



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

---

In the matter of the appeal of

**WBE Painting, LLC**

FINAL ORDER 19-18

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 WBE Painting, LLC, LLC ("WBE Painting") 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 December 5, 2017, to deny WBE Painting certification as a Woman-owned Business Enterprise ("WBE").

Appellant initiated this written appeal by filing its pleading on May 28, 2018. Jessica A. Myers, Esq. of Harter, Secrest & Emery LLP represented appellant. The Division, through counsel, Thomas Regan, Esq., responded to appellant's appeal on June 5, 2019 and subsequently, appellant filed a reply memorandum of law on June 27, 2019, at which time the record closed. This appeal was assigned to Administrative Law Judge P. Nicholas Garlick for review and drafting of a Recommended Order.

The issues on appeal were whether WBE Painting demonstrated that Ms. Kelly Cook, P. Christine Cook, Lori Cook and Shannon Cook, as the owners relied upon for certification, make decisions pertaining to the operation of the enterprise as required by 5 NYCRR § 144.2(b)(1); whether the women owners devote time on an ongoing basis to the daily operation of the business enterprise, as required by 5 NYCRR § 144.2(b)(1)(iii); and whether the business enterprise was in fact an independent business as required by 5 NYCRR §§ 144.2(a)(2) and 144.2(c)(2).

On August 19, 2019, the Division received a Recommended Order from Administrative Law Judge Garlick that recommended affirmation of the Division's denial of the application to certify WBE Painting as a WBE on the ground set forth in the Division's December 5, 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, other than those pertaining to review of material not before the Division at the time of the denial. The Division abstains from review or consideration of any conclusions reached even after review of materials not before the Division at the time of denial.

It is hereby **ORDERED** that the decision to deny certification, dated December 5, 2017, is affirmed. Accordingly, WBE Painting will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

September 18, 2019



---

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