

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

In the Matter

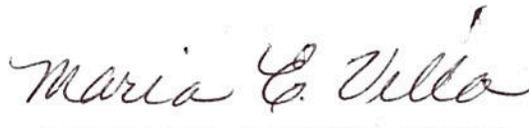
- of -

the Application of **Precision Building & Construction, LLC**  
for Certification as a Women-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 62016

RECOMMENDED ORDER

- by -

A handwritten signature in cursive script that reads "Maria E. Villa". The signature is written in black ink and is positioned above a horizontal line.

Maria E. Villa  
Administrative Law Judge

December 31, 2019

## **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 Precision Building & Construction, LLC ("Precision" or "applicant") certification as a women-owned business enterprise ("WBE") be affirmed, 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 Precision does not meet the eligibility criteria for certification as a WBE.

The Division denied Precision's application for WBE certification (Exhibit 1) by letter dated October 17, 2017. Exhibit A. As discussed below, the letter sets forth three grounds under Section 144.2 of 5 NYCRR for the denial, based upon applicant's failure to demonstrate that the women owner operates Precision for certification purposes. By letter dated November 9, 2017, including exhibits, applicant appealed from the Division's determination to deny the application. Exhibit O.

The Division responded to applicant's appeal in submissions dated September 24, 2019, including a memorandum of law and the affidavit of Raymond Emanuel, Director of Certification Operations for the Division (the "Emanuel Affidavit"), with attached exhibits. The exhibits offered by applicant and Division staff were marked and received into evidence. A chart of those exhibits is attached.

## **ELIGIBILITY CRITERIA**

The eligibility criteria pertaining to certification as a women-owned business enterprise are established by regulation (see Section 144.2 of 5 NYCRR). For the purposes of determining whether an applicant should be granted or denied WBE status, the ownership, operation, and control of the business enterprise are evaluated based upon information supplied through the application process. The Division reviews the enterprise as it existed at the time that the application was made, based on representations in the application itself, on information revealed in supplemental submissions, and, if appropriate, on interviews conducted by Division analysts.

## **STANDARD OF REVIEW**

On this administrative appeal, applicant bears the burden of proving that the Division's denial of Precision'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

### Division

The Division argued that applicant failed to meet three operational requirements for certification as a woman-owned business, pursuant to Section 144.2 of 5 NYCRR. First, the Division asserted that Adrienne Schwall and Megan Rullo-Steinbuch, the woman owners, did not make decisions pertaining to Precision’s operation, as required by Section 144.2(b)(1). In this regard, the Division cited the following “relevant facts” in the denial letter:

- Precision Building & Construction, LLC (“Precision Building”) is primarily engaged in providing general contracting services, with specialization in historic renovation and adaptive reuse.
- Ms. Megan Rullo-Steinbuch owns a seventy percent (70%) membership interest in Precision Building and Ms. Adrienne Schwall owns a thirty percent (30%) membership interest in Precision Building.
- Ms. Rullo-Steinbuch is primarily responsible for managing financial and human resources aspects of the business.
- Male individuals, including former owner Mr. Charles Schwall, project executive Mr. George Rullo, and foreman Mr. Dave Riddle are responsible for managing significant operations of the business, including estimating and the supervision of field operations.

Exhibit A, at 2.

The Division went on to assert that the woman owners of the business enterprise had not demonstrated adequate managerial experience or technical competence to operate Precision (see Section 144.2(b)(1)(i)). In addition, the Division contended that the woman owners did not show that they had the working knowledge and ability needed to operate the business enterprise (see Section 144.2(b)(1)(ii)). Specifically, in its denial letter, the Division noted that:

- Ms. Rullo-Steinbuch’s professional experience prior to joining Precision Building was administrative in nature.
- Ms. Rullo-Steinbuch does not possess any demonstrated credentials or formal training related to construction management or historic renovation and adaptive reuse.
- Male individuals associated with the business possess decades of industry experience supervising estimating, project management, and field operations.

Id., at 3. According to the Division, the record “reveals that the women owners lack the technical expertise that is needed to undertake and supervise the essential, ‘core’ construction work on the projects that the company is hired to complete, a function that has been and

continues to be performed . . . by Charles Schwall, George Rullo and the other male members of the company's staff." Emanuel Affidavit, ¶ 9. The Division went on to contend that while Adrienne Schwall and Megan Rullo-Steinbuch "perform administrative and related services for Precision Building, their efforts in that regard advance the interests of what is on this record . . . at best a family-owned business, as opposed to a WBE." Id.

