

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

In the Matter

- of -

the Application of **PamTen, Inc.**
for Certification as a Women-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 61464

RECOMMENDED ORDER

- by -



Richard A. Sherman
Administrative Law Judge

June 26, 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 PamTen, Inc. ("PamTen" or "applicant") certification as a women-owned business enterprise ("WBE")¹ be reversed for the reasons set forth below.

PROCEEDINGS

This matter involves the appeal by applicant, 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 ("NYCRR") Parts 140-144, challenging the determination of the Division that PamTen does not meet the eligibility criteria for certification as a WBE.

The Division denied the application (exhibit 1) filed by PamTen for WBE certification by letter dated April 7, 2017 (exhibit 2 [denial letter]). The denial letter sets forth only one ground under 5 NYCRR 144.2 for the denial. Applicant filed a notice of appeal ("notice of appeal"), dated May 1, 2017, and the Division advised applicant that the appeal hearing would be held on May 8, 2018 (letter from the Division to applicant, dated April 18, 2018).

I convened the hearing at approximately 10:30 a.m. on May 8, 2018, at the Division's offices, 633 Third Avenue, New York, New York. Chaya Pamula and Prasad Tenjerla appeared on behalf of PamTen, and both testified. Simon Wynn, Esq., Senior Counsel, Empire State Development, represented the Division and called one witness, Francisco Guzman, a senior certification analyst for the Division. The parties proffered a total of fourteen exhibits, all of which were received into evidence on stipulation of the parties. A list of the exhibits is appended to this report.

Consistent with 5 NYCRR 145.1(m), an audio recording of the hearing was made. A copy of the audio recording, consisting of two audio files, was provided to this office on May 30, 2018. On June 12, 2018, I requested that Division staff provide me with copies of owner resumes that applicant had submitted with its WBE application. I received the resumes on June 12, 2018, whereupon, the hearing record closed.

ELIGIBILITY CRITERIA

The eligibility criteria pertaining to certification as a WBE are established by regulation (see 5 NYCRR 144.2). For the purposes of determining whether an applicant should be granted or denied WBE status, the ownership, operation, control, and independence of the business enterprise are assessed on the basis of information supplied through the application

¹The term "women-owned business enterprise" applies to an enterprise that meets the requisite criteria on the basis of the ownership and control of one woman or of multiple women (see 5 NYCRR 140.1[tt] [defining a women-owned business enterprise as one that is, inter alia, "at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women"]).

process. The Division reviews the enterprise as it existed at the time that the application was made, based on representations in the application itself, and on information revealed in supplemental submissions or 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 WBE certification for PamTen 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

The Division cited only one eligibility criterion for the denial of PamTen's application. Specifically, the Division argues that applicant failed to establish that the woman owner, Chaya Pamula, made a contribution to PamTen in proportion to her ownership interest in the enterprise (exhibit 2 at 2 [citing 5 NYCRR 144.2(a)(1)]).

Position of Applicant

Applicant states that it "would like to clarify . . . relevant facts in the [Division's denial] letter" (notice of appeal). Applicant argues that it "already provided support documentation to substantiate contributions made by Ms. Pamula and Mr. Tenjerla as shareholder loans" and further argues that "Ms. Pamula manages the bigger portion of the organization" (id.).

FINDINGS OF FACT

1. PamTen is a corporation, established on June 21, 2002, and is "an IT Solutions, Strategy, and Staffing service" (exhibit 1 at 2 [application, items 1.Q, 1.R]; exhibit 1 at 3 [application, items 3.B-D]).
2. Chaya Pamula is the Chief Executive Officer of PamTen and has held a 51 percent interest in PamTen since its inception in 2002 (exhibit 1 at 2-3 [application, items 1.P, 2.A, 2.D]).
3. Prasad Tenjerla is the Chief Operating Officer of PamTen and has held a 49 percent interest in PamTen since its inception in 2002 (exhibit 1 at 2-3 [application, items 1.O, 2.A, 2.D]).

