

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

In the Matter

- of -

the Application of **Hudson River Mechanical Group, Inc.**  
for Certification as a Minority-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 62699

RECOMMENDED ORDER

- by -

/s/

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Michele M. Stefanucci  
Administrative Law Judge

May 1, 2020

## **SUMMARY**

This report recommends that the determination of the Division of Minority and Women's Business Development (Division) of the New York State Department of Economic Development to deny Hudson River Mechanical Group, Inc. (applicant) certification as a minority-owned business enterprise (MBE) be affirmed for the reasons set forth below.

## **PROCEEDINGS**

This matter involves the appeal by 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 ("NYCRR") Parts 140-144, of the determination of the Division that applicant does not meet the eligibility criteria for certification as a MBE.

Applicant submitted an application for MBE certification on September 5, 2017 (DED 1). By letter dated September 24, 2018, the Division denied the application (DED 2). In the letter, the Division set forth the following three grounds for the denial of certification:

1. The contributions of minority group members are not proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise (5 NYCRR 144.2[a][1]);
  2. Minority group members relied upon for certification do not devote time on an ongoing basis to the daily operation of the business enterprise (5 NYCRR 144.2[b][1][iii]);
  3. Hudson River Mechanical Group, Inc., is not an independent business enterprise (5 NYCRR 144.2[a][2] and 144.2[c][2])
- (DED 2).

On October 5, 2018, applicant requested a hearing on the denial (DED 3). By letter dated February 26, 2020, the Division advised applicant that a hearing had been scheduled for March 10, 2020 (DED 4). Roberto Velazquez, president of Hudson River Mechanical Group, Inc. and Tonya Dennis, appeared and testified on behalf of the business enterprise. Meaghan Caltabiano, Excelsior Service Fellow, represented the Division, and Iliana Farias, Director of Certification, provided testimony for the Division.

Closing statements were filed by the Division and the applicant on March 30, 2020. An audio recording of the hearing was made and received by my office on April 7, 2020. The recording is approximately 80 minutes in length and consists of three tracks. References to testimony from the hearing are identified by the time on the recording at which the testimony occurs (Track \_\_ at \_\_).

## **ELIGIBILITY CRITERIA**

The eligibility criteria pertaining to certification as a minority owned business enterprise are established by regulation (*see* 5 NYCRR 144.2). For the purposes of determining whether an applicant should be granted MBE status, the ownership, operation, and control of the business enterprise are assessed based on information supplied through the application process. The Division reviews the enterprise as it existed at the time that the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and any interviews that the Division’s analyst may have conducted (*see* 5 NYCRR 144.4[e] and 144.5[a]).

## STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that the Division's denial of the application for MBE certification 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 the Division's conclusions and factual determinations are not supported by “such relevant proof as a reasonable mind may accept as adequate” (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011] [internal quotation and citations omitted]).

## POSITIONS OF THE PARTIES

### Division

The Division contends that its determination to deny MBE certification to Hudson River Mechanical Group, Inc. is supported by substantial evidence and that applicant failed to satisfy certification criteria related to ownership, operation and independence of the business enterprise by a minority owner (DED 2). With regard to ownership, the Division maintains that the applicant failed to provide documentation with the application to substantiate the claim that Mr. Velazquez made contributions to the business enterprise in the amount of [REDACTED] (DED 2 at 2). Moreover, the Division maintains that the 2015 and 2016 personal income tax returns and associated W-2 statements that accompanied applicant’s request for MBE certification, indicate that Mr. Velazquez received no compensation from applicant and is employed full-time by Bargain Plumbing and Heating LLC (DED 2 at 3). Finally, the Division argues that applicant is not an independent business enterprise because it shares office space, employees and contracts with another business, Bargain Plumbing and Heating LLC (*id.*).

### Applicant

On appeal, applicant argues that the facts supporting the Division’s decision to deny MBE certification to Hudson River Mechanical Group, Inc. are unclear (DED 3). Applicant contends that Hudson River Mechanical Group, Inc. is a plumbing and heating business, owned 100% by Roberto Velazquez (Track 1 at 3:00). According to Mr. Velazquez, applicant was previously certified as a MBE and has completed numerous projects with that certification (Track 1 at 3:12). Applicant argues that its owner, Roberto Velazquez, is a licensed master plumber in both New York City and Westchester County, and that certification as a MBE was improperly denied (Track 1 at 4:45).

