

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

In the Matter

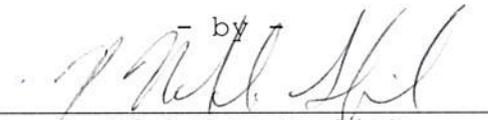
- of -

the Application of  
**Mark Cerrone, Inc.**  
For Certification as a Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 52174

RECOMMENDED ORDER

- by -



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P. Nicholas Garlick  
Administrative Law Judge

April 2, 2018

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

Mark Cerrone, Inc.'s application was submitted on September 28, 2016 (Exh. DED1).

The application was denied by letter dated January 18, 2017, from Bette Yee, Director of Certification Operations (Exh. DED3). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet two separate eligibility criteria related to Stephanie Churakos's ownership and operation of the applicant.

By letter dated January 31, 2017, applicant's counsel appealed from the denial (Exh. A12).

By letter dated March 31, 2017, applicant's counsel requested that the Division provide a more definitive statement of the grounds upon which the denial was based and asked the Division to identify the documents relied upon to reach its conclusion (Exh. A13).

By letter dated April 20, 2017, the Division responded with the requested information (Exh. A14).

With a five-page letter dated May 17, 2017, applicant's counsel submitted its written appeal which included: the affidavit of Stephanie Churakos with fourteen exhibits attached

(labeled in the exhibit chart as A1-A14); and the affidavit of James Keefe, CPA.

By letter dated May 23, 2017, applicant's counsel requested that the Division be required to respond to the appeal within thirty days and requested an opportunity to provide a reply to the Division's response, when received. The Division opposed the request to take this appeal out of order, but did not object to allowing a reply, provided it was given an opportunity to supply a sur-response.

The request to establish a thirty-day deadline for the Division's response to the appeal was denied by Chief Administrative Law Judge (ALJ) James T. McClymonds via an email dated May 26, 2017. This email also set a schedule for the filing of the reply and sur-response.

In an email dated September 19, 2017, applicant's counsel queried the Division regarding when a response could be expected. In a responding email the next day, the Division stated that the applicant's appeal would be processed in the order in which it was received. Two days later, applicant's counsel responded by email stating that the Division's response was not satisfactory and that the delay had cost his client hundreds of thousands of dollars in lost subcontracting work.

By letter dated September 27, 2017, applicant's counsel renewed his request that a deadline be established for the Division's response to the appeal.

In a nine-page memorandum dated February 14, 2018, the Division responded to the applicant's appeal. Enclosed with the response were the affidavit of Matthew LeFebvre, senior certification analyst, and three exhibits, described in the attached exhibit chart as DED1-DED3.

On February 15, 2018, this matter was assigned to me.

With a cover letter dated February 26, 2018, applicant's counsel provided a reply memorandum of law. Included with this submission were copies of the applicant's 2010 WBE application (Exh. A15) and its 2013 WBE renewal application (Exh. A16).

In an email dated March 13, 2018, the Division declined to file any additional papers and the record closed.

### **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, and independence are applied on the basis of information supplied through the application process.

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 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**

#### Position of the Division

In its denial letter, the Division asserts that the application failed to meet two separate criteria for certification.

First, the Division found that the applicant failed to demonstrate that the woman owner Stephanie Churakos's contributions are 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).

Second, the Division found that the woman owner, Stephanie Churakos, does not make decisions pertaining to the operation of the business enterprise, as required by 5 NYCRR 144.2(b)(1).

Position of the Applicant

Mark Cerrone, Inc. asserts that it meets the criteria for certification and that the Division erred in not granting it status as a woman-owned business enterprise pursuant to Executive Law Article 15-A.

**FINDINGS OF FACT**

1. Mark Cerrone, Inc. is in the business of: providing demolition services; site preparation; site remediation; site utilities; roads and paving; railroad services; concrete flatwork; sports field construction; trucking and hauling; truck and heavy equipment repair; landfill construction; landscaping services; material recovery; and equipment rentals (Exh. DED1 at 3). The firm has a business address of 2368 Maryland Avenue, Niagara Falls, New York (Exh. DED1 at 1).

