

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

In the Matter

- of -

the Application of
Roberts Office Interiors, Inc.
For Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 57265

RECOMMENDED ORDER

- by -



P. Nicholas Garlick
Administrative Law Judge

March 18, 2019

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 the application of Roberts Office Interiors, Inc. ("applicant") for certification as a woman-owned business enterprise ("WBE") be affirmed for the reasons set forth below.

PROCEEDINGS

This matter involves the appeal, pursuant to New York State Executive Law ("EL") 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, by Roberts Office Interiors, Inc. challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Roberts Office Interiors, Inc.'s application was submitted on March 11, 2016 (Exh. DED11).

The application was denied by letter dated December 15, 2016, from Bette Yee, Director of Certification Operations (Exh. DED12). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet one eligibility criterion related to Lynne Angelicola's and Marina Angelicola's ownership of the applicant.

In a two-page cover letter and seven-page submission dated April 17, 2017, Lynne Angelicola and Marina Angelicola filed an appeal on behalf of applicant. Attached to the appeal were twenty exhibits described in the attached exhibit chart as A1 - A20.

In a sixteen-page filing dated January 14, 2019, the Division responded to the applicant's appeal. Included with the Division's papers was the affidavit of Rita Rivas, a Division staff Senior Certification Analyst, and fifteen exhibits described in the attached exhibit chart as DED1-DED15.

On January 28, 2019, this matter was assigned to me.

ELIGIBILITY CRITERIA

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status, regulatory criteria regarding the applicant's ownership, operation, control, and independence are applied on the basis of information supplied through the application process.

The Division reviews the enterprise as it existed at the time the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and interviews that are conducted by Division analysts.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proving that the Division's denial of applicant's WBE certification 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 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 NY3d 494, 499 [2011] [internal quotation marks and citations omitted]).

POSITIONS OF THE PARTIES

Position of the Division

In its denial letter, the Division asserts that the application failed to meet a single criterion for certification. Specifically, the Division found that the applicant failed to show that contribution of the women owners, Lynne Angelicola and Marina Angelicola, was proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

Position of the Applicant

Roberts Office Interiors, Inc. asserts that it meets the criterion for certification and that the Division erred in not granting it status as a woman-owned business enterprise pursuant to Executive Law Article 15-A.

FINDINGS OF FACT

1. Roberts Office Interiors, Inc. is in the business of providing furniture, flooring, window treatments, signage, office accessories, movable walls, as well as interior design services and installation for commercial clients (Exh. DED11 at 3). The firm has a business address of 144 Hangar Road, Rome, New York (DED12 at 1). The firm is headquartered in Rome, and at the time of the application had three showrooms: Rome, Syracuse, and Albany (Exh. A3 at 4).

2. Roberts Office Interiors was formed in 1995 by Roberto and Lynne Angelicola, husband and wife, who jointly contributed their personal funds to establish the business (Exh. A3 at 1 & 2). Roberts Office Interiors, Inc. was formed on January 5, 1999 (Exh. A2 at 3). At this time, Roberto and Lynne Angelicola each took possession of 50 shares of the firm's stock (Exh. A3 at 1).

3. In December 2012, Roberto Angelicola transferred one share of stock to his daughter, Marina Angelicola (Exh. A4 at 2-3, DED2). The application does not show Marina Angelicola made any contribution to the firm (Exh. DED11 at 3) and the firm's federal tax return for 2012 reports that the share of stock was a gift (Exh. DED6 at 10, line 9).

DISCUSSION

This report considers the appeal of the applicant from the Division's determination to deny certification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The Division's denial letter set a single basis related to the Lynne Angelicola's and Marina Angelicola's ownership of Roberts Office Interiors, Inc. Specifically, the Division found that the applicant failed to show that contribution of the women owners,

Lynne Angelicola and Marina Angelicola, was proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). The relevant facts cited in the denial letter are: (1) the firm was organized in January 1999 at which time fifty shares of common stock were issued to Roberto Angelicola and fifty shares to Lynne Angelicola; (2) on or about December 26, 2012, Roberto Angelicola conveyed one share of stock to Marina Angelicola, resulting in women owning 51% of the firm; (3) the application represents that Roberto and Lynne Angelicola jointly contributed [REDACTED] to the firm between 2004 to 2013 - the application also stated that Marina Angelicola did not make any contributions to the firm; (4) documents submitted with the application include checks drawn from an account owned by Lynne and Roberto Angelicola as well as loan guarantees made by Lynne Angelicola; (5) serving as a loan guarantor is not considered a contribution by the Division; and (6) all cash contributions were made by Lynne and Roberto Angelicola (Exh. A1 at 2).

The applicant, in its cover letter to the appeal notes that between the time the Division granted the firm WBE certification on July 31, 2013 (Exh. DED9) and the Division's denial letter, dated December 19, 2016 (Exh. A1), there were no changes in ownership at the firm. In addition, during several conversations between members of the firm and the Division during this time, no mention of Marina Angelicola's contribution was made.