## FINDINGS OF FACT

1. Hudson River Mechanical Group, Inc. is a plumbing and heating business, located at 435 Austin Place, Space F, New York, New York. DED 1 at 1, 3.
2. Roberto Velazquez is 100% owner and president of Hudson River Mechanical Group, Inc. DED 1 at 3.
3. On the application for certification, Mr. Velazquez identified his ethnicity as Hispanic. Mr. Velazquez is the minority member relied upon for certification. DED 1 at 3.
4. Hudson River Mechanical Group, Inc. was previously certified as a MBE. During the recertification process, Division staff requested that applicant submit a new application. Track 1 at 13:54; Track 2 at 29:04.
4. Bargain Plumbing and Heating LLC is a plumbing and heating business, located at 435 Austin Place, New York, New York. DED 1 at 6.
5. Roberto Velazquez is 51% owner and vice-president of Bargain Plumbing and Heating, LLC. DED 1 at 6, 13.
6. Mr. Velazquez is the Master Licensed Plumber for both applicant and Bargain Plumbing and Heating LLC. Mr. Velazquez's supervises all jobs, projects and inspections for both companies. Mr. Velazquez maintains full-time employment with applicant and Bargain Plumbing and Heating LLC. DED 1 at 16-17.
7. In the application for certification, Mr. Velazquez indicated that he contributed a total of [REDACTED] to applicant in the form of equipment and a vehicle. At the time of the application, Mr. Velazquez was unable to provide proof of these contributions. DED 1 at 16.
8. In 2015, Mr. Velazquez received compensation from Bargain Plumbing and Heating LLC in the amount of [REDACTED]. In 2016, Mr. Velazquez received compensation from Bargain Plumbing and Heating LLC in the amount of [REDACTED]. Mr. Velazquez did not receive any compensation from applicant in 2015 or 2016. DED 11, 12.
9. Three contracts accompanied applicant's MBE certification request. All three contracts were for services rendered by Bargain Heating and Plumbing LLC. DED 1 at 15; DED 14, 15, 16.

## DISCUSSION

This recommended order considers applicant's appeal from the Division's determination pursuant to Executive Law 15-A, to deny Hudson River Mechanical Group, Inc.'s certification as a MBE.

### *Ownership*

To be eligible for certification as a MBE, a business enterprise applying for certification is required to establish that the contributions of minority members are proportionate to their equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise (5 NYCRR 144.2[a][1]). To verify claims, Division staff request and review documents such as bank statements, cancelled checks, bills of sale and registration information (DED 1 at 16; Track 2 at 1:00).

In the application for MBE certification, Mr. Velazquez indicated that he made two contributions to the business enterprise, specifically [REDACTED] for tools and [REDACTED] for a vehicle (DED 1 at 3). At the time of the application, Mr. Velazquez was unable to provide any documentation to substantiate these contributions indicating "we moved, and are still trying to locate the information" (*id.* at 16). At the hearing, Mr. Velazquez clarified that over the years, he has made many contributions to the business, well in excess of the [REDACTED] detailed in the application (Track 1 at 20:55). Mr. Velazquez indicated that the value of the vehicle referenced in the application was actually [REDACTED], not [REDACTED], and that he could provide a copy of the satisfaction of debt to support his claim (Track 1 at 21:12).

I note that the satisfaction of debt referenced by Mr. Velazquez at the hearing post-dates applicant's request for certification and was therefore not available for consideration by the Division at the time the application was made. Moreover, the documents that were submitted with the application to support Mr. Velazquez's claims of capitalization of the business, specifically three of bank statements from 2017, do not contain any evidence that Mr. Velazquez made contributions to applicant (DED 5, 6, 7 and 17; Track 2 at 5:05).

Accordingly, I conclude that based on the information that was provided to the Division during the application process, it was reasonable for the Division to determine that the contribution of the minority owner was not proportionate to his equity interest in the business enterprise.

### *Operation and Independence*

Pursuant to 5 NYCRR 144.2[b][1][iii], the minority group member relied upon for certification must devote time on an ongoing basis to the daily operation of the business. Moreover, a business seeking certification as a MBE must demonstrate that it is independent (5 NYCRR 144.2[a][2] and 144[c][2]). In evaluating these criteria, Division staff consider, among other things, whether the individual relied upon for certification devotes time to the business on a daily basis and is compensated for that time, and whether the business provides services independent of another business entity (Track 2 at 7:25; 18:10).

