

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

In the Matter

- of -

the Application of **Putrelo Building Enterprises, Inc.**
for Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 54036

RECOMMENDED ORDER

- by -



Maria E. Villa
Administrative Law Judge

August 24, 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 Putrelo Building Enterprises, Inc. ("Putrelo" or "applicant") certification as a woman-owned business enterprise¹ ("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 Putrelo does not meet the eligibility criteria for certification as a WBE.

The Division denied Putrelo's application for WBE certification (Exhibit 1) by letter dated May 12, 2017. Exhibit 2. The denial letter set forth three grounds under 5 NYCRR Section 144.2 for the denial. Specifically, according to the Division,

- (1) applicant failed to demonstrate that the contributions of Kristine Putrelo, the woman owner, are proportionate to her equity interest in the business enterprise as demonstrated by, but not limited to, contributions of money, property, equipment or expertise (see Section 144.2(a)(1) ("Ownership"));
- (2) applicant failed to demonstrate that Ms. Putrelo made decisions pertaining to Putrelo's operation (see Section 144.2(b)(1) ("Operation")); and
- (3) applicant did not establish that Ms. Putrelo has the managerial experience or technical competence, working knowledge or ability needed to operate the enterprise (see Section 144.2(b)(1)(i) ("Operation")).

Exhibit 2. On May 19, 2017, applicant requested a hearing on the denial, and the Division responded by letter dated July 3, 2018, advising applicant that a hearing had been scheduled. Exhibits 3 and 4.

The hearing took place as scheduled on July 24, 2018. Applicant was represented by Diana Plue, Esq., of the law firm of Sheats & Bailey, Liverpool, New York. Applicant called two witnesses: Kristine Putrelo and Nicholas Putrelo. Division Staff was represented by Benson Martin, Esq., and called Raymond Emanuel, the Division's Director of Certification Operations.

A list of exhibits is attached to this recommended order. The hearing was recorded by Division staff. This audio recording is approximately three hours long, on three compact discs.

¹ The term "women-owned business enterprise" applies to an enterprise that meets the requisite criteria based upon 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, inter alia, "at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women")).

References to testimony from the hearing are identified by the time on the recording at which the testimony occurs (“HR at ____”).

ELIGIBILITY CRITERIA

The eligibility criteria pertaining to certification as a woman-owned business enterprise are established by regulation (see 5 NYCRR Section 144.2). For the purposes of determining whether an applicant should be granted WBE status, the ownership, operation, and control of the business enterprise are assessed based on 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, and on information revealed in supplemental submissions and any interviews that the Division’s analyst may have conducted.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that the Division’s denial of Putrelo’s application for WBE certification is not supported by substantial evidence (see State Administrative Procedure Act Section 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 N.Y.3rd 494, 499 (2011) (internal quotation and citations omitted)).

POSITIONS OF THE PARTIES

Applicant

On appeal, applicant addresses the bases cited by the Division for the denial of Putrelo’s WBE application. According to applicant, Ms. Putrelo loaned Putrelo Building Enterprises \$██████, and the loan was subsequently recharacterized as a contribution to capital. Exhibit 1, at 10. Applicant asserted that Ms. Putrelo had worked in the construction field for almost twenty years, and that she possesses the necessary experience to run the company. Exhibit 3, at 2. Applicant went on to state that “[t]he level of detail in running a construction company does not mean that I need to be able to load trucks, install materials, man equipment; I hire professional Union Carpenters, Bricklayers, Laborers and Ironworkers to complete the field work and have a good working relationship with the Union Representatives.” Exhibit 3, at 2.

Division

The Division contends that its determination is supported by substantial evidence, and that applicant failed to satisfy certification criteria related to ownership and operation of the business enterprise by a woman owner. Specifically, the Division asserted that with respect to ownership, applicant failed to demonstrate that Ms. Putrelo’s 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. With respect to operation, the Division maintained that applicant failed to show that Ms. Putrelo has the managerial experience or technical

competence, working knowledge or ability to operate Putrelo, and that Ms. Putrelo did not make decisions pertaining to Putrelo's operations. Accordingly, the Division requested that its determination to deny WBE certification to Putrelo be upheld.

