

In the Matter

-of-

The Application of **TRACO MANUFACTURING, INC.**  
for Certification as a Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 48550

RECOMMENDED ORDER

by

/s/

---

Helene G. Goldberger  
Administrative Law Judge

March 25, 2020

## 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 (DED or Division) to deny the application filed by Traco Manufacturing, Inc. (Traco or applicant) for certification as a woman-owned business enterprise (WBE) be affirmed for the reasons set forth below.

## PROCEEDINGS

Traco applied for recertification as a woman-owned business enterprise on May 22, 2015. *See*, Exhibit (Ex.) DED 1. By letter dated March 28, 2017, the Division determined that Traco does not meet the eligibility requirements to be certified as a woman-owned business enterprise and denied its application. Ex. DED 2. The grounds for the Division's determination were:

- Pursuant to § 144.2(b)(1) of Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (5 NYCRR), the woman owner does not make the decisions pertaining to the operation of the business enterprise.
- Pursuant to 5 NYCRR § 144.2(b)(1)(i), the woman owner does not have adequate managerial experience or technical competence in the business enterprise seeking certification.

By letter dated April 24, 2017, Tracy Jachimowicz, President, wrote requesting an appeal from the Division's determination to deny Traco's application for WBE certification. DED Ex. 9. Pursuant to Traco's decision to pursue its appeal in writing, by letter dated June 9, 2017, the Division notified Acme that its written appeal was due by August 8, 2017. DED Ex. 3. DED received Traco's timely written appeal on September 8, 2017. With its appeal (App.), Traco included the affidavit of Tracy Jachimowicz and Daniel Jachimowicz and three exhibits that included incorporation documentation and a certificate of shares, banking information, and documentation related to a lease of equipment. In the Division's responding papers, Attorney Bella Satra stated that this documentation was not provided with the company's application for recertification and therefore, should not be considered pursuant to 5 NYCRR § 144.4(e).

Respondent DED, by counsel Bella Satra, submitted its response to the appeal dated March 6, 2020. This response includes the affidavit (Aff.) of Raymond Emanuel, the Division's Certification Director. Mr. Emanuel's duties at the Division include supervision of the application process for WBE certification. Emanuel Aff., ¶ 1. Attached to Mr. Emanuel's affidavit are the Division's exhibits 1-8. In addition, Ms. Satra submitted the Division's Memorandum of Law in Response to the Appeal (MOL) dated March 6, 2020.

## **ELIGIBILITY CRITERIA**

The eligibility criteria pertaining to certification as a woman-owned business enterprise are set forth in the regulations at 5 NYCRR § 144.2. To determine whether an applicant should be granted WBE status, the Division assesses the ownership, operation, control, and independence of the business enterprise based on information supplied through the application process. The Division reviews the business enterprise as it existed at the time that the application was made, based on representations in the application itself and information presented in supplemental submissions as well as any interviews that the Division's analyst may have conducted. *See*, 5 NYCRR § 144.4(e).

## **STANDARD OF REVIEW**

On this administrative appeal, Traco bears the burden of proving that the Division's denial for WBE recertification is not supported by substantial evidence (*see*, State Administrative Procedures Act § 306[1]). The substantial evidence standard "demands only that a given inference is reasonable and plausible, not necessarily the most probable," and the 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**

### The Division

The Division denied the application filed by Traco for recertification as a woman-owned business enterprise with a letter dated March 28, 2017 (*see*, Exhibit DED 2). The Division determined that Traco failed to demonstrate: (1) the woman owner controlled the operations of the business enterprise and (2) that the woman owner has adequate managerial experience or technical competence in the business enterprise seeking recertification as required by 5 NYCRR §§ 144.2(b) and 144.2(b)(1)(i).

The Division concluded that Ms. Jachimowicz is chiefly involved with the administrative and financial aspects of the company. Mr. Emanuel points to both the duties and credentials that are set forth in the resumes of Tracy Jachimowicz and Daniel Jachimowicz. MOL, pp. 4-5. Specifically, the Division notes that Ms. Jachimowicz's resume describes her functions at Traco as administrative and financial, while her husband Daniel's sets forth an array of technical and control functions such as oversight of equipment, contract terms, research and development, and setting manufacturing schedules. DED Exs. 5, 6. In addition, the Division explains that Ms. Jachimowicz's prior job experience is clerical and she has no advanced educational training. The Division contrasts those factors to Daniel Jachimowicz who has an Associate's degree in Applied Sciences as well as a number of previously held related positions in model fabrication and plastics manufacturing. *Id.* The Division also notes that the other resumes

submitted by Traco as part of its application identify other family members who appear to operate and control more of the core functions of Traco and who also have related educational backgrounds. DED Ex. 8.

