

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

In the Matter

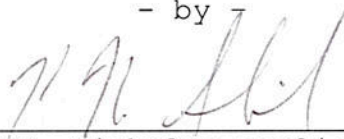
- of -

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

NYS DED File ID No. 47247

RECOMMENDED ORDER

- by -



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P. Nicholas Garlick  
Administrative Law Judge

August 30, 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 JVN Restoration, 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 JVN Restoration, Inc., challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

JVN Restoration, Inc.'s application was submitted on May 11, 2015 (Exh. DED1).

The application was denied by letter dated December 5, 2018, from Raymond Emanuel, Director of Certification Operations. As explained in an attachment to Mr. Emanuel's letter, the application was denied for failing to meet three eligibility criteria related to Jeanine Tardy's operation of the applicant (Exh. DED2).

In a three-page letter dated January 23, 2018, Ms. Tardy requested an in-person hearing (Exh. DED3).

By letter dated June 14, 2019, the Division notified Ms. Tardy that a hearing had been scheduled for July 9, 2019 at 10:00 am in the Division's New York City office.

The hearing convened as scheduled. Ms. Tardy appeared for the applicant and testified, and she called one witness, Les Fintz, the firm's Certified Public Accountant. The Division was represented by Simon Wynn, Esq., and called one witness, Clenice Mincey, Senior Certification Analyst. The hearing concluded at approximately 12:00 pm.

The digital recording of the hearing on four discs was received on August 1, 2019, at which time the record closed.<sup>1</sup>

### **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, if any, 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 three separate criteria for certification. First, the Division found that applicant failed to demonstrate that Jeanine Tardy makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR

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<sup>1</sup> Counsel for the Division requested and was granted permission to file a written closing brief to be received no later than ten days after the recording was provided (disc 4 at 13:30). However, no brief was ever received.

144.2(b)(1). Second, the Division found that the woman owner relied upon for certification, Jeanine Tardy, does not have adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i). Third, the Division found that the woman owner, Jeanine Tardy, 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

JVN Restoration, 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. JVN Restoration, Inc. is in the business of providing asbestos and lead abatement services, as well as remediating mold (Exh. DED1 at 3). Almost all of the firm's business is remediating asbestos (disc 2 at 12:15). The firm has a business address of 101 Ellis Street, Staten Island (Exh. DED1 at 1).

2. JVN Restoration, Inc. was established February 28, 2002 and is wholly owned by Jeanine Tardy, who serves as the firm's president (Exh. DED 1 at 2-3).

3. The individuals responsible for estimating and supervising field operations for JVN Restoration, Inc. are: John Tardy, Michael Aguello, Ignatius Marraccino, Charles Tardy, and Vincent Tardy (Exh. DED1 at 4-5).

4. Jeanine Tardy's resume states that she is in charge of all business and office operations, including: hiring staff; managing payroll, insurance, billing and collections; assisting in writing proposals; and supervising the filing of all project documentation (Exh. DED5). Ms. Tardy runs the office for the firm (disc 1 at 7:00), but does not do asbestos or lead abatement work, which is performed by union members (disc 2 at 11:30), nor does she supervise the work in the field (Exh. DED3 at 3). Ms. Tardy does not possess any individual licenses or certificates and cannot go into a contained area where asbestos remediation work is occurring (disc 2 at 14:45).

5. John G. Tardy, Ms. Tardy's husband, serves as senior project manager for all divisions of JVN Restoration, Inc. (Exh. DED4). Mr. Tardy has over 25 years of experience supervising field operations on asbestos abatement projects (Exh. DED3 at 3). He prepares bid proposals and is responsible for coordinating all phases of work, including overseeing project managers and supervisors as well as being in charge of safety on job sites (Exh. DED7). Mr. Tardy holds the following licenses and certificates: NYS Department of Labor asbestos certificate; NYC Department of Environmental Protection asbestos certificate; NYC Home improvement sales person license; and US EPA lead paint activities certificate (Exh. DED10 at 1 & 2).

6. Other employees of the firm also possess asbestos handling licenses and certificates, including: Charles Tardy (Exh. DED6, DED10 at 3); Michael Augello (Exh. DED8); Ignatius Marraccino (Exh. DED9); and Vincent Tardy (Exh. DED10 at 4).

#### **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 three bases related to the woman owner's operation of the firm.

The first ground for denial was that the applicant failed to demonstrate that the woman owner, Jeanine Tardy, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1). The relevant facts cited in the denial letter are: (1) JVN Restoration, Inc. is primarily engaged in providing asbestos abatement services; (2) Ms. Tardy is the sole shareholder of the firm; (3) John Tardy is the senior project manager and he, along with several other male employees is primarily responsible for managing significant operations of the firm related to estimating and supervising field operations; and (4) Ms. Tardy is primarily responsible for managing accounting, human resources, and accounts receivable (Exh. DED2).

