

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

In the Matter

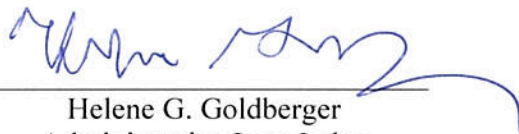
- of -

the Application of **LIDA STRATEGIC SOLUTIONS, INC.**  
for Certification as a Woman-owned Business Enterprise  
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 60212

RECOMMENDED ORDER

- by -



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Helene G. Goldberger  
Administrative Law Judge

March 6, 2019

## **SUMMARY**

The determination of the Division of Minority and Women's Business Development (Division) of the New York State Department of Economic Development to deny LSS Strategic Solutions, Inc. (LSS or applicant) certification as a woman owned business enterprise (WBE) should be affirmed for the reasons set forth below.

## **PROCEEDINGS**

In a letter dated January 5, 2017, the Division determined that LSS does not meet the eligibility requirements to be certified as a woman owned business enterprise and denied LSS's application. *See*, WBE Exhibit 2.

By letter dated February 1, 2017 and received by the Division on February 3, 2017, Sarah Romig, as the president of LSS and its majority (51%) shareholder, appealed from the Division's determination to deny WBE certification. Ms. Romig agreed to file a written appeal in lieu of a hearing.

By notice dated February 21, 2017, the Division acknowledged LSS's request to proceed with a written appeal. The February 21, 2017 notice set April 19, 2017 as the due date for LSS's written appeal. The notice also reiterated the Division's bases for the denial.

Ms. Romig timely filed a written appeal on behalf of LSS in the form of a letter dated April 11, 2017 and received by the Division on April 17, 2017 (Appeal). Ms. Romig included with the Appeal a number of copies of credit card statements from 2016. I have not marked these as exhibits and I am not considering them in making this determination as they were not before the Division staff when the review was made on LSS's application. In addition, I do not find that they add anything to LSS's effort to answer the Division staff's determinations.

Thomas Regan, Esq., Associate Counsel, New York State Division of Economic Development, filed the Division's response dated February 20, 2019 (Response). With the Response, the Division included six exhibits, which are identified in the attached exhibit chart. Among the exhibits included with the Response is a copy of LSS's completed application for WBE certification (*see* WBE Exhibit 1 [Application No. 7297595, submitted September 22, 2015]), as well as other application materials related to the bases for the Division's January 5, 2017 determination.

## **ELIGIBILITY CRITERIA**

The eligibility criteria pertaining to certification as a woman owned business enterprise are established by regulation. *See*, Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (5 NYCRR) § 144.2. To determine whether an applicant should be granted WBE status, the Division assesses the ownership, operation, and control of the business enterprise on the basis of 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, information presented in supplemental submissions and, if appropriate, from interviews conducted by Division analysts. *See*, 5 NYCRR 144.5(a).

## STANDARD OF REVIEW

On this administrative appeal, LSS, as applicant, bears the burden of proving that the Division's denial of its application for 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

### The Division

In the January 5, 2017 denial letter (WBE Exhibit 2), the Division determined that the application failed to meet the WBE certification criteria related to Sarah Romig's ownership as reflected by her capital contribution to the business enterprise. The Division asserted that the contribution of Sarah Romig is not 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). According to the Division, Ms. Romig possesses a 51% interest in the business enterprise, as compared to Mr. Christopher Farrell who possesses a 49% interest. Nevertheless, applicant failed to provide documentation that Ms. Romig made a greater capital contribution to the business as compared to Mr. Farrell. *See*, WBE Memorandum of Law (MOL) at pp. 3-4. The Division's MOL notes that LSS's application indicates that Ms. Romig contributed zero cash or capital contributions to the firm when she acquired ownership. *See*, MOL at pp. 3-4; WBE Exhibit 1, p. 3. Staff notes that copies of bank account statements were submitted with the application, but no explanation was provided showing how these documents supported a showing of Ms. Romig's contributions. Secondly, the Division presents that although Ms. Romig alleges that she developed her equity interest through "contributions of time and expertise in operating the entity" [WBE Exhibit 4, pp. 1-2], in the application Mr. Farrell is identified as Vice President with equal responsibility for the ten categories of business operations. *See*, WBE Exhibit 1, pp. 4-5.

