

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

In the Matter

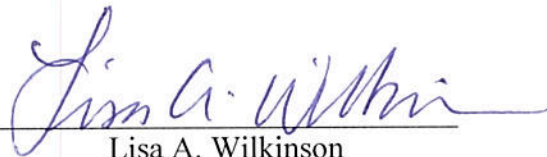
- of -

the Application of **Hatfield Metal Fab., Inc.**
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 2256

RECOMMENDED ORDER

- by -

A handwritten signature in blue ink, reading "Lisa A. Wilkinson", is written over a horizontal line.

Lisa A. Wilkinson
Administrative Law Judge
November 13, 2017

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 Hatfield Metal Fab, Inc. (Hatfield or applicant) certification as a woman-owned business enterprise should be affirmed for the reasons set forth below.

PROCEEDINGS

This matter considers the appeal, pursuant to New York State Executive Law article 15-A and title 5 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (5 NYCRR) parts 140-144, by Hatfield challenging the determination of the Division that its application does not meet eligibility criteria requirements for certification as a woman-owned business enterprise (WBE).

On behalf of Hatfield, Ann Hatfield submitted an application for certification as a woman owned business enterprise to the Division on September 22, 2016 (WBE Exhibit 1). Subsequently, by letter dated November 17, 2016, the Division determined that Hatfield did not meet the eligibility criteria for WBE certification and denied the application (WBE Exhibit 4). By letter dated December 7, 2016, Ann Hatfield appealed from the Division's denial of WBE certification and requested a hearing (Hatfield Exhibit 1). According to Ms. Hatfield, "[w]e all get a salary, however, my sons also get a commission check at the end of the year based on the customers they serve" (*see id.*). By letter dated March 2, 2017, the Division scheduled a hearing for July 18, 2017 at 11:00 a.m. in its offices in Albany, New York. On July 3, 2017, Ms. Hatfield advised the Division and the Office of Hearings and Mediation Services that she was suffering from Lyme Disease and requested an adjournment of the hearing. Philip Harmonick, counsel for the Division, stated in a letter dated July 5, 2017 that Ms. Hatfield's request was timely and that she had shown good cause for an adjournment. He requested that the parties make their arguments via written submissions and that I establish a briefing schedule pursuant to 5 NYCRR 145.1(p).

On July 6, 2017, I granted Ms. Hatfield's request for an adjournment and established a briefing schedule for the parties' submissions whereby applicant would submit its appeal in writing by September 27, 2017, and the Division would file its response by October 27, 2017. Ms. Hatfield consented to filing a written appeal in accordance with the schedule by letter dated July 10, 2017, but indicated that she was uncertain as to what the briefing schedule would entail. By letter dated July 20, 2017, I provided clarification to the parties as to what Ms. Hatfield should address in her submissions.

Ms. Hatfield submitted her written appeal by letter dated September 27, 2017 consisting of a cover letter and a three-page statement addressed to me and Mr. Harmonick (*see Hatfield Exhibit 2*). On November 6, 2017, Mr. Harmonick submitted a response on behalf of the Division consisting of a memorandum of law dated November 6, 2017 and four exhibits.

ELIGIBILITY CRITERIA

The eligibility criteria pertaining to certification as a woman-owned business enterprise are established by regulation (*see* 5 NYCRR 144.2). To determine whether an applicant should be granted WBE status, 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, Hatfield, 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 [SAPA] § 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 its November 17, 2016 denial letter, the Division determined based on the application and information provided that Hatfield failed to demonstrate that Ann Hatfield shared in the risks and profits of the business enterprise in proportion to her ownership interest in the business enterprise as required pursuant to 5 NYCRR 144.2(c)(2) because her two sons each receives significantly more compensation than Ms. Hatfield. The Division also determined that applicant and failed to demonstrate that Ann Hatfield's adjusted personal net worth was less than \$3,500,000 as required by 5 NYCRR 140.1(tt)(1)(v). (*See* WBE Exhibit 4 at 2-3.)

Hatfield

Ms. Hatfield states that she became the president Hatfield Metals upon her husband's death in 1978 and was forced to pay inheritances taxes on the business inasmuch as spousal property did not pass tax free in 1978. Her older son started working in the business part time in January 1979 after school and began working full-time after he finished school. He was elected secretary of Hatfield in December 1987. Her younger son started working full time at Hatfield in 1985 after graduating from high school and was elected treasurer of Hatfield in December 1988. She further stated that her salary is slightly higher than her sons and their bonuses are reflective of their commitment to work. (*See* Hatfield Exhibit 2 at Bates 52-53.)

FINDINGS OF FACT

1. Hatfield Metal Fab Inc. (Hatfield) is located in Poughkeepsie, New York and provides metal fabrication, custom sheet metal, fabrication and painting and coating of products at its facility (*see* WBE Exhibit 1, § 1.E at Bates 2).
2. Ann Hatfield is the president of Hatfield and owns 56% of outstanding shares of common stock (*see* WBE Exhibit 1, § 3.A at Bates 4). Her sons are each a vice president and each hold 22% of outstanding shares of commons stock (*see id.*).
3. Ann Hatfield has a personal net worth of [REDACTED] (*see* WBE Exhibit 2 at Bates 9).
4. In 2016, the inflation adjusted limit for personal net worth of an individual whose ownership is relied upon for the certification of a business as a WBE was \$3,783,236.53 (*see* Memorandum of Law at 3).
5. In 2015, Ann Hatfield received [REDACTED] in compensation, Christopher Hatfield received [REDACTED] in compensation, and Henry C. Hatfield received [REDACTED] in compensation (*see* WBE Exhibit 3 at Bates 27).
6. Hatfield did not pay dividends in 2015 (*see* WBE Exhibit 3 at Bates 25).

