

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

**In the Matter**

**- of -**

**the Application of GREEN TEAM DUMPSTER RENTAL INC.**  
**for Certification as a Woman-owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 65850**

**RECOMMENDED ORDER**

**-by-**



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**Deidre A. Chuckrow**  
**Administrative Law Judge**  
**November 13, 2023**

This matter considers the written appeal by Green Team Dumpster Rental, Inc., (“Green Team” 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 April 4, 2019, Ms. Angela Flynn, as President, applied on behalf of Green Team for certification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1).
2. On February 18, 2022, the Division denied the application on the following grounds (DED Exhibit 2):
  - (a) Minority group members or women relied upon for certification have not demonstrated having made a capital contribution to the business enterprise proportionate to their equity interest therein, as demonstrated by but not limited to, contributions of money, property, equipment or expertise, as required under 5 NYCRR §144.2(b)(2); and
  - (b) The business enterprise does not operate independently as required under 5 NYCRR §144.2(e).
3. Green Team filed a Request to Appeal on March 22, 2022 (DED Exhibit 11).
4. A Notice to Proceed Via Written Appeal was sent to Green Team on October 4, 2022 (TRIBUNAL Exhibit 1).
5. Green Team submitted its written appeal by letter dated October 25, 2022. (APP Exhibit A).

6. The Division filed an Affidavit of Matthew Lefebvre, Associate Certification Director, dated July 20, 2023, and a brief of Laurel A. Wedinger-Gyimesi Esq., counsel for the Division, dated July 24, 2023.

### **FINDINGS OF FACT**

7. Green Team is engaged in the business in renting dumpsters to commercial and residential customers. (DED Exhibit 1).
8. Ms. Angela Flynn is the President and has a 100% ownership interest. (DED Exhibit 1).
9. Ms. Flynn contributed \$450.00 towards the capitalization of the business on July 1, 2018. (DED Exhibit 1).
10. In addition to her ownership of Green Team, Ms. Flynn works for The Roofing Guys, Inc. (“Roofing Guys”) and works for both Green Team and the Roofing Guys “simultaneously.” (DED Exhibit 1).
11. Mr. Flynn is the President and 100% owner of the Roofing Guys (DED Exhibit 8 and APP Exhibit B).
12. The dumpsters used by the Green Team were purchased by Roofing Guys for \$44,650. Roofing Guys also paid a deposit towards the purchase of a Ford F-550<sup>1</sup> in the amount of \$2,000. (DED Exhibit 5).
13. Green Team’s company journal and general ledger list a series of “transactions paid by The Roofing Guys,” including one in the amount of \$31,733.48, which is listed to include a \$25,170.00 payment for dumpsters, \$5,798.48 to Ford Credit, and \$765.00 for auto maintenance. (DED Exhibit 5).

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<sup>1</sup> The Division’s Denial Determination and Respondent’s brief mistakenly refer to an F-150 truck. This appears to be a typographical error as the only truck referenced in the exhibits is an F-550.

14. A credit card statement reflecting a payment for dumpsters to Bucks Fabricating Company, dated July 3, 2020, is under the name of Mike Flynn, The Roofing Guys, Inc. (DED Exhibit 6).
15. Invoices for the purchase of dumpsters from Bucks Fabricating by Green Team are addressed to “Mike” or “Mike Flynn” with a phone number that is not the business’ telephone number provided in the Certification Application. (DED Exhibit 7).
16. Ms. Flynn acknowledges, in a narrative included with the application, that The Roofing Guys paid for items on behalf of Green Team, stating that “[she] did not have enough credit on the Green Team credit card or in the Green Team bank account to pay for the dumpsters outright.” (DED Exhibit 1).
17. The Green Team reported gross sales of \$66,545 in 2019 and received payment in the amount of \$100,000 from the Roofing Guys which was recorded as a “management fee.” (TRIBUNAL Exhibit 2).
18. Roofing Guys’ business address is 3570 Walters Road, Syracuse, New York. The Green Team uses Roofing Guys’ business location, 3570 Walters Road, Syracuse, New York, for storage of their dumpsters, as well as for office space and as a mailing address, without a lease agreement, and without charge. (DED Exhibit 8).

### **APPLICABLE LAW**

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

Capital Contribution. Minority group members and women relied upon for certification must demonstrate a capital contribution to the business enterprise for which certification is sought proportionate to their equity interest therein.

