

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

In the Matter

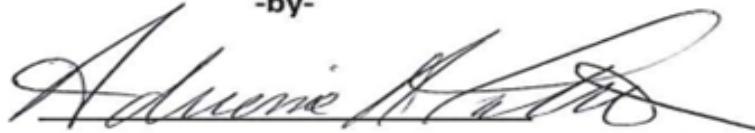
- of -

**the Application of RR Resource Recovery, LLC.
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 68083

RECOMMENDED ORDER

-by-

A handwritten signature in black ink, appearing to read "Adrienne R. Lotson", written in a cursive style.

**Adrienne R. Lotson
Administrative Law Judge
May 31, 2023**

This matter considers the written appeal by RR Resource Recovery, LLC. (“RR Resource” or “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 (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for certification as a WBE.

PROCEDURAL HISTORY

1. On October 27, 2020, Coral Reed, as President, applied on behalf of RR Resource Recovery, LLC for certification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1). On February 28, 2022, and July 28, 2022, Applicant submitted Responses to Division Follow-Up Questions. (DED Exhibits 1 & 6)
2. On September 13, 2022, the Division denied the application on the grounds that RR Resource failed to demonstrate that the woman owner relied upon for certification made a capital contribution to the business enterprise proportionate to her equity interest. (DED Exhibit 2)
3. RR Resource submitted its written appeal by letter dated December 28, 2022. (DED Exhibit 4)
4. The Division filed an Affidavit of Glenn Butler, Associate Certification Director dated May 12, 2023, and a brief of Candace C. Williamson, Esq. counsel for the Division, dated May 15, 2023.

FINDINGS OF FACT

1. The applicant's correct name is RR Resource Recovery, LLC. (DED Exhibit 4)
2. RR Resource is a third-party debt collection agency. (DED Exhibit 1)
3. Coral Reed is the President of RR Resource and has a 60% ownership interest. (DED Exhibit 1)
4. Ms. Reed's husband, John Reed, serves as Vice-President and holds a 40% ownership interest. (DED Exhibit 1)
5. The value of Ms. Reed's shares at the time of acquisition, June 1, 2019, was \$ [REDACTED]. (DED Exhibit 6)
6. The original application indicated that Ms. Reed's purchased her ownership interest (DED Exhibit 1)
7. In response to subsequent inquiries, Ms. Reed indicated that her ownership interest was gifted. (DED Exhibit 6)

APPLICABLE LAW

5 NYCRR § 144.2(b)(2) states as follows:

Minority group members or women relied upon for certification must have demonstrated having made a capital contribution to the business enterprise proportionate to their equity interest therein, as demonstrated by, but not limited to, contributions of money, property, equipment, or expertise.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by RR Resource for certification as a WBE 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 Division staff’s conclusions and factual determinations are not supported by “such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact.” (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]) The review is limited to such information that was before the division at the time of the denial determination. See *In Re: The Application of Lido Strategic Solutions, Inc.* (DED File no. 60212) (March 6, 2019) (recommended order declining to consider documents offered by the applicant on appeal that were not part of the application and thus not before DED at the time of denial), adopted on June 5, 2019 (Final Order). Evidence that seeks to clarify and explain previously submitted materials will be considered, however new evidence will not be considered. (*See Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021)).

DISCUSSION

The Division denied RR Resource’s application for certification as a WBE on the basis that RR Resource failed to demonstrate that the woman owner relied upon for certification made a capital contribution to the business enterprise proportionate to her equity interest, as required by 5 NYCRR § 144.2(b)(2). (DED Exhibit 2).

In its brief, the Division argues that Appellant’s application indicates the ownership interest (60 shares/\$ [REDACTED]) was gifted from John T. Reed to Coral Reed on June 1, 2019. Further, there is no evidence in said application of funds exchanged for the ownership interest. The exchange of funds came after the denial of the application. Finally, the Division argues, said funds did not

come from an independently controlled (personal) checking account, but rather from a joint account held by both John T and Coral Reed. The Division has consistently denied applications for WBE certification where an applicant fails to substantiate the source of the capital contribution by the woman-owner See *Matter of Hertel Steel Inc.*, Recommended Order dated February 10, 2017, at 3-5 (business not eligible for WBE certification where the money to purchase the business was from a jointly owned bank account).

Applicant argues that their attorney advised them on how to handle the transfer of ownership. Further, applicant states that she and her husband have held a joint checking account for 32 years and therefore it would be “frivolous” to write a check to her husband for her ownership interest. However, to “comply” with the Division’s request she did so on November 14, 2022. Applicant repeated that she and her husband do not hold separate checking accounts, thus the check went from their joint account to their joint account. (DED Exhibit 4)

There is no argument that on June 1, 2019, John T. Reed after acquiring 50% of the company shares from his former business partner, transferred 60% ownership interest to his wife, Coral Reed. The issue before this tribunal rests on whether a capital contribution proportionate to the ownership interest occurred. (5 NYCRR § 144.2(b)(2)) In the present matter, I find that it did not.

Where contributions of money, property, equipment, or expertise were not given in exchange for an proportionate ownership interest, I find that Applicant, has failed to demonstrate that the woman relied upon for certification made capital contributions to the business enterprise proportionate to her equity interest therein. A check written post the Denial Determination date, does not rehabilitate this matter as (1) it was not before the Division before the denial; and (2) it was not issued from personal funds, but rather a joint bank account held by both owners.

Although, contrary to the Division's assertions otherwise, Ms. Reed raises the issue of her expertise having been exchanged for her ownership interest; she has not submitted any evidence regarding the nature of this expertise and whether its value rises to the level of her ownership interest.

Accordingly, I find that the record before the Division at the time of its determination to deny the WBE application contains substantial evidence to support its finding that the requirements of 5 NYCRR § 144.2(b)(2) were not met.

RECOMMENDATION

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

In the Matter of RR Resource Recovery, LLC.
DED File ID No. 68083
Exhibit Chart

Exhibit #:	Description of the Exhibits
DED 1	Application for Certification
DED 2	Denial Determination Letter
DED 3	Notice to Proceed Via Written Appeal
DED 4	Appellant's Written Appeal Submission
DED 5	Stock Ledger
DED 6	Applicant Responses to Division Follow-Up Questions