Mr. Velazquez is the president and 100% owner of Hudson River Mechanical Group, Inc. as well as the vice-president and 51% owner of Bargain Plumbing and Heating LLC (DED 1). The record in this matter reflects that both entities are in the business of providing plumbing and heating services for residential and commercial customers (DED 1 at 3, 14). In addition, both enterprises share office space, equipment and employees (DED 13, 14; Track 2 at 30:25).<sup>1</sup>

In the application for certification, Mr. Velazquez indicated that he is the licensed master plumber for both companies and in that role, he oversees all contracts, supervises jobs, and performs inspections (DED 1). Moreover, Mr. Velazquez testified at the hearing that he works 60-70 hours a week as well as on weekends and even holidays (Track 2 at 14:28). Mr. Velazquez acknowledged both entities provide similar services, share office space and employees, however he maintains that they are separate and distinct entities, each with their own jobs and contracts (Track 1 at 12:37).

In support of the application for certification, Mr. Velazquez submitted his personal income tax returns and associated W-2 statements for calendar years 2015 and 2016 (DED 11, 12). According to those returns, Mr. Velazquez received no compensation from applicant in 2015 and 2016 however he did receive compensation from Bargain Plumbing and Heating, LLC (*id.*). At the hearing, Mr. Velazquez clarified that he did not take a salary from applicant, but instead reinvested his compensation back into the business (Track 2 at 33:04). I note that the record does not contain any documentation to support this claim. Based upon the lack of proof in this regard, it was reasonable for the Division to conclude that Mr. Velazquez did not meet the certification criteria related to the operation of the business enterprise.

Finally, Mr. Velazquez submitted three contracts to substantiate the business activities of applicant (DED 14, 15, 16). However, all three of these contracts were for services provided by Bargain Plumbing and Heating LLC, not applicant (*id.*). When questioned on this issue, Tonya Dennis testified on behalf of applicant that those contracts were submitted in error and that Hudson River Mechanical Group, Inc. had several of its own contracts during that time (Track at 32:35). While these documents may have been submitted in error, my review in this matter is limited to the documentation that was submitted with the application for certification as a MBE (5 NYCRR 144.5[a]). Accordingly, based upon the information provided to the Division, it was not reasonable for the Division to determine that the Hudson River Mechanical Group, Inc. is not an independent enterprise.

## **CONCLUSION**

As discussed above, applicant failed to meet its burden to demonstrate that the Division's determination denying certification was based upon substantial evidence.

## **RECOMMENDATION**

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<sup>1</sup> According to Mr. Velazquez, the reason that Hudson River Mechanical Group, Inc. and Bargain Plumbing and Heating LLC share office space is because New York City requires a master plumber with more than one business, to locate both entities at the same address (Track 29:55).

For the reasons set forth above, the Division's determination to deny Hudson River Mechanical Group, Inc.'s application for MBE certification should be affirmed.

Matter of Hudson River Mechanical Group, Inc.  
 DED File ID No. 62699  
*Exhibit Chart*

Exhibit No.	Description	Rec'd
DED 1	Certification Application submitted 9/5/17	✓
DED 2	Denial Letter for MBE Certification dated 9/24/18	✓
DED 3	Request for Hearing dated 10/5/18	✓
DED 4	Notice of Appeal Hearing dated 2/26/20	✓
DED 5	TDS Bank Statement of Account for the period 3/1/17-3/31/17	✓
DED 6	TDS Bank Statement of Account for the period 7/1/17-7/31/17	✓
DED 7	TDS Bank Statement of Account for the period 6/1/17-6/31/17	✓
DED 8	2013 Corporate Income Tax Return for Hudson River Mechanical Group, Inc.	✓
DED 9	2014 Corporate Income Tax Return for Hudson River Mechanical Group, Inc.	✓
DED 10	2015 Corporate Income Tax Return for Hudson River Mechanical Group, Inc.	✓
DED 11	2015 Personal Income Tax Return for Roberto Velazquez	✓
DED 12	2016 Personal Income Tax Return for Roberto Velazquez	✓
DED 13	Operating Agreement for Bargain Plumbing and Heating LLC dated 7/7/15	✓
DED 14	Contract between Bargain Plumbing and Heating and [REDACTED] dated 1/9/18	✓
DED 15	Contract between Bargain Plumbing and Heating and [REDACTED] [REDACTED] dated 8/25/17	✓
DED 16	Contract between Bargain Plumbing and [REDACTED] dated 9/12/17	✓
DED 17	New York State Vehicle Registration – Roberto Velazquez	✓