

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

In the Matter

- of -

the Application of

MIKERI GROUP, INC. d/b/a MGI ELEVATOR

For certification as a Minority and Woman-owned
Business Enterprise pursuant to Executive Law Article 15-A.

NYS DED File ID NO.: 63521

RECOMMENDED ORDER ON DEFAULT



Marshall H. Day
Administrative Law Judge
November 7, 2022

STATE OF NEW YORK
DEPARTMENT OF ECONOMIC DEVELOPMENT

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In the Matter of the Appeal of:

MIKERI GROUP, INC. d/b/a MGI ELEVATOR,
Appellant,

- against -

THE COMMISSIONER OF LABOR,
Respondent.

**RECOMMENDED
ORDER
ON
DEFAULT**

FILE ID: 63521

To review a determination denying an application for
for certification as a Minority and Woman-owned
Business Enterprise pursuant to Executive Law Article 15-A.

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APPEARANCES

Goldie Weixel, Deputy General Counsel, NYS Department of Economic Development, New York (Kyle Satchell of counsel), for Respondent.

WHEREAS:

1. The above proceeding was commenced by the filing of an appeal, pursuant to New York Executive Law Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York Parts 140-144, by Mikeri Group, Inc. d/b/a MGI Elevator (“Appellant”), to challenge the determination of the Division of Minority and Women’s Business Development (“Division”) that the applicant does not meet the eligibility requirements for certification as a Minority-owned and Woman-owned Business Enterprise; and
2. The application for certification was received on August 29, 2017. The application was denied by the Division by a letter dated December 17, 2018. The Appellant thereafter appealed the denial by a letter dated January 14, 2019; and
3. Upon notice to the parties, dated July 28, 2022, a hearing was scheduled for September 15, 2022; and
4. A pre-trial conference was held on August 25, 2022, in which the Appellant attended and requested time to retain counsel. At that conference, in lieu of the original hearing date, a control date was set for the Appellant to report back with progress on retaining counsel. Appellant failed

to appear on that control date, or contact either counsel for the Division or the Administrative Adjudication Unit, as such, a hearing date was set for October 14, 2022 to review the appeal; and

5. A Notice of Adjournment and Rescheduled Hearing, dated September 15, 2022, was sent by email to the Division and the Appellant at the email addresses provided and consented by the parties to receive all communications. Counsel for the Division also reached out to the Appellant by phone, with no response; and

6. Appellant, although on notice, failed to appear at the October 14, 2022 hearing; and

7. On administrative appeal, the Appellant bears the burden of proving that the Division's denial of Appellant's Minority and Women's Business Enterprise certification is not supported by substantial evidence (*See*; State Administrative Procedure Act §306); and

8. A party waives all rights to challenge the review of the denial letter by failing to appear; except the right to request that the Administrative Adjudication Unit reconsider the appeal within five (5) days of receipt of this Recommendation; and

9. At the October 14, 2022 hearing, the Division made a motion to dismiss the review of the application, based on the Appellant's failure to appear.

RECOMMENDATION

Based upon the Appellant's failure to appear at the hearing and contest the basis of the denial determination contained in the Division's Notice of Hearing; the Appellant should be deemed in default, the motion of the Division to dismiss the review of the application be granted and the application for review dismissed in accordance with State Administrative Procedure Act §301.5.

Case Name & Number:	Mikeri Group, Inc. d/b/a MGI Elevator; File ID:63521
Exhibit #:	Description of the Exhibits
HO-1	Notice of Hearing, dated July 28, 2022.
HO-2	Three emails evidencing interaction and notice to appellant, various dates.
HO-3	Notice of Adjournment and Rescheduled Hearing and email evidencing service, dated September 15, 2022