



**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

**MC Environmental Services, Inc.**

FINAL ORDER 21-03

From a denial of certification as a Women-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 MC Environmental Services, Inc. ("MCES" or "Appellant") pursuant to Executive Law Article 15-A and 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 September 28, 2018, to deny MCES certification as a Woman-owned Business Enterprise ("WBE").

Appellant requested an administrative appeal and hearing by letter dated October 24, 2018 and a hearing was subsequently held on March 18, 2021 using the Webex videoconferencing platform. MCES was represented by Colleen E. Delcore, Esq. and Deirdre Diccicco-Craft, President/Co-owner of MCES testified on behalf of Appellant. The Division was represented by Meaghan Caltabiano, Esq. and Matthew C. LeFebvre, Senior Certification Analyst, testified on behalf of the Division. Administrative Law Judge ("ALJ") Richard A. Sherman presided over the hearing.

The issues on appeal were whether Appellant sufficiently demonstrated that the woman owner relied upon for certification (1) makes a capital contribution to the business in proportion to her equity interest, as required by 5 NYCRR 144.2(a)(1) (2014); (2) shares in the risks and profits in proportion to her ownership interest, as required by 5 NYCRR 144.2(c)(2) (2014); (3) makes decisions pertaining to the business enterprise, as required by 5 NYCRR § 144.2(b)(1)

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<sup>1</sup> The Division's September 28, 2018 denial determination and Appellant's October 24, 2018 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.

(2014); (4) has adequate managerial experience or technical competence to operate the business, as required by 5 NYCRR 144.2(b)(1)(i) (2014) and (5) has the working knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR 144.2(b)(1)(ii) (2014).

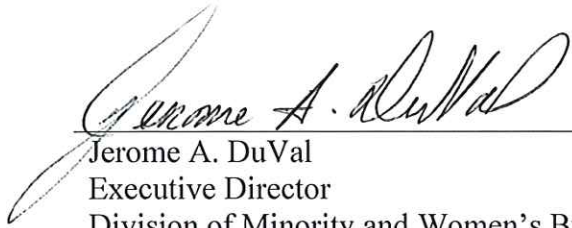
On May 3, 2021, the Division received a Recommended Order from ALJ Sherman that recommended striking the ownership ground under 5 NYCRR 144.2(a)(1) (2014) as a basis for denial and as modified, affirming on the remaining grounds.

After considering the appeal record, I decline to accept the recommendation to strike the ownership ground under 5 NYCRR 144.2(a)(1) (2014) as a basis for denial. I accept the factual finding that at its inception in 1995, the Appellant issued 51 shares of common stock to Ms. Diccicco-Craft, the woman owner relied upon for certification and 49 shares to co-owner Mr. Michael Craft and that Ms. Diccicco-Craft and Mr. Craft paid a combined total of \$100 for their shares. (Ex. B-2; Ex. 5 at 2; Ex. 6 at 1-2). I also accept the finding that the \$100 contribution used to purchase 100 shares in 1995 is the only allegation of capital contribution in the application. (See Ex. 6 at 1-2). As such, I find that it is appropriate for the Division to consider the capital contribution of \$100 in determining whether 5 NYCRR 144.2(a)(1) (2014) is met, even though such amount may be relatively small and the transaction occurred in 1995. I accept the finding that Appellant did not demonstrate the source of the \$100 capital contribution nor did the owners contribute additional capital. (Ex. 6 at 1-2). I agree that to the extent the \$100 contribution was made jointly by Mrs. Diccicco-Craft and Mr. Craft, such jointly made contribution does not demonstrate satisfaction of 5 NYCRR 144.2(a)(1) (2014), which requires that the owner relied upon for certification independently made a capital contribution in proportion to her equity interest. I also concur with the recommendation that the various officer loans are not relevant to the determination of whether the capital contributions requirement was met as loans do not constitute contributions to the business enterprise. (See Ex. 6 at 1; Ex. 7; Ex. 8).

I accept the recommendation to affirm the denial determination on the basis that the Appellant failed to demonstrate that the denial grounds with respect to 5 NYCRR 144.2(c)(2), (b)(1), (b)(1)(i) and (b)(1)(ii) (2014) were not supported by substantial evidence. Incorporation by reference is hereby made with respect to the findings and conclusions of the Recommended Order concerning 5 NYCRR 144.2(c)(2), (b)(1), (b)(1)(i) and (b)(1)(ii) (2014).

It is hereby **ORDERED** that the decision to deny certification, dated March 16, 2017, is affirmed. Accordingly, Environmental Construction, Inc. will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

February 7, 2022

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