

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

**In the Matter**

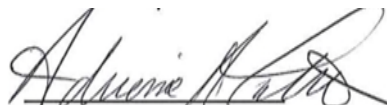
**- of -**

**the Application of Right Brother Aviation LLC**  
**for Certification as a Minority and Woman-owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 64277**

**RECOMMENDED ORDER**

**-by-**

A handwritten signature in black ink, appearing to read "Adrienne R. Lotson", written over a horizontal line.

**Adrienne R. Lotson**  
**Administrative Law Judge**  
**June 28, 2023**

This matter considers the written appeal by Right Brother Aviation LLC, (“Right Brother” 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 and woman-owned business enterprise (“MWBE”).

### **PROCEDURAL HISTORY**

1. On July 2, 2018, Jessica Ventura, as owner, applied on behalf of Right Brother Aviation, LLC for certification as a minority and woman-owned business enterprise (“MWBE”). (DED Exhibit 1).
2. On January 12, 2021, the Division denied the application on the grounds that (1) the party relied upon for certification does not make decisions pertaining to the operation of the business enterprise as required under 5 NYCRR former §144.2(b)(1); (2) said party has not demonstrated adequate managerial experience or technical competence to operate the business enterprise as required under 5 NYCRR former §144.2(b)(1)(i); and (3) said party has not demonstrated the working knowledge and ability needed to operate the business enterprise as required under 5 NYCRR former §144.2(b)(1)(ii) (DED Exhibit 2).
3. The Notice of Written Appeal Letter was issued by the Division on April 29, 2021 (DED Exhibit 5).
4. Right Brother submitted its written appeal by letter dated May 14, 2021 (DED Exhibit 6).

5. The Division filed an Affidavit of Matthew LeFebvre, Associate Certification Director dated April 27, 2023, and a brief of JaMone Turner, Esq. counsel for the Division, dated May 10, 2023.

### **FINDINGS OF FACT**

6. Right Brother is a company that provides unscheduled air transportation for charter, serial photography, aerial surveillance, power line patrol, power line mapping and pipeline patrol. (DED Exhibit 1)
7. Jessica Ventura is the owner of Right Brother and as of the original application date held 100% ownership interest. This interest was acquired on February 8, 2018, for a capital contribution of \$50,000. (DED Exhibit 1).
8. Ms. Ventura is not trained in aviation. Ms. Ventura does not possess any flight certificates or licenses, nor does she independently pilot any aircraft (DED Exhibit 3).
9. Adam Ventura, Ms. Ventura's husband, is the President of Right Brother and its Chief Pilot. (DED Exhibit 1).
10. At the time of the application, Adam Ventura had 10 years of pilot experience, more than 5,200 hours flying hours, and several flight certificates (DED Exhibit 3).
11. Adam Ventura has sole responsibility for supervising field operations and negotiating contracts. He also maintains FAA certification and flies as a full-time pilot with the business enterprise (DED Exhibit 1). In addition, Adam Ventura is employed as a pilot with two additional businesses: Mercy Flight WNY (DED Exhibit 1), and Chautauqua County Sheriff's Dept. (DED Exhibit 3).

12. Jacob Ventura, Adam Ventura's brother is the Vice-President of Right Brother, as well as a pilot at the company (DED Exhibit 1). Jacob Ventura also serves as a pilot with Western New York Helicopters and Chautauqua County Sheriff (DED Exhibit 3).
13. Jacob Ventura has over 10 years of pilot experience, more than 5,200 flying hours, and several flight certificates. (DED Exhibit 3).
14. Jacob Ventura acquired a 40% ownership interest after submission of the initial application, but prior to the certification determination (DED Exhibit 1).
15. Jacob Ventura's responsibilities at Right Brother include sharing financial decisions, marketing, sales, purchasing equipment, and serving as a signatory for business accounts. Jacob Ventura also supervises maintenance and maintenance related purchases (DED Exhibit 1).
16. Ms. Ventura is a certified thermographer and the company's sole inspector for thermal imaging inspections and comprehensive visual inspections on powerlines (DED Exhibit 1).
17. Ms. Ventura's other responsibilities include managing the administrative requirements of the business including HR, payroll, billing, accounting, marketing, purchasing equipment, insurance, banking, etc. Only HR and payroll matters are solely her responsibility. All others are shared with either Adam Ventura or Jason Ventura. (DED Exhibit 1).

### **APPLICABLE LAW**

5 NYCRR former §144.2(b)(1) states in relevant part as follows:

Decisions pertaining to the operations of the business enterprise must be made by minority group members or women claiming ownership of that business enterprise. The following will be considered in this regard:

- (i) Minority group members or women must have adequate managerial experience or technical competence in the business enterprise seeking certification.