In addition, the Division asserted that LSS did not demonstrate that Ms. Romig has control over LSS for certification purposes pursuant to 5 NYCRR § 144.2(b)(1). Staff maintained that in each notice of award that LSS submitted to the Division as part of their application was directed to Mr. Farrell, Vice President not Ms. Romig.<sup>1</sup> *See*, WBE Exhibit 5. Staff maintains that this fact in addition to the status of Mr. Farrell as the original owner of the company from 2013-2015 led the Division to conclude that Ms. Romig did not possess the requisite control over the firm for certification purposes. *See*, WBE MOL, p. 4; WBE Exhibit 6.

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<sup>1</sup>In the Division's Response, Counsel Regan refers to the notices of award being addressed to "Mr. Peter Farrell." *See*, Response, p. 4. I believe this was an error and staff meant Christopher Farrell as noted in the denial letter (as Mr. Farrell) and in the referenced exhibit. *See*, WBE Exhibits 2 and 5. I did not find any reference to a Peter Farrell in any of the documents submitted with the file.

## LSS

On appeal, Ms. Romig explains that after forty years as president of LSS Credit Agency Inc., James Farrell, her husband Christopher Farrell's father, passed away. *See*, WBE Exhibit 3, LSS Appeal, p. 2. She explains that after her father-in-law's death, her husband was overwhelmed with the demands of running several businesses and they agreed to form LSS together and in July 2015, Ms. Romig assumed the title of President. *Id.* She maintains that in this role she contributed tens of thousands of dollars and thousands of hours and that her initial investment in the company was to work for "nearly 20 months compensation free." *Id.* She also points to the copies of credit card statements submitted with her appeal as further documentation of her contribution.

### **FINDINGS OF FACT**

#### **I. General**

1. LSS Strategic Solutions, Inc. is located as 3255 Lawson Blvd, Suite 202, Oceanside, NY 11572-2044. *See*, WBE Exhibit 1 at p. 1.
2. Sarah Romig is president and owns 51% of LSS. Her husband, Christopher Farrell, owns 49% of LSS. *See*, WBE Exhibit 1 at p. 3.
3. Sarah Romig applied to certify LSS as a WBE on September 22, 2015 through the New York State Contract System. *See*, WBE Exhibit 1 at p. 9.
4. LSS is primarily engaged in credit investigation and reporting, backgrounds investigations and pre-employment investigations. *See*, WBE Exhibit 1 at p. 3.

#### **Ownership**

5. For almost forty years, James Farrell was president of LSS Credit Agency Inc., the predecessor of LSS. *See*, LSS Appeal, p. 1. In August 2013, Christopher Farrell, the son of James Farrell, took over the enterprise and served as president from 2013-2015. *Id.* In 2015, Christopher and Sarah agreed that Sarah should take over as president due to competing demands on Christopher's time. *Id.*
6. In 2015, Ms. Romig became the owner of fifty-one percent of the outstanding common stock of LSS with Mr. Farrell owning forty-nine percent. *See*, WBE Exhibit 1, p. 3.
7. Ms. Romig did not contribute cash or capital to the firm when she became president. *See*, WBE Exhibit 1, p. 3.

## Control

8. The notices of award submitted to the Division as part of LSS's application are directed to Mr. Farrell. *See*, WBE Exhibit 5.
9. For all business operations noted in the application, Christopher Farrell and Sarah Romig appear to have equal responsibility. *See*, WBE Exhibit 1, pp. 4-5.

## **DISCUSSION**

This recommended order considers LSS's April 11, 2017 appeal and the response of the Division staff including Exhibits 1-6. The bases identified in the Division's January 5, 2017 denial letter (*see* WBE Exhibit 2) are addressed below.

