

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

In the Matter

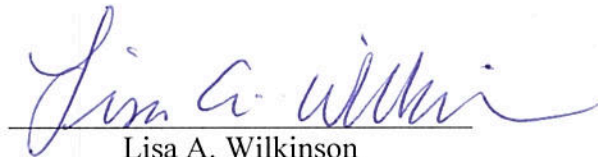
- of -

the Application of **Share Corp.**
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 60410

RECOMMENDED ORDER

- by -

A handwritten signature in blue ink, reading "Lisa A. Wilkinson", 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 Share Corporation (Share Corp. 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 Share Corp. 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 Share Corp., Laure Des Jardins, president and chief executive officer, submitted an application for certification as a woman owned business enterprise to the Division on April 12, 2016 (WBE Exhibit 1). Subsequently, by letter dated August 4, 2016, the Division determined that Share Corp. does not meet the eligibility requirements to be certified as a woman-owned business and denied the application (*see* WBE Exhibit 3.)

By letter August 31, 2016, Ms. Des Jardins filed a notice of appeal of the Division's determination to deny WBE certification on behalf of Share Corp. and stated her intent to file an appeal in writing (Share Exhibit 1). By letter dated September 28, 2016, the Division notified applicant that the appeal should be filed on or before November 28, 2016, 2016. The notice also reiterated the Division's basis for the denial. By a letter dated November 23, 2016, Laure Des Jardins filed an appeal on behalf of Share Corp. (Share Exhibit 2). The appeal consisted of a letter from Laure Des Jardins and numerous unnumbered exhibits.¹ The Division filed a response dated September 15, 2017, consisting of a memorandum of law dated September 15, 2017 (Memorandum of Law) and seven exhibits. The matter was assigned to me on September 18, 2017.

An exhibit list is attached to this order. The list includes the Division's exhibits and select documents from applicant's exhibits that I deemed to be relevant to this recommended order and were not already included among the Division's 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

¹ Applicant's appeal includes a voluminous number of unlabeled attachments to which there are few cross references in Ms. Des Jardins's letter. Ms. Des Jardins cross references Exhibits C and D in discussing the dividends paid to women. None of the documents are labeled Exhibits C and D. As discussed in the recommended decision, the dividends paid by Share Corp. appear on applicant's corporate tax return schedule M-2. Moreover, applicant indicates in its appeal that dividends were paid on a pro rata basis.

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, Share Corp., 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 the August 4, 2016 denial letter, the Division determined based on the documents and information provided that the women owners failed to demonstrate that their contributions to the business enterprise were proportionate to their equity interest in the business enterprise as required by 5 NYCRR 144.2(a)(1); failed to demonstrate that the women owners shared in the risks and profits of the business enterprise in proportion to their ownership interest in the business enterprise as required pursuant to 5 NYCRR 144.2(c)(2); failed to demonstrate that they made decisions pertaining to the operation of the business enterprise as required pursuant to 5 NYCRR 144.2(b)(1); and failed to demonstrate that the women owners relied upon for certification had adequate managerial experience or technical competence to operate the business enterprise as required by 5 NYCRR 144.2(b)(1)(i).

Share Corp.

With a letter dated November 23, 2016, Laure Des Jardins, on behalf of applicant, appealed from the Division's August 4, 2016 determination to deny Share Corp. WBE certification (*see* Share Exhibit 2). With respect to ownership, Ms. Des Jardins states that Share Corp. was incorporated in 1970 and that since 1991, when Paul De Jardins died, no additional capital was contributed to Share Corp. and no additional shares of common stock were sold by Share Corp. to any person. Ms. Des Jardins argues that the capital contributions to the company ceased more than forty years ago and that metrics of money, property or equipment are not appropriate to establish certification. She further states that the common stock of the women owners was acquired by inheritance pursuant to an estate plan and that women own 53.87% of the outstanding common stock of Share Corp. (*See* Share Exhibit 2 at 2-3.)