### Applicant

In its November 9, 2017 appeal, applicant stated that "[t]here are no other owners, investors or signatories on the business other than Adrienne Schwall and Megan R. Steinbuch." Exhibit R. Applicant argued that the women owners exercised independent control over the day to day business decisions of the enterprise, and that Ms. Rullo-Steinbuch was actively involved in all aspects of the business.

Applicant pointed out that the company's sales had grown in three years from \$ [REDACTED] to over \$ [REDACTED], and contended that "no legitimate business would state that successfully increasing profitability, efficiency and cost streamlining is a detriment nor a diminished role of a growing company." Exhibit R, at 2. According to applicant, "[m]ale counterparts hired, employed and/or consulted in the business are for the sole purpose of efficiently managing the needs of the business/client projects/contracts/public works jobs and bidding the ensure the highest level of expertise applied to get 'the job done.'" Id. Applicant went on to assert that Ms. Rullo-Steinbuch "should not be discriminated against for being a dynamic entrepreneur and taking on ownership and debt for her chosen career as a construction company owner," and stated that she had "years of on the job training and continues to expand her learning . . . through online courses, seminars and being in the field with the employees working on the jobs." Id.

As part of the appeal, applicant included updated resumes for Adrienne Schwall and Megan Rullo-Steinbuch. Exhibits P and Q. As the Division pointed out, these documents were not part of the application, and therefore were not considered by the Division in evaluating Precision's eligibility for certification as a woman-owned business. Consequently, these documents are not considered on appeal.

## **FINDINGS OF FACT**

1. Precision Building & Construction, LLC is a general contracting business located at 216 Somerset Street, Bound Brook, New Jersey. Exhibit B, at 1. Precision specializes in historical renovation and adaptive reuse. Id., at 3.

2. The business was established on March 4, 1995 by Adrienne Schwall and her husband, Charles Schwall. Exhibit B, at 2. At the time the company was formed, Charles and Adrienne Schwall each owned a fifty percent (50%) interest in Precision, and Charles was primarily involved in running the business. Exhibit C.

3. Charles Schwall studied engineering at the College of Staten Island, and later owned a home improvement company for approximately ten years. Exhibit D.

4. Adrienne Schwall's resume does not reflect any training in engineering or construction-related disciplines. After attending Kean College, she was employed in office support for an architectural business and worked as an executive assistant to the vice president of a construction company. Exhibit E. In the seven years before Precision was formed, she owned and operated a food/catering business. Id.

5. In or about 2009, the ownership of Precision changed to eighty-five percent (85%) ownership by Adrienne Schwall, and fifteen percent (15%) by Charles Schwall. Exhibit C.

6. On December 13, 2012, Adrienne Schwall, Charles Schwall, and Megan Rullo-Steinbuch entered into an agreement for the purchase and sale of membership interest and stock shares (the "Purchase Agreement"). Exhibit F. On the same date, Adrienne Schwall, Megan Rullo-Steinbuch, and Precision Building & Construction, LLC executed a Second Amended Operating Agreement of Precision Building & Construction, LLC (the "Amended Operating Agreement"). Exhibit G. Finally, also on December 13, 2012, Charles Schwall and Precision Building & Construction, LLC entered into a Consulting Services Agreement (the "Schwall Consulting Agreement"). Exhibit H. These documents are referred to collectively as the "Restructuring Agreements."

6. Under the terms of the Second Amended Operating Agreement, Adrienne Schwall assumed the title of president of Precision. Exhibit G, ¶ 16(a). The Second Amended Operating Agreement also gave Adrienne Schwall "the authority to make all material decisions for the LLC with no right of review or override by the majority members." Exhibit G, ¶ 17. In addition, the Second Amended Operating Agreement granted Adrienne Schwall, at least through December 31, 2013, "an irrevocable proxy coupled with an interest from Megan . . . which proxy . . . authorizes Adrienne to vote on behalf of Megan with respect to all business issues and decisions relating to the operations and management of the LLC." Exhibit G, ¶ 16(a), and accompanying Irrevocable Proxy Agreement.