The applicant states that Marina Angelicola's financial contribution to the firm was [REDACTED] which represents one percent of the owners' exposure of [REDACTED]. This [REDACTED] contribution was in the form of a commensurate reduction in her starting salary in 2013. The calculation supporting this claim, as set forth in the appeal, begins with the median wage for a sales representative as reported by the U.S. Bureau of Labor Statistics (Exh. A10) which is [REDACTED]. For new college graduates, as Marina Angelicola was at the time, the firm pays 60% of this amount or [REDACTED]. From this amount, the appeal states that Marina Angelicola's [REDACTED] contribution was deducted from her salary in 2013, which left her with [REDACTED] the amount reported to the IRS in her 2013 W@ (Exh. A8 at 1).

The appeal also contains information about a second employee, an interior designer, who was also hired directly from college and earned 60% of the median wage for interior designers (Exhs. A9 & A8 at 2). These documents, the appeal concludes, demonstrate that Marina Angelicola made a financial contribution proportionate to her equity interest. The applicant argues that the information to reach this conclusion was contained in the application documents, though it is not clear that all the exhibits cited above were before the Division at the time of the denial. Also left unexplained is why, if Marina Angelicola did buy a share of stock from her father, she paid the corporation for it, rather than her father.

In addition to her financial contribution to the firm, the applicant argues that Marina Angelicola contributed expertise to the firm in 2013 in the form of marketing expertise and knowledge of the furniture business. Specifically, she graduated in 2012 with a Bachelor of Science degree in marketing. Even prior to her graduation, she worked at the firm expanding sales opportunities through the use of the internet, search engine optimization, and social media. She built and maintains the firm's website (Exh. A13) which expanded sales opportunities and improved the efficiency of the firm's sales force. These efforts expanded the firm's revenue stream. This growth facilitated the firm's expansion to a total of four showrooms as of the date of the appeal. Other examples of Marina Angelicola's expertise include her implementation of the firm's sales software (Exh. A14, A18, & A19), her skills in using social media to promote business contacts (Exh. A15 & A16), her success in a 2013 social media business competition (Exh. A17), and her ability to streamline the firm's process for submitting written proposals (Exh. A20). Again, it is not clear from the appeal if these facts or any of the documents cited were before the Division at the time of its denial.

In its response, the Division argues that the firm does not meet the criteria for WBE status, and never has, due to the applicant's failure to demonstrate that the contribution of the women owners, Lynne Angelicola and Marina Angelicola, is proportionate to their equity interest in the business, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR

144.2(a)(1) (apparently admitting that the 2013 granting of such status was in error).¹

The Division argues that the transfer of the single share of stock to Marina Angelicola in 2012 was a gift and was reported as such on the firm's federal tax returns (Exh. DED6 at 10, line 9). In her affidavit, Senior Certification Analyst Rita Rivas states that there was no indication in the documents submitted with the 2016 application that showed Marina Angelicola paid anything for her single share of stock in the firm (Rivas affidavit, ¶11) nor was there any proof offered that the stock was transferred in exchange for a contribution of expertise (Rivas affidavit, ¶16). It should be noted that neither the 2013 application (Exh. A5), which was approved, nor the 2016 application (Exh. A7), which was denied, identify any contribution by Marina Angelicola to the firm, though this fact is listed in the denial letter (Exh. DED12 at 2).

Based on the evidence in the record, specifically the fact that the application only identifies joint contributions from Roberto and Lynne Angelicola and the firm's 2012 federal tax returns list the transfer of the stock to Marina Angelicola as a gift, the applicant has failed to show that the women owners, Lynne Angelicola and Marina Angelicola, made contributions proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1). The Division's denial on this ground was based on substantial evidence.

CONCLUSION

Applicant failed to show that the contribution of the women owners, Lynne Angelicola and Marina Angelicola, was proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to,

¹ The Division's response to the appeal also argues that the application failed to demonstrate that the woman owners controlled the business, as required by 5 NYCRR 144.2(b). However, since this was not cited as a ground for denial (Exh. A1 & DED12), this argument is irrelevant to this appeal and is not addressed in this recommended order.

contributions of money, property, equipment or expertise, as required by 5 NYCRR 144.2(a)(1).

RECOMMENDATION

The Division's determination to deny Roberts Office Interiors, Inc.'s application for certification as a woman-owned business enterprise should be affirmed for the reasons stated in this recommended order.

**Matter of
Roberts Office Interiors, Inc.**

**DED File ID No. 57265
Exhibit List**

Exh. #	Description
DED1	Certificate of incorporation
DED2	Stock transfer ledger
DED3	Resume of Roberto G. Angelicola
DED4	Corporate bylaws
DED5	Resume of Lynne Angelicola
DED6	Portions of 2012 corporate income tax returns
DED7	Portions of 2010 personal tax returns
DED8	Minutes of shareholder meeting
DED9	2013 WBE certification letter
DED10	2016 letter reopening certification
DED11	2016 application
DED12	Denial letter
DED13	Resume of Marina Angelicola
DED14	Portions of Marina Angelicola's tax return
DED15	Cancelled checks
A1	Denial letter
A2	Certificate of incorporation
A3	Narrative of business history
A4	Stock certificates
A5	2013 WBE application

A6	Line of credit information
A7	2016 WBE application
A8	2013 W2s
A9	US BOLS interior designer income information
A10	US BOLS marketing specialist income information
A11	Blaszgow 2013 W2
A12	M. Andelicola 2013 W2
A13	Website
A14	CRM salesforce information
A15	Search engine results
A16	Social media results
A17	Article from Albany Business Review
A18	Sci-quest information
A19	On-line shopping information
A20	ROI proposal example