

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

In the Matter


- of -

**the Application of Innovative Products & Imports, Inc
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 63161

RECOMMENDED ORDER

-by-

A handwritten signature in black ink, appearing to read "Adrienne R. Lotson", written in a cursive style.

Adrienne R. Lotson
Administrative Law Judge
August 8, 2023

This matter considers the written appeal by Innovative Products & Imports, Inc., (“Innovative” 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 November 18, 2016, Eve Korn, as President, applied on behalf of Innovative for certification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1.)
2. On January 3, 2020, the Division denied the application on the grounds that the woman owner did not make capital contributions in proportion to her equity interest in the business enterprise as required by 5 NYCRR former §144. 2(a)(1) (DED Exhibit 2.)
3. Innovative submitted its written appeal by letter dated March 16, 2020. (APP B.)
4. The Division filed an Affidavit of Raymond Emanuel, Certification Director dated March 8, 2023, and a brief of Laurel A. Wedinger-Gyimesi Esq., counsel for the Division, dated April 21, 2022.

FINDINGS OF FACT

5. Innovative is an advertising material direct distribution services business that provides promotional products and advertising services. (DED Exhibit 1).
6. Eve Korn is the President of Innovative and has a 60% ownership interest. (DED Exhibit 1).

7. Eve Korn (nee Reinman) founded Mamie's Inc, a fashion design and women's accessory business in May 2004. (DED Exhibit 4).
8. From 2004, until the company went dormant in 2007, Ms. Reinman held a 100% ownership interest in Mamie, Inc. (DED Exhibit 5)
9. In May 2010, Ms. Korn transferred her stock to her husband, Doug Korn who used the company to sell consulting services to overseas suppliers. The name of the business enterprise was changed to Innovative Products & Imports, Inc. with Doug Korn retaining 100% ownership interest. (DED Exhibits 1, 3, 5 and 7)
10. In 2016, Innovative was restructured to provide promotional products and advertising services and Ms. Korn acquired a 60% ownership interest with Doug Korn retaining a 40% ownership interest. (DED Exhibits 1 and 5).
11. Two separate checks (\$ [REDACTED] each), written from the joint bank account of Eve and Doug Korn, were deposited in Innovative's account on August 22 and September 26, 2016, respectively. (DED Exhibit 6).

APPLICABLE LAW

5 NYCRR former § 144.2 (a)(1) states in relevant part as follows:

[T]he contribution of the minority group member(s) or woman owner must be proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise...

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 Innovative 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))

Accordingly, applicant’s attachment: Eve Reinman’s 2004 Personal Income Tax return, will not be considered as this is new evidence not before the division at the time of the denial determination and does not clarify previously submitted materials. (APP Exhibit D).

DISCUSSION

The Division denied Innovative’s application for certification as a WBE on the basis that Innovative failed to demonstrate that the party relied upon for certification made capital contributions proportionate to their ownership interest as required by 5 NYCRR former § 144.2 (a)(1) (DED Exhibit 2).

The Division argues in its brief that Eve Korn has not presented independently verifiable documentation to show that she made a capital contribution proportionate to her 60% ownership interest in Innovative. Specifically, the Division argues that Innovative has been inconsistent in how it represents the purpose of two \$ [REDACTED] cash infusions made by Eve Korn on August 21, 2016, and September 24, 2016. In one instance, section 2.C of the certification application, the payments are noted as capital contributions. In another instance, section 2.D of the same application, Appellant indicates that she did not make any capital contribution (\$ [REDACTED]) for her 60%

interest. The Division argues that the noted funds were used to fund operations of the business enterprise and not as contributions of capital. The Division further argues that in either event, while the regulations require capital contributions come from assets solely controlled by the woman owner, the two checks presented as proof of capital contribution came from a bank account held jointly by both Eve and Doug Korn¹. (DED Exhibits 1 and 6)

The parties agree that Ms. Korn, under her maiden name, Eve Reinman, founded Mamie Inc, a women's fashion and accessory business in 2004. The business was in operation from 2004 until 2007, at which time it went dormant. The business was revived in 2010 when its' name was changed to Innovative. Under the new name, Doug Korn, Eve Korn's husband, as the sole owner of the business enterprise provided consulting services. In 2016 Ms. Korn joined the company as a 60% owner. (DED Exhibits 1, 3 and 4).

Appellant argues that she made capital contributions when she formed the original company in 2004². However, when she transferred ownership of the business enterprise to her husband Doug in 2010, he did not make a capital contribution due to their marital status. Likewise, in 2016, when he reconveyed 60% to her, a capital contribution was not made for the same reason. The two \$ [REDACTED] checks issued in 2016 were cash infusions due to the operational needs of the business enterprise. (APP Exhibit B)

I find Appellant's argument that she and her husband were consistent in foregoing capital contributions during the transfer of ownership interests in 2010 and 2016 due to their marital status to be without merit. One's marital status does not negate the statutory requirement that the party

¹ The Division notes that several other discrepancies exist in the certification application including the date upon which Ms. Korn became president, and whether Mr. and Ms. Korn overlapped as president of the business enterprise. These matters are not taken up in this Recommended Order.

² Ms. Korn notes that neither she nor the bank have records going back as far as 2004 that can verify the capital contributions.

relied upon for certification make a capital contribution proportionate to their ownership interest. I also find that Ms. Korn has not substantiated the nature of any capital contribution made in 2004 at the founding of the original company: Mamie, Inc.

Although Appellant ultimately concedes in her appeal that the \$ [REDACTED] cash infusions in 2016 were not capital contributions, I feel the matter should be addressed, as the original certification application makes assertions that these funds were used for such a purpose (DED Exhibit 1). In this regard, even if one were to successfully argue that most, if not all, capital contributions are made to infuse cash into a business enterprise, in the present matter, the source of the funds was a joint bank account held by Eve and Doug Korn. As such, they do not satisfy the statutory requirement of the source of funds being solely under the control of the woman business owner. See *Application of S.C. Spencer Electric Inc*, Recommended Order dated July 29, 2021.

In conclusion, the record before the Division at the time of its determination to deny the WBE application contains substantial evidence to support its finding that the party relied upon for certification did not make capital contributions proportionate to their ownership interest as required by 5 NYCRR former § 144.2 (a)(1).

RECOMMENDATION

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

In the Matter of Innovative Products & Imports, Inc
DED File ID No. 63161
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
DED 1	Application for Certification, Dated November 18, 2016	Y	Y
DED 2	Denial Determination Letter, Dated January 28, 2020	Y	Y
DED 3	Certificate of Amendment of Mamie, Inc.	Y	Y
DED 4	Mamie Inc. Incorporation Documents	Y	Y
DED 5	“Explanation to various questions from Town Ryan Partner”	Y	Y
DED 6	Copy of checks dated August 21, 2016, and September 26, 2016	Y	Y
DED 7	2016 Corporate Minutes	Y	Y
DED 8	Authorized Signer Card	Y	Y
DED 9	Lease Agreement	Y	Y
DED 10	Eve Korn Resume	Y	Y
DED 11	Doug Korn Resume	Y	Y
DED 12	Updated Doug Korn Resume	Y	Y
APP A	Applicant’s Request to Proceed by Written Appeal, Dated January 28, 2020	Y	Y
APP B	Applicant’s Appeal Letter, Dated March 16, 2020	Y	Y
APP C	2004 Certificate of Incorporation	Y	Y
APP D	2004 Personal Income Tax Return: Eve Reinman	Y	N
APP E	2004 & 2010 Mamie Inc. Stock Certificates; 2010 & 2016 Innovative Products & Imports, Inc. Stock Certificates	Y	Y