

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

In the Matter

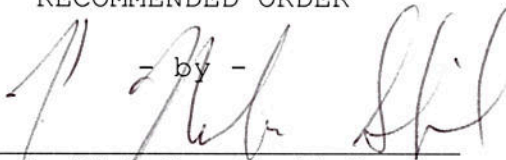
- of -

the Application of  
**Puppa Group LLC**  
For Certification as a Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 60701

RECOMMENDED ORDER

- by -



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P. Nicholas Garlick  
Administrative Law Judge

August 31, 2017

## **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 Puppa Group LLC ("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 Puppa Group LLC challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Puppa Group LLC's application was submitted on June 13, 2016 (Exh. DED1).

The application was denied by letter dated July 1, 2016, from Bette Yee, Director of Certification Operations (Exh. DED4). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet three separate eligibility criteria related to Christina Masi's ownership and operation of the applicant.

In a letter received August 4, 2016, the applicant appealed from the Division's determination.

By letter dated August 31, 2016, the Division notified the applicant that its written appeal should be received on or before October 14, 2016.

In a one-page memorandum received October 13, 2016, the applicant submitted its written appeal. Attached to the appeal were six exhibits (listed in the attached exhibit chart as A1 - A6).

In a seven-page memorandum dated August 7, 2017, the Division responded to the applicant's appeal. Enclosed with the

response were five exhibits, described in the attached exhibit chart as DED1-DED5.

On August 8, 2017, this matter was assigned to me.

#### **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 three separate criteria for certification.

First, the Division found that the applicant failed to demonstrate that the woman owner Christina Masi's capital 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 relied upon for certification, Christina Masi, does not have adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i).

Third, the Division found the applicant failed to demonstrate that the woman owner, Christina Masi, makes decisions pertaining to the operations of the enterprise or devotes time on an ongoing basis to the daily operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

#### Position of the Applicant

Puppa Group LLC 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. Puppa Group LLC is in the business of providing land and site development services and related consulting services (Exh. DED1 at 3). The firm has a business address of 105 Arbour Avenue, West Islip, New York (Exh. DED1 at 1).

2. Puppa Group LLC was established on April 15, 2014 by Joseph Puppa and on February 1, 2016 Christina Masi assumed a 51% ownership interest (Exh. DED1 at 3).

3. From 2008 to 2013, Ms. Masi was a part-time administrative assistant at 3J Site Development and her duties included: phone calls, accounting, bookkeeping, obtaining town permits, meeting with clients, and site visits (Exh. A5).

4. Mr. Puppa has approximately 20 years' experience as a heavy equipment operator (Exh. A5).

5. Ms. Masi is employed as a high school science teacher during the regular business hours of the business (Exh. A5).

6. Mr. Puppa manages field work, estimating, and client relations for Puppa Group LLC (Exh. A5).

## **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 three bases related to Ms. Masi's ownership and operation of Puppa Group LLC. Each basis is discussed individually, below.

### **Ownership**

In its denial, the Division found that the applicant failed to demonstrate that the woman owner Christina Masi's capital 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 were: (1) the application shows the business is owned by Ms. Masi and Mr. Puppa; (2) the application shows both owners contributed an equal amount; (3) bank records submitted with the application do not show a contribution by Ms. Masi; (4) the application does not provide any metric for valuing the contribution of expertise by Ms. Masi; and (5) Ms. Masi's prior work experience and training do not reflect significant expertise or business acumen in the applicable industry.

The appeal states that Ms. Masi contributed [REDACTED] to the business. Attached to the appeal are a bank statement and deposit slip showing a deposit into the business's checking account of [REDACTED] on August 3, 2016 (Exh. A6).

In its response, the Division notes that the application states that Mr. Puppa and Ms. Masi each contributed [REDACTED] to the firm on April 15, 2014: he contributed expertise and equipment while she contributed expertise (Exh. DED1 at 3). As proof of these contributions, Ms. Masi included a series of bank statements from the firm for the period between September 2015 and March 2016 (Exh. DED5), which the Division argues bears no

discernable connection to the claimed contributions. The Division asserts that even if the claimed contributions were demonstrated, it would only show equal contributions by the members and not that Ms. Masi contributed in proportion to her majority ownership interest. The Division also questions Ms. Masi's claim of a contribution of expertise when her resume shows a lack of relevant credentials and only prior work in the construction industry as a part-time administrative assistant. The Division also cites the firm's operating agreement, which states that no contributions were made to the firm by either member (Exh. DED2 at 13).

With respect to applicant's claim of a [REDACTED] contribution by Ms. Masi on August 3, 2016, the Division notes that this transaction occurred after the denial and is, therefore, not relevant to the appeal. Further, the Division argues that the documents provided, alone, do not demonstrate a contribution, but may well be some other transaction, such as a loan.

Based on the evidence in the record, specifically the fact that there is no proof of any contribution by Ms. Masi to the firm before the denial, the applicant has failed to demonstrate that the woman owner Christina Masi's capital 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).