4. Chaya Pamula and Prasad Tenjerla are, and have been, the only directors and the only shareholders of PamTen since its inception in 2002 (exhibit 1 at 2-3 [application, items 2.A, 2.D. 2.F]).

5. Neither Chaya Pamula nor Prasad Tenjerla made a monetary contribution to PamTen for their respective ownership interests (exhibit 1 at 3 [application, items 2.C, 2.D (stating that the owners paid "\$0" for their respective shares in PamTen)]; hearing audio file ["AF2"]² at 5:20, 8:20 [Guzman testimony confirming that the shareholder loans to the company that were identified in the application do not qualify as contributions]).

6. PamTen is certified as a WBE by the State of New Jersey and the City of New York (exhibit 1 at 6 [application, item 8.A]; see also exhibits 5, 7).

DISCUSSION

This report considers applicant's appeal from the Division's determination to deny certification of PamTen as a WBE pursuant to Executive Law Article 15-A. As discussed below, the Division cites one eligibility criterion in support of upholding the denial.

Ownership: Contribution Proportionate to Equity Interest

The eligibility criterion at issue requires that "the contribution of the minority group member(s) or woman owner must be proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise" (5 NYCRR 144.2[a][1]).

The Division argues that applicant failed to demonstrate that Chaya Pamula made contributions to PamTen in proportion to her ownership interest in the enterprise (exhibit 2 at 2 [citing 5 NYCRR 144.2(a)(1)]). Specifically, the Division asserts that shareholder loans made to the company by Ms. Pamula and Mr. Tenjerla are not contributions to the enterprise for the purposes of evaluating this eligibility criterion (*id.*; AF2 at 5:20, 8:20 [Guzman testimony confirming that the shareholder loans noted in the application do not qualify as contributions to the enterprise]).

The Division further asserts that the application "does not include any evidence that Ms. Pamula has made greater contributions to PamTen than has Mr. Tenjerla" (exhibit 2 at 2). The Division expert testified that there is no documentation of any qualifying contributions to the corporation from any source (AF2 at 1:40 [In response to the question, "Did you ever get any evidence . . . that there had been any contributions of cash, loans, whatever to the corporation?" Mr. Guzman testified, "None, no"]; see also AF2 at 9:30 [Guzman testimony that the application lacks documentation of any contributions in relation to the owners' equity interests in the company]). The application itself states that the owners each paid "\$0" for their shares in the corporation (exhibit 1 at 3 [application, item 2.D]).

² The hearing recording consists of two audio files, identified herein as AF1 and AF2.

As noted above, the corporation was established sixteen years ago under the same ownership arrangement that exists today (see findings of fact ¶¶ 1-4). Ms. Pamula testified that the corporation did not require a capital infusion at the time it was established (AF2 at 12:40) and that the corporation did little business until 2007 (AF2 at 23:30; 31:35). As the corporation grew, the owners extended loans to the enterprise to ensure sufficient cash-flow (AF2 at 12:30; 31:35). As noted by the Division, these loans do not constitute contributions to the enterprise. Therefore, the loans are not relevant to determining whether applicant satisfied the subject criterion.

Ms. Pamula acknowledged at the hearing that the dollar amounts shown on the application concerning cash and capital contributions relate to shareholder loans that she and Mr. Tenjerla made to the company (AF2 at 11:55, 23:20 [Pamula testimony that the dollar amounts shown under item 2.C of the application relate to shareholder loans]). She argues, however, that the Division's follow-up on this information was confusing and contradictory (AF2 at 9:00). Rather than advise applicant that shareholder loans are not contributions to the enterprise, the Division requested documentation relating to the loans. Applicant questions why the Division sought documentation of loans that do not constitute contributions to the enterprise, but failed to ask for the basis of the woman owner's 51 percent interest in the corporation (*id.*).

Applicant's argument that the Division's position is "contradictory" is reflected in the facts cited by the Division in support of its denial of the application. As Ms. Pamula notes, the denial letter states that applicant failed to provide documentation of the shareholder loans, but also states that such loans are not contributions to the enterprise (see AF2 at 9:00; see also exhibit 2 at 2 [third and fourth items noted under "Relevant Facts"]). Because loans do not constitute contributions to the enterprise, the failure to provide documentation of the loans is irrelevant to the analysis of whether an owner made a qualifying contribution.