7. At the same time as the Consulting Agreement with Charles Schwall was executed, Precision entered into a similar consulting agreement with Megan Rullo-Steinbuch's father, George Rullo (the "Rullo Consulting Agreement). Exhibit H. Both the Schwall Consulting Agreement and the Rullo Consulting Agreement provided that both consultants would exercise supervisory roles over "site management" and the "engagement of subcontractors and vendors." Exhibit H.

8. Under the terms of the December 2012 Purchase Agreement, the Schwalls agreed to sell to Megan Rullo-Steinbuch, for the sum of \$ [REDACTED], a seventy percent (70%) ownership interest in Precision. Exhibit F. The 70% interest was derived from a fifty-five percent (55%) interest transferred from Adrienne Schwall to Megan Rullo-Steinbuch, and a fifteen percent (15%) interest from Charles Schwall, leaving Adrienne Schwall with a thirty percent (30%) interest, and Charles Schwall with no remaining equity in Precision. Exhibit F.

8. Precision's 2014 federal tax return indicated that Adrienne Schwall owned an eighty-five percent (85%) interest in Precision, with Charles Schwall holding a fifteen percent

(15%) interest. Exhibit I, Bates 7, 8, and 10. Precision's 2015 federal tax return showed the same ownership percentages. Exhibit J, Bates 7, 16 and 18.

9. Precision's 2016 federal tax return (the last tax return before Precision applied for certification) indicated that Adrienne Schwall held a 67.404% interest in Precision, Megan Rullo-Steinbuch a 21.366% interest, and Charles Schwall an 11.229% interest. Exhibit K, Bates 7, 8, and 9.

10. Megan Rullo-Steinbuch graduated from high school in 2009, three years before being accorded a majority interest in Precision. Exhibit N. She had no formal training in any construction-related discipline, or any construction-related experience other than clerical work performed for her father, George Rullo, in his construction business. Exhibit N.

11. George Rullo has years of experience and expertise in construction project management and field operations. Exhibit C. David H. Riddle, Precision's supervisor for commercial construction, has more than thirty years of construction industry experience. Exhibit L. Robert Paterniti, Precision's commercial construction superintendent, has worked for forty years in the commercial construction industry. Exhibit M.

## DISCUSSION

This report considers applicant's appeal from the Division's determination, pursuant to Executive Law Article 15-A, to deny certification to Precision as a women-owned business enterprise.<sup>1</sup> Section 144.2(b)(1) of 5 NYCRR requires that an applicant demonstrate that decisions pertaining to the operations of the business enterprise are made by the woman claiming ownership of the business. Moreover, the woman owner must have adequate managerial experience or technical competence in the business enterprise seeking certification, pursuant to Section 144.2(b)(1)(i). Finally, Section 144.2(b)(1)(ii) requires that the applicant show that the woman owner has the working knowledge and ability needed to operate the business enterprise. The Division denied Precision's application for certification on each of these three operational grounds.

On its appeal, with respect to decision making applicant argued that “[a]ll decisions of the business; from costing; personnel; marketing; sales; credentialing; hiring/firing; skill analysis; forecasting and pricing are managed and led by both Adrienne Schwall and Megan R. Steinbuch.” Exhibit R, at 1. According to applicant, “employing experts to handle the projects/field workers to successfully/profitably manage individual projects does not in any way relinquish control of the business from the owners to staff/independent contractors.” *Id.*

In response, the Division asserted that “[w]hile Precision Building has sought to cast itself as an enterprise that has been, at least since the December 13, 2012 restructuring, operated by its two women owners, that conclusion is not supported by the documentary

---

<sup>1</sup> The 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* Section 140.1(tt) of 5 NYCRR (defining a women-owned business enterprise as one that is, among other things, “at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women”)).

record.” Respondent’s Memorandum of Law in Support, at 7. The Division argued that “those restructuring agreements upon which the Appellant purports to rely show that even after Megan Rollo [sic] became the asserted majority owner of the business, she ceded any decision making authority to Adrienne Schwall who, along with husband Charles (now acting under a consulting agreement that was executed along with the other restructuring agreements), continued [to] operate the company.” Emanuel Affidavit, ¶ 10.

