for certification as a woman-owned business enterprise (“WBE”). GPN based its application on Maddalena Piacentino, President and 100% owner of GPN Electric. (DED Exhibit 1).
2. On July 9, 2021, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) Minority group members or women relied upon for certification do not possess adequate, industry-specific competence to make critical business decisions without relying upon other persons as required under 5 NYCRR § 144.2(c)(1); and
 - (b) Minority group members or women relied upon for certification do not 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).
3. GPN Electric submitted a request to appeal the denial determination, dated August 4, 2021 and received by DED on August 11, 2021. (DED Exhibit 3).
4. GPN Electric submitted a letter dated December 18, 2021, addressed incorrectly and thus, received by DED on April 11, 2022, inquiring about the status of the written appeal.

5. A Notice to Proceed Via Written Appeal was sent to GPN Electric on October 3, 2022 (DED Exhibit 4).
6. No additional materials or information were submitted by GPN Electric.
7. The Division filed an Affidavit of Glenn Butler, Associate Certification Director, dated July 27, 2023, and a brief of Amy H. O'Connor, Esq., counsel for the Division, dated July 28, 2023.

FINDINGS OF FACT

8. GPN Electric is an electrical contracting company that provides design build services for lighting, power and controls in commercial, residential, and industrial facilities. (DED Exhibit 1).
9. Maddalena Piacentino is the President and has a 100% ownership interest. Her primary responsibilities include managing office operations, client needs, work permits, payables/receivable, purchases, payroll, marketing, branding, social media, hiring office workers, sales, and preparing contracts, proposals, and invoices. (DED Exhibit 8).
10. Jason Piacentino is the Vice President, and his duties include estimating, field surveys, preparation of proposals, project management and commissioning, interviewing field candidates, and developing plans for field workers. (DED Exhibit 8).
11. The critical function of the business, as established through contracts submitted with the application, includes electrical power installation and repair. (DED Exhibit 5).
12. Maddalena Piacentino holds degrees in Finance and Business Administration and has a Medical Billing Certificate. Her prior experience is as a medical billing specialist and customer service supervisor. (DED Exhibits 6 and 9).

13. Jason Piacentino holds a degree in Electrical and Computer Engineering, is a Licensed Master Electrician, and is certified by the National Council on Qualifications for Lighting Professionals. He has over 24 years of experience in electrical contracting, installation and repairs, project management, field supervision, and CAD lighting control systems design. (DED Exhibit 7).

14. A copy of a contract between GPN Electric and its largest active project was provided with the application and is signed by Jason Piacentino on behalf of the business enterprise. (DED Exhibit 5).

APPLICABLE LAW

5 NYCRR § 144.2 (c)(1) states as follows:

Competence in the industry.

Minority group members and women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things. In evaluating whether a minority group member or woman possesses adequate, industry-specific competence, the division shall consider factors including but not limited to:

- (i) Whether individuals employed by the business enterprise for which certification is sought are required to obtain licenses or certifications to provide products or services to the clients of the business enterprise;
- (ii) The extent to which academic credentials exist for persons employed in the industry; and
- (iii) The extent to which industry-specific expertise may be obtained via direct work experience.

5 NYCRR § 144.2 (c)(2) states as follows:

Operational decisions.

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.

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 GPN Electric 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. Industry-Specific Competence

The Division denied GPN Electric's application for certification as a WBE on the basis that GPN Electric failed to demonstrate that, Maddalena Piacentino, the party relied upon for certification possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR § 144.2(c)(1). (DED Exhibit 2).

“This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things.” (5 NYCRR § 144.2(c)(1)). The Division interprets this regulation to require an applicant to demonstrate that the woman-owner, relied on for certification, have the working knowledge necessary to review or evaluate the work of more experienced employees. (See *In the Matter of Upstate Electrical, LLC v New York State Department of Economic Development*, 179 AD3d 1343 (3d Dept. 2020) citing to *C.W. Brown, Inc. v Canton*, 216 AD 841, 842 (1995) (where the Court affirmed the denial where the woman-owner had no training or experience in the industry to make her qualified to supervise the work of her employees.)) The Division consistently requires that women owners be able to perform the core revenue generating functions of the business enterprise. (See *Matter of Bore Tech LLC*, Recommended Order dated June 1, 2021 (Final Order 21-05, dated December 22, 2021), see also, *Matter of Occupational Safety & Environmental Assoc. Inc. v New York State Department of Economic Development*, 161 AD3d 1582 (3d Dept. 2019)).