DISCUSSION

This recommended order considers Hatfield's appeal from the Division's November 17, 2016 determination to deny certification as a woman owned business enterprise.

I. PERSONAL NET WORTH

To be eligible for certification as a WBE, a business must be owned by one or more women "whose ownership, control and operation are relied upon for certification, with an individual personal net worth at the time of application that does not exceed three million five hundred thousand dollars, as adjusted annually on the first of January for inflation according to the consumer price index of the previous year starting in 2011" (5 NYCRR 140.1[tt][1][v]).

In calculating personal net worth, the Division excludes the value of the individual's primary residence and up to five hundred thousand dollars of the present cash value of any qualified retirement savings plan or individual retirement account held by the individual" (5 NYCRR 140.1[ee]). In 2016, the inflation-adjusted limit for the personal net worth of an individual relied upon for certification as a WBE was \$3,783,236.53 (*see* Memorandum of Law at 3; United States Department of Labor, Bureau of Labor Statistics, CPI Inflation Calculator *available at* https://www.bls.gov/data/inflation_calculator.htm [last visited November 13, 2017]).

Ms. Hatfield submitted a personal net worth affidavit with the application that showed her net worth to be [REDACTED], significantly greater than the inflation adjusted limit allowed pursuant to 5 NYCRR 140.1(tt)(1)(v) (*see* WBE Exhibit 2 at Bates 9). Although she claimed the

applicable exclusions from net worth for her personal residence and for \$500,000 in qualified retirement savings, her adjusted net worth still exceeded the regulatory limit.

Notably, Ms. Hatfield did not contest the Division's determination regarding her personal net worth. The appeal provides a history of Ms. Hatfield's involvement in the business enterprise and how her experience with inheritance taxes following her husband's death influenced her tax planning and wealth management decisions, but offers no evidence to overturn the Division's findings with respect to her personal net worth. Accordingly, the Division's denial of Hatfield's WBE application pursuant to 5 NYCRR 140.1(tt)(1)(v) is supported by substantial evidence.

II. OWNERSHIP

To qualify for WMBE certification the woman owner relied upon for certification "must enjoy the customary incidents of ownership and must share in the risks and profits, in proportion with their ownership interest in the business enterprise" (5 NYCRR 144.2[c][2]). To this end, the Division will consider whether a male individual or individuals receive a disproportionate salary as compared to the woman owner (*see Matter of C.W. Brown v Canton*, 216 AD2d 841, 843 [3d Dept 1995]). The Division evaluates the nature and extent of ownership of a business enterprise to ensure that women owners realize the significant benefits that may accrue as a result of state contracting preferences and that such benefits do not flow disproportionately to persons who are not members of a protected class (*see Richmond v J.A. Croson*, 488 US 469, 506 [1989]).

According to Hatfield's 2015 U.S. Income Tax Return, Christopher Hatfield and Henry Hatfield each received over ██████████ in compensation from the business enterprise while Ms. Hatfield received only ██████████ in compensation (*see* WBE Exhibit 3 at Bates 7). Hatfield did not distribute any profits to shareholders during the 2015 tax year (*see* WBE Exhibit 3 at Bates 27). Thus, the record demonstrates that Ms. Hatfield's compensation was significantly less than her two sons, neither of whom is a member of a protected class.

Ms. Hatfield states on the appeal that the greater compensation paid to her sons reflects bonuses paid for work performed (*see* Hatfield Exhibit 2 at 4). While this arrangement may be fair and appropriate from a business perspective, it is inconsistent with the Division's regulations, which require that the wages and dividends paid to a woman owner be commensurate with her equity interest in the business. Here, Ms. Hatfield's compensation is significantly lower than what Hatfield paid to her sons. If Hatfield were to be granted WBE certification and the existing compensation regime persisted, non-minority male individuals would, impermissibly, receive a disproportionate share of the benefits. Accordingly, the Division's determination to deny WBE certification to Hatfield because Ms. Hatfield did not share in the risks and profits of the business enterprise in proportion to her majority ownership interest is supported by substantial evidence.

CONCLUSION

Hatfield has not met its burden to show that the Division's November 17, 2016 determination to deny its application for WBE certification based on the personal net worth

criteria at 5 NYCRR 140.1(tt)(1)(v) and the ownership criterion at 5 NYCRR4 144.2(c)(2) is not supported by substantial evidence.

RECOMMENDATION

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

Attachment: Exhibit List

Division of Minority and Women's Business Development

**Exhibit Chart
Matter of Hatfield Metal Fab Inc.
WBE File No. 2256**

Exhibit No.	Description
WBE 1	Hatfield Metal Fab Inc. Certification Application No. 3427868 submitted September 22, 2016
WBE 2	Attachment B: Personal Financial Statement Ann Hatfield
WBE 3	U.S. Income Tax Return for Hatfield Metal Fab Inc. 2015
WBE 4	Division Denial Letter November 17, 2016
Hatfield 1	Hatfield Notice of Appeal Letter December 7, 2016
Hatfield 2	Hatfield Appeal September 26, 2017