



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

In the matter of the appeal of

MDS Associates, Inc.

FINAL ORDER 20-14

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

This order arises from an administrative appeal brought on behalf of MDS Associates, Inc. (“MDS” or “Appellant”) pursuant to section 144.2 of title 5 of the New York Codes, Rules and Regulations. Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated May 17, 2018, to deny MDS certification as a Woman-owned Business Enterprise (“WBE”).

Appellant initiated its appeal by letter dated June 12, 2018. David J. Colligan, Esq., Kevin T. O’Brien, Esq., and Christina J. Kennedy, Esq. of Colligan Law LLP filed a written appeal on behalf of MDS in the form of a brief dated August 17, 2018, along with an affidavit of Sarah Stec dated August 17, 2018, an affidavit of Sherry A. Mueller, CPA sated August 15, 2018, and Exhibits A-S further described in the Exhibit List appended to the Recommended Order. Fawziyyah W. Slavov, Esq. filed the Division’s Memorandum of Law, dated November 24, 2020, Affidavit of Glenn Butler, a Senior Certification Analyst with the Division, and Exhibits 1-9 further described in the Exhibit List appended to the Recommended Order, in support. Administrative Law Judge Helene G. Goldberger presided over the appeal.

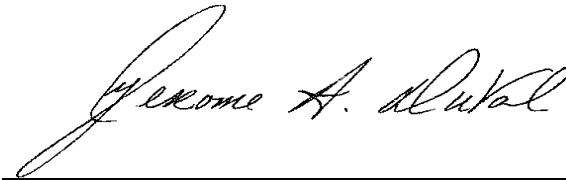
The issues on appeal were whether Appellant sufficiently demonstrated that (1) the contribution of the woman owner is proportionate to her equity interest in the business enterprise, as required by 5 NYCRR § 144.2(a)(1); (2) the woman owner shares in the risks and profits in proportion to her equity interest, as required by 5 NYCRR § 144.2(c)(2); and (3) the woman owner controls negotiations through the production of signed contracts, as required by 5 NYCRR § 144.2(b)(3).

On December 18, 2020, the Division received a Recommended Order from Administrative Law Judge Goldberger that recommended affirmation of the Division's denial of the application to certify MDS as a WBE on the grounds set forth in the Division's May 17, 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.

It is hereby **ORDERED** that the decision to deny certification, dated May 17, 2018, is affirmed. Accordingly, MDS Associates, Inc. will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

January 20, 2021

A handwritten signature in black ink that reads "Jerome A. DuVal". The signature is written in a cursive style with a large, looping initial "J".

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