2. Mark Cerrone, Inc. was established in 1999 by Mark Cerrone and following his death it was purchased by three of its key employees: Stephanie Churakos, her husband George Churakos, and Vincent Cerrone, Mark Cerrone's brother (Exh. DED2 at 4). At the time of the application Ms. Churakos owned 51% of the firm's stock and served as its president, treasurer, and chief administrative officer; Mr. Churakos owned 15% of the stock and served as its vice president and secretary; and Mr. Cerrone owned 34% of the stock and served as vice president and general superintendent (Exh. DED1 at 3).

3. The purchase price for Mark Cerrone, Inc. was [REDACTED] [REDACTED] which included a [REDACTED] [REDACTED]. The down payment was made in two parts: a [REDACTED] [REDACTED], however, no description of the source of these funds was provided in the application. The [REDACTED] [REDACTED], but applicant provided no proof of how this

██████████ was made, nor how the claimed ██████████ was attributable to Ms. Churakos.

4. Ms. Churakos's resume describes her role at the firm including: managing office and administrative staff; handling banking; coordinating insurance and bonding; providing administrative support for estimating and project management; tracking incoming projects; coordinating bid preparation and submittal; preparing and reviewing contracts; maintaining and securing all licenses and permits; and completing certified payroll and billing. Before becoming an owner, she worked for the firm for seven years as contracts manager/office manager. Prior to this, she worked as a project management secretary, billing clerk, and receptionist. Exh. DED2 at 8.

5. Mr. Churakos's resume describes his role at the firm including: serving as a senior executive with extensive experience in civil construction; and managing all company projects, managing operations of the general site construction company and all support services. His resume describes him as skilled in project management, personnel scheduling, resource allocation, government relations, cost/budget analysis, financial planning and possessing field expertise necessary to safely and successfully complete projects. Prior to becoming an owner, he worked for the firm as director of operations for four years and project manager for four years before that. Before joining the firm, he owned a landscaping firm for three years. Exh DED2 at 10.

6. Mr. Cerrone's resume identifies him as the firm's general superintendent and describes his role at the firm as providing supervision and direction to site supervisors; working with owners, engineers, and inspectors in the field; and coordinating transportation and equipment requirements between the fleet maintenance shop and field projects. His resume states he has over thirty years of field experience in civil construction and emphasizes his commitment to safety. Exh. DED2 at 9.

#### **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 set forth two bases related to Ms. Churakos's ownership and operation of Mark Cerrone, Inc. Each basis is discussed individually, below. However, before discussing the bases of the denial, it is necessary to address applicant's counsel's argument that the Division is estopped from denying recertification because applicant's operation or control has not changed from the time of the Division's initial granting of WBE certification in 2010.

### **Estoppel**

Applicant's counsel asserts that because the firm was certified as a WBE in 2010 and again in 2013, the Division is estopped from denying the application now under the doctrine of *stare decisis*, because the firm's ownership or control has not changed from the time of the 2010 certification to the present. Counsel cites Matter of Charles A. Field Delivery Service, Inc. (Roberts) (66 NY2d 516 [1985]) as authority. Counsel further argues that the 2016 denial was arbitrary and capricious because the firm has had no change in ownership or control since 2010.

The Division responds that the 2016 denial was not based on the same facts as the prior approvals. Pointing to Mr. LeFebvre's statement that the analyst who reviewed the earlier application failed to ask for documents regarding Ms. Churakos's contributions to the firm or the resumes of the owners (LeFebvre affidavit, ¶11), the Division argues that the 2016 review was more thorough than the previous ones. The Division concludes that even if the facts underlying the prior approvals and the 2016 denial were the same, the Division cannot be estopped from applying its regulations merely because it had previously applied them in error, and cites Matter of Pascual v State Bd. of Law Examiners (79 AD2d 1054 [3d Dept 1981]).