- (ii) Minority group members or women must demonstrate the working knowledge and ability needed to operate the business enterprise...

In December 2020, 5 NYCRR §§ 140-145 were amended, updating the regulations and clarifying the Division’s interpretations of its regulations. See 2020 NY REG TEXT 548304 (NS)

Current 5 NYCRR §144.2(c) states in relevant part as follows:

Operation. Minority group members and women relied upon for certification must make day-to-day decisions concerning the operation of the business enterprise for which certification is sought. The division shall evaluate whether minority group members or women operate a business enterprise for which certification is sought based upon the following criteria:

- (1) Competence in the industry. Minority group members and women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons...

In its Brief, the Division argued that the regulations cited in the denial determination letter were incorrect as the Division should have relied upon the regulations as amended in December 2020. However, as the Division clearly performed their analysis under the former regulations and never provided notice to the Appellant that the analysis would proceed under the current regulations, this appeal will rely upon the regulations cited in the denial determination.

### **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 Right Brother for certification as a MWBE 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 (5 NYCRR 145.2(b)(1)). 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**

*Minority group members or women do not make decisions pertaining to the operation of the business enterprise. 5 NYCRR former § 144.2(b)(1)*

The Division argues in its brief that Right Brother’s core business functions are securing contracts and providing helicopter charter services. Adam Ventura, a non-qualifying employee is the chief pilot at Right Brother. He has over 10 years of pilot experience, more than 5,200 flying hours, and holds eleven flight certificates. He is also trained in helicopter safety and wire environment. Jessica Ventura, the party relied upon for certification, on the other hand, does not have any piloting experience, does not hold any flight certificates, is not licensed to operate aviation equipment, and does not independently operate any aircraft. Jason Ventura, a later added co-owner, is a full-time pilot with the business enterprise. He also has over 10 years of piloting experience, more than 5,200 flying hours and several flight certificates. He has training in helicopter safety as well (DED Exhibits 1 and 3).

The Division further noted that while Ms. Ventura is the only person responsible for human resources and payroll matters, she shares administrative and managerial responsibilities with Adam Ventura and Jason Ventura. Those responsibilities include financial decisions, estimating

and preparing bids, negotiating bonding and insurance, marketing, and sales, purchasing and sale of equipment, and serving as signatories on business accounts (DED Exhibit 1).

The Appellant argued that although she “never claimed to have experience in aviation,” her contributions to the company have been significant because she runs the business. In addition, she is “an entrepreneur with a love of creating businesses” (APP Exhibit 1/DED Exhibit 4). Further, her lack of experience and training in aviation is not relevant as her skill set is in business and entrepreneurship (APP Exhibit 2/DED Exhibit 6). She notes that although she originally had 100% ownership of the company, she soon realized that she needed the *knowledge* [emphasis added] and financial assistance of another person. (APP Exhibit 2/DED Exhibit 6) Notwithstanding the addition of her brother-in-law, Jacob Ventura for this purpose, she still handles nearly every aspect of the company’s administrative, managerial, and legal operation.

The Appellant also argued that she has more flight time than any other employee other than her husband. She is a certified in thermography and powerline inspection (DED Exhibit 1). As such during 2020 she put in over 800 hours in flight operating thermography equipment or performing powerline inspections. This is second only to her husband who put in 920 flight hours in the same year. In addition, she has created all FAA approved aviation manuals used at the business. She also makes equipment purchase decisions (APP Exhibit 2/ DED Exhibit 6).

Finally, she delegates work to both Adam and Jacob Ventura. Although they are the voice of the company in meetings with the FAA, she attends all meetings. This also true when it comes to dealing with their aviation insurance brokers (APP Exhibit 2/ DED Exhibit 6).

While I credit the sizeable contribution Ms. Ventura has made to the company from an administrative standpoint, it has long been established that administrative and other functions

outside of the core revenue generating functions do not satisfy the regulatory requirements of 5 NYCRR former §144.2(b)(1). See *In the Matter of Upstate Electrical, LLC v. New York State Department of Economic Development*, 137 A.D.3d 1343 (3<sup>rd</sup> Dept., 2020). In the current matter, from her own statements, it is clear that the party relied upon for certification does not pilot the helicopters, is not trained, or licensed to do so, and does not hold any flight certificates. Additionally, Ms. Ventura indicated in the certification application, that her husband “manage[d] the aircraft side of things” (DED Exhibit 1). Ms. Ventura stated that she does not fly alone and that her fear of flying alone prevented her from completing her training and certifications (APP Exhibit 2/ DED Exhibit 6).

