

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

In the Matter

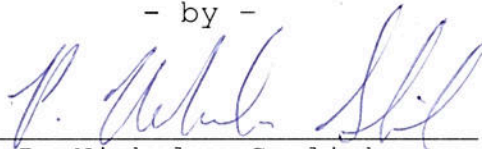
- of -

the Application of  
**Innovative WindoWear, Inc.**  
For Certification as a Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 62541

RECOMMENDED ORDER

- by -



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P. Nicholas Garlick  
Administrative Law Judge

September 24, 2019

## **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 the application of Innovative WindoWear, Inc. ("applicant") for certification as a woman-owned business enterprise ("WBE") be affirmed for the reasons set forth below.

## **PROCEEDINGS**

This matter involves the appeal, pursuant to New York State Executive Law ("EL") 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, by Innovative WindoWear, Inc. challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Innovative WindoWear, Inc.'s application was submitted on March 2, 2017 (Exh. DED1).

The application was denied by letter dated January 16, 2018, from Raymond Emanuel, Director of Certification Operations (Exh. DED2). As explained in an attachment to Mr. Emanuel's letter, the application was denied for failing to meet four eligibility criteria related to Patricia Côté's ownership and operation of the applicant.

In a two-page letter dated February 16, 2018, Patricia Côté and her husband Carl Côté, requested an in-person hearing to contest the denial (Exh. DED3).

By letter dated August 6, 2019, the Division notified Ms. Côté that a hearing would be held at 11:00 am on August 27, 2019 at the Division's Albany office (Exh. DED4).

The hearing was held as scheduled on August 27, 2019. The applicant was represented by Patricia Côté who testified as did her husband, Carl Côté. The Division was represented by Bella Satra, Esq., Senior Counsel for the Division, who called one witness, Clenice Mincey, Senior Certification Analyst. The hearing concluded at approximately 12:30 pm.

On September 9, 2019, the audio recording of the hearing was received, and the record closed.

### **ELIGIBILITY CRITERIA**

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status, regulatory criteria regarding the applicant's ownership, operation, control, and independence are applied on the basis of information supplied through the application process.

The Division reviews the enterprise as it existed at the time the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and interviews that are conducted by Division analysts.

### **STANDARD OF REVIEW**

On this administrative appeal, applicant bears the burden of proving that the Division's denial of applicant's WBE 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 marks and citations omitted]).

### **POSITIONS OF THE PARTIES**

#### Position of the Division

In its denial letter, the Division asserts that the application failed to meet four separate criteria for certification. First, the Division found that the contribution of the woman owner, Patricia Côté, was proportionate to her equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

Second, the Division found that the woman owner, Patricia Côté, does not share in the risks and profits in proportion to her equity interest, as required by 5 NYCRR 144.2(c)(2).

Third, the Division found that the woman owner, Patricia Côté, has not demonstrated adequate managerial experience or technical competence to operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(i).

Fourth, the Division found that the woman owner, Patricia Côté, has not demonstrated the working knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(ii).

Position of the Applicant

Innovative WindoWear, Inc. asserts that it meets the criteria for certification and that the Division erred in not granting it status as a woman-owned business enterprise pursuant to Executive Law Article 15-A.

**FINDINGS OF FACT**

1. Innovative WindoWear, Inc. is in the business of providing and installing window treatments (Exh. DED1 at 3). The firm has a business address of 16 Walpole Road, Groton, New York (Exh. DED1 at 1).

2. Innovative WindoWear, Inc. was acquired by Patricia Côté and her husband Carl Côté on December 2, 2013. Ms. Côté owns 51% of the firm and serves as its president. Mr. Côté owns 49% of the firm and serves as vice-president. (Exh. DED1 at 2-3).

3. The funds used by the Côtés to purchase the business were joint funds (Exh. DED13 at 25:00).

4. In 2016, Innovative WindoWear, Inc. paid Carl Côté [REDACTED] and Patricia Côté [REDACTED] (Exh. DED9).

5. Ms. Côté's resume lists twelve years of experience in the hotel industry and seventeen years of experience working for a local church as parish secretary, business manager, and bookkeeper (DED11). Mr. Côté's resume lists ten years of experience managing a wood products company, three years as an

iron worker, and fifteen years as owner/manager of a home improvement company (Exh. DED12).

6. A narrative of the roles of the owners of the firm provided with the application states Ms. Côté oversees daily office operations, including: reviewing project documents, preparing estimates, executing contracts, purchasing materials, managing accounts receivable and payable, preparing payroll, submitting tax reports and payments, and preparing union reports. Mr. Côté's duties include: meeting with customers, obtaining field measurements, overseeing projects in the field, and managing and scheduling employees. DED7.

### **DISCUSSION**

This recommended order considers the appeal of the applicant from the Division's determination to deny certification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The Division's denial letter set forth four bases related to Patricia Côté's ownership of Innovative WindoWear, Inc. Each is discussed separately, below.

#### **OWNERSHIP**

The first denial ground is that the applicant failed to show that the contribution of the woman owner, Patricia Côté, was proportionate to her equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). The relevant facts cited in the denial letter are: (1) Patricia Côté owns 51% of the applicant and Carl Côté owns 49%; (2) the application represents that Ms. Côté contributed more money to the firm than Mr. Côté; and (3) the application does not include any documents showing Ms. Côté contributed any money to the firm individually or that she made a greater contribution than did Mr. Côté.

In their appeal letter, the Côtés do not address the issue of contributions to the firm. Rather, they provide a brief history of their purchase of the applicant, Mr. Côté's previous experience in the construction business, and Ms. Côté's training with the firm's previous owner. At the hearing, Mr. Côté

testified that all contributions to the firm were made jointly by him and his wife (Exh. DED13 at 25:00).

