



**Division of Minority  
and Women's  
Business Development**

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

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In the matter of the appeal of

**Jennifer Temps, Inc.**

FINAL ORDER 22-03

From a denial of certification as a Minority and Woman-owned Business Enterprise pursuant to Executive Law Article 15-A.

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This order arises from an administrative appeal brought on behalf of Jennifer Temps, Inc. ("JTI" or "Appellant") pursuant to parts 140-145 of title 5 of the New York Codes, Rules and Regulations.<sup>1</sup> Appellant seeks reversal of the decision of the Division of Minority and Women's Business Development (the "Division"), dated March 21, 2018, to deny JTI certification as a Minority and Woman-owned Business Enterprise ("MWBE").

By letter dated April 9, 2018, Appellant requested an administrative appeal and hearing. The Division issued a notice of appeal hearing dated October 24, 2019 which advised Appellant that a hearing had been scheduled for November 5, 2019. The hearing was adjourned and a virtual hearing using the Webex videoconferencing platform took place on July 22, 2021. Jason B. Klimpl, Esq. and Marisa B. Sandler appeared on behalf of the Appellant and Jennifer Singleton, President of Jennifer Temps Inc., testified for the Appellant. Bella Satra, Esq., appeared on behalf of the Division and Rodney Smith, Senior Certification Analyst, testified for the Division. Administrative Law Judge ("ALJ") Molly T. McBride presided over the hearing.

The issue on appeal was whether Appellant qualifies a small business as required by 5 NYCRR 140.1(aa)(6) and 140.1(tt)(1)(vi). Under the small business requirement to qualify for MWBE certification in New York, a business must not employ more than three hundred people. (5 NYCRR 140.1 [gg]) The arguments in this matter centered on whether a business that provides

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<sup>1</sup> The Division's March 21, 2018 denial determination and Appellant's April 9, 2018 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.

temporary workers to clients must count the temporary workers as employees in determining the business size.

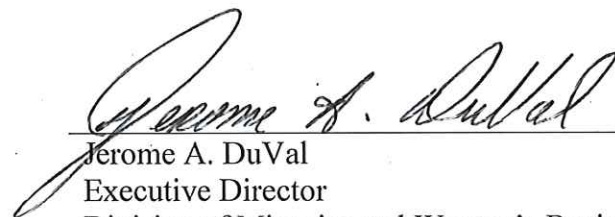
The Division received from ALJ McBride a Recommended Order, dated March 16, 2022, that recommended affirmation of the Division's denial of the application to certify JTI as an MWBE on the grounds set forth in the Division's March 21, 2018 denial letter.

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. As ALJ McBride noted, the issue of whether "a temporary staffing agency employee calculation include[s] personnel it places in temporary jobs" had already been decided in the 2017 Final Order in *In the matter of Superior Workforce Solutions, Inc.* (Final Order of Lourdes Zapata, March 23, 2017) In *Superior Workforce*, ALJ P. Nicholas Garlick had also agreed with the Division's position that the State MWBE program does not allow for an adjustment of employee count based on temporary workers and to do so would contradict the plain language of Executive Law 310 (20). (Recommended Order *Superior Workforce* at 5) As ALJ McBride found, the Final Order in *Superior Workforce* "is controlling in this matter" and "temporary staffing agencies must count the temporary employees placed through the agency as employees of the business." (Recommended Order, *In the matter of Jennifer Temps, Inc.*, March 16, 2022 at 5).

ALJ McBride determined that JTI did not present any legal basis for reversing the Division's determination in *Superior Workforce*; nor did JTI show that the facts of its denial differed from *Superior Workforce*. The Division's denial of JTI's application was based on substantial evidence and, based on the evidence in the record, JTI failed to demonstrate that it employed fewer than three hundred people at the time of application for recertification.

It is hereby **ORDERED** that the decision to deny certification, dated March 21, 2018, is affirmed. Accordingly, Jennifer Temps, Inc. will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

March 31, 2022

  
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Jerome A. DuVal  
Executive Director  
Division of Minority and Women's Business Development