The record before the Division at the time of its determination to deny the application supports the determination that neither owner made a monetary contribution to the corporation. The application states that the owners paid "\$0" for their respective shares of the corporation, and the shareholder loans listed in the application do not constitute contributions. Accordingly, the record indicates that the owners' monetary contributions to the corporation were equal (i.e., nothing), but that the woman owner was awarded a 51 percent ownership interest. On this basis, the Division denied the WBE application.

The eligibility criterion at issue in this proceeding provides that "the contribution of the minority group member(s) or woman owner must be proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise" (5 NYCRR 144.2[a][1]). The analysis under this criterion does not end with the determination that no monetary contribution was made by the owners. Rather, the analysis must consider non-monetary forms of contribution such as property, equipment and expertise. This is particularly so where, as here, the Division's denial determination is based solely upon the contribution eligibility criterion and the record demonstrates that no monetary contribution was made by either owner.³

³ I note that PamTen applied to the Division for both WBE and minority business enterprise ("MBE") certification (see exhibit 1 at 1 [application, item 1.A]), and that the Division approved PamTen's MBE

At the hearing, Ms. Pamula testified that "we considered the expertise to be . . . prime evidence for my contributions considering the type of business we have" (AF2 at 13:20 [also noting that PamTen did not require "immediate capital" at the start of its operations]). Mr. Tenjerla testified that "right from day one, when the company website was built . . . the content, strategy, everything came from Chaya Pamula" (AF2 at 31:05). I note that Ms. Pamula's predominant role in the enterprise is reflected in the corporate name, "PamTen," which combines the owners' names, placing her name before his.

It is not clear whether the Division analyst considered the relative expertise of the two owners of PamTen in the context of the contribution eligibility criterion. He testified that his determination to recommend denial of PamTen's WBE application was based solely on the lack of evidence of any monetary contribution by the owners of PamTen (AF2 at 6:40). Notably, the analyst also testified that he did not know whether, as general practice, the Division always relies solely on an owner's monetary contribution in assessing the contribution eligibility criterion (AF2 at 6:50).

As noted above, the application materials demonstrate that the ownership interests of Ms. Pamula and Mr. Tenjerla are nearly equal (i.e., 51 percent to 49 percent, respectively), and further demonstrate that neither owner made a monetary contribution for their ownership interest in the enterprise. Given the foregoing, I requested additional information from the Division to ascertain whether documents in the application materials demonstrate the extent of the expertise that the two owners brought to the enterprise (see 5 NYCRR 144.5[a] [providing that "[t]he hearing officer may request additional information of the applicant and the division and take other actions necessary to make an informed decision"]). Specifically, I requested that the Division provide me with copies of the owners' resumes (see email to the parties dated June 12, 2018). The resumes were submitted to the Division with the application materials and, therefore, were before the Division at the time of its determination to deny PamTen's WBE application (see exhibit 1 at 7 [application, mandatory documents]).

The resumes show that both Ms. Pamula and Mr. Tenjerla brought extensive expertise to the enterprise in the field of information technology ("IT"). Both have post-graduate degrees in the field (see exhibit A at 4 [stating that Ms. Pamula has a post-graduate degree in computer science]; exhibit B at 1 [stating that Mr. Tenjerla has a post-graduate degree in systems management]). Both have 16 years of IT experience (see exhibit A at 1 [stating that Ms. Pamula has "16 years IT experience"]; exhibit B at 1 [stating that Mr. Tenjerla has "**16 years** of overall IT experience"]). Accordingly, the resumes indicate that Ms. Pamula and Mr. Tenjerla share similar levels of expertise in IT.