As discussed in detail below, the Division has shown that its denial was based upon substantial evidence. From the record on appeal, it appears that the Division's prior grant of WBE certification to Mark Cerrone, Inc. was in error. Applicant's counsel's claims that the Division is bound by its prior approvals is without merit because the facts in the record clearly show that the firm does not meet WBE certification standards and, therefore, the denial was neither arbitrary nor

capricious. Moreover, as a general rule, equitable estoppel is not applicable to a State agency acting in a governmental capacity in the discharge of its statutory responsibilities (see Matter of Wedinger v Goldberger, 71 NY2d 428, 440-441 [1988]; Matter of Parkview Assocs. v City of New York, 71 NY2d 274, 282, appeal dismissed and cert denied 488 US 801 [1988]).

### Ownership

In its denial, the Division found that the applicant failed to demonstrate that the woman owner Stephanie Churakos'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). The relevant facts cited in the denial letter are: (1) Ms. Churakos owns 51% of the firm, Mr. Vincent Cerrone owns 34%, and Mr. George Churakos owns 15%; (2) the application represents that Ms. Churakos's contributions to the business were in the form of payments; (3) documents submitted with the application indicate that the majority of the purchase price was obtained via a loan made jointly to the three owners; and (4) the application does not demonstrate that Ms. Churakos personally contributed money to the firm in proportion to her majority interest therein.

On the appeal, applicant's counsel states that since Ms. Churakos acquired the majority of shares in 2008, she has maintained operational control of the firm. Counsel also states that she personally paid [REDACTED] purchase price and supplies an affidavit of Ms. Churokos and that of the firm's CPA, James Keefe, to support this claim.

In her affidavit, Ms. Churakos states that when the business changed hands in 2008, she was able to provide the largest financial contribution of the purchase price through the assistance of family and friends, as well as from her own resources (Churakos affidavit, ¶15). She states that, of the [REDACTED] purchase price, [REDACTED]

██████████ )<sup>1</sup> ██████████ (¶17). Since it was decided she would acquire 51% of the company, she was required to pay a total of ██████████,<sup>3</sup> which meant after taking into account her initial contribution, she would pay ██████████ ██████████ (Churakos affidavit, ¶¶18-19). Subsequently, the loan was paid-in-full from distributions made to the owners by the firm: ██████████ ██████████ (Churakos affidavit, ¶21). No proof of these distributions or payments is provided either with the application or on appeal.<sup>4</sup>

In his affidavit, Mr. Keefe, the firm's accountant, states he has reviewed the documents relating to the purchase of the firm and confirms the terms of the deal related by Ms. Churakos, above (Keefe affidavit, ¶¶5-7). With respect to the terms of the ██████████, he notes that all three shareholders were jointly and severally liable for the amount borrowed and that has been required in every business transaction he has been involved with (Keefe affidavit, ¶8). With respect to Ms. Churokos's 51% ownership of the firm, he states this came about due to her twenty-plus years of experience in the construction industry and because she contributed the majority of the equity (Keefe affidavit, ¶14). He states that no additional capital contributions from the

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<sup>1</sup> As proof of this contribution, the applicant attached to its appeal a copy of a check in this amount and a letter from the bank stating that the entire amount had been withdrawn from account ██████████ in the name of Stephanie Churakos (Exh. A1 at 1&2). Only the letter from the bank was provided with the application (Exh. DED2 at 14). A copy of this check was provided with the 2010 WBE application (Exh. A15, tab at 3).

<sup>2</sup> No proof of this amount was provided with the instant application, but it was provided in the 2010 WBE application and was in the form of a joint checking account in the name of George and Stephanie Churakos, account ██████████ (Exh. A15, tab 8 at 2).

<sup>3</sup> This amount, as well as the amounts to be paid by the other purchasers, are reflected in the firm's stock purchase agreement (Exh. A1 at 4).

<sup>4</sup> It should be noted that in the 2010 application, the firm claimed Ms. Churakos contributed ██████████, her husband ██████████, and Mr. Cerrone ██████████ (Exh. A15 tab 1 at 5, question #8).

shareholders have been necessary because the firm is profitable (Keefe affidavit, ¶15). Ms. Churakos's tax returns show that she has been allocated 51% of the corporation's profits and has been taxed on this amount (Keefe affidavit, ¶16).

