

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
207 GENESEE STREET
UTICA, NEW YORK 13501

In the Matter

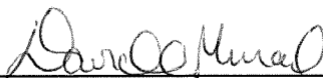
- of -

the Application of AIM Carriers, LLC
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 72128

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
May 9, 2025

This matter considers the written appeal by AIM Carriers, LLC (“AIM Carriers” or “applicant”) pursuant to New York State Executive Law Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for certification as a woman-owned business enterprise (“WBE”).

PROCEDURAL HISTORY

1. On March 22, 2024, Ms. Brittany Rosselle, as owner, applied on behalf of AIM Carriers for certification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1)
2. On July 15, 2024, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) Minority group members or women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1);
 - (b) Minority group members or women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required under 5 NYCRR §144.2(c)(2); and
 - (c) The business enterprise must operate independently, as required under 5 NYCRR § 144.2(e).
3. AIM Carriers timely filed a Request to Appeal on July 15, 2024. (DED Exhibit 3)
4. A notice to proceed via written appeal was sent to AIM Carriers on August 14, 2024. (DED Exhibit 4)

5. The Division filed an Affidavit of Eugenio Alcantara, Certification Director, dated February __, 2025, and a brief of Amy O'Connor, Esq., counsel for the Division, dated February 14, 2025.
6. AIM Carriers requested and was granted leave to submit its written appeal following a conference held on February 24, 2025.
7. AIM Carriers submitted its written appeal by letter dated March 21, 2025, with attachments, from its attorney, Clifford Greene, Esq, of Clifford H. Greene & Associates.
(APP Exhibit A)
8. Amy O'Connor, Esq., counsel for the Division, filed a responsive brief dated April 18, 2025.

FINDINGS OF FACT

9. AIM Carriers is engaged in the business of hauling dirt, rock, gravel, blacktop, brick, and construction debris to and from construction sites, both residential and commercial, and providing truck rentals with drivers. (DED Exhibit 1)
10. Brittany Rosselle is the 100% owner of AIM Carriers. (DED Exhibit 1)
11. AIM Carriers is a union shop. It employs Teamsters from Local 456 who drive the trucks.
(DED Exhibit 1)
12. Robert Thorne, Shop Steward, is responsible for supervising field operations. (DED Exhibit 1)
13. Ms. Rosselle is responsible for financial decisions, estimating, preparing bids, negotiating bonding, hiring and firing, purchasing equipment/sales, managing and signing payroll, negotiating contracts, and is a signatory for the business accounts. The office manager,

Liala Sardo, is responsible for negotiating insurance, preparing bids, and marketing and sales. (DED Exhibit 1)

14. Ms. Rosselle's husband, Michael Galeno, is the owner of Aim Trucking, LLC ("Aim Trucking") which is located at the same address as AIM Carriers. Mr. Galeno is a member of Teamsters Local 456 and works as a truck driver for AIM Carriers. (DED Exhibit 1)

15. Ms. Rosselle's experience comes from family members in the industry. Over the years she has been present and assisted with contacting vendors, scheduling jobs, knowing costs, calculating profit, and establishing relationships with people in the industry. (DED Exhibit 1)

16. Ms. Rosselle does not have a CDL or an OSHA card. Her experience comes from her family and her husband and having grown up around the industry, watching people work and helping out in the office when she could. Her husband owns a trucking company, and it was with his "help, support, and encouragement" that she could establish and run her own business. She stated, "I still rely on his guidance and support at times when I find myself at a crossroads." (DED Exhibit 1)

17. Ms. Rosselle stated "I work in the office and from home. I communicate with customers, secure jobs, set prices, coordinate contracts, prioritize work, make large purchasing decisions. I have a dispatcher who assigns the trucks to their daily tasks after I prioritize the work... I have an assistant in the office who does my invoicing, payroll, accounts payable, accounts receivable, obtaining insurance, *et al.* When our trucks need repair, we schedule with a facility or purchase parts and hire a mechanic via our lease with Aim Trucking. I am accessible to drivers via phone whenever they have questions or run into

issues. The dispatcher is also available to them. One of us will make a decision concerning our vehicles in the field.” (DED Exhibit 1)

18. Ms. Rosselle’s resume reflects that she is responsible for signing business accounts, hiring and firing employees, and negotiating contracts. Her previous experience is as an office manager and registered nurse. She received a Bachelor of Science degree in Nursing. Her list of skills includes “basic understanding of Quickbooks and Microsoft Excel” and “strong knowledge of business office operations.” (DED Exhibit 6)

