

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

In the Matter

- of -

the Application of **Versatile LLC**
for Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 62470

RECOMMENDED ORDER

- by -

/S/

Molly T. McBride
Administrative Law Judge

July 21, 2022

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 (“NYSDED”) to deny Versatile LLC (“Versatile” or “applicant”) certification as a woman-owned business enterprise (“WBE”) be reversed 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 Versatile challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Versatile submitted an application to the NYSDDED on December 15, 2016 (Exhibit A). By letter dated December 17, 2019, the Division denied the application for WBE certification on one ground: (1) Versatile LLC is not an independent business enterprise. 5 NYCRR § 144.2(a)(2) and 144.2(c)(2) (Exhibit B).

Applicant filed an appeal from the denial and requested to proceed by written appeal rather than hearing (Exhibit C). By letter dated June 19, 2020, applicant requested a sixty (60) day extension to file its written appeal while it waited for DED to produce its complete file. The extension was granted without objection and applicant filed its written appeal on September 3, 2020. DED filed its brief in response on June 23, 2022, along with the affidavit of Raymond Emanuel, certification Director of the Division of Minority and Women’s Business Enterprises.

ELIGIBILITY CRITERIA

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status, regulatory criteria regarding, among other things, the applicant’s operation are applied on the basis of information supplied through the application process (see 5 NYCRR 144.2[a]). The Division reviews the enterprise as it existed at the time the application was made, based on representations in the application itself and, upon written appeal, the hearing officer shall base the decision upon information provided with the certification application and before the Division at the time of the denial (5 NYCRR 145[b])[2]). On administrative appeal, the applicant bears the burden of proving its business meets the eligibility criteria for certification as a woman-owned business enterprise (see State Administrative Procedure Act [SAPA] § 306[1]). To carry its burden, the applicant must show that the Division’s determination is not supported by substantial evidence.

POSITIONS OF THE PARTIES

Position of the Division

The Division's denial letter asserts that applicant failed to meet one criterion for certification: (1) Versatile LLC is not an independent business enterprise pursuant to 5 NYCRR pursuant to 5 NYCRR § 144.2(a)(2) and 144.2(c)(2).

Position of the Applicant

Versatile asserts that it meets the criteria for certification and that the Division erred in not certifying it as a woman-owned business enterprise pursuant to EL Article 15-A.

FINDINGS OF FACT

1. Versatile was purchased by Patricia Verdi, a woman, on January 22, 2015 (Exhibit A, 2.A.)
2. Versatile is in the business of leasing office trailers and storage containers (Exhibit A, 3.C.).
3. The application states Patricia Verdi made a capital contribution to the business of \$40,000 when she purchased the business on January 22, 2015 (Exhibit A, 2.C.). She also entered into a loan agreement with the former owner, Richard Woodcock, in the amount of \$1,400,000 to purchase the business (Exhibit E).
4. Patricia Verdi is President of Versatile and holds all managerial positions for the business (Exhibit A, 2.D. & 4.A.).
5. Versatile leases office facilities from Patricia Verdi's husband Joseph Verdi at 7 Route 31, Port Byron, NY for one thousand dollars (\$1,000) per month, and leases warehouse, plant or yard facilities from an unrelated third party at 650 Rotterdam Industrial Park, Guilderland, NY for five thousand dollars (\$5,000) per month (Exhibit A, 5.A., 5.B., 6. A-C., and Exhibit F).
6. The application states Patricia Verdi also works as an assistant at A-Verdi LLC owned by her husband, Joseph Verdi (Exhibit A, 6.A. & J). Patricia Verdi is not an owner of A-Verdi.
7. Versatile has generated a profit since 2015 and submitted records demonstrating that as of 2018 \$700,000 of the loan to Woodcock has been paid by Ms. Verdi (Appellant brief at 3).

9. The records furnished do not indicate any contribution to the purchase or operation of Versatile by Joseph Verdi and/or A-Verdi, LLC.

DISCUSSION

This report considers the appeal of the applicant from the Division's determination to deny certification as a woman-owned business enterprise (WBE) pursuant to EL Article 15-A. 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 SAPA 306[1][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]).

INDEPENDENCE

The December 17, 2019 letter denying the application of Versatile LLC notes "Relevant Facts" that detail the denial of the application for WBE certification (Exhibit B). Among the facts listed are: (1) Patricia Verdi is the sole owner of the business, (2) she works as an assistant at her husband's business A-Verdi, (3) Versatile and A-Verdi are marketed as family owned businesses and have similar or related business services and goods (*Id*). The denial concludes that the applicant has failed to sufficiently establish that the business is "an independent business" (Exhibit B, at 3). Applicant appealed the denial and requested a written appeal by letter dated February 12, 2020 (Exhibit C). Applicant argues in its appeal that the denial is "based upon unsubstantiated conclusory allegations, and not fact or reason." (Applicant appeal at 1) Applicant argues that the facts identified in the denial letter "demonstrate that Versatile is an independent business" (*id.*).