The Division went on to note that although applicant indicated that a majority interest was transferred to Megan Rullo-Steinbuch in December of 2012, Precision’s federal tax returns for 2014 stated that Adrienne Schwall owned an eighty-five percent (85%) interest in Precision, with Charles Schwall holding a fifteen percent (15%) interest. Emanuel Affidavit, ¶ 12; Exhibit I, Bates 7, 8, and 10. Precision’s 2015 federal tax return showed the same ownership percentages. Emanuel Affidavit, ¶ 13; Exhibit J, Bates 7, 16 and 18. Precision’s 2016 federal tax return (the last tax return before Precision applied for certification) indicated that Adrienne Schwall held a 67.404% interest in Precision, Megan Rullo-Steinbuch a 21.366% interest, and Charles Schwall an 11.229% interest. Emanuel Affidavit, ¶ 13; Exhibit K, Bates 7, 8, and 9. The Division concluded that Charles and Adrienne Schwall “remained the de facto owners and ran the company, as they had in the past, as a family-owned business.” Emanuel Affidavit, ¶ 11.

In light of the documentary evidence, the Division’s conclusion is supported by substantial evidence. First, although Precision’s restructuring supposedly resulted in a majority ownership by Megan Rullo-Steinbuch, the company’s tax returns indicate that Adrienne and Charles Schwall continued to own Precision. Moreover, although male members of the company, including Charles Schwall, possessed significant relevant experience, neither Adrienne Schwall’s, nor Megan Rullo-Steinbuch’s resumes support the conclusion that either of the women owners is capable of overseeing construction projects. Exhibits E and N. Adrienne Schwall’s resume indicates that she performs certain managerial functions, but lists only limited experience outside an administrative role. Exhibit E.

The Division correctly concluded that Adrienne Schwall did not exercise independent operational control over Precision’s core functions. According to the Division, “[i]nasmuch as Adrienne Schwall is not in a position to address the technical details of the construction work that is undertaken by Precision Building, she does not make decisions pertaining to the ‘operation of the business,’ as required by 5 NYCRR § 144.2(b)(1) and is accordingly a participant in what is at best a family-owned, as opposed to a women owned, business enterprise.” Emanuel Affidavit, ¶ 16; (see Matter of J.C. Smith v. New York State Dept. of Economic Development, 163 A.D.3d 1517, 1519 (4<sup>th</sup> Dept. 2018) (holding that “it is not irrational or unreasonable for the Division to require that a woman owner must exercise independent operational control over the core functions of the business in order to establish the requisite control for WBE certification”); see also Occupational Safety & Environmental Assocs, Inc. v. New York State Dept. of Economic Development, 161 A.D.3d 1582, 1583 (4<sup>th</sup> Dept. 2018) (denying certification where the wife did not have the working knowledge and expertise to have independent operational control of the business; rather, it was the husband who had the education and expertise, and was the principal consultant for the business, and therefore decisions pertaining to operation were not made by the woman claiming ownership)).

The same reasoning applies with respect to the other purported woman owner. Megan Rullo-Steinbuch's resume states that she graduated from high school in 2009, and her resume does not show that she has any formal training in any construction related discipline or experience other than purely clerical tasks that she performed for her father, George Rullo's construction business. Exhibit N. As noted above, on its appeal, applicant provided updated resumes, but because those submissions were not based on information provided as part of the application, they cannot be considered on appeal (see Section 144.4(e) of 5 NYCRR).

Moreover, pursuant to the terms of the Second Amended Operating Agreement, Adrienne Schwall assumed the title of president of Precision. Exhibit G, ¶ 16(a). The Second Amended Operating Agreement also gave Adrienne Schwall "the authority to make all material decisions for the LLC with no right of review or override by the majority members." Exhibit G, ¶ 17. In addition, the Second Amended Operating Agreement granted Adrienne Schwall, at least through December 31, 2013, "an irrevocable proxy coupled with an interest from Megan . . . which proxy . . . authorizes Adrienne to vote on behalf of Megan with respect to all business issues and decisions relating to the operations and management of the LLC." Exhibit G, ¶ 16(a), and accompanying Irrevocable Proxy Agreement. In light of this documentation, the Division's determination that Megan Rullo-Steinbuch did not exercise independent operational control was based upon substantial evidence.