Finally, the Division argues that the submissions of Traco on its appeal were not part of its application and therefore, could not be considered on this review.

### Traco

In its appeal received by the Division on September 8, 2017, Ms. Jachimowicz explained in her affidavit that she started the small business of making small plastic parts in 1996 for some extra income. T. Jachimowicz Aff., ¶¶ 1-3. She provides that her husband guided her in this endeavor and in 1997, she realized that she had the “business acumen” to start her own small business. *Id.*, ¶ 6. She admits that she does tend to the administrative and financial matters for Traco but is “responsible for the entire operation of Traco.” *Id.*, ¶ 11. In addition, Ms. Jachimowicz points to three records that Traco submitted on this appeal – a certificate of shares to demonstrate that she is the sole shareholder; bank records to demonstrate that she takes care of the financial transactions; and an equipment lease agreement to demonstrate that she has identified the machinery needed for the company and negotiates these transactions. *Id.*, ¶¶ 12, 14-16.

Ms. Jachimowicz states that while her husband Daniel provides valuable services to Traco, he is “replaceable.” *Id.*, ¶ 26. Throughout her affidavit, she claims that she is the primary decisionmaker and key person.

Traco also submits an affidavit of Daniel Jachimowicz in which he provides that while he manages aspects of the company, he does so under Tracy’s management. D. Jachimowicz Aff., ¶¶ 5-6. He states that the company could not operate without her management as he must focus on the “technical” aspects of production. *Id.*, ¶ 7. He concludes by stating that Tracy is primarily responsible for ensuring that Traco has the proper equipment to fulfill client orders and supervises all the personnel to keep Traco in growth mode. *Id.*, ¶ 10.

### **FINDINGS OF FACT**

1. Traco Manufacturing, Inc. is located at 4300 Commerce Drive, Batavia, New York. Ex. DED 1, § 1 E.
2. The company is engaged in the manufacture of plastic and wood end products for large retail business machine parts, mining, marine and medical enterprises. Ex. DED 1, §§ 5A, 5B, 5C.
3. In or around 1997, under her husband Daniel’s supervision, Tracy Jachimowicz began to make small plastic parts and eventually, the company grew into a larger entity. T. Jachimowicz Aff., ¶¶ 2-6.

4. Ms. Jachimowicz owns 100% of the shares of the company. Ex. DED 1, § 3A, Traco Ex. A.
5. Ms. Jachimowicz has a high school diploma and prior to working at Traco held two positions that were clerical. Ex. DED 5.
6. Daniel Jachimowicz graduated with an Associate's Degree in Applied Science in Model Making. Ex. DED 6. He has had twelve years of experience with two plastic fabrication companies and since 1991 has owned his own plastic products manufacturing company. *Id.*
7. At Traco, Ms. Jachimowicz is responsible for administrative functions and meets with attorney, bank and accountant representatives. Ex. DED 5.
8. Mr. Daniel Jachimowicz's duties include setting company's mission, oversight of manufacturing schedule, identification of what personnel and equipment are required, setting of hourly rates, negotiation of contracts with clients and also for raw materials, oversight of all sales and all research and development. Ex. DED 7.
9. Other family members work at Traco. Daniel Jachimowicz Jr. is responsible for inventory control, shipping and receiving, research and development, development of fixtures for fabrication of products, programming and production control. Ex. DED 7. Jameson Jachimowicz is involved with programming, customer service, engineering and quality control. *Id.* Alicia Jachimowicz is charged with customer service, invoicing and data entry. Rachel Jachimowicz works on special projects, production scheduling, assisting Tracy, and is liaison to the top customer. *Id.*

## **DISCUSSION**

This recommended order considers Traco's appeal from the Division's March 28, 2017 determination to deny Traco's application for recertification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The discussion below addresses the bases for the Division's denial.

The standards for determining whether an applicant is eligible to be certified as a woman-owned business enterprise are set forth in 5 NYCRR § 144.2. According to the Division's March 28, 2017 denial letter (*see*, Ex. DED 2), Traco did not demonstrate that (1) the woman owner controlled the operations of the business enterprise; and (2) that the woman owner has adequate managerial experience or technical competence in the business enterprise seeking recertification as required by 5 NYCRR §§ 144.2(b) and 144.2(b)(1)(i).