With respect to compensation, Ms. Des Jardins contends the wages for key officers show that male individuals do not receive "compensation *significantly* greater than similarly situated females." She notes that the Division never asked Share Corp. for information about executive compensation, and therefore none was included in the original application. Similarly, with

respect to women's share of risks and profits, Ms. Des Jardins states that women received dividends at the same time as men on a pro-rata basis based on their equity holdings, and that this information was not submitted as part of the original application because it was not requested. (*See* Share Exhibit 2 at 4.)

Ms. Des Jardins also disputes the Division's conclusion that women owners do not make operational decisions for the business enterprise, noting that the majority of the members of the Board of Directors are women and that the Board is chaired by Patricia Des Jardins (*see* Share Exhibit 2 at 5). Ms. Des Jardins states that she is both a Director of Share Corp. and serves as President and CEO. Ms. Des Jardins also stated that she is involved in day to day operations and management of the corporation and works sixty hours per week (*see id.* at 6). Finally, Ms. Des Jardins maintains that she is capable and has the operational knowledge of Share Corp. that allows her to oversee corporate operations (*see id.*).

FINDINGS OF FACT

1. Share Corporation (Share Corp.) is located in Milwaukee, Wisconsin (*see* WBE Exhibit 1, § 1.D). Its primary business is the manufacture and distribution of specialty chemicals to institutions and municipalities (*see id.* § 3.C).
2. Share Corp. was established by Paul Des Jardins in 1970 (*see* Share Exhibit 2 at 1). The company website describes Share Corp. as "chemical engineering specialists" (*see* WBE Exhibit 1, § 1.J; www.sharecorp.com).
3. In 2013, Share Corp. received WBE certification from the System for Award Management, an official website for the United States government that allows users to register to do business with the government (*see* WBE Exhibit 1, § 8.A; <https://www.sam.gov/portal/SAM/#1>).
4. In 2015, Share Corp. received WBE certification from the Wisconsin Department of Administration (*see* WBE Exhibit 1, § 8.A).

Ownership

5. Females own approximately 53.8% of the outstanding shares of common stock in Share Corp. The ownership interest of women is as follows: Kelcie Des Jardins 35%; Patricia Des Jardins 10.6%; Cameron Des Jardins 5.2%; Laure Des Jardins 1.6%; Lily Des Jardins 0.9%; and Nadia Winke 0.5% (*see* WBE Exhibit 1, § 2.A).
6. The women shareholders acquired their shares of common stock through inheritance and did not make a capital contribution for their shares (*see* Share Exhibit 2 at 3).
7. Male members of the Des Jardins family and other male employees own 28.6 % of the outstanding shares of common stock of Share Corp (*see* WBE Exhibit 1, § 2.A).
8. The balance of shares is held by an employee stock ownership trust (*see id.*).

9. Kelcie Des Jardins owns a plurality of the outstanding shares of common stock (*see* WBE Exhibit 1, § 2.A).
10. The capital contributions to Share Corp were made by male individuals from August 14, 1971 to December 31, 1995 (*see* WBE Exhibit 1, § 2.C).
11. In 2014, Share Corp. paid cash dividends of [REDACTED] (*see* WBE Exhibit 7 at Bates 127). Based on a pro-rata distribution of dividends, the female owners would have collectively received a total of [REDACTED] cash distributions. Kelcie Des Jardins earned dividends in the amount of [REDACTED] from Share Corp. in 2014 (*see* WBE Exhibit 7 at Bates 128; Share Exhibit 3, schedule B, line 5).
12. In 2014, Share Corp. paid compensation to corporate officers as follows: Laure Des Jardins [REDACTED]; Thomas Des Jardins [REDACTED]; Kevin Behm [REDACTED]; John Wright [REDACTED]; Len Ullsperger [REDACTED]; Steven Hipp [REDACTED]; David Olmstead [REDACTED] (*see* WBE Exhibit 7 at Bates 88).
13. In 2013, Share Corp. paid compensation to corporate officers as follows: Laure Des Jardins [REDACTED]; Thomas Des Jardins [REDACTED]; Kevin Behm [REDACTED]; John Wright [REDACTED]; Len Ullsperger [REDACTED]; Steven Hipp [REDACTED]; David Olmstead [REDACTED]; Douglas Dropp [REDACTED] (*see* WBE Exhibit 6 at Bates 66).