In her January 23, 2018 letter, Ms. Tardy states that she makes just about every decision about the operation of the firm.

She does not dispute the facts cited in the Division's denial letter but insists that all her male employees working the field report back to her and she makes the final decisions on each project (Exh. DED3). At the hearing, Ms. Tardy testified that while men at the firm are responsible for estimating and supervising field operations, they all report back to her (disc 2 at 2:00). She stated that she runs the office, not the field operations (disc 3 at 1:00) and Mr. Fintz testified that she was responsible for internal company management while her husband was responsible for external matters (disc 3 at 5:45).

Division analyst Mincey testified that she reviewed JVN Restoration, Inc.'s application and noted that it states that Ms. Tardy does not do estimating for the firm nor does she supervise field operations (Exh. DED1 at 2). Based on this evidence, she concluded that Ms. Tardy did not make decisions pertaining to the operations of the enterprise, as that phrase is used in the relevant regulation (disc 3 at 30:00). In evaluating whether a firm meets this certification criterion, the Division examines the woman owner's role in the core functions of the business: how the firm obtains business and how it earns revenue. In most construction related businesses, the core functions are considered to be estimating and supervising the work done in the field. In this case, because Ms. Tardy does not perform either of these functions, JVN Restoration, Inc. does not meet this certification criterion.

Based on the evidence in the record, including the application itself as well as the testimony of Ms. Tardy, the applicant failed to demonstrate that the woman owner, Jeanine Tardy, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1). The Division's denial on this ground was based on substantial evidence.

The Division's denial letter treats the second and third grounds for denial together. The second ground for denial was that the woman owner relied upon for certification, Jeanine Tardy, does not have adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i). The third ground for denial was that the woman owner, Jeanine Tardy, has not demonstrated the working knowledge and ability needed to

operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(ii). The relevant facts cited in the denial letter are: (1) John Tardy is certified by the NYS Department of Labor as a Class G Supervisor for asbestos projects; he also has 25 years of experience supervising field operations for asbestos abatement projects; and (3) Ms. Tardy does not possess any certifications related to asbestos abatement and has no demonstrated experience supervising field operations on asbestos abatement projects (Exh. DED2).

Again, the facts supporting these denial bases are not in dispute. Ms. Tardy acknowledges that she does not hold any individual licenses or certificates, but states that she applied for and received the NYS asbestos handling license for the firm (Exh. DED3 at 4). She also states that while her husband has 25 years of experience supervising field operations on asbestos abatement projects, she has over 15 years of experience managing a company in the asbestos abatement field (Exh. DED3 at 3). She questions why, after being certified by the Division as a WBE in the past and being found qualified to meet these certification criteria, the Division has now denied her application on these grounds (Disc 1 at 7:30).

Division analyst Mincey testified that because Ms. Tardy did not have any individual licenses or certificates in the field of asbestos remediation and her husband and other employees did, she concluded that JVN Restoration, Inc. did not meet these WBE certification criteria (disc 3 at 32:15). On cross examination, she stated that she was not aware that the firm had been previously certified (disc 4 at 5:30) and that such information had not been included in the application (disc 4 at 9:00).

Based on the evidence in the record, specifically the fact that Ms. Tardy possesses no individual licenses or certificates in the asbestos abatement field and has no experience handling asbestos, the applicant has failed to demonstrate that Ms. Tardy has adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i), and has failed to demonstrate Ms. Tardy 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 demonstrate that the woman owner, Jeanine Tardy, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

2. The applicant failed to demonstrate that the woman owner relied upon for certification, Jeanine Tardy, has adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i).

3. The applicant failed to demonstrate that the woman owner, Jeanine Tardy, has demonstrated 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 JVN Restoration, Inc.'s application for certification as a woman-owned business enterprise should be affirmed for the reasons stated in this recommended order.



**Matter of  
JVN Restoration, Inc.**

**DED File ID No. 47247  
Exhibit List**

<b>Exh. #</b>	<b>Description</b>
DED1	Application
DED2	Denial letter
DED3	Appeal letter
DED4	Web page
DED5	Resume of Jeanine Tardy
DED6	Resume of Charles Tardy
DED7	Resume of John Tardy
DED8	Resume of Michael Augello
DED9	Resume of Ignatius Marraccino
DED10	Licenses
A1	Letter from ECA
A2	Promissory Note