



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

In the matter of the appeal of

WNY TILE & STONE CORP.

FINAL ORDER 23-08

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

This order arises from an administrative appeal brought on behalf of WNY Tile & Stone Corp. (“WNY” or “Appellant”) pursuant to section 144.2 of Title 5 of the New York Codes, Rules and Regulations.¹ Appellant seeks reversal of the decision of the Division of Minority and Women’s Business Development (the “Division”), dated January 10, 2022, to deny WNY’s December 2, 2019, certification application as a Woman-owned Business Enterprise (“WBE”).

Appellant initiated its appeal by sending a notice of appeal letter dated February 16, 2022, to the Division, requesting to appeal the denial determination via written submission. On October 4, 2022, the Division sent a notice to proceed by written appeal to the Appellant. Thereafter, attorney, Luke Brown, Esq., submitted a written appeal on behalf of WNY dated March 25, 2022. The Division responded to the written appeal submission with its Memorandum of Law dated May 25, 2023, and an Affidavit of Glenn Butler, Associate Certification Director for the Division, with attached Exhibits. Administrative Law Judge (“ALJ”) David A. Murad presided over the appeal.

The issues on appeal were whether Appellant sufficiently demonstrated that the woman owner relied upon for certification (1) shares in the risks and profits of the business enterprise in proportion to her equity interests therein, as required by 5 NYCRR § 144.2(b)(3); (2) possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR § 144.2(c)(1); (3) makes operational decisions on a day-

¹ The Division’s January 10, 2022, denial determination and post-dates the December 2, 2020, amendments made to 5 NYCRR Parts 140 et al. Accordingly, the eligibility criteria set forth under the amended regulations are referenced throughout this final order.

to-day with respect to the critical functions of the business enterprise, as required by 5 NYCRR § 144.2(c)(2); and (4) devotes time on an ongoing basis to the daily operation of the business enterprise, as required by 5 NYCRR § 144.2(c)(3).

On August 28, 2023, the Division received a Recommended Order from ALJ Murad that recommended affirmation of the Division's denial of the application to certify WNY Tile & Stone Corp. as a WBE on the grounds set forth in the Division's January 10, 2022, 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 January 10, 2022, is affirmed. Accordingly, WNY Tile & Stone Corp. will not be listed in the Division's directory for Minority and Women-owned Business Enterprises.

September 22, 2023

A handwritten signature in black ink, appearing to read "Jason M. Clark", with a long horizontal stroke extending to the right.

Jason M. Clark
Executive Vice President and Executive Director
Division of Minority and Women's Business Development