Operation and Management

14. On August 1, 2013, Laure Des Jardins was appointed president and chief executive officer of Share Corp. She worked at Share Corp. in an administrative role from 1989 to 1992. She left the corporation in 1992 when she married Thomas Des Jardins, then the president, to raise her family and volunteer in the community (*See* WBE Exhibit 1, § 2.F at Bates 4; WBE Exhibit 2 at Bates 18-19 [Laure Des Jardins resume]; WBE Exhibit 7 at Bates 55 [2013 Form 1125-E]; *see also* Share Exhibit 4 [tax return of Thomas and Laure Des Jardins]).
15. Thomas Des Jardins has been employed by Share Corp. since 1970. He was president and chief operating officer from 1991 to 2013. Since 2013, Thomas Des Jardins has been chief operating officer. He was chairman of the board from 1991 to 1998, vice president from 1984 to 1991, traffic manager from 1973 to 1984, and plant manager from 1970 to 1973. (*See* WBE Exhibit 2 at Bates 15 [Thomas Des Jardins resume].)
16. Thomas Des Jardins and Laure Des Jardins are married and file a joint tax return in 2014 (*see* Share Exhibit 4).
17. On August 1, 2013, Kelcie Des Jardins was appointed to the board of directors of Share Corp. Ms. Des Jardins graduated from New York University in 2014 with a bachelor of arts in English and American literature. She works for a digital publisher based in New

York, NY and lives in New York, NY. (*See* WBE Exhibit 1, § 2.F at Bates 5; WBE Exhibit 2 at Bates 17 [Kelcie Des Jardins resume].)

18. Patricia Des Jardins was married to Share Corp.'s founder, Paul Des Jardins. She worked at Share Corp. in an administrative capacity typing invoices, taking orders, creating contracts, and managing accounting. She did not receive a salary. At the time of the application, she was 90 years old. Her present involvement in Share Corp. includes attending sales award trips, board meetings, and stockholder meetings. (*See* WBE Exhibit 2 at Bates 16.)
19. John Wright has been employed by Share Corp. since 1970 and has been the senior vice president since 1991. From 1984 to 1991, he was vice president of sales and marketing and the area sales manager for the southwest region from 1970 to 1984. He was elected to the Board of Directors in 1981. (*See* WBE Exhibit 2 at Bates 14 [John Wright resume].)
20. Kevin Behm, CPA, joined Share Corp. in 1994. He has held the position of secretary, treasurer and chief financial officer of Share Corp. since 2013. From 1994 to 2013, he was accounting manager. (*See* WBE Exhibit 2 at Bates 12-13 [Kevin Behm resume].)
21. Kevin Behm manages estimating, negotiates bonding, and negotiates insurance, and co-manages negotiating contracts with John Wright (*see* WBE Exhibit 1, § 4.A).
22. John Wright manages marketing and sales and co-manages negotiating contracts with Kevin Behm (*see* WBE Exhibit 1, § 4.A).
23. Thomas Des Jardins, the chief operating officer, supervises field operations (*see* WBE Exhibit 1, § 4.A).
24. Todd Charest, the area manager, prepares bids (*see* WBE Exhibit 1, § 4.A).
25. Laure Des Jardins co-manages financial decisions and payroll with Kevin Behm. Ms. Des Jardins and Mr. Behm are also signatories for business accounts (*see* WBE Exhibit 1, § 4.A).

DISCUSSION

This recommended order considers Share Corp.'s August 31, 2016 appeal from the Division's August 4, 2016 determination to deny Share Corp. certification as a woman-owned business enterprise pursuant to Executive Law article 15-A.

