

**NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
207 GENESEE STREET
UTICA, NEW YORK 13501**

In the Matter

- of -

**the Application of Reliance Floor, Inc.
for Certification as a Minority-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 66716

RECOMMENDED ORDER

-by-



**David A. Murad
Administrative Law Judge
June 7, 2023**

This matter considers the written appeal by Reliance Floor, Inc. (“Reliance Floor”, 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 the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for certification as a minority-owned business enterprise (“MBE”).

PROCEDURAL HISTORY

1. Florivaldo Groverio, as the President, applied on behalf of Reliance Floor for certification as a MBE on June 14, 2019 (DED Exhibit 1).
2. In a letter dated June 4, 2021, the Division denied Reliance Floor’s application (DED Exhibit 2) and set forth two grounds for the denial:
 - (a) The minority group member does not negotiate business contracts and represent himself as the principal of the business enterprise, as demonstrated by full executed business agreements, as required under 5 NYCRR §142.2(d)(2); and
 - (b) The business enterprise does not operate independently, as required under 5 NYCRR §142.2(e).
3. Reliance Floor timely filed a notice of appeal on June 28, 2021 (APP Exhibit 1).
4. A notice to proceed by written appeal was sent to Reliance Floor on October 3, 2022 (DED Exhibit 3).
5. Applicant submitted its written appeal by letter dated November 28, 2022 (APP Exhibit 2).
6. The Division responded by filing an Affidavit of Robyn Clarke dated March 7, 2023, and a brief submitted by William Chen, Esq., counsel for the Division, dated April 7, 2023.

FINDINGS OF FACT

1. Reliance Floor is engaged in the business of installing epoxy floors, based in Cliffside Park, New Jersey (DED Exhibit 1).
2. Florivaldo Groberio is the President and 100% owner of Reliance Floor (DED Exhibit 1).
3. Reliance Floor is an exclusive installer of Stonhard products. Stonhard hires Reliance Floor to install flooring as part of Stonhard's contracts (DED Exhibit 1).
4. Stonhard is the only company that Reliance Floor does work for (DED Exhibit 1).
5. Reliance Floor entered into a Master Installation Agreement with Stonhard dated June 6, 2007. The Agreement states that Stonhard controls all contract negotiations related to the installation of its flooring products, including the price the end user will pay for the installation (DED Exhibit 5).
6. Reliance Floor does not interact with clients or negotiate contracts with clients. Stonhard's contracts with the end users include the labor cost of installation that Stonhard charges. After Reliance Floor completes an installation, it sends an invoice to Stonhard, not to the end user (DED 6).

APPLICABLE LAW

5 NYCRR §144.2(e) states as follows:

Business enterprises for which certification is sought must operate independently. In order to determine whether such business enterprises operate independently, the division shall consider but not be limited to the following criteria:

... (2) Whether the business enterprise transacts business primarily with one other entity...

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

Minority group members relied upon for certification must negotiate business contracts and represent themselves to clients as the principals of business entities for which certification is sought, as demonstrated by fully executed business agreements.

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 Reliance Floor for certification as a MBE 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" (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011] [internal quotation marks and citations omitted]).

The review is limited to such information that was before the Division at the time of the denial determination (5 NYCRR §145.2(b)(1)). Evidence that seeks to clarify or explain previously submitted materials will be considered, however new evidence will not be considered. See *Scherzi Systems, LLC v. White*, 197 AD 3d 1466 (3d Dept. 2021).

DISCUSSION

Control

In order for a business entity to be certified as a MBE, the minority group member owner relied upon for the certification must have the power to control the business enterprise by showing that he negotiates business contracts and represents himself to clients as the principal of the business, as demonstrated by fully executed business agreements. (5 NYCRR §144.2(d)(2)).

The Master Installation Agreement between applicant and Stonhard prohibits applicant from entering into a contract with the end users without Stonhard's consent (DED Exhibit 5).

Mr. Groberio does not negotiate contracts with clients and does not represent himself to the clients as applicant's principal. Stonhard manufactures and sells the products (DED Exhibits 4 and 5).

Reliance Floor installs the flooring for Stonhard. Applicant states "it is an exclusive installer of Stonhard products" and that Stonhard is "the only company we do work for" (DED Exhibit 4). Stonhard handles all contract negotiations with the end users related to the installation of its flooring products (DED Exhibit 4). After the installation is complete, applicant invoices Stonhard for the labor (DED Exhibit 6).

Applicant's application for MBE certification is based on a request from Stonhard in order for applicant to bid on projects that Stonhard could not (APP Exhibits 1 and 2). Applicant must first demonstrate that the minority group member negotiates contracts and represents himself to clients as the principal of the business before MBE certification can be provided. Applicant failed to show that the Division's denial was not supported by substantial evidence.

Independence

The eligibility criteria for MBE certification requires that the business enterprise must operate independently and not transact business primarily with one entity. (5 NYCRR §144.2(e)). Reliance Floor is hired by Stonhard to install flooring for them. They are the only company applicant does work for (DED Exhibit 4). Stonhard controls all contract negotiations related to the installation of its flooring products (DED Exhibit 5).

There is no evidence that Reliance Floor has done work for anyone other than Stonhard (DED Exhibit 1). Applicant does not operate independently from Stonhard as it is dependent on and interwoven with Stonhard for all contract negotiations and revenue. Applicant has not

established that it is an independent business since it transacts business with only one entity. Therefore, applicant failed to show that the Division's denial was not supported by substantial evidence.

CONCLUSION

Reliance Floor, Inc. did not meet its burden to demonstrate that the Division's determination to deny its application for certification as a minority-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(d)(2) and 144.2(e) was not based on substantial evidence.

RECOMMENDATION

For the reasons set forth above, I recommend that the Director affirm the Division's determination to deny Reliance Floor's application for certification as a minority-owned business enterprise.

In the Matter of Reliance Floor, Inc.
DED File ID No. 66716
Exhibit Chart

Exhibit #:	Description of the Exhibits
DED 1	Application for Certification – 6/14/2019
DED 2	Denial Letter – 6/4/2021
DED 3	Notice to Proceed via Written Appeal – 10/3/2022
DED 4	Applicant’s Narrative Response
DED 5	Master Installation Agreement
DED 6	Invoice
APP 1	Applicant’s Notice of Appeal – 6/28/2021
APP 2	Applicant’s Appeal Letter – 11/28/2022