FINDINGS OF FACT

1. Putrelo Building Enterprises, Inc. is located at 9273 Grange Hill Road, New Hartford, New York. Exhibit 1, at 1.
2. Putrelo provides building renovation and construction services for public works contracts. Exhibit 1, at 3; HR at 17:10 (Disc 2).
3. The company was established in 2006. Exhibit 1, at 2; HR at 16:30 (Disc 2).
4. Schedule L of the company's 2015 federal corporation income tax return shows a shareholder loan of \$ [REDACTED]. Exhibit 15.
5. Tony Putrelo and Nicholas Putrelo's resumes reflect significant relevant experience in the construction industry, including training and certifications. Exhibits 5 and 6. Applicant provided copies of certifications held by Michael Putrelo, relevant to work in construction. Exhibit 8.
6. Ms. Putrelo's resume provides a skills summary, listing "business management, written correspondence, general office skills, computer savvy, customer service, insurance, accounting/bookkeeping, and office operations." Exhibit 7. Applicant did not submit any certifications for Ms. Putrelo.
7. As part of the application, the Division received a narrative of duties and responsibilities of key employees, including Tony Putrelo and Michael Putrelo. Exhibit 9. That document elaborated upon the duties of both employees, including Tony Putrelo's duties as operations manager/project manager and quality control, and Michael Putrelo's role as project manager and estimator.
8. Applicant also provided a list of duties for Kristine Putrelo. Exhibit 12. That document elaborated upon the administrative tasks performed by Kristine Putrelo, as well as other functions, including supervision of field work in coordination with project managers, and overseeing estimates.

DISCUSSION

This report considers applicant's appeal from the Division's determination to deny Putrelo certification as a woman-owned business enterprise, pursuant to Executive Law Article 15-A.

Ownership

Section 144.2(a)(1) of 5 NYCRR requires an applicant to demonstrate that the woman owner's 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. In addition, an applicant must show that a woman owner shares in the risks and profits in proportion with her ownership interest in the business enterprise (see Section 144.2(c)(2) of 5 NYCRR).

In the denial letter, the Division stated that with respect to contribution, applicant failed to satisfy the ownership criteria, based upon the following "relevant facts":

- The most recent balance sheet for Putrelo Building Enterprises ("PBE") shows \$ [REDACTED] in additional paid-in capital contributed to the business.
- Ms. Putrelo declined to provide bank records or other documents that demonstrated that she contributed the capital in question to PBE.

Exhibit 2, at 2.

In reviewing the application, the Division's analyst requested that applicant provide "documentation, such as bank statements, demonstrating the source of the \$ [REDACTED] in additional paid-in capital reflected on line 23" of the balance sheet (Schedule L) of Putrelo's 2015 federal corporation tax return. Exhibit 1, at 10. At the hearing, the Division's witness, Raymond Emanuel, testified that Ms. Putrelo provided a narrative in response to the analyst's inquiry regarding the \$ [REDACTED]. HR at 35:00 (Disc 1). Specifically, applicant responded that

The Company received a loan from its shareholder – Kris Putrelo, during 2011 amounting to \$ [REDACTED]. This was for personal payments made to the Management Company and loans to the company to stay afloat during difficult financial times. The Management company, [REDACTED], was hired for Professional Services to help restructure the Company and identify ways to improve profitability, and assist with Bonding and Banking requirements after significant losses were incurred. At that time, the shareholder did not intend to demand repayment prior to January 1, 2014. This amount was subsequently recharacterized by the shareholder, Kris Putrelo, and the Company as a contribution to capital during the year ended December 31, 2013.