I. OWNERSHIP

To qualify for WBE certification, a woman relied upon for certification must demonstrate that her ownership interest in the business enterprise is "substantial and continuing" (5 NYCRR 144.2[c][2]). The purpose of this requirement is to ensure that women ownership of the business

seeking certification is not just mere pro forma ownership as reflected in corporate documents. Relevant to this appeal, two factors the Division considers in assessing ownership are: (1) whether the capital contribution of the woman owner is proportionate to her equity interest in the business enterprise, as demonstrated by contributions of money, property, equipment or expertise (5 NYCRR 144.2[a][1]); and (2) whether the woman owner possesses “the customary incidents of ownership” and shares “in the risks and profits in proportion with [her] ownership interest in the business enterprise” (5 NYCRR 144.2[c][2]). The Department 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]). Based on the information presented in the application, the Department correctly determined that Share Corp. failed to satisfy the ownership requirement.

a. Capital Contributions to the Business Enterprise

The Division contends that Share Corp. is not eligible for certification pursuant to 5 NYCRR 144.2(a)(1) because the women owning a majority of the outstanding shares of common stock, notably Kelcie Des Jardins, failed to demonstrate that they made a contribution of money, property, equipment or expertise proportionate to their respective equity interests in the business. According to the Division, the application and supporting documents establish that the women owners made no capital contribution although they were issued shares as late as 2015. (*See* WBE Memorandum of Law dated September 15, 2017.) The Department’s determination with respect to the capital contribution test is supported by substantial evidence.

As set forth in the application, the only capital contributions to Share Corp. came from male individuals, and only four individuals, all of whom were male, paid money to purchase shares of common stock (*see* WBE Exhibit 1, §§ 2.C, 2.D). Kelcie Des Jardins, who owns a plurality of the outstanding shares of common stock of Share Corp. obtained her interest in the corporation in August 1993, twenty-one years before she graduated from college (*see* WBE Exhibit 1, § 2.A and Exhibit 2 [resume of Kelcie Des Jardins]). Stock certificates submitted with the application, however, show that Kelcie Des Jardins was issued her shares of stock via two certificates, the first issued in 2011 and the second in 2013 (*see* WBE Exhibit 5 at Bates 34-35). Schedule L of Share Corp.’s Form 1120 tax return for 2013 indicates no capital was contributed during the 2013 calendar year (*see* WBE Exhibit 6 at Bates 52 [line 22]).

Applicant states that until the death of Paul Des Jardins in 1991, no additional capital was contributed to Share Corp., and no additional shares of common stock were sold to anyone (*see* Share Exhibit 2 at 2). According to applicant, for the last forty years, Share Corp. has generated the necessary revenues from its operations to purchase property and equipment (*id.* at 2). Applicant states that women owners of Share Corp. acquired their ownership interest through inheritance and argues that “for a multi-operational company, the contribution of women involved with the Corporation clearly becomes the most relevant factor in certification” (*id.* at 3 [Table 2 Current Ownership]). Notably, Applicant does not identify, much less quantify, any non-monetary contributions to the business by the women shareholders. As discussed below with

respect to the certification criteria for operation, none of the women shareholders possess particular skills or knowledge related to the manufacturing or distribution of specialty chemicals.

Based on the foregoing, applicant failed to demonstrate that the women owners of Share Corp. made contributions of money, property, equipment or expertise to the business enterprise proportionate to their equity interest as required by 5 NYCRR 144.2(a)(1). Accordingly, the Division's denial of certification on this ground is supported by substantial evidence.

b. Risks and Profits

To demonstrate that a woman owner's interest in a business enterprise is substantial and continuing, "[t]he minority group member or woman owner 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]). In evaluating whether a woman owner shares proportionately in the risks and profits of a business relative to her equity interest, the Division may 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 record here unequivocally shows that the women owners do not enjoy the customary incidents of ownership proportionate to their ownership interest in Share Corp.