In Matter of Northeast Stud Welding Corp., 211 A.D.2d 889 (3<sup>rd</sup> Dept. 1995), the court determined that an application for certification as a women-owned business was properly denied, reasoning that, although the woman applicant performed some functions, and made some decisions on her own, significant operations were shared and still others were performed solely by her husband. Noting that, while not dispositive, the woman owner had no training or expertise in welding, which was the construction service provided by the business, the court observed that she lacked the technical ability to evaluate her husband's work, "be it stud welding, training others to do so or supervising field operations." Id., at 891 (citations omitted). The court concluded that the enterprise was a family business.

The Division relied upon a second ground for denial, specifically, that the women owners did not have adequate managerial experience or technical competence in the business enterprise seeking certification, pursuant to Section 144.2(b)(1)(i). In addition, Section 144.2(b)(1)(ii) requires that the applicant show that the woman owner has the working knowledge and ability needed to operate the business enterprise.

Applicant responded to both denial grounds in the same section of its appeal, asserting that Megan Rullo-Steinbuch's professional experience prior to joining Precision was not solely administrative in nature, and contended that Ms. Rullo-Steinbuch "worked closely with her father's construction business and learned the business from the ground floor up." Exhibit R, at 2. Applicant went on to argue that "[i]f NYS is claiming that Megan does not have decades of experience – she does not due to her age; and should not be discriminated against for being a dynamic entrepreneur and taking on ownership and debt for her chosen career as a construction company owner." Id. Applicant noted that since Ms. Rullo-Steinbuch joined Precision, sales increased over 177% in three years, from \$ [REDACTED] to over \$ [REDACTED].

In response, the Division pointed out that George Rullo, Megan Rullo-Steinbuch's father, had years of experience and expertise in construction project management and field operations. Emanuel Affidavit, ¶ 18; Exhibit C. The Division went on to note that Charles Schwall and George Rullo, the two individuals with construction experience in the field continued to be involved in Precision pursuant to the terms of identical consulting contracts which were in effect until at least December 31, 2018. Emanuel Affidavit, ¶ 18; Exhibit H. Two other male employees, David H. Riddle, and Robert Paterniti, both have years of experience in the construction industry. Emanuel Affidavit, ¶ 18; Exhibits L and M. The Division acknowledged that both Adrienne Schwall and Megan Rullo-Steinbuch play a role in the administration of Precision's business, but maintained that "the fact that they lack professional training in construction related disciplines and leave the performance and supervision of the 'in field' construction work to Charles Schwall, George Rullo, David H. Riddle and Robert Paterniti means that they have neither the degree of control [pursuant to Section 144.2(b)(1) of 5 NYCRR] nor the working knowledge or technical competence, particularly with respect to the core functions of the company's business [as required by Section 144.2(b)(1)(i) and (ii)]." Emanuel Affidavit, ¶ 21. This reasoning is persuasive, and in light of the information submitted with the application, the Division's determination with respect to the two remaining criteria was supported by substantial evidence, and should be affirmed.

### **CONCLUSION**

As discussed above, applicant did not meet its burden to demonstrate that the Division's determination to deny Precision's WBE application for certification was not based on substantial evidence.

### **RECOMMENDATION**

The Division's determination to deny Precision's application for certification as a women-owned business enterprise should be affirmed.

**Matter of Precision Building & Construction, LLC**  
**DED File ID No. 62016**  
**Exhibit List**

Exhibit	Description	Received?
A	October 7, 2017 denial letter	✓
B	July 25, 2017 application	✓
C	Narrative explaining history of Precision, including ownership	✓
D	Resume: Charlie Schwall	✓
E	Resume: Adrienne Schwall	✓
F	December 13, 2012 agreement for purchase and sale of membership agreement and stock shares	✓
G	Second amended operating agreement (executed December 13, 2012)	✓
H	December 13, 2012 consulting services agreement	✓
I	2104 U.S. return of partnership income	✓
J	2015 U.S. return of partnership income	✓
K	2016 U.S. income tax return for an S corporation	✓
L	Resume: David H. Riddle	✓
M	Resume: Robert Paterniti	✓
N	Resume: Megan Rullo Steinbuch	✓
O	November 9, 2017 appeal letter	✓
P	Updated resume: Adrienne Schwall	✓
Q	Updated resume: Megan Rullo Steinbuch	✓
R	November 8, 2017 memorandum from A. Schwall and M. Steinbuch to DED	✓
S	Organizational chart	✓