## I. Control

To be eligible for WBE certification, the Division's regulations state that "[d]ecisions pertaining to the operation of the business enterprise must be made by . . . women claiming ownership of that business enterprise." 5 NYCRR § 144.2(b)(1). While Ms. Jachimowicz sets forth in her affidavit submitted on Traco's appeal that she is the owner and the individual principally in charge, Traco's application provided a different picture. In the documents supporting the application, including Tracy's resume and also the company's narrative that was submitted with supplemental material on the application, it is Mr. Daniel Jachimowicz who is described as overseeing most of the core functions of the company. Ex. DED 7. With the exception of the administrative and financial matters, Daniel is described as being in charge of all the key aspects of this manufacturing company including setting the company's mission, setting schedules, negotiating contracts with customers and for raw materials, and research and development. *Id.*

In Ms. Jachimowicz's affidavit she acknowledges that her husband's "technical expertise" has permitted the company to "compete for more complicated work." T. Jachimowicz Aff., ¶ 8. She also admits that she is responsible for the administrative and financial matters but also claims without substantiation that she is in charge of all operations. *Id.*, ¶¶ 10, 11. She has submitted a few records to attempt to bolster these claims – the share certificate, bank records and lease agreement. Traco Exs. A, B, C. As Ms. Satra notes, I am required to limit my review to records that were submitted to DED as part of the application. 5 NYCRR § 144.5(a). But having reviewed these documents, I do not find that they support Traco's claims that Ms. Jachimowicz is in fact the chief operating officer. The Division has not challenged Tracy's ownership of the shares and such assignment does not prove she actually runs the company. With respect to her signature on the various contracts, that too is unavailing.

It appears that Traco is a collaborative family business with Daniel the principal in charge, Tracy managing the administrative aspects, and the children providing support in a variety of technical and administrative capacities. However, such an enterprise is not one that qualifies for WBE status. *See, e.g., Matter of J.C. Smith v. New York State Department of Economic Development*, 163 AD3d 1517, 1519 (4<sup>th</sup> Dep't 2018).

Accordingly, based on the record before me, I find that the Division's conclusion that Ms. Jachimowicz failed to demonstrate control of the business is supported by substantial evidence.

## II. Managerial Experience

The applicable regulatory criteria state that the woman owner "must have adequate managerial experience of technical competence in the business enterprise seeking certification [and] must demonstrate the working knowledge and ability needed to operate the business enterprise." 5 NYCRR § 144.2(b)(1)(i). Ms. Jachimowicz graduated high school and went on to hold two positions as a stenographer and then as a clerk at the [REDACTED] and the [REDACTED], respectively. Ex. DED 5. Certainly, she has gained experience at Traco and undoubtedly knows a good deal about the company's functions. However, this does

not substitute for the technical expertise that her husband Daniel has gained through his Associate's Applied Science Degree in Model Making as well as his many years of experience working at plastic manufacturing enterprises. Ex. DED 6.

On this record, I conclude that the Division's determination with regard to demonstration of adequate managerial experience or technical competence is supported by substantial evidence.

### **CONCLUSION**

1. With respect to the operation criterion at 5 NYCRR § 144.2(b)(1), Traco did not meet its burden to show that the Division's March 28, 2017 determination to deny the application for WBE recertification is not based on substantial evidence.
2. With respect to the managerial criterion at 5 NYCRR § 144.2(b)(1)(i), Traco did not meet its burden to show that the Division's March 28, 2017 determination to deny the application for WBE certification is not based on substantial evidence.

### **RECOMMENDATION**

The Division's determination to deny Traco's application for recertification as a woman owned business enterprise should be affirmed for the reasons stated in this recommended order.

Attachment: Exhibit Chart

**IN THE MATTER OF TRACO MANUFACTURING, INC.**  
**DED FILE No. 48550**  
**EXHIBIT LIST**

Exhibit No.	Description	ID	Rec'd
A	Incorporation Documents Including Share Certificate	√	√
B	Bank Account Information	√	√
C	Lease Agreement for Equipment	√	√
DED-1	Application for Certification – 5/22/15	√	√
DED-2	Denial Letter – 3/28/17	√	√
DED-3	Notice to Proceed with Written Appeal – 6/9/17	√	√
DED-4	Equipment List & Narrative	√	√
DED-5	Resume – Tracy Jachimowicz	√	√
DED-6	Resume – Daniel Jachimowicz	√	√
DED-7	Traco Narrative – additional information for application submission	√	√
DED-8	Resumes of Daniel Jachimowicz Jr. and Jameson Jachimowicz	√	√