Laure Des Jardins was the only female officer of Share Corp. who received a salary in 2013 and 2014 (*see* WBE Exhibit 6 at Bates 66, WBE Exhibit 7 at Bates 88). Even factoring in her pro-rata share of dividends of [REDACTED], her compensation is substantially less than the compensation received by three male officers (*see id.*). Moreover, her wages are inherently suspect because she is married to Thomas Des Jardins, the past president of Share Corp. Ms. Des Jardins returned to Share Corp. in 2013, the same year Share Corp. was seeking WBE certification from the federal government. Thomas Des Jardins relinquished his role of president in 2013 and took a cut in his salary. Ms. Des Jardins's salary increased from [REDACTED] in 2013 to [REDACTED] in 2014 and, according to applicant's appeal, increased to [REDACTED] as of the date of the appeal. (*See* WBE Exhibit 6 at Bates 66, WBE Exhibit 7 at Bates 88; Share Exhibit 2 at 4.) Given the relationship between Thomas and Laure Des Jardins, it can be reasonably inferred that compensation paid to Laure Des Jardins will also be enjoyed by her husband, who is still involved in the management and operation of Share Corp.

The record also fails to demonstrate that Kelcie Des Jardins receives profits from Share Corp. in proportion to her 35% ownership interest. According to Ms. Des Jardins's 2014 individual income tax return, she received [REDACTED] in dividends from Share Corp.² (*see* Share Exhibit 3, schedule B, line 5). Ms. Des Jardins's dividend income was significantly less than the compensation paid to every corporate officer, including six non-minority male individuals, notwithstanding that Ms. Des Jardins owns more shares of common stock than any other officer and shareholder (*see* WBE Exhibit 7 at Bates 88).

² Ms. Des Jardins's 2014 tax return indicates that she received [REDACTED] in wages, [REDACTED] of which was from income earned in New York State. The source of the non-New York income is not indicated, but even assuming it was from Share Corp., it would not change the analysis because Ms. Des Jardins enjoyment of the profits of Share Corp. is still well below every male officer, notwithstanding her ownership interest in the corporation.

Applicant provided supplemental information with its appeal regarding the compensation paid to its board of directors and executive managers (*see* Share Corp. Exhibit 2 at 4 [Table 3] and 5 [Table 4]). The new information purports to show that women received more compensation than men and that Kelcie Des Jardins received a salary of [REDACTED]. This information was not included in the WBE application materials that were before the Division when it made its decision, and thus is not within the scope of this appeal (*see* 5 NYCRR 144.5[a]). Even if the new information could be considered, it does not present grounds to overturn the Division’s determination. Applicant does not corroborate the information or identify its source. Although the information is intended to show that women received a majority of wages paid to the board of directors and executive managers, it does not demonstrate that each woman owner’s share of corporate profits is proportionate to her equity interest in the business as required by 5 NYCRR 144.2(c)(2). Compensation that is paid to women who are shareholders is not relevant for purposes of 5 NYCRR 144.2(c)(2). With respect to Kelcie Des Jardins, the information further supports the Division’s determination that the compensation she received from Share Corp. was not commensurate with her ownership interest in the business.

Applicant’s argument that the Division erred in not taking into account the dividends Share Corp. paid on a pro rata basis to shareholders in denying its application, while factually correct, is of no consequence on appeal (*see* Share Exhibit 2 at 4). According to the corporate tax returns, Share Corp. paid [REDACTED] in dividends in 2014, significantly less than the compensation paid to three male corporate officers (*see* WBE Exhibit 7 at Bates 88, 128). The dividends paid to the women owners on a pro rata basis were significantly less than the compensation paid to every male corporate officer (*see id.*).

The tables below summarize the compensation paid to Share Corp. officers and the pro rata dividends paid to shareholders and demonstrates the disparity in wages and profits enjoyed by the women shareholders as compared to the compensation paid to male officers and managers (*see* WBE Exhibit 6 at Bates 66, WBE Exhibit 7 at Bates 88; *see also* Share Exhibit 5 [Share Corp. 2012 Income Tax Return Form 1125-E Compensation of Officers]).