### **Operation**

In its denial letter, the Division found that the woman owner relied upon for certification, Christina Masi, does not have adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i). The relevant facts cited in the denial letter were: (1) Mr. Puppa possesses significant work and management experience in the industry; (2) Ms. Masi has no relevant prior work experience in the industry; and (3) the application does not demonstrate that Ms. Masi has received any relevant training in the industry.

The appeal states that Ms. Masi volunteered for 3J Site Development and shows an eager willingness to learn the

business. Attached to the appeal is a copy of her resume, which states that from 2008 to 2013 she was a part-time administrative assistant at 3J Site Development where her duties included: phone calls, accounting, bookkeeping, obtaining town permits, meeting with clients, and site visits (Exh. A5). The applicant also states that her experience in the education field has provided her with leadership skills necessary to hire, run, and delegate all aspects of the business, and as she works at Puppa Group LLC, her experience grows. The applicant concludes that she makes relevant decisions to complete all jobs and her resume shows she has received training by working for both 3J Site Development and the Puppa Group LLC (Exh. A4).

In its response, the Division argues Ms. Masi does not have any demonstrated industry-specific experience that would allow her to meaningfully evaluate Mr. Puppa's work. Mr. Puppa has approximately 20 years' experience as a heavy equipment operator. With respect to the claim in the appeal that Ms. Masi can hire and fire employees or replace Mr. Puppa, if necessary, the Division argues that this is irrelevant to the appeal and does not show managerial experience or technical competence, as required by the regulations.

Based on the evidence in the record, including the resumes of Ms. Masi and Mr. Puppa, the applicant failed to demonstrate that the woman owner relied upon for certification, Christina Masi, has adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i). The Division's denial on this ground was based on substantial evidence.

The second operational ground for denial was that the Division found that the applicant failed to demonstrate that the woman owner, Christina Masi, makes decisions pertaining to the operations of the enterprise or devotes time on an ongoing basis to the daily operations of the enterprise, as required by 5 NYCRR 144.2(b)(1). The relevant facts cited in the denial letter were: (1) Ms. Masi is employed as a teacher during the regular business hours the business; (2) the application does not indicate that Mr. Puppa maintains outside employment; (3) Ms. Masi's duties are administrative in nature; and (4) Mr.

Puppa manages field work, estimating, and client relations for the firm.

The applicant states that Ms. Masi can hire and fire the appropriate staff to complete any job and that Mr. Puppa is not the only one who can complete jobs for the firm. Should Mr. Puppa leave the business, the applicant states, Ms. Masi could hire staff to complete field work. The applicant notes that Mr. Puppa does maintain client relations after jobs are acquired, but that Ms. Masi delegates the authority to manage these relationships so she can continue to grow and manage the business.

The applicant also states that Mr. Puppa's main source of income is not Puppa Group LLC but other companies for which he works. Attached to the appeal papers are federal W2 forms for 2014 showing Mr. Puppa is employed by three firms (Exh. A2), forms from 2015 showing his employment at several firms (Exh. A3), and member contribution forms for 2016 showing his work through his union (Exh. A4). In addition, the applicant acknowledges that Ms. Masi does work as a teacher during normal business hours, but that during these hours she can and does return client and customer messages and works for the firm after school as well as on days off, holidays, weekends, and during the summer. She looks forward to the time when the business will provide her with 100% of her income.

In its response, the Division argues that Ms. Masi cannot operate the firm because she is employed as a full-time high school teacher (Exh. DED3). The resume provided with the application did not indicate that Mr. Puppa was employed anywhere but at the firm, which lead the Division to conclude that he was the only individual available during ordinary business hours to manage the firm. Further, the Division determined that Mr. Puppa was responsible for estimating, and supervision of field operations based on the resumes provided (Exh. DED3). Because these management functions represented the means by which the firm obtained work and delivered services to its clients, the Division concluded that he operated the business for certification purposes.

Based on the evidence in the record, specifically the information regarding the roles of Mr. Puppa and Ms. Masi at the



firm and Ms. Masi's full-time employment as a teacher, the applicant failed to demonstrate that the woman owner, Christina Masi, makes decisions pertaining to the operations of the enterprise or devotes time on an ongoing basis to the daily operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

#### **CONCLUSIONS**

1. The applicant failed to demonstrate that the woman owner Christina Masi's capital 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 demonstrate that the woman owner relied upon for certification, Christina Masi, has adequate managerial experience or technical competence to operate the business enterprise seeking certification, as required by 5 NYCRR 144.2(b)(1)(i).

3. The applicant failed to demonstrate that the woman owner, Christina Masi, makes decisions pertaining to the operations of the enterprise or devotes time on an ongoing basis to the daily operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

#### **RECOMMENDATION**

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

**Matter of  
Puppa Group LLC**

**DED File ID No. 60701  
Exhibit List**

<b>Exh. #</b>	<b>Description</b>
DED1	Application
DED2	Operating agreement
DED3	Resumes
DED4	Denial letter
DED5	Bank statements
A1	Denial letter
A2	2014 W2 Forms for Joseph Puppa
A3	Pay stubs for Joseph Puppa
A4	Member Contribution Statements for Joseph Puppa
A5	Resumes
A6	Bank Statement and deposit slip