I do credit that Ms. Ventura, as a certified thermographer (DED Exhibit 1), does make some contribution to the core revenue generating functions of powerline surveillance; however, Applicant has not put forth any information showing what percentage of the business encompasses specifically thermal imaging and inspecting powerlines, versus providing charter flights and other aviation functions, i.e., whether this is the primary or ancillary business of the enterprise. Based on evidence submitted in the certification application and Appeal Letter, it appears, it is not primary. Accordingly, for the above reasons, I find DED’s denial determination was supported by substantial evidence.<sup>1</sup>

*Minority group members or women must have adequate managerial experience or technical competence in the business enterprise seeking certification. 5 NYCRR former §144.2(b)(1)(i)*

*Minority group members or women must demonstrate the working knowledge and ability needed to operate the business enterprise. 5 NYCRR former §144.2(b)(1)(ii)*

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<sup>1</sup> It should be noted that even were I to base my findings on the current regulation as set forth in 5 NYCRR §144.2 (c)(1), as requested by the Division, my recommendation would remain the same: the denial determination is supported by substantial evidence.



The Division argues that the party relied upon for certification lacks the necessary technical competence and working knowledge of its industry needed to operate the business. With a lack of training, licensing or experience as a pilot, Ms. Ventura is incapable of performing the core functions of the business, namely performing unscheduled flight operations (DED Exhibit 1). While Ms. Ventura's resume shows a background in elementary education, media technology and graphic designer, her husband, a non-qualifying employee, has the background, training, and licensing to perform the core business functions, and in fact, serves as the Chief Pilot (DED Exhibit 3). In addition, her brother-in-law, who eventually came to hold a 40% ownership interest, also has the background, training, licensing, and experience to serve as a full-time pilot with the business enterprise (DED Exhibit 3). The Division further argues that Appellant admitted that she lacks technical competence and working knowledge to operate the enterprise when she indicated in the certification application that she brought her brother-in-law into the company, expressly because she needed someone with aviation knowledge (APP Exhibit 2/ DED Exhibit 6).

Appellant argues that although she did not "know everything" when starting the business, she has surrounded herself with people who are wiser than she in business and aviation. As a result, she is now familiar with FAA regulations and certification, helicopters, powerlines, and helicopter maintenance. Applicant further states that she is not, and never claimed to be, an industry expert. However, she has learned a great deal over her four years in the industry (APP Exhibit 2/ DED Exhibit 6).

While I recognize Ms. Ventura's dedication and efforts on behalf of the business enterprise, what is required, as per the regulations is the technical competence and working knowledge of the industry in which the business enterprise functions. By her own statement, Ms. Ventura makes clear that she lacks both. In addition, she does not possess any of the training, experience or

licensing that would provide this technical competence and working knowledge. Accordingly, I find that DED's denial determination was supported by substantial evidence.<sup>2</sup>

In conclusion, the record before the division at the time of its determination to deny the MWBE application contains substantial evidence to support its finding that the party relied upon for certification does not make decisions pertaining to the operation of the business enterprise as required by 5 NYCRR former §144.2(b)(1); has not demonstrated adequate managerial experience or technical competence to operate the business enterprise as required by 5 NYCRR former §144.2(b)(1)(i); and has not demonstrated the working knowledge and ability needed to operate the business enterprise as required by 5 NYCRR former §144.2(b)(1)(ii).

### **RECOMMENDATION**

For all of the reasons stated herein, the Division's determination to deny Right Brother's application for certification as a minority and woman-owned business enterprise should be affirmed.

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<sup>2</sup> It should be noted that even were I to base my findings on the current regulation as set forth in 5 NYCRR §144.2 (c), as requested by the Division, my recommendation would remain the same: the denial determination is supported by substantial evidence.

In the Matter of Right Brother Aviation LLC  
DED File ID No. 64277  
Exhibit Chart

Exhibit #:	Description of the Exhibits
DED 1	Application for Certification and narrative responses
DED 2	Denial Determination Letter dated January 12, 2021
DED 3	Resumes of Jessica Ventura, Adam Ventura and Jacob Ventura
DED 4	Applicant's Notice of Appeal Letter dated February 15, 2021
DED 5	Notice of Written Appeal dated April 29, 2021
DED 6	Applicant's Appeal Response Letter dated May 14, 2021
APP 1	Applicant's Notice of Appeal Letter dated February 15, 2021
APP 2	Applicant's Appeal Response Letter dated May 14, 2021