Exhibit 1, at 10. In response to a second request for documentation from the Division, applicant provided a document entitled "Officer Loan to Company" (Exhibit 10) and a narrative, as follows:

In regards to the Personal Loan to Putrelo Building recorded on the Analysis of Shareholder's Loan I add the following note: During the year 2011 I hired a professional Management Consulting Group, [REDACTED]. The [REDACTED] went out of business, but I maintained a contract with the two consultants we worked closely with, Carole Wasala, and her associate; Ken Miller: [REDACTED] directly thereafter. We worked on numerous management and accounting [matters] for the business. It was well worth my investment to hire the Management Consulting group because I needed help with the accounting with the database from [REDACTED].

They [sic] [REDACTED] database was not set up correctly and not accurately recording job costs. I had to go reconfigure the entire accounting system. It was a very expensive venture, but the gain on my investment was measurable. Due to losses in 2010, and trying to account for all the costs for Taxes, Banking, Insurance and Year End Financial Statements, I didn't have the money in the business to pay for all the costs of the Management company, so I paid them personally. The accountants, [REDACTED] out of Syracuse recorded the payments and added interest. It was an investment in my business and well worth it. My [REDACTED] Database is running correctly and Projects, Costs, etc, are all flowing through the system correctly giving me the ability to accurately gauge profitability on projects weekly.

Exhibit 1, at 12.

On this record, it was reasonable for the Division to determine that Ms. Putrelo had not contributed money, property, equipment, or expertise sufficient to entitle Putrelo to WBE certification. Applicant's response to repeated requests for information by the Division consisted of a narrative description, and two documents (Exhibits 14 and 15) which do not reflect that the loan made by Ms. Putrelo was converted into a capital contribution. HR at 56:50 (Disc 2).

Although Ms. Putrelo testified that the loan was converted, on the advice of Putrelo's accountant and bonding company, the documents before the Division at the time of the denial showed only that a loan had been made. HR at 51:04 (Disc 2); see Matter of Haas, Inc., NYS DED File ID No. 60185, at 7 (October 30, 2017) (loans are not capital contributions; "[a]lthough [applicant] credibly testified that the business enterprise has changed accountants who would now characterize the balance of the previously made payments as capital contributions," the application materials reviewed by Division staff at the time of the denial "did not reflect the revised accounting characterization"). The facts in Matter of Haas are similar to the situation in this case, and the same reasoning applies. The Division's determination that Putrelo did not

satisfy the eligibility criterion at Section 144.2(a)(1) of 5 NYCRR is based upon substantial evidence.

Operation

Section 144.2(b)(1) of 5 NYCRR requires that decisions pertaining to the operations of the business enterprise must be made by the woman owner. With respect to this requirement, the Division's denial letter set forth the following facts:

- PBE provides a variety of construction services including, but not limited to, the sale and erection of Chief Buildings pre-engineered buildings, carpentry, masonry, and iron work.
- Ms. Putrelo is primarily responsible for office management and management of financial matters.
- Male individuals associated with the business are responsible for managing significant operations of the business including supervising field operations and estimating.

Exhibit 2, at 2-3.

As part of the application, applicant provided resumes, certifications, and narrative descriptions of the duties and responsibilities of Tony Putrelo, Michael Putrelo, Nicholas Putrelo, and Kristine Putrelo. Exhibits 5, 6, 7, 8, 9 and 12. Notably, Ms. Putrelo's resume describes her skills as primarily administrative and office-related. Exhibit 7. In contrast, Tony Putrelo's resume and duties indicate that he is responsible for managing and performing field operations, as well as quality control and estimating, among numerous other construction-related tasks. Exhibits 6 and 9. Michael Putrelo holds several construction-related certifications (Exhibit 8), and his duties include organizing, planning, directing and coordinating overall job development, functioning as a project manager and estimator. Exhibit 9. Although Ms. Putrelo expanded upon her job description in a narrative (Exhibit 12) to include a role in estimating and coordination with field superintendents, among other things, that narrative does not indicate that Ms. Putrelo performs these functions independently.

