



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

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In the matter of the appeal of

**MILTON WELDING, INC.**

FINAL ORDER 23-08

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

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This order arises from an administrative appeal brought on behalf of Milton Welding, Inc. (“MWI” or “Appellant”) pursuant to section 144.2 of Title 5 of the New York Codes, Rules and Regulations.<sup>1</sup> Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated August 3, 2022, to deny MWI’s September 21, 2020, certification application as a Minority-owned Business Enterprise (“WBE”).

Appellant initiated its appeal by sending a Request to Appeal Form dated September 6, 2022, to the Division, requesting to appeal the denial determination via written submission. On October 6, 2022, the Division sent a notice to proceed by written appeal to the Appellant. Thereafter, MWI failed to submit any other papers. The Division filed its submission with its Memorandum of Law dated May 19, 2023, and an Affidavit of Glenn Butler, Associate Certification Director for the Division, with attached Exhibits. Administrative Law Judge (“ALJ”) David A. Murad presided over the appeal.

The issues on appeal were whether Appellant sufficiently demonstrated that the minority group owner relied upon for certification (1) shares in the risks and profits of the business enterprise in proportion to their equity interest, as required by 5 NYCRR & 144.2(b)(3); (2) possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR § 144.2(c)(1); (3) makes operational

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<sup>1</sup> The Division’s August 3, 2022, denial determination postdates the December 2, 2020, amendments made to 5 NYCRR Parts 140 et al. Accordingly, the eligibility criteria set forth under the amended regulations are referenced throughout this final order.

decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required by 5 NYCRR § 144.2(c)(2); and (4) devotes time on an ongoing basis to the daily operation of the business enterprise, as required by 5 NYCRR §144.2(c)(3).

On August 23, 2023, the Division received a Recommended Order from ALJ Murad that recommended affirmation of the Division's denial of the application to certify Milton Welding, Inc. as a MBE on the grounds set forth in the Division's August 3, 2023, 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 August 3, 2022, is affirmed. Accordingly, Milton Welding, Inc. will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

September 22, 2023



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Jason M. Clark  
Executive Vice President and Executive Director  
Division of Minority and Women's Business Development