19. Copies of drivers’ licenses and OSHA certificates/cards provided include CDL’s and OSHA 10 certifications for Michael Galeno, Robert Thorne, Alfred Zimmerman, and William Holland. (DED Exhibit 7) Ms. Rosselle provided only a Class D driver license and not a CDL. (DED Exhibit 8)

20. A Trucking Agreement between AIM Carriers (subcontractor) and ELQ Industries, Inc. (prime contractor) for truck and trailer rentals provides that Michale Galeno is the “Supervisor of the day-to-day DBE/MBE/WBE/SDVOB trucking operation.” (DED Exhibit 10)

21. AIM Carriers and Aim Trucking share equipment, office space, and yard space. (DED Exhibit 1) AIM Carriers rents trucks from Aim Trucking when needed, pursuant to the rental agreement. (DED Exhibit 9) AIM Carriers refers any non-union work that they have to Aim Trucking. (DED Exhibit 1)

22. AIM Carriers and Aim Trucking are “Co-Makers/Co-Debtors” for five promissory notes and security agreements covering nine (9) pieces of equipment. Seven (7) of those are owned by AIM Carriers. Two (2) are owned by Aim Trucking. AIM Carriers makes the

full payment on all the notes, except for the most recent note of 3/21/24 since no payments had yet been made. (DED Exhibits 19 – 26)

APPLICABLE LAW

5 NYCRR §144.2(c) states in relevant part as follows:

Operation. Minority group members and women relied upon for certification must make day-to-day decisions concerning the operation of the business enterprise for which certification is sought. The division shall evaluate whether minority group members or women operate a business enterprise for which certification is sought based upon the following criteria:

- (1) Minority group members and women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things...
- (2) Minority group members and women relied upon for certification must make operational decisions on a day-to-day basis with respect to the functions of the business enterprise for which certification is sought. The critical functions of a business enterprise shall be determined by the division based upon the following factors, but is not limited to:
 - (i) The products or services the business enterprise provides to clients; and
 - (ii) The means by which the business enterprise obtains contracts or orders.

5 NYCRR §144.2(e) states as follows:

Independence. Business enterprises for which certification is sought must operate independently. In order to determine whether such business enterprises operate independently, the division shall consider but not be limited to the following criteria:

- (1) Whether the business enterprise shares resources with another entity, including, but not limited to, personnel, equipment, office space, warehouse and other storage space, and yard space;
- (2) Whether the business enterprise transacts business primarily with one other entity; and
- (3) Whether the business enterprise receives tangible benefits as a result of a connection to another entity, and whether such benefits are consistent with standard industry practices.

STANDARD OF REVIEW

On this administrative appeal, applicant bears the burden of proof to establish that Division staff's determination to deny the application filed by AIM for certification as a WBE is not supported by substantial evidence (*see* State Administrative Procedure Act § 306[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 Division staff's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]).

The review is limited to such information that was before the division at the time of the denial determination (5 NYCRR 145.2(b)(1)). Evidence that seeks to clarify and explain previously submitted materials will be considered, however new evidence will not be considered. *See Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

DISCUSSION

I. Operation

The Division found that the woman-owner does not possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR §144.2(c)(1). In *C.W. Brown, Inc. v. Canton*, 216 A.D.2d 841 (3d Dept 1995), the Court affirmed the denial where the woman-owner had no training or experience in the industry, nor could she specify the "working knowledge" necessary to review the estimates made by or evaluate the work of more experienced employees. 5 NYCRR §144.2(c)(1) states that "this requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things".

The Division also found that the woman-owner did not make operational decisions on a day-to-day basis with respect to critical functions of the business, as required by 5 NYCRR §144.2(c)(2). The regulation states that “The critical functions of a business enterprise shall be determined by the division based upon the following factors, but is not limited to: (i) the products or services the business enterprise provides to clients; and (ii) the means by which the business enterprise obtains contracts or orders”. The woman-owner “must exercise independent operational control over the core functions of the business in order to establish the requisite control for WBE certification”. See *J.C. Smith, Inc. v. New York State Department of Economic Development*, 163 AD 3d, 1517 (4th Dept. 2018).