In Matter of J.C. Smith, Inc., 163 A.D.3rd 1517 (4th Dept. July 25, 2018), the Appellate Division considered the appeal by an applicant for re-certification as a woman-owned business. In that case, the Division denied the application because, among other grounds, "petitioner failed to demonstrate that the women owners made decisions pertaining to the operations of the business enterprise." Id., at 1518 (citations omitted). The court reasoned that

[i]n view of the legislative purpose to facilitate additional business opportunities for women-owned enterprises, and the requirement that women exercise independent control over the day-to-day business decisions of the enterprise, we conclude 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.

Id. (citations omitted). In this case, the core functions of the business enterprise are performed by non-minority males, either alone or in coordination with Ms. Putrelo. Applicant did not meet its burden of proof to show that the Division's determination was not supported by substantial evidence with respect to the operational criterion of Section 144.2(b)(1) of 6 NYCRR.

Section 144.2(b)(1)(i) of 5 NYCRR mandates that an applicant demonstrate that the woman owner has adequate managerial experience or technical competence to operate the business enterprise seeking certification. The Division's denial letter included the following facts:

- Ms. Putrelo has not identified any prior professional experience, trainings, or certifications relevant to the work performed by PBE.
- Mr. Nicholas Putrelo, Mr. Michael Putrelo, and Mr. Tony Putrelo possess trainings and certifications relevant to the services provided by PBE.
- Mr. Nicholas Putrelo is a certified installer of Chief Buildings brand pre-engineered buildings. Ms. Putrelo has demonstrated no training or experience in the installation of pre-engineered buildings.

Exhibit 2, at 3.

As part of the application, Putrelo provided copies of certifications held by Michael Putrelo and Nicholas Putrelo. Exhibits 8 and 11. Although Ms. Putrelo testified that she possesses an OSHA 10 certificate, at the hearing, applicant was unable to indicate where in the application materials that documentation of the certification was provided to the Division. HR at 59:50 (Disc 2). With respect to the Chief Buildings franchise, the only certifications provided with the application were those issued to Nicholas Putrelo, Allen Schrader, and Keith Bouchard. Exhibit 11.

While Ms. Putrelo testified credibly concerning her involvement in the business and her years of experience, it was reasonable for the Division to deny the application where the application supports the conclusion that expertise and licensing with respect to the primary functions of the business enterprise reside with non-qualifying individuals. As the Division's witness testified, there was "no doubt" that Ms. Putrelo was involved in operating the business, but not to the level of controlling operations, particularly the core functions of the business. HR at 6:20 (Disc 2).

The record supports the Division's determination regarding the operation of Putrelo. As was the case in Matter of J.C. Smith, the record in this case supports the conclusion that Putrelo is operated as a family-owned, rather than a woman-owned business. Matter of J.C. Smith, supra, 163 A.D.3rd at 1520. The Division's denial of certification was supported by substantial evidence, and should be affirmed.

CONCLUSION

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

RECOMMENDATION

For the reasons set forth above, the Division's determination to deny Putrelo's application for WBE certification should be affirmed.

Matter of Putrelo Building Enterprises, Inc.

DED File ID No. 54036

Exhibit Chart

Exhibit No.	Description	Rec'd
1	June 26, 2014 application	✓
2	May 12, 2017 denial letter	✓
3	May 19, 2017 letter requesting hearing	✓
4	July 3, 2018 letter scheduling hearing	✓
5	Resume: Nicholas Putrelo	✓
6	Resume: Tony Putrelo	✓
7	Resume: Kristine S. Putrelo	✓
8	Michael Putrelo: Qualifications	✓
9	Duties and Responsibilities: Key Employees	✓
10	Officer Loan to Company	✓
11	Chief Certified Installer Certificates	✓
12	Duties of K. Putrelo	✓
13	2011 Bank Statements	✓
14	CPA Entries	✓
15	Analysis of Shareholder Loan Account	✓