Share Corp. Officer Compensation

Name	Title/Position 2014	Compensation 2014 Tax Return	Compensation 2013 Tax Return	Compensation 2012 Tax Return	Ownership WBE Application (%)
Kelcie Des Jardins	Director	[REDACTED]	[REDACTED]	[REDACTED]	35
Laure Des Jardins	Dir/CEO	[REDACTED]	[REDACTED]	[REDACTED]	1.6
Thomas Des Jardins	Exec VP/COO	[REDACTED]	[REDACTED]	[REDACTED]	0.00
Kevin Behm	CFO	[REDACTED]	[REDACTED]	[REDACTED]	0.00
John Wright	Sr. VP Sales	[REDACTED]	[REDACTED]	[REDACTED]	6.63

Douglas Dropp	Officer		0.00
Len Ullsperger	Officer		0.00
Steven Hipp	Director/Officer		0.00
David Olmstead	Officer		0.00

Share Corp. 2014 Pro Rata Dividend Distributions to Shareholders³

Name	Title/Position	Ownership	2014 Pro Rata Dividends
Kelcie Des Jardins	Director	35%	
Patricia Des Jardins	Director	10.6%	
John Wright	Sr. VP. Sales	8.6%	
Josh Rapkin	Director	5.2%	
Zach Des Jardins	Owner	5.2%	
Cameron Des Jardins	Director	5.2%	
Aaron Des Jardins	Owner	4.5%	
Anthony Oliverio	Owner	2.3%	
Laure Des Jardins	President/CEO	1.6%	
Lily Des Jardins	Owner	0.9%	
Jim Rutherford	Owner	0.7%	
Paul Des Jardins	Owner	0.5%	
Alex Rapkin	Owner	0.5%	
Max Rapkin	Owner	0.5%	
Nadia Winke	Owner	0.5%	
Douglas Dropp	Owner	0.5%	

³ The calculation of dividends is based on a total distribution of [REDACTED] as indicated on the 2014 corporate tax return (*see* WBE Exhibit 7 at Bates 128) and the ownership information in section 2.A of the application (*see* WBE Exhibit 1, § 2.A).

In sum, applicant has failed to demonstrate that women owners share in the risks and profits of Share Corp. in proportion to their ownership interest in the business. The Division's denial of WBE certification to Share Corp. based on the eligibility criteria in 5 NYCRR 144.2(c)(2) was based on substantial evidence.

II. OPERATION

The first basis asserted for denial on operational grounds is that Share Corp. did not show that the women owners relied upon for certification make decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1). For a business to be certified as a WBE, "decisions pertaining to the operation of the business enterprise must be made by [] women claiming ownership of that business enterprise" (5 NYCRR 144.2[b][1]).

To evaluate whether an applicant complies with this eligibility criterion, the Division considers whether the woman-owner manages functions critical to the operation of the business enterprise (*see Matter of Northeastern Stud Welding Corp. v Webster*, 211 AD2d 889, 890 [3d Dept. 1995]). A woman owner who shares control of the business's day-to-day operations with a non-minority male individual does not exert independent control over the business particularly if she is primarily engaged in back office, administrative functions while male individuals manage the revenue-generating operations of the business (*see id.*). The certification criteria for operation ensure that WBE certification is limited to those businesses owned by women who are directly involved in managing significant operations of the business, functions that were traditionally managed by non-minority male individuals.

The Division determined that management of manufacturing operations and distribution constituted the significant operations of Share Corp. because they represented the means by which Share Corp. produced and sold its products (*see Memorandum of Law at 7*). This determination is reasonable inasmuch as Share Corp. is primarily engaged in the manufacturing and distribution of specialty chemicals. According to the application, seven core management functions of the business are managed by male individuals, including estimating, preparing bids, supervising field operations, negotiating bonding, negotiating insurance, negotiating contracts, marketing and sales. (*See WBE Exhibit 1, §§ 2.D, 4.A.*) Laure Des Jardins, the only woman shareholder who works full time at Share Corp., co-manages financial decisions and payroll with Kevin Behm and is a signatory with Mr. Behm on business accounts. She is not involved with the manufacturing or distribution of product. The application identifies no other woman shareholder who is involved in the management or operations of the business. (*See WBE Exhibit 1, § 4.A.*)