In its response, the Division argues that the firm is not eligible for WBE certification because Ms. Churakos has not demonstrated a greater contribution to the business than her male co-owners. In his affidavit, Senior Certification Analyst LeFebvre states on October 18, 2016, as part of his review of the application, he requested, among other items, an explanation of how Ms. Churakos financed her acquisition of stock. He noted that the stock purchase agreement states she paid [REDACTED] and requested evidence of the purchase in the form of cancelled checks/bank statements showing the transacted amount (Exh. DED1 at 7). Mr. Lefebvre states that on November 1, 2016 he received a response to his request, including a copy of the letter from [REDACTED] stating that the entire amount had been withdrawn from account [REDACTED] in the name of Stephanie Churakos (Exh. A1 at 2). Mr. LeFebvre states that he had specifically asked for cancelled checks and bank statements, which were not provided, so that he could identify the source and uses of the funds claimed as a contribution (LeFebvre affidavit, ¶18). Without additional information, he was unable to determine if the [REDACTED] had come from Ms. Churakos alone, or from a joint account, nor was anything provided showing a connection between the withdrawal and the purchase of the firm (LeFebvre affidavit, ¶19). With respect to the [REDACTED] used to pay for the balance of the cost of acquisition, Mr. LeFebvre notes that the loan was guaranteed by all three borrowers, jointly and severally (LeFebvre affidavit, ¶20). Based on the lack of proof of Ms. Churakos's claimed contributions to the firm, Mr. LeFebvre concluded that the firm did not meet WBE certification criteria.

The Division argues that the application materials contain no evidence that Ms. Churakos paid anything for her majority interest. The letter provided as proof of her contribution did not identify the owner of the account from which the funds were drawn or the purpose of this withdrawal. Further, the loan documents provided do not show that she made a greater contribution for her equity than did the other owners. With

respect to the appeal's claims that Ms. Churakos paid [REDACTED] the [REDACTED] the Division argues that there was no evidence of these payments in the application. The check provided with the appeal (Exh. A1 at 2) was not provided with the application and, therefore, was not before the Division at the time of the denial. Even if it had been, the Division argues that it fails to demonstrate the source of these funds or prove Ms. Churakos's ownership of them. The Division concludes that in addition to the lack of proof regarding the initial payment of [REDACTED], nothing in either the application materials or supplied on appeal shows that Ms. Churakos was responsible for the repayment of the claimed [REDACTED].

In its reply, applicant's counsel notes that the date of the [REDACTED] which was payable to Candace Cerrone (widow of Mark Cerrone), was November 21, 2008, which was contemporaneous with the date of the loan closing and the date of the sale of the firm. Counsel also argues that the Division has offered no proof that the [REDACTED] did not come from her own funds. This is irrelevant because the applicant bears the burden of proving it meets WBE certification criteria. With respect to the repayment of her portion of the loan, [REDACTED] counsel argues that each time the corporation made a payment on the loan, 51% of that amount was charged to Ms. Churakos's capital account, 15% to her husband's, and 34% to Mr. Cerrone's account, but counsel makes no reference to any information in the application materials or any other documents that substantiates this claim.<sup>5</sup> Counsel concludes that evidence including the cancelled check, the bank letter, the affidavits of Mr. Keefe and Ms. Churakos, as well as the income tax returns and share certificates demonstrate Ms. Churokos's contribution to the firm. However, the check was not provided with the application, nor were the affidavits, so this information was

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<sup>5</sup> In addition to the lack of proof, counsel's computation is obviously wrong. If 51% of the [REDACTED] repayment was attributable to Ms. Churakos that amount would be [REDACTED] not the [REDACTED] claimed. The fact that counsel cannot explain why Ms. Churakos should be credited for the [REDACTED] repayment of the loan only underscores the Division's point that the record is unclear on this point.

not before the agency at the time of the denial. Even if it had been, the only information regarding the source of Ms. Churakos's [REDACTED] contribution is her statement that with the assistance of family and friends, in addition to her own resources, she was able to provide the contribution. Without more information to show this money was Ms. Churakos's, and not a joint contribution from her and her husband, a loan, or from another source, the application fails to demonstrate that the firm qualifies as a WBE. Similarly, without some proof in the application regarding the repayment of the loan, the application also fails.