### I. Ownership and Contribution

With respect to the ownership criteria, Division staff asserted that applicant failed to provide documentation showing that Ms. Romig's contributions were 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) and, thus, greater than the capital contributions of Mr. Farrell. *See*, WBE Exhibit 2. The Division's determination is supported by substantial evidence.

Ms. Romig submitted an application to the Division to certify LSS as a WBE. *See*, 5 NYCRR 144.8(a)(5). The application does not support Ms. Romig's claim that she has contributed greatly financially and in other ways to the company. Instead, the application indicates that she contributed nothing in cash or capital contributions. *See*, WBE Exhibit 1, p. 3. In her appeal, she submitted copies of credit card statements to substantiate her contributions. However, as noted above, because these documents were not submitted as part of the application, I cannot consider them. 5 NYCRR §§ 144.4(e); 144.5(a). But even if I were to consider them, there is no explanation of how these random expenses demonstrate that Ms. Romig is contributing a proportionate amount to her 51% ownership interest. Ms. Romig contends in her Appeal that she has contributed thousands of dollars and almost two years without compensation to LSS. However, the application fails to include evidence of such alleged contributions. *See*, *Matter of JVR Electric, Inc.*, Recommended Order (August 31, 2016), available at: [https://cdn.esd.ny.gov/mwbe/Data/Hearings/09062016\\_JVRElectricRecommendedOrder.pdf](https://cdn.esd.ny.gov/mwbe/Data/Hearings/09062016_JVRElectricRecommendedOrder.pdf), Final Order 16-43, available from the New York State Economic Development Division of Minority and Women's Business Development.

I note that neither article 15 of the Executive Law nor the implementing regulations at 5 NYCRR part 144 (Statewide Certification Program) place the Division under a legal obligation to research the nature of a woman owner's capital contributions, make inquiries with respect to the same, or complete the WBE application on her behalf.

Based on the administrative record, the Division reasonably concluded that Ms. Romig did not demonstrate that she made a capital contribution to the business enterprise proportionate to her majority ownership interest.

## II. Control

To be eligible for WBE certification, the Division's regulations state that "[d]ecisions pertaining to the operation of the business enterprise must be made by . . . women claiming ownership of that business enterprise." 5 NYCRR § 144.2(b)(1). In addition, . . . women must demonstrate control of negotiations, signature authority for payroll, leases, letters of credit, insurance bonds, banking services and contracts, and other business transactions through production of relevant documents." 5 NYCRR § 144.2(b)(3). As noted by Division staff in the MOL, the notices of award submitted by LSS as part of its application were all addressed to Mr. Farrell. In addition, in the application, for all of the business operations, there was no distinction between the responsibilities of Mr. Farrell and Ms. Romig. WBE Exhibit 1, pp. 4-5.

LSS failed to demonstrate in its application and/or in its Appeal to rebut the staff's conclusions to the contrary that Ms. Romig was in control of the significant operations of LSS. Accordingly, based on the record before me, I find that the Division reasonably concluded that Ms. Romig failed to demonstrate control of the business.

## **CONCLUSION**

1. With respect to the ownership criterion at 5 NYCRR § 144.2(a)(1), LSS did not meet its burden to show that the Division's January 5, 2017 determination to deny the application for WBE certification is not based on substantial evidence.
2. With respect to the independence criteria at 5 NYCRR § 144.2(b)(3), LSS did not meet its burden to show that the Division's January 5, 2017 determination to deny the application for WBE certification is not based on substantial evidence.

## **RECOMMENDATION**

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

Attachment: Exhibit Chart

**Exhibit Chart**  
**Matter of Lida Strategic Solutions, Inc.**  
**WBE File ID No. 60212**

<b>WBE Exhibit No.</b>	<b>Description</b>
1	LSS WBE certification application (Application No. 7297595, submitted September 22, 2015)
2	January 5, 2017 Denial Letter
3	Sarah Romig's April 11, 2017 Appeal Letter
4	Three-page response by LSS to WBE
5	Notices of Award to LSS
6	Resume of Christopher Farrell