In the areas of project management and business management, however, Ms. Pamula's expertise clearly surpasses that of Mr. Tenjerla. Ms. Pamula has held project management

application (AF1 at 11:25). Arguably, the rationale the Division cites for the denial of the WBE application could have been extended to the MBE application. That is, the application states that the two minority owners paid \$0 for their 100 percent ownership interest, and applicant did not assert in its application that either owner made a non-monetary contribution to the enterprise. Accordingly, the minority owners' 100 percent ownership interest in PamTen could be viewed to be disproportionate to their contribution to the enterprise.

positions consistently since June 1993 (see exhibit A [listing multiple project management positions, beginning in June 1993 as a "Project/Branch Manager"]). In contrast, Mr. Tenjerla's resume indicates that he has five years' experience in project management (exhibit B at 1 [stating that Mr. Tenjerla's experience "includ[es] 5 years of core Project Management"]; *id.* at 2-4 [listing Mr. Tenjerla's most recent prior positions as "Principal Consultant," and "System Analysis and Development Specialist"]). Ms. Pamula also has a master's degree in business administration and has undertaken additional training at Boston University in principles and techniques of project management (exhibit A at 4). Mr. Tenjerla's resume indicates that he has no educational background or certifications in project management or business management (exhibit B at 1). Notably, the Division acknowledged Ms. Pamula's "very impressive resume" at the close of the hearing (see AF2 at 32:50).

I conclude that the record that was before the Division at the time of its determination to deny the WBE application does not contain substantial evidence to support the Division's assertion that "the application does not include any evidence that Ms. Pamula has made greater contributions to PamTen than has Mr. Tenjerla" (see exhibit 2 at 2). At the time that applicant was incorporated in 2002, Ms. Pamula had more management expertise than Mr. Tenjerla. Given that there is no record of other qualifying contributions to the enterprise from either owner, Ms. Pamula's more extensive management expertise provides sufficient support for the award of her 51 percent ownership interest in PamTen.

I am cognizant of the fact that applicant did not quantify the value of the two owners' respective contributions of expertise to the enterprise. Nevertheless, where, as here, the application fails to indicate that there were any qualifying contributions (e.g., money, property, equipment, or expertise) by any owner (see 5 NYCRR 144.2[a][1]), the application materials should be scrutinized for evidence of a qualifying contribution. In this matter, the resumes that were before the Division at the time of the determination to deny the WBE application indicated that Ms. Pamula brought significantly more management expertise to the enterprise than did Mr. Tenjerla. Under the facts and circumstances presented in this matter, the difference in expertise of the two owners provides sufficient basis for Ms. Pamula's majority interest in PamTen.

CONCLUSION

Applicant met its burden to demonstrate that the record lacks substantial evidence to support the Division's determination to deny PamTen's WBE application on the basis of whether the women owner, Chaya Pamula, made contributions to PamTen in proportion to her equity interests in the enterprise (see 5 NYCRR 144.2[a][1]).

RECOMMENDATION

For the reasons stated herein, the determination of the Division to deny PamTen, Inc. certification as a women-owned business enterprise should be reversed.

**Matter of PamTen, Inc.
DED File ID No. 61464**

Exhibit List

Exhibit #	Description
1	PamTen WBE Application, submitted October 18, 2016
2	Division WBE Denial Letter to PamTen, dated April 7, 2017
3	PamTen Loan Agreement (2013)
3A	PamTen Letter, dated March 23, 2017, re: loan from Chaya Pamula
4	PamTen Organization Chart
5	New York City, Small Business Services, MWBE Certification for PamTen
6	City of Philadelphia, Commerce Department, MWBE Certification for PamTen
7	New Jersey, Division of Revenue and Enterprise Services, MWBE Certification for PamTen
8	NJBIZ Supplement, Best Fifty Women in Business (2018)
9	Community College of Philadelphia, Certificate of Entrepreneurship, issued to Chaya Pamula
10	New York State, Division of Minority and Women's Business Development, MBE Certification for PamTen
11	Princeton Regional Chamber of Commerce, 2016 Women of Achievement Award
12	New Jersey Monthly, Top 25 Leading Women Entrepreneurs & Intrapreneurs (2016)
13	MidJersey Business, Worthy of Imitation (2016 article re: Chaya Pamula)
Documents Requested by ALJ	
A	Resume of Chaya Pamula
B	Resume of Prasad Tenjerla