



**Division of Minority
and Women's
Business Development**

New York State
Department of Economic Development
Division of Minority and Women's
Business Development

In the Matter of the Appeal of

Sempronius Electric, Inc.

FINAL ORDER 23-06

From a denial of re-certification as a Women-owned Business Enterprise pursuant to Executive Law Article 15-A.

This order arises from an administrative appeal brought by Sempronius Electric, Inc. ("SEI" or "Appellant") pursuant to New York Executive Law Article 15-A and Title 5 of the New York Codes, Rules and Regulations.¹ Appellant seeks reversal of the decision of the Division of Minority and Women's Business Development (the "Division"), dated December 3, 2018, to deny SEI's April 23, 2015 re-certification application as a Woman-owned Business Enterprise ("WBE").

Appellant requested an administrative hearing by letter dated December 21, 2018, and upon notice to the parties, a virtual hearing was scheduled for July 19, 2022, using the Webex videoconferencing platform. A pre-hearing conference was held a few weeks prior on June 30, 2022. SEI was represented by Diana Plue, Esq., and Deborah Nelson and Dene Nelson, President and Vice President of SEI, testified on behalf of the Appellant. The Division was represented by Kyle Satchell, Esq., and Raymond Emanuel, Associate Certification Analyst, testified on behalf of the Division. Administrative Law Judge ("ALJ") Timothy MacPherson presided over these proceedings.

The issues on appeal were whether Appellant sufficiently demonstrated that the woman owner relied upon for certification (1) shares in the risks and profits in proportion to her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2); (2) makes decisions pertaining to the operation of the business enterprise, as required by 5 NYCRR § 144.2(b)(1); and (3) demonstrates adequate managerial experience or technical competence, and working

¹ The Division's December 3, 2018 denial determination and Appellant's December 21, 2018 appeal pre-date the December 2, 2020 amendments made to 5 NYCRR Parts 140 et al. Accordingly, the eligibility criteria set forth under the former regulations are referenced throughout this final order.

knowledge and ability needed to operate the business enterprise, as required by 5 NYCRR §§ 144.2(b)(1)(i) and 144.2(b)(1)(ii).

On December 28, 2022, the Division received a Recommended Order from Judge MacPherson that recommended affirmation of the Division's denial of the application to certify SEI as a WBE on the grounds set forth in the Division's December 3, 2018 denial letter.

Although the Division agrees with the ultimate denial finding, it is important to note that information that was before the Division as part of its review at the time of the application as well as materials which seek to clarify and explain are in fact relevant to whether the DED's denial determination was supported by substantial evidence. *See* Scherzi Sys., LLC v. White, 197 A.D.3d 1466 (3d Dep't 2021). While an agency is required to consider the testimony offered at an administrative hearing in rendering its determination, only evidence which seeks to clarify and explain previously submitted materials will be considered and new evidence shall not be considered. Here, the owner relied upon for certification does not offer clarification materials, instead, Ms. Nelson provided new information not mentioned in Appellant's application or supporting documents. Even if Ms. Nelson's information was clarifying, the Appellant would still be denied on the risks and profits ground.

After considering the appeal record, I accept the recommendation of the Administrative Law Judge as it pertains to the remaining denial grounds. Incorporation by reference is hereby made with respect to the conclusions of the Recommended Order.

It is hereby **ORDERED** that the decision to deny certification, dated December 3, 2018, is affirmed. Accordingly, SEI will be removed from the Division's directory for Minority and Women-owned Business Enterprises.

July 10, 2023



Jason Myles Clark
Executive Vice President and Executive Director
Division of Minority and Women's Business Development