



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

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In the matter of the appeal of

**Versatile LLC**

FINAL ORDER 23-06

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

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This order arises from an administrative appeal brought on behalf of Versatile LLC (“Versatile” or “Appellant”) pursuant to parts 140-145 of title 5 of the New York Codes, Rules and Regulations.<sup>1</sup> Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated December 17, 2019, to deny Versatile certification as a Woman-owned Business Enterprise (“WBE”). For the reasons below, and after considering the administrative record, I hereby issue a new determination granting WBE certification to Versatile LLC.

By letter dated February 12, 2020, Appellant filed a request to appeal via written submission. By letter dated June 19, 2020, Appellant requested and was granted an extension to file its written appeal. Versatile filed its written appeal submission on September 3, 2020 through counsel Robyn B. Eisen, Esq. of Strassburger, McKenna, Gutnick & Gefsky. Counsel for the Division, Ashley Lherisson, Esq., filed a written response to the submission and an accompanying affidavit by Certification Director Raymond Emanuel, dated June 23, 2022. Administrative Law Judge (“ALJ”) Molly T. McBride presided over the appeal.

The issue on appeal was whether Appellant qualifies as an independent business enterprise. The applicable regulatory criteria in effect at the time of Versatile’s application state that “the business enterprise must demonstrate that it is an independent, continuing entity” and that “an eligible . . . woman applicant must be an independent business enterprise. The ownership and control by the minority group member or woman must be real, substantial and continuing and must

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<sup>1</sup> The Division’s December 17, 2019 denial determination and Appellant’s February 12, 2020 request to 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.

go beyond the pro forma ownership of business as reflected in the ownership documents.” 5 NYCRR 144.2(a)(2) and 144.2(c)(2). The arguments in this matter centered on whether Patricia Verdi, Versatile’s sole owner according to the application, owned and controlled the business independently of her husband, Joseph Verdi, and A-Verdi LLC, a business he primarily owned.

The Division received from ALJ McBride a Recommended Order, dated July 21, 2022, that recommended reversal of the Division’s denial of the application to certify Versatile as a WBE on the grounds set forth in the Division’s December 17, 2019 denial letter.

After considering the appeal record, I accept the recommendation of the ALJ to reverse the Division’s denial determination. I distinguish, however, this matter from prior cases where the Division’s determination—that a WBE applicant was not independent because it failed to pay rent for facilities leased from the applicant’s spouse—has been affirmed on appeal as supported by substantial evidence. (*See Recommended Order, In re Husted Concrete Products Co., Inc.*, December 1, 2020, at 3, 5) Thus, I disagree here with the ALJ’s summary of a key fact: that Versatile leased facilities from Joseph Verdi at 7 Route 31, Port Byron, NY, property that was also utilized by Joseph Verdi’s business A-Verdi LLC. Although an expired lease provided in the application showed Versatile’s rent to be one thousand (\$1000) per month for the Port Byron facility, the Applicant failed to provide an unexpired lease or proof of rent payments for the appropriate periods, even after such documentation was explicitly requested on two occasions during the application process (9/26/2017 and 6/3/2019, *see Application pp. 10-13*). As such, Versatile’s failure to document arms-length leasing of the Port Byron, NY facility raised reasonable questions as to the Applicant’s independence, and I disagree where the ALJ states that “(t)here is no indication that the lease payments are not paid or that the lease amounts are not the fair market value.” (Recommended Order, *In re Versatile LLC*, July 21, 2022, at 4-5)

Still, I accept that here, Versatile’s failure to demonstrate rent payments and arms-length leasing of the Port Byron property did not constitute support by substantial evidence that Versatile lacks independence. In contrast to the situation in *Husted Concrete*, the WBE applicant here did in fact document up-to-date leasing and rent payments for another facility in Guilderland, NY from an unrelated third party, at the rate of five thousand (\$5000) per month. Thus, Versatile demonstrated payment of more significant rents on an arms-length lease and I agree with the ALJ’s conclusion that the lack of documentation regarding the Port Byron property did not constitute substantial evidence to support a finding that Versatile was not independent.

It is hereby **ORDERED** that the decision to deny certification, dated December 17, 2019, is reversed. Accordingly, Versatile LLC will be listed in the Division’s directory for Minority and Women-owned Business Enterprises.

July 10, 2023



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