Based on the evidence in the record, specifically the lack of evidence of the source of Ms. Churakos's [REDACTED] claimed payment or of her claimed [REDACTED] repayment of the loan used to purchase the firm, the applicant has failed to demonstrate that the woman owner Stephanie Churakos's contributions are 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). The Division's denial was based on substantial evidence.

### **Operation**

In its denial letter, the Division found that the woman owner, Stephanie Churakos, does not make decisions pertaining to the operation of the business enterprise, as required by 5 NYCRR 144.2(b)(1). The relevant facts cited in the denial letter are: (1) the firm is primarily engaged in providing demolition, sitework, and related services; (2) significant operations of the firm, including estimating and supervising field operations are managed by males; and (3) Ms. Churakos is primarily responsible for managing administrative and financial aspects of the firm.

On the appeal, applicant's counsel argues that since Ms. Churakos became president of the firm, she has controlled both the administrative and operational aspects of the business without restriction. In her affidavit, Ms. Churakos states that due to the growth of the business and the hiring of new employees, some of the tasks that were performed by the owners are now done by employees, under the owners' supervision

(Churakos affidavit, ¶30). Mr. Cerrone still works on-site directing workers and her husband participates in the bid process and oversees progress on projects (Churakos affidavit, ¶31). She states that she decides which jobs to bid on, makes hiring and firing decisions, oversees bonding, manages accounts payable and accounts receivable, as well as other administrative matters including: insurance, employment policies, regulatory compliance, payroll, real property management, equipment purchases, and banking (Churakos affidavit, ¶32). She admits that some of the Division's factual findings in the denial letter are correct but claims that the findings do not support the conclusion that she does not control the firm (Churakos affidavit, ¶45). She states that she has the managerial experience to run the firm and operational control, but also admits she does not possess expertise in many of the technical areas (Churakos affidavit, ¶46), does not work in the field directing work (Churakos affidavit, ¶47), and does not perform computations necessary to complete bids (Churakos affidavit, ¶48). Nevertheless, she does decide which projects to pursue based on her knowledge of the firm's cash flow, bonding, manpower, and regulatory compliance (Churakos affidavit, ¶49). She also manages the administrative and financial aspects of the firm and enjoys unrestricted authority to operate the firm (Churakos affidavit, ¶¶50-51). Mr. Keefe, the firm's CPA, states in his affidavit that he meets with the owners of the firm on a regular basis, always with Ms. Churakos, and that he has found her to be extremely knowledgeable about the construction industry, especially the financial and accounting aspects of the business and that her skill set and duties are consistent with that expected of a chief operating officer or president of a large general contractor (Keefe affidavit, ¶¶17-18).

In its response, the Division states that the purpose of the WBE program is to remedy past discrimination against woman-owned firms and that certifying firms owned by women who primarily manage back office and administrative functions, while deferring the management of significant operations to men, directly undermines the remedial purpose of the program. Because Ms. Churakos does not manage the firm's field operations or the firm's estimating and relies on her husband and Mr.

Cerrone for these functions, the firm was properly denied WBE certification.

In his affidavit, Mr. LeFebvre states that in her November 1, 2016 cover letter responding to his request for additional information, Ms. Churakos described her role as chief administrative officer and contracts manager, while describing her husband's role as overseeing project estimates and overseeing projects and Mr. Cerrone's role as being the firm's general superintendent who supervises the work of field crews (Exh. DED2 at 1). Mr. LeFebvre states that he determined the critical functions of the firm to be those that are the primary source of revenue and that in the case of Mark Cerrone, Inc. these functions are estimating and overseeing field work (LeFebvre affidavit, ¶¶27-28). In order to determine who performs these tasks at the firm he examined the resumes included with the application materials.