- (i) Sources of capital contribution. Minority group members and women may demonstrate a capital contribution by providing documentary evidence of, for example and without limitation, one of more of the following:

1. Money;
2. Property;
3. Equipment; or
4. Expertise, provided that the contribution of such expertise must be uncompensated, the expertise must be specialized and directly applicable to one or more critical aspects of the operation of the business enterprise, and a reasonable assessment of the fair market value of the expertise must be clearly documented.

5 NYCRR § 144.2 (e) states as follows:

Independence. Business enterprises for which certification is sought must operate independently. In order to determine whether such business enterprises operate independently, the division shall consider but not be limited to the following criteria:

- (1) Whether the business enterprise shares resources with another entity, including, but not limited to, personnel, equipment, office space, warehouse and other storage space, and yard space;
- (2) Whether the business enterprise transacts business primarily with one other entity; and
- (3) Whether the business enterprise receives tangible benefits as a result of a connection to another entity, and whether such benefits are consistent with standard industry practices.

#### **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 Green Team 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. Ownership**

The Division denied Green Team’s application for certification as a WBE on the basis that Green Team failed to demonstrate that the party relied upon for certification made capital contributions proportionate to their equity interest therein, as required by 5 NYCRR § 144.2(b)(2). (DED Exhibit 2). The Division interprets this regulation to require an applicant to demonstrate that the woman owner contributed, “as demonstrated by, but not limited to, contribution of money, property, equipment, or expertise,” in proportion “to their equity interest in the business enterprise.” 5 NYCRR § 144.2(b)(2) and 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 applicant must substantiate that the source of the capital contribution is by the minority group member or woman owner. See *Matter of Otone Mechanical Construction, Inc.*, Recommended Order dated April 24, 2015 (Final Order 17-28, dated May 2, 2017), *Matter of Spring Electric, Inc.*, Recommended Order dated March 17, 2017 (Final Order 17-21, dated March 27, 2017).

The Applicant bears the burden in establishing that she has met this certification 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 person relied upon for certification, Ms. Angela Flynn, failed to provide sufficient evidence regarding her capital contribution for her 100% ownership interest in Green Team. The certification application provides that Ms. Flynn contributed \$450.00 as a capital contribution and nothing for the payment of her shares. (DED Exhibit 1). The funding for dumpsters and for the purchase of an F-550 truck, necessary items for the critical functioning of the business enterprise, in an amount in excess of \$80,000 was instead provided by the Roofing Guys a company owned by Ms. Flynn's husband. (DED Exhibits 5 and 7, and APP Exhibit B).

The Applicant admits in her appeal letter that her "husband provided funds to help the start up of the business" but argues that over the past two and a half years that she has paid all the bills associated with the business from revenue generated from the business. (APP Exhibit A). In support of her argument, Appellant now seeks to introduce additional documents including a personal financial statement, credit card statements, bank statements, and a 2021 tax return. (APP Exhibits B, C, and D).

The Division argues that Ms. Flynn raises the above issues for the first time upon appeal, and therefore these arguments, and accompanying evidence must be disregarded as they do not seek to clarify or explain previously submitted materials, but rather they represent new information asserted for the first time on appeal. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021). They further argue, that even if these documents were properly before this tribunal, they do not overcome the appellant's failure to produce evidence establishing that she made capital contributions proportionate to her equity interests.

Ms. Flynn's statements and documents regarding the revenue of Green Team, its valuation, and how bills are paid were not before the Division at the time of the denial determination. Additionally, this information does not clarify the information that was before the Division at the time of its certification decision, and therefore may not be considered on appeal. See *Scherzi, supra*. Notwithstanding its inadmissibility, had the information been provided with the application it still would not address nor overcome the issue of a lack of evidence regarding capital contributions by Appellant.

I find that Ms. Flynn did not demonstrate that she made capital contributions to Green Team in proportion to her ownership interest. Thus, the Division's determination that the party relied upon for certification failed to demonstrate that they made a capital contribution to the business enterprise proportionate to their equity interest therein, as required under 5 NYCRR § 144.2(b)(2) is supported by substantial evidence.