AIM Carriers is a union shop. It employs Teamsters from Local 456 who drive the trucks. (DED Exhibit 1) Robert Thorne, Shop Steward, is responsible for supervising field operations. (DED Exhibit 1) Ms. Rosselle is responsible for financial decisions, estimating, preparing bids, negotiating bonding, hiring and firing, purchasing equipment/sales, managing and signing payroll, negotiating contracts, and is a signatory for business accounts. The office manager, Liala Sardo, is responsible for negotiating insurance, preparing bids, and marketing and sales. (DED Exhibit 1)

Ms. Rosselle’s husband, Michael Galeno, is the owner of Aim Trucking, which is located at the same address as AIM Carriers. Mr. Galeno is a member of Teamsters Local 456 and works as a truck driver for AIM Carriers. (DED Exhibit 1)

Ms. Rosselle’s experience comes from family members in the industry. Over the years she has been present and assisted with contacting vendors, scheduling jobs, knowing costs, calculating profit, and establishing relationships with people in the industry. (DED Exhibit 1)

Ms. Rosselle does not have a CDL or an OSHA card. Her experience comes from her family and her husband and having grown up around the industry, watching people work and

helping out in the office when she could. Her husband owns a trucking company, and it was with his “help, support, and encouragement” that she could establish and run her own business. She stated “I still rely on his guidance and support at times when I find myself at a crossroads.” (DED Exhibit 1)

Ms. Rosselle stated “I work in the office and from home. I communicate with customers, secure jobs, set prices, coordinate contracts, prioritize work, make large purchasing decisions. I have a dispatcher who assigns the trucks to their daily tasks after I prioritize the work... I have an assistant in the office who does my invoicing, payroll, accounts payable, accounts receivable, obtaining insurance, et al. When our trucks need repair, we schedule with a facility or purchase parts and hire a mechanic via our lease with Aim Trucking. I am accessible to drivers via phone whenever they have questions or run into issues. The dispatcher is also available to them. One of us will make a decision concerning our vehicles in the field.” (DED Exhibit 1)

Ms. Rosselle’s resume reflects that she is responsible for signing business accounts, hiring and firing employees, and negotiating contracts. Her previous experience is as an office manager and registered nurse. She received a Bachelor of Science in Nursing. Her list of skills includes “basic understanding of Quickbooks and Microsoft Excel” and “strong knowledge of business office operations.” (DED Exhibit 6)

Copies of drivers’ licenses and OSHA certificates/cards provided include CDL’s and OSHA 10 certifications for Michael Galeno, Robert Thorne, Alfred Zimmerman, and William Holland. (DED Exhibit 7) Ms. Rosselle provided a Class D driver license. (DED Exhibit 8) She did not provide a CDL.

A Trucking Agreement between AIM Carriers (subcontractor) and ELQ Industries, Inc. (prime contractor) for truck and trailer rentals provides that Michale Galeno is the “Supervisor of the day-to-day DBE/MBE/WBE/SDVOB trucking operation.” (DED Exhibit 10)

Ms. Rosselle does not have any industry specific expertise; her skills are related to general business or office management. She does not have any academic credentials or training relevant to the critical functions of the business. (DED Exhibits 1 and 6) The critical functions of the business are hauling dirt, rock, gravel, blacktop, brick, and construction debris to and from construction sites, residential and commercial, and providing truck rentals with drivers. She does not possess a CDL or have an OSHA certification. She therefore must rely on other individuals regarding the operation of commercial vehicles and transport of the hauled materials, which are the core revenue generating functions of the business. She uses a dispatcher to assign and manage the trucks in the field. (DED Exhibits 1, 7 and 8)

Applicant argues on appeal that she has industry-specific competence because she has a strong knowledge of business operations and a BSN in Science. Applicant further stated that she handles banking, deposits, loans, and financing. She pursues certifications and cultivates new business relationships, seeking new sectors in the market to pursue. (APP Exhibit A) However, these are administrative duties which do not demonstrate any experience or training in trucking, hauling, and truck rentals.

On appeal, applicant claims that Robert Thorne is not the individual responsible for supervising field operations. She claims that Mr. Thorne’s sole responsibility is to keep track of the drivers’ hours on behalf of the union. (APP Exhibit A) This contradicts the answer provided in the application and does not demonstrate that Ms. Rosselle is herself supervising field operations. (DED Exhibit 1) It also does not dispute that Mr. Galeno is named as the supervisor of the day-to-

day operations on the ELQ Industries contract. (DED Exhibit 10) Ms. Rosselle further acknowledged that she delegates managerial responsibility and field supervision to Mr. Galeno. (APP Exhibit A) Accordingly, Ms. Rosselle does not maintain independent operational control over the core functions of the business. *See Panko Elec. & Maintenance Corp. v. Zapata*, 172 A.D.3d 1682 (2019)

The Division's determination to deny the application on the basis that AIM Carriers failed to demonstrate that Ms. Rosselle possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1), and make operational decisions on a day-to-day basis with respect to the critical functions of the business, as required under 5 NYCRR §144.2(c)(2) is supported by substantial evidence.