Ms. Churakos's resume shows that prior to becoming majority owner of the firm, she had previously worked as receptionist, billing clerk, secretary, office manager, and contracts manager (Exh. DED2 at 8). Her resume states her duties at the firm now include: managing office and administrative staff; handling banking; coordinating insurance and bonding; providing administrative support for estimating and project management; tracking incoming projects; coordinating bid preparation and submittal; preparing and reviewing contracts; maintaining and securing all licenses and permits; and completing certified payroll and billing (Exh. DED2 at 8). Mr. Churakos's resume describes his role at the firm including: serving as a senior executive with extensive experience in civil construction; and managing all company projects, managing operations of the general site construction company and all support services. Prior to becoming an owner, he worked for the firm as director of operations for four years and project manager for four years before that. Before joining the firm, he owned a landscaping firm for three years (Exh DED2 at 10). Mr. Cerrone's resume identifies him as the firm's general superintendent and describes his role at the firm as providing supervision and direction to site supervisors; working with owners, engineers, and inspectors in the field; and coordinating transportation and

equipment requirements between the fleet maintenance shop and field projects (Exh. DED2 at 9).

Based on the information in the resumes, Mr. LeFebvre states that he concluded that Mr. Cerrone and Mr. Churakos managed estimating and supervising field work, and therefore, the firm was not eligible for certification as a WBE (LeFebvre affidavit, ¶33). The Division asserts that the documents provided show that Ms. Churakos manages the back-office operations of the firm, and that even though she is the highest-ranking officer of the firm, this is not enough to satisfy WBE eligibility criteria, based on the longstanding case law and the Division's interpretation of its regulations governing the WBE program. Because of this, Mark Cerrone, Inc. is more properly considered to be a family-owned business rather than a WBE.

In its reply, applicant's counsel argues that because of the size of the firm, none of the owners perform estimating work; a claim which may be technically true, but not consistent with the application materials. Specifically, the list of owners' responsibilities states Mr. Churakos directs the review of project estimates with estimators to win work at profitable margins (Exh. DED2 at 1). Counsel maintains that Ms. Churakos, as president of the firm, decides on which jobs to bid. Counsel concedes that she does not supervise field work, but because she is in control of all significant day-to-day operations, the firm should qualify as for WBE certification.

The parties do not dispute the roles of the three owners of Mark Cerrone, Inc.; rather, the only dispute is whether Ms. Churakos's duties meet the criteria to be certified as a WBE. The Division's interpretation of its own regulations as well as past caselaw, both administrative and judicial, all demonstrate that an examination of who performs a firm's significant operations is appropriate. Based on the evidence in the record, specifically the fact that estimating and supervision of field work are performed by ineligible males, the applicant failed to show that the woman owner, Stephanie Churakos, makes decisions pertaining to the operation of the business enterprise, as required by 5 NYCRR 144.2(b)(1). The Division's denial was based on substantial evidence.

## **CONCLUSIONS**

1. The applicant failed to demonstrate that the woman owner Stephanie Churakos's contributions are 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).

2. The applicant failed to show that the woman owner, Stephanie Churakos, makes decisions pertaining to the operation of the business enterprise, as required by 5 NYCRR 144.2(b)(1).

## **RECOMMENDATION**

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

**Matter of  
Mark Cerrone, Inc.**

**DED File ID No. 52174  
Exhibit List**

<b>Exh. #</b>	<b>Description</b>
DED1	Application
DED2	Supplemental information dated 11/1/16
DED3	Denial letter
A1	Check, stock purchase agreement, and closing statement
A2	Term note and demand note
A3	Share certificates and shareholder register
A4	2009 minutes of board of directors
A5	2010 WBE certification letter
A6	2013 WBE recertification letter
A7	2016 application (same as DED1)
A8	2013, 2014, and 2015 federal tax returns as well as letters from Erie County certifying as WBE
A9	Applicant's letter to DED dated 11/1/16 attaching narrative history, resumes, personal financial statement, and purchase documents
A10	Applicant's letter to DED dated 12.23.16
A11	Denial letter (same as DED3)
A12	Appeal
A13	Letter requesting more definitive statement
A14	DED response

A15	2010 WBE application
A16	2013 WBE application