## II. Operation

The Division also denied Green Team's application for certification as a WBE on the basis that Green Team failed to demonstrate that it operates independently, as required by 5 NYCRR § 144.2(e). (DED Exhibit 2). To determine whether a business operates independently the Division must consider, but is not limited to the following: "(1) Whether the business enterprise shares resources with another entity, including, but not limited to, personnel, office space, warehouse and other storage space, and yard space; (2) Whether the business enterprise transacts business primarily with one other entity; and (3) Whether the business enterprise receives tangible benefits as a result of a connection to another entity, and whether such benefits are consistent with standard industry practices." 5 NYCRR § 144.2 (e) (1) (2) & (3)



The Division argues that the applicant has failed to meet any of the stated criteria of independence under the regulation. Specifically, the Division argues that the fact that Green Team shares office space with Roofing Guys, without a lease and without being charged rent, that they are provided with storage space for their dumpsters from Roofing Guys, also free of charge, and that Ms. Flynn simultaneously is employed by Roofing Guys while operating Green Team, is proof of a sharing of resources. (DED Exhibits 1, 8, and 9). In addition, the Division cites to Green Team's 2019 tax return which shows that business received \$100,000 from Roofing Guys as a management fee while having gross sales of \$66,545, as evidence of transacting primarily with one business entity. (TRIBUNAL 2). Finally, the Division argues that Roofing Guys' purchases of equipment, and additional other transactions as recorded on Green Team's business' journal, evidences a tangible and significant benefit, not standard in industry practice, received by Green Team from Roofing Guys. (DED Exhibit 5).

Ms. Flynn now asserts in her appeal submissions, that she no longer pays a management fee to the Roofing Guys, that equipment payments and bills are now paid through Green Team, and that she no longer works for the Roofing Guys. (DED Exhibit 11 and APP Exhibit A). However, no documents or information are provided to support those arguments.<sup>2</sup> Further, Ms. Flynn, in her appeal form, acknowledges that she continues to share office and storage space with the Roofing Guys. (DED Exhibit 11).

A business which shares office space, rents storage space, acts as a subcontractor, and shares employees is not considered to operate independently. See *Matter of Acme Lighting Rod, LLC.*, Recommended Order dated March 6, 2020 (Final Order 20-02, dated April 21, 2020). As

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<sup>2</sup> As my review is limited to such information that was before the division at the time of the denial determination, only evidence that seeks to clarify and explain previously submitted materials will be considered. See *Scherzi*, supra. Here, no documentation, clarifying or otherwise, has been submitted.

was the case in *Matter of Skyline Specialty Systems, Inc. v. Gargano*, 294 AD2d 742 (3<sup>rd</sup> Dept 2002), where the applicant was so entangled with another business by sharing personnel, office, etc., that it clearly was not independent, so is the instant case. Here, Green Team relies heavily on the Roofing Guys for capital, office space, and equipment storage and appears to be a tangential aspect of the Roofing Guys and thus, not eligible for WBE certification.

Based on the foregoing, I find that Ms. Flynn has not demonstrated that Green Team operates independently. Accordingly, the Division's determination that the business enterprise does not operate independently, as required under 5 NYCRR § 144.2(e) is supported by substantial evidence.

### **CONCLUSION**

Green Team 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(b)(2) and 5 NYCRR § 144.2(e) was not based on substantial evidence.

### **RECOMMENDATION**

The Division's determination to deny Green Team Dumpster Rental, Inc.'s application for certification as a woman-owned business enterprise should be affirmed.

In the Matter of Green Team Dumpster Rental, Inc.  
DED File ID No. 65850  
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	Green Team's Filing Documents / Articles of Incorporation	Y	Y
DED 4	Green Team's Bank Signatory Card	Y	Y
DED 5	Green Team General Ledger and Journal	Y	Y
DED 6	Capital One Credit Card Statement	Y	Y
DED 7	Invoices for the Purchase of Dumpsters	Y	Y
DED 8	Rent Letter	Y	Y
DED 9	Resume Angela Flynn	Y	Y
DED 10	Accountant explanation re: Management Fee The Roofing Guys	Y	Y
DED 11	March 22, 2022 Appeal	Y	Y
APP A	Appeal Letter dated October 25, 2022	Y	Y
APP B	Personal Financial Statement	Y	Y
APP C	2021 Federal Income Tax Return – Green Team	Y	Y
APP D	Green Team Capital One Credit Card Statements	Y	Y
TRIBUNAL 1	Notice to Proceed Via Written Appeal	N	Y
TRIBUNAL 2	2019 Green Team Tax Return	N	Y