



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

In the matter of the appeal of

Upstate Electrical, LLC

FINAL ORDER 18-39

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

This order arises from an administrative appeal brought on behalf of Upstate Electrical, LLC ("Upstate Electrical") pursuant to section 144.2 of title 5 of the New York Codes, Rules and Regulations. Appellant seeks reversal of the decision of the Division of Minority and Women's Business Development (the "Division"), dated July 12, 2017, to deny Upstate Electrical certification as a Women-owned Business Enterprise ("WBE").

Jennifer K. Harvey, Esq., of Couch & White, LLP, representing the appellant, initiated this appeal and requested a hearing. On February 27, 2018, the parties appeared before Administrative Law Judge, Molly T. McBride and the hearing took place as scheduled. Following the hearing, the parties submitted post-hearing briefs, and the record closed on March 9, 2018, upon receipt of those documents.

The issues on appeal were whether Upstate Electrical demonstrated that the woman owner, Ms. Brooke L. Spraragen, shared in the risks and profits of the proportion to her fifty-one percent ownership interest in the business enterprise, as required by 5 NYCRR § 144.2(c)(2); whether she makes decisions pertaining to the operation of the business, as required by 5 NYCRR § 144.2(b)(1); whether she demonstrated adequate managerial experience or technical competence to operate the business enterprise, as required by 5 NYCRR § 144.2(b)(1)(i); and whether she as the woman owner relied upon for certification, devoted time on an ongoing basis to the daily operation of the business enterprise, as required by 5 NYCRR § 144.2(b)(1)(iii).


On June 11, 2018, the Division received a Recommended Order from Administrative Law Judge McBride that recommended affirmation of the Division's denial of the application to

certify Upstate Electrical as a WBE on the grounds set forth in the Division's July 12, 2017 denial letter.

After considering the appeal record, I accept the recommendation of the Administrative Law Judge as it pertains to the facts of this case. Incorporation by reference is hereby made with respect to the findings and conclusions of the Recommended Order.

It is hereby **ORDERED** that the decision to deny certification, dated July 12, 2017, is affirmed. Accordingly, Upstate Electrical will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

August 30, 2018



Valerie White
Executive Director
Division of Minority and Women's
Business Development