Ms. Mincey, the Division's witness, testified that she reviewed the application which listed various contributions to the firm (Exh. DED1 at 3) as well as the other documents submitted regarding contributions. She stated that neither the copy of a statement of Ms. Côté's Roth IRA (Exh. DED5) nor copies of bank documents (Exh. DED6) showed Ms. Côté had made a contribution to the firm that was proportionate to her equity interest (Exh. DED13 at 44:00).

Based on the evidence in the record, specifically the fact that no evidence was included with the application showing any individual contribution by Ms. Côté, the applicant has failed to show that the contribution of the woman owner, Patricia Côté, was proportionate to her equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). The Division's denial on this ground was based on substantial evidence.

The second ground for denial cited in the denial letter was that the woman owner, Patricia Côté, does not share in the risks and profits in proportion to her equity interest, as required by 5 NYCRR 144.2(c)(2). The relevant fact cited in the denial letter is that Mr. Côté received greater compensation from the firm than Ms. Côté in 2016.

In their appeal letter, the Côtés argue the fact that Mr. Côté earned more than Ms. Côté in 2016 should be irrelevant because he is a union member and paying her more would not have been fiscally responsible. At the hearing, Ms. Côté explained that her husband was paid more because of membership in the local carpenters' union and she thought it prudent, from a business standpoint, to receive less compensation (Exh. DED13 at 6:30).

Ms. Mincey, the Division's witness, testified that she reviewed the firm's 2016 tax return (Exh. DED8) and the amount of salary each of the owners received (Exh. DED9), which showed Mr. Côté was paid [REDACTED] and Ms. Côté was paid [REDACTED]. These

facts lead her to conclude that the firm did not meet this WBE criterion (Exh. DED13 at 46:00).

Based on the evidence in the record, specifically the fact that Ms. Côté earned less than her husband, the applicant has failed to show that the woman owner, Patricia Côté, shares in the risks and profits in proportion to her equity interest, as required by 5 NYCRR 144.2(c)(2). The Division's denial on this ground was based on substantial evidence.

### OPERATION

The third ground for denial that Patricia Côté has not demonstrated adequate managerial experience or technical competence to operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(i) and the fourth ground, that Patricia Côté, has not demonstrated the working knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(ii), are combined by the Division in its denial letter. The relevant facts cited are: (1) the applicant is primarily engaged in furnishing and installing blinds and window shades; (2) Mr. Côté has approximately 25 years of managerial experience in the construction industry, including managing estimating and field operations; and (3) Ms. Côté's primary managerial experience is in accounting and bookkeeping and she had no demonstrated experience in the construction industry before becoming the majority owner of the applicant.

In their appeal letter, the Côtés argue that Ms. Côtés has a greater range of experience than that cited in the Division's denial letter, including more than forty years in customer service, fifteen years as a church business manager, and nine years as a manager at a hotel. These jobs have provided her with experience in supervising, training, scheduling employees, budgeting and spending, collaborating with co-workers and committees, soliciting and tracking capital campaign funds, overseeing human resources and payroll, as well as given her an opportunity to develop computer and organizational skills. These points were restated in Ms. Côté's testimony (Exh. DED13 at 7:30-10:00).

Ms. Mincey, the Division's witness, testified that she reviewed a narrative provided with the application describing

the roles of key employees (Exh. DED10) as well as the resumes of both Ms. Côté (Exh. DED11) and Mr. Côté (Exh. DED12) and concluded that Mr. Côté managed the revenue generating functions, including supervising fieldwork, while Ms. Côté was responsible for the firm's administrative functions and overseeing office work (Exh. DED13 at 51:00). She also testified Mr. Côté's resume showed extensive experience in managing construction related projects and employees while Ms. Côté's resume did not (Exh. DED13 at 49:30).

Based on the evidence in the record, including the resumes of the Côtés, the applicant has failed to show that Ms. Côté has adequate managerial experience or technical competence to operate the business enterprise, as required by 5 NYCRR144.2(b)(1)(i). In addition, the applicant has failed to demonstrate that the woman owner, Patricia Côté, has the working knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(ii). The Division's denial on these grounds was based on substantial evidence.

#### **CONCLUSIONS**

1. The applicant failed to show that the contribution of the woman owner, Patricia Côté, was proportionate to her equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

2. The applicant failed to show that the woman owner, Patricia Côté, shares in the risks and profits in proportion to her equity interest, as required by 5 NYCRR 144.2(c)(2).

3. The applicant failed to demonstrate that the woman owner, Patricia Côté, has adequate managerial experience or technical competence to operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(i).

4. The applicant failed to demonstrate that the woman owner, Patricia Côté, has the working knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(ii).



## **RECOMMENDATION**

The Division's determination to deny Innovative WindoWear, Inc.'s application for certification as a woman-owned business enterprise should be affirmed for the reasons stated in this recommended order.

**Matter of  
Innovative WindowWear, Inc.**

**DED File ID No. 62541  
Exhibit List**

<b>Exh. #</b>	<b>Description</b>
DED1	Application
DED2	Denial letter
DED3	Letter requesting hearing
DED4	Hearing scheduling letter
DED5	Roth IRA statement
DED6	Bank documents
DED7	Narrative
DED8	2016 tax returns
DED9	2016 federal tax form 1125
DED10	Narrative
DED11	Resume of Patricia Côté
DED12	Resume of Carl Côté
DED13	Audio recording of the hearing
A1	Shareholder minutes