The Applicant bears the burden of establishing that the woman-owner relied upon for certification has met this requirement. Failure to satisfy this burden is proof that the denial was supported by substantial evidence. See *A.A.C. Contracting, Inc. v. NYS Dept. of Economic Development*, 195 A.D. 3d 1284, 151 NYS 3d 187 (3d Dept. 2021).

The Division argues that the applicant failed to provide sufficient evidence regarding Maddalena Piacentino’s industry-specific competence. The applicant provided a copy of Ms. Piacentino’s resume which details her educational and work experience as being in medical billing, customer service, administrative work, and bookkeeping. (DED Exhibit 6). Nothing in the resume cites to any education, experience, or certifications related to the core, or critical, functions of GPN Electric. (DED Exhibit 6). The Division also cites to a narrative submitted with the application

which lists Ms. Piacentino's duties at the business enterprise as being administrative and financial in nature, with nothing listed to demonstrate any expertise or experience in electrical contracting. (DED Exhibit 8). The narrative also lists work responsibilities for Jason Piacentino, which in contrast to Ms. Piacentino, includes roles which require experience and expertise in electrical contracting. (DED Exhibit 8). In addition, Mr. Piacentino's resume clearly evidences his experience in the core business functions, as indicated by his degree in electrical and computer engineering, licensure as a master electrician, and certifications in the field of lighting. (DED Exhibit 7).

The Applicant's only submission in response to the denial is a brief statement by Maddalena Piacentino included in the Request to Appeal. There, Ms. Piacentino admits that her work history is devoid of industry related experience but argues that her eight years working with the GPN Electric should qualify her as competent in the industry. (DED Exhibit 3). Ms. Piacentino also states that she would "further explain in detail in [her] written appeal submission." (DED Exhibit 3). However, no additional submissions have been provided to the Division or to this Tribunal. (DED Exhibit 3).

I find Ms. Piacentino's argument, that her time working at GPN Electric qualifies as her having industry-specific competence, unpersuasive. All the evidence presented indicates that Ms. Piacentino's experience is purely administrative while Mr. Piacentino's expertise is directed towards the core business functions of GPN Electric. Mr. Piacentino is a licensed Master Electrician, with a degree in electrical engineering, and has more than 24 years of experience in the electrical contracting industry. In contrast, Ms. Piacentino has no such experience. Businesses where the non-eligible spouse has the education and expertise to perform the specialized work and the owner spouse relied upon for certification handles the administrative aspects is considered a

family-owned business, which does not meet the criteria for WBE certification. (*Matter of Occupational Safety, supra* at 1583). Thus, the Division’s determination that the party relied upon for certification does not possess adequate, industry-specific competence to make critical business decisions without relying on others, as required under 5 NYCRR § 144.2(c)(1) is supported by substantial evidence.

II. Operation

The Division also denied GPN Electric’s application for certification as a WBE on the basis that GPN failed to demonstrate that Maddalena Piacentino, the woman-owner relied upon for certification, makes operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise as required by 5 NYCRR § 144.2(c)(2). According to the regulation, the critical functions of the business enterprise shall be determined by the Division based upon, but not limited to, the following factors: (1) “The products or services the business enterprise provides to clients; and” (2) “The means by which the business enterprise obtains contracts or orders.” 5 NYCRR § 144.2 (c)(2). The Division consistently denies certification where the woman-owner has no training, experience, or working knowledge in the core business functions and other employees or owners have more significant or substantive experience, and exercise that experience, such as by supervising or controlling field operations. (*Matter of Panko Electrical and Maintenance Corp. v Zapata et. al*, 172 AD3d 1682 (3d Dept. 2019), see also *Matter of Upstate Electrical, supra*).

