



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

In the matter of the appeal of

HVAC SYSTEMS, CORP.

FINAL ORDER 23-08

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

This order arises from an administrative appeal brought on behalf of HVAC Systems, Corp. (“HSC” or “Appellant”) pursuant to section 144.2 of Title 5 of the New York Codes, Rules and Regulations.¹ Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated September 7, 2021, to deny HSC’s November 13, 2017, certification application as a Woman-owned Business Enterprise (“WBE”).

Appellant initiated its appeal by sending a request to appeal dated October 27, 2021, to the Division, requesting to appeal the denial determination via written submission. On October 3, 2022, the Division sent a notice to proceed by written appeal to the Appellant. Thereafter, HSC submitted an undated written appeal. The Division responded to the written appeal submission with its Memorandum of Law dated May 12, 2023, and an Affidavit of Raymond Emanuel, Associate Director for the Division, with attached Exhibits. Administrative Law Judge (“ALJ”) David A. Murad presided over the appeal.

The issues on appeal were whether Appellant sufficiently demonstrated that the woman owner relied upon for certification (1) has made capital contributions in the form of money, property, equipment or expertise in proportion to her equity interest, as required by 5 NYCRR § 144.2(b)(2); (2) shares in the risks and profits of the business enterprise in proportion to her equity interest, as required by 5 NYCRR § 144.2(b)(3); (3) has shown that ownership was not allocated

¹ The Division’s September 7, 2021, denial determination postdate the December 2, 2020, amendments made to 5 NYCRR Parts 140 et al. Accordingly, the eligibility criteria set forth under the amended regulations are referenced throughout this final order.

solely for the purpose of securing certification, as required by 5 NYCRR § 144.2(b)(5); (4) possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required under 5 NYCRR § 144.2(c)(1); (5) 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); and (3) has devoted time on an ongoing basis to the daily operation of the business enterprise, as required by 5 NYCRR § 144.2(c)(4).

On August 9, 2023, the Division received a Recommended Order from ALJ Murad that recommended affirmation of the Division's denial of the application to certify HVAC Systems, Corp. as a WBE on the grounds set forth in the Division's September 7, 2021, denial letter.

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 September 7, 2021, is affirmed. Accordingly, HVAC Systems, Corp. will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

August 17, 2023



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