II. Independence

The Division further found that AIM Carriers is not an independent business enterprise, as required under 5 NYCRR §144.2(e). This section considers “Whether the business enterprise shares resources with another entity, including, but not limited to, personnel, office space, warehouse and other storage space, and yard space” 5 NYCRR §144.2(e)(1), “Whether the business enterprise transacts business primarily with one other entity” 5 NYCRR §144.2(e)(2) ; and “Whether the business enterprise receives tangible benefits as a result of a connection to another entity...”. 5 NYCRR §144.2(e)(3).

AIM Carriers and Aim Trucking share equipment, office space, and yard space. (DED Exhibit 1) AIM Carriers rents trucks from Aim Trucking when needed, pursuant to the rental agreement. (DED Exhibit 9) AIM Carriers refers any non-union work that they have to Aim Trucking. (DED Exhibit 1)

AIM Carriers and Aim Trucking are “Co-Makers/Co-Debtors” for five promissory notes and security agreements covering nine (9) pieces of equipment. Seven (7) of those are owned by AIM Carriers. Two (2) are owned by Aim Trucking. AIM Carriers makes the full payment on all the notes, except for the most recent note of 3/21/24 since no payments had yet been made. (DED Exhibits 19 – 26)

Applicant acknowledge that both businesses share office space and that she uses Aim Trucking vehicles in her business. She does not dispute that both businesses share equipment loans, secured by trucks and trailers owned by both businesses. She also does not dispute that AIM Carriers also uses Aim Trucking’s trucks to operate the business, is primarily transacting business with Aim Trucking for equipment and personnel and is using Aim Trucking’s mechanic for repairs. She admits that this arrangement is beneficial to Aim Trucking and that Mr. Galeno is “paid twice” because AIM Carriers pays for the equipment loans and also pays Aim Trucking to use the trucks. (APP Exhibit A)

The Division’s determination to deny the application on the basis that AIM Carriers failed to demonstrate that the business is an independent enterprise, as required under 5 NYCRR §144.2(e), is supported by substantial evidence.

CONCLUSION

AIM Carriers did not meet its burden to demonstrate that the Division’s determination to deny its application for certification as a woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(c)(1), 144.2(c)(2) and 144.2(e), was not based on substantial evidence.

RECOMMENDATION

For the reasons set forth above, I recommend that the Director affirm the Division's determination to deny AIM Carrier's application for certification as a woman-owned business enterprise.

In the Matter of AIM Carriers, LLC
DED File ID No. 72128
Exhibit Chart

Exhibit #	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Appeal Submission	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Request to Appeal	Y	Y
DED 4	Notice to Proceed via Written Appeal	Y	Y
DED 5	Operating Agreement	Y	Y
DED 6	Resume of Brittany Rosselle	Y	Y
DED 7	CDL Licenses and OSHA Card/Certifications	Y	Y
DED 8	Brittany Rosselle Driver's License	Y	Y
DED 9	Lease/Rental Agreement between AIM Carriers and AIM Trucking	Y	Y
DED 10	AIM Carriers Subcontract with ELQ	Y	Y
DED 11	AIM Carriers Equipment List	Y	Y
DED 12	Vehicle Registrations	Y	Y
DED 13	Castle Hill Recycling Invoices	Y	Y
DED 14	John Civetta & Sons Invoices	Y	Y
DED 15	ELQ Invoices	Y	Y
DED 16	HL Contracting LLC Invoice	Y	Y

DED 17	PCI Industries Invoices	Y	Y
DED 18	Shawn's Lawns Invoices	Y	Y
DED 19	CCG Promissory Note/Security Agreement dated 6/19/20	Y	Y
DED 20	CCG Promissory Note/Security Agreement dated 7/26/21	Y	Y
DED 21	CCG Promissory Note/Security Agreement dated 8/18/21	Y	Y
DED 22	CCG Promissory Note/Security Agreement dated 1/29/24	Y	Y
DED 23	CCG Promissory Note/Security Agreement dated 3/21/24	Y	Y
DED 24	2023 Bank Statements January- December	Y	Y
DED 25	2024 Bank Statements June- May	Y	Y
DED 26	National Gear & Piston Inc. Invoice	Y	Y
DED 27	2021 Taxes of Brittany Rosselle and Michael Galeno	Y	Y
DED 28	2022 Taxes of Brittany Rosselle and Michael Galeno	Y	Y
DED 29	2023 W-2s of AIM Carriers	Y	Y