The resumes supplied by applicant further support the Division's determination that male individuals rather than the women owners manage the significant operations of the business. John Wright has been employed at Share Corp. since 1970 and manages the sale of its manufactured products (*see WBE Exhibit 2 at Bates 14*). Thomas Des Jardins has also been employed by Share Corp. since 1970 and oversees manufacturing operations (*see WBE Exhibit 2 at Bates 15*). Patricia Des Jardins's resume shows that her primary function is to attend meetings

(see WBE Exhibit 2 at Bates 16). Laure Des Jardins's resume offers no details of her job duties as CEO and president at Share Corp., but focuses instead on her personal life outside of Share Corp. while she was raising her children and volunteering in the community (see WBE Exhibit 2 at Bates 18-19). Kelcie Des Jardins is a writer who lives New York City and has never worked at Share Corp., according to her resume (see WBE Exhibit 2 at Bates 17).

Applicant contends that the majority of the members of the board of directors are women and that they oversee all actions taken by the corporation. Applicant further asserts that Laure Des Jardins, as president and CEO, is involved in Share Corp.'s day to day operations and management, participates in new product development, and manages sales and marketing activities and personnel across the country. (See Share Exhibit 2 at 6.) Neither the application nor Laura Des Jardins's resume provides this description of her job duties. In any event, the fact remains that male individuals perform significant operations of the business without the involvement of the women owners.

The second basis for denial on operational grounds is that the women owners have not demonstrated adequate managerial experience or technical competence to operate the business enterprise. A business seeking WBE certification must demonstrate that the woman owner "[has] adequate managerial experience or technical competence in the business enterprise seeking certification [,] . . . demonstrate[s] the working knowledge and ability needed to operate the business enterprise[,] . . . [and] devote[s] time on an ongoing basis to the daily operation of the business enterprise" (5 NYCRR 144.2[b][1][i]-[iii]). To this end, the Division will consider whether the woman owner possesses the technical competence to evaluate the work of her employees (see *Northeast Stud Welding Corp.*, 211 A.D.2d at 891). As discussed above, the application and supplemental materials fail to demonstrate that the women shareholders possess the managerial experience or technical competence related to specialty chemical manufacturing and distribution. Being a member of the board of directors is insufficient to establish that a women owner has the experience and technical competence to operate a business engaged in the manufacture and distribution of specialty chemicals.

Based on the foregoing, the Division appropriately determined that the women shareholders of Share Corp. lack the experience and technical expertise to manage and operate the corporation, and that Share Corp. does not meet the eligibility criteria for certification under 5 NYCRR 144.2(b)(1).

CONCLUSION

Share Corp. has not met its burden to show that the Division's August 4, 2016 determination to deny its application for WBE certification based on the ownership criteria at 5 NYCRR 144.2(a)(1) and 5 NYCRR 144.2(b)(1), and the operational criteria at 5 NYCRR 144.2(b)(1) and 144.2(b)(1)(i), is not based on substantial evidence.

RECOMMENDATION

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

Attachment: Exhibit List

Division of Minority and Women's Business Development

**Exhibit Chart
Matter of Share Corporation
WBE File No. 60410**

Exhibit No.	Description
WBE 1	Share Corporation Certification Application No. 9112540 submitted April 12, 2016
WBE 2	Resumes
WBE 3	New York State Department of Economic Development Division of Minority and Women's Business Development (Division) Denial Letter August 4, 2016
WBE 4	Share Corporation memorandum regarding fire March 12, 2006
WBE 5	Share Corporation Stock Certificates and Ownership Log
WBE 6	Share Corporation 2013 US Corporation Income Tax Return
WBE 7	Share Corporation 2014 US Corporation Income Tax Return
Share 1	Share Corporation Notice of Appeal August 31, 2016
Share 2	Share Corporation Appeal November 23, 2016
Share 3	2014 Individual Tax Return Kelcie Des Jardins
Share 4	2014 Joint Tax Return Laure Des Jardins and Thomas Des Jardins
Share 5	2012 Income Tax Return Share Corp. Form 1125-E Compensation of Officers