



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

In the matter of the appeal of

Hartson Total Opening, Inc.

FINAL ORDER 23-07

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 Hartson Total Opening, Inc. (“HTO” 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 January 21, 2020, to deny HTO’s March 7, 2017, certification application as a Woman-owned Business Enterprise (“WBE”).

Appellant initiated its appeal by sending a notice of appeal letter dated February 17, 2020, to the Division, requesting to appeal the denial determination via written submission. On May 8, 2020, the Division sent a notice to proceed by written appeal to the Appellant. Kathleen Hartson thereafter submitted a written appeal on behalf of HTO dated June 29, 2020. The Division responded to the written appeal submission with its Memorandum of Law dated February 16, 2023, and an Affidavit of Raymond Emmanuel, Certification 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 proportion to her equity interest in the business enterprise, as required by 5 NYCRR §144.2(a)(1); (2) whether the woman owner makes decision pertaining to the operation of the business enterprise, as required by 5 NYCRR § 144.2(b)(1); (3) whether the woman owner has the adequate managerial experience or

¹ The Division’s January 21, 2020, denial determination and Appellant’s February 17, 2020, request to appeal pre-date 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.

technical competence to operate the business enterprise, as required by 5 NYCRR § 144.2(b)(1)(i); (4) whether the woman owner demonstrated the working knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR § 144.2(b)(1)(ii); and (5) whether the relevant business agreements permit the woman owner to make decisions without restrictions, as required by 5 NYCRR 144.2(b)(2).

On April 12, 2023, the Division received a Recommended Order from ALJ Murad that recommended affirmation of the Division's denial of the application to certify HTO as a WBE on the grounds set forth in the Division's January 21, 2020 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 January 21, 2020, is affirmed. Accordingly, Hartson Total Opening, Inc. will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

July 17, 2023



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