In its evaluation, the Division reviewed, in addition to the application, the largest project identified by GPN Electric to determine what products and services GPN Electric provides to clients. (DED Exhibits 1 and 5). The application describes GPN Electric’s principal products, commodities, and services as “electrical engineering” and states that it provides “design build

services for lighting, power and controls in commercial, residential and industrial facilities.” (DED Exhibit 1). The contract, with Aclara Smart Grid Solutions (“Alcara”), indicates that the scope of work for GPN Electric is “electric meter repair services.” (DED Exhibit 5). Thus, the Division determined that the critical functions of GPN Electric is electrical engineering and electrical contracting, functions which involve site work and supervision.

The Division argues that Jason Piacentino is the employee at GPN Electric who makes the day-to-day decisions with respect to the critical functions of the business enterprise. They cite to Mr. Piacentino’s resume and the narrative provided with the application which lists the duties of Mr. Piacentino and Ms. Piacentino. (DED Exhibits 7 and 8). Mr. Piacentino holds a degree in electrical engineering, has more than 24 years of experience in electrical contracting, and is the person at GPN Electric responsible for estimating, field survey, preparing proposals, project management and commissioning, interviewing field candidates, and developing the plans for field workers. (DED Exhibits 7 and 8). By contrast, Maddalena Piacentino’s duties and responsibilities are administrative, ones that are common to most businesses and not industry-specific. (DED Exhibits 6 and 8). Thus, the Division argues that Ms. Piacentino does not have the expertise or training to make the operational decisions required by and relating to electrical contracting, and therefore it is Mr. Piacentino that is making those decisions. In support of that argument, the Division also cites to the contract with Alcara, which is signed by Mr. Piacentino, on behalf of GPN Electric. (DED Exhibit 5).

The applicant, in their Request to Appeal, provides no explanation nor any information that demonstrates that Ms. Piacentino has any training or industry related experience. (DED Exhibit 3). Instead, the applicant simply asserts that Ms. Piacentino’s experience over the past 8 years, working at GPN Electric, should qualify as industry-specific competence as required by the

regulations, without further explanation or information relating to how Ms. Piacentino is involved in any of the critical business functions of the business enterprise. (DED Exhibit 3). The applicant provides no other submissions in relation to their appeal.

As is the case with the first denial ground, as discussed *infra*, it is well settled that where the owner relied upon for certification has no training or experience in the critical functions of the business enterprise and others, with more significant experience, such as an employee or non-qualifying owner, actively engage in the core functions of the business, denial based on lack of operational control is appropriate. (See *Matter of Panko, supra*, and *Matter of Upstate Electrical, supra*). Here, the evidence presented establishes, unequivocally, that Maddalena Piacentino's role at GPN Electric is primarily administrative while Jason Piacentino's is responsible for the day-to-day operations of the electrical contracting work.

Based on the foregoing, I find that the Division's determination that GPN Electric has not demonstrated that Ms. Piacentino makes 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) is supported by substantial evidence.

CONCLUSION

GPN Electric did not meet its burden to demonstrate that the Division's determination to deny its application for certification as a minority and woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR § 144.2(c)(1) and 5 NYCRR § 144.2(c)(2) was not based on substantial evidence.

RECOMMENDATION

The Division's determination to deny GPN Electric Corp.'s application for certification as a woman-owned business enterprise should be affirmed.

In the Matter of GPN Electric Corp.
 DED File ID No. 65677
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
DED 1	Application for Certification	Y	Y
DED 2	Denial Determination	Y	Y
DED 3	Request to Appeal	Y	Y
DED 4	Notice to Proceed by Written Appeal Submission	Y	Y
DED 5	GPN Electric Contract with Aclara Smart Grid Solutions	Y	Y
DED 6	Resume of Maddalena Piacentino	Y	Y
DED 7	Resume of Jason Piacentino	Y	Y
DED 8	Narrative of Day-to-Day Duties	Y	Y
DED 9	Degrees of Maddalena Piacentino (nee Maddalena D'Orlando)	Y	Y
TRIBUNAL 1	GPN Inquiry re Appeal Status	N	Y