There is no dispute that Ms. Verdi purchased Versatile in 2015 from Richard Woodcock and, as of April 3, 2018 was the sole employee of Versatile (Exhibit D).¹ In addition to providing \$40,000 in a capital contribution for the business purchase, Ms. Verdi entered into a loan agreement with Richard Woodcock, in the amount of one million four hundred thousand dollars (\$1.4 million) to purchase the business (Exhibit E) and as of 2018 has paid \$700,000 of the loan to Mr. Woodcock (App. Brief at 3). The application and supplemental submissions confirm that Versatile leases office space from Joseph Verdi for \$1,000/month and warehouse/storage space from Northeastern Industrial Park, Inc, including 2 acres of land for storage of the trailers for \$5,000/month (*id.*). There is no indication that the lease payments are not paid or that the lease

¹ The application was filed in 2016, additional information was supplied to the Division in April and May 2018 as well. The denial was issued December 2019. Therefore, the information relied on for the appeal and this Recommended Decision is from 2016-2018.

amounts are not the fair market value. A-Verdi operates its business from a different location than Versatile (Exhibit H). Versatile submitted invoices it received for the space it leases, evidencing the charges for the leased space (Exhibit G). Applicant provided a letter to the Division during the application review process explaining the rationale for leasing from A-Verdi, availability and convenience (Exhibit H). In a letter to the Division during the application review process, Versatile indicated that: (1) A-Verdi, LLC operates its business from a different location as Versatile, (2) Joseph Verdi does not have any interest in Versatile, and, (3) Versatile would continue to operate if A-Verdi, LLC were to close (*id*). Versatile submitted a letter to the Division during the application review process which stated it does not share ownership, offices, space, databases, payroll, contact information, employees, contracts, equipment, vehicles or garage space with A-Verdi, LLC (Exhibit I). Versatile also submitted a letter to the Division during the application review detailing the job duties of Patricia Verdi at Versatile and stating that she works 20 hours a week at A-Verdi and approximately 40 hours a week for Versatile (Exhibit J).

In reviewing the information supplied in the application and subsequent submissions, as well as the information supplied with the appeal, there is no indication that Versatile is not an independent business. While it may be similar in nature to Mr. Verdi's business, A-Verdi, there is nothing in the record that supports a finding that Versatile is reliant on A-Verdi for its business to operate.

The applicant has demonstrated that the denial of the application on the grounds of independence was not based on substantial evidence.

CONCLUSIONS OF LAW

1. Versatile has demonstrated that the Division's denial was not based on substantial evidence.

RECOMMENDATION

The Division's determination to deny Versatile's application for certification as a woman-owned business enterprise should be reversed for the reasons stated herein.

Applicant Exhibit List

A	Application for WBE certification
B	Denial letter of 12-17-19
C	Notice of Appeal dated 9-5-17
D	Letter dated 4-3-18 from Versatile LLC to Division
E	Loan Agreement dated 2-1-15
F	Lease Agreement between Versatile LLC and Joseph Verdi dated 4-1-16 for 527 Rte 31 Port Byron, and sublease betw Northeastern Industrial Park, Inc. and Versatile, LLC for 695 Rotterdam Industrial Park
G	Invoices to Versatile LLC for leased space
H	Letter dated 5-17-18 from Versatile LLC to Division
I	Letter dated May 17, 2018 from Versatile to the Division
J	Letter dated June 22, 2018 from Versatile to the Division

DED Exhibits

EXH 1	Application for Certification
EXH 2	Denial Letter
EXH 3	Applicant's Request to Appeal via Written Appeal
EXH 4	Applicant's Written Brief Submission
EXH 5	Versatile Office Trailers Story
EXH 6	Screenshot of A-Verdi and Versatile's webpages
EXH 7	Joseph Verdi's Deed for 527 State Route 31
EXH 8	Commercial Lease between Versatile and Joseph Verdi
EXH 9	May 17, 2018 Letter to the Division re Versatile and Joseph Verdi's company A-Verdi
EXH 10	Screenshot of Joseph Verdi's LinkedIn
EXH 11	Patricia Verdi Resume
EXH 12	May 17, 2018 Letter to the Division re Patricia Verdi's Job Duties at Versatile
EXH 13	April 3, 2018 Letter to the Division re subcontracting services
EXH 14	Versatile LLC 2016 Profit & Loss Form
EXH 15	Versatile LLC 2016 Balance Sheet
EXH 16	Versatile LLC 2017 Balance Sheet
EXH 17	Joseph and Patricia Verdi 2016 Federal Tax Returns
EXH 18	Joseph and Patricia Verdi 2016 NYS Tax Returns
EXH 19	Joseph and Patricia Verdi 2017 Federal Tax Returns
EXH 20	Joseph and Patricia Verdi 2017 NYS Tax Returns
EXH 21	Joseph and Patricia Verdi 2018 NYS and Federal Tax Returns
EXH 22	May 17, 2018 Letter to the Division re Ownership of A-Verdi
EXH 23	June 22, 2018 Letter to the Division re Ms. Verdi's duties & hours at A-Verdi
EXH 24	First Niagara Business Signature Card Form
EXH 25	Copy of Rent Check to Joseph Verdi – Grey Rock
EXH 26	Sublease Agreement between Versatile and Northeastern Industrial Park (“NIP”)
EXH 27	Rent Transactions/Invoices with NIP