

New York State  
Department of Economic Development  
633 Third Avenue  
New York, NY 10017

In the Matter

-of-

the Application of  
**Director Door Industries, Ltd.**  
For Certification as a Woman-Owned Business Enterprise  
Pursuant to Executive Law Article 15-A

NYS DED File ID No. 48669

Recommended Order

-by-



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Teneka Frost-Amusa  
Administrative Law Judge

November 6, 2017

## **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 Director Door Industries, Ltd. ("applicant") 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 Director Door Industries, Ltd., challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

The applicant requested an appeal in writing pursuant to 5 NYCRR 144.5 (State's Ex. 1).

Director Door Industries, Ltd.'s application to recertify as a WBE was submitted on August 1, 2016 (State's Ex. 2).

The application was denied by letter dated August 12, 2016 from Bette Yee, Director of Certification Operations (State's Ex. 3). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet one eligibility criterion related to Susan Director's adjusted personal net worth.

In a letter received by the Division on November 9, 2016, Susan Director, President and Owner of Director Door Industries, Ltd., filed an appeal on behalf of the applicant from the Division's denial determination (Applicant's Ex. 1). The letter consisted of two pages with no attachments.

By memo dated September 7, 2017, the Division responded to the applicant's appeal. Included with the response were six exhibits; five of these exhibits are identified as State's Exhibits 1-5 in the attached exhibit chart. On September 7, 2017, these matters were assigned to me.

## **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, independence, and net worth are applied on the basis of information received by the Division.

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 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 conclusion 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 applicant failed to meet one criterion for certification, specifically that the applicant failed to demonstrate that the woman owner, Susan Director, has an adjusted personal net worth that is less than \$3.5 million, as required by 5 NYCRR 140.1(tt)(1)(v). In its memo, the Division calculates this amount, as adjusted for inflation, to be \$3.78 million.

### Position of the Applicant

In applicant's letter submitted in support of its appeal, Susan Director does not dispute that her adjusted personal net worth exceeds the amount required by 5 NYCRR 140.1(tt)(1)(v), but requests that this criterion for WBE certification be waived in her matter.

## FINDINGS OF FACT

1. Director Door Industries, Ltd. is in the business of distributing doors, frames and hardware and has a business address of 95 Cabot Street, West Babylon, NY 11704.
2. As part of the application materials, Susan Director submitted a personal net worth affidavit indicating that she has an adjusted personal net worth of [REDACTED] (State's Ex. 4). To verify that Ms. Director had correctly calculated her personal net worth, the Division requested that she complete and submit a Personal Financial Statement Worksheet, which she did, and that worksheet confirmed that Ms. Director's net worth was greater than \$3.5 million (State's Ex. 5).

## DISCUSSION

This report 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 sets forth one basis related to Ms. Director's net worth.

In its denial letter, the Division determined that the applicant failed to meet one criterion for certification, specifically that the application failed to demonstrate that the woman owner,

Susan Director, has an adjusted personal net worth that is less than \$3.5 million, as adjusted for inflation, pursuant to 5 NYCRR 140.1(tt)(1)(v).

In its appeal, the applicant's owner, Ms. Director, requested a waiver of the requirement set forth in 5 NYCRR 140.1(tt)(1)(v).

In its response, the Division states that it became aware of Ms. Director's net worth when it received her affidavit and Personal Financial Statement Worksheet as part of this application. As part of the review of the application, the Division reviewed Ms. Director's affidavit, in which she indicated that her adjusted personal net worth was [REDACTED]. To verify that Ms. Director had correctly calculated her personal net worth, the Division requested that she complete and submit a Personal Financial Statement Worksheet, which she did, and it confirmed that Ms. Director's net worth was greater than \$3.5 million. In verifying this additional information, the Division was not clear whether Ms. Director excluded \$500,000 of retirement savings as permitted by NY EL §310(19). The Division nevertheless deducted this amount and still determined that her adjusted net worth exceeded the \$3.5 million limit pursuant to 5 NYCRR 140.1(tt)(1)(v).

Furthermore, Ms. Director never disputed the Division's calculation of her adjusted personal net worth in her request for appeal. Rather, she requested that she be given a waiver which would allow her certify as a woman-owned business even though her adjusted personal net worth exceeds the amount as required by 5 NYCRR 140.1(tt)(1)(v), a criterion necessary for WBE certification. There is no provision in that regulation which permits the Division to waive this criterion.

Based on the evidence in the record and the discussion above, the Division has demonstrated that the woman owner, Susan Director, has an adjusted personal net worth greater than \$3.5 million, as adjusted for inflation, pursuant to 5 NYCRR 140.1(tt)(1)(v). The Division has shown its denial on this ground was based on substantial evidence.

### **CONCLUSION**

The applicant failed to demonstrate that the woman owner, Susan Director, has an adjusted personal net worth that is less than \$3.5 million, as required by 5 NYCRR 140.1(tt)(1)(v).

### **RECOMMENDATION**

The Division's determination to deny Director Door Industries, Ltd.'s application as a woman-owned business enterprise should be affirmed for the reasons stated in this recommended order.

**MATTER OF  
DIRECTOR DOOR INDUSTRIES, LTD.  
DED FILE ID NO. 48669  
EXHIBIT LIST**

<b>Exhibit #</b>	<b>Description</b>	<b># of pages</b>
State's Ex. 1	Notice of Written Appeal	2
State's Ex. 2	Application	6
State's Ex. 3	Denial Letter dated August 12, 2016	3
State's Ex. 4	Individual Personal Net Worth Affidavit	1
State's Ex. 5	Personal Financial Statement Worksheet	3
Applicant's Ex. 1	Applicant's Written Appeal Submission	2