

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

In the Matter

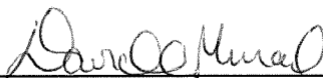
- of -

the Application of ASA Corner Stone Builders Corp.
for Certification as a Minority and Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 73941

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
February 20, 2026

This matter considers the appeal by ASA Corner Stone Builders Corp. (“ASA” 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 minority and woman-owned business enterprise (“MWBE”).

PROCEDURAL HISTORY

1. On May 15, 2025, Fabiola Molina, as President, applied on behalf of ASA for certification as a minority and woman-owned business enterprise (“MWBE”). (DED Exhibit 1)
2. On October 6, 2025, 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); and
 - (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).
3. On October 12, 2025, ASA filed a Request to Appeal via a Hearing. (DED Exhibit 3)
4. On October 20, 2025, a Notice of Hearing was sent to all parties. (Tribunal Exhibit 1)
5. A hearing was held and concluded on January 13, 2026.

FINDINGS OF FACT

6. ASA is engaged in the business of home improvement and home renovations. (DED Exhibit 1)
7. Fabiola Molina is the President and 90% owner of ASA. Emilexis Medina is the Secretary and 10% owner of ASA. (DED Exhibit 1)
8. Fabiola Molina's resume lists her duties at ASA as follows:

“Oversee all business operations including budgeting, construction oversight, contract negotiation, and vendor management
Supervise project managers and construction teams across multiple job sites
Ensure full compliance with DOB, insurance, city/state building codes, and permit requirements
Lead business development, estimating, subcontractor management, and quality control
Directly responsible for hiring, financing, marketing, and legal oversight of the company”

(DED Exhibit 7)
9. Fabiola Molina's resume indicates that she is currently an associate real estate broker. Her education and certifications are listed as follows:

“Lehman College- Bronx, NY/ Real Estate Studies
Mortgage Course – Bronx, NY
EPA Certificate
Lead Paint Certificate Osha”

(DED Exhibit 7)
10. Fabiola Molina stated “I am a real estate broker. I purchase some houses and renovate for some investment, and I start to like it.” She described her technical training as “Most of the courses I have to do is online... That knowledge, I got all those courses online. That's what I have, online courses.” (DED Exhibit 8)
11. At ASA, Fabiola Molina handles financial decisions, negotiating bonding, hiring and firing, purchasing equipment/sales, managing and signing payroll, negotiating contracts.

and acts as signatory for business accounts. Emilexis Medina, the manager, handles estimating and preparing bids. Stephanie Molina, the secretary, handles negotiating insurance. Amairenis Merced, the marketing manager, handles marketing and sales. Alessandro Galiardo, the field manager, handles supervising field operations. (DED Exhibit 1)

12. Fabiola Molina is “responsible for overseeing all daily operations including budgeting, client negotiations, subcontractor coordination, permitting, and quality control.” She works “a minimum of 50 hours per week managing job sites, purchasing materials, reviewing project scopes, approving financials, and supervising staff.” She also leads “strategic planning and ensure compliance with state and city regulations.” Ms. Molina prepares the schedule for the workers every day. (Hearing Testimony of Fabiola Molina; DED Exhibit 9)

13. Ms. Molina originally wanted to become an architect but became a real estate broker. In 1998, Ms. Molina purchased and began renovating distressed properties for investment and “started liking it”. She was “involved in everything”, including doing the repairs, the contracts and the materials and learned everything required to “be in compliance”. She has taken online courses for certification with OSHA, EPA and DCA and has a Home Improvement Contractor License issued by NYC Consumer and Worker Protection. She has a General Contractor License with NYC DOB and had to learn the “construction book” in order to obtain this license. She explained that she needed to have “all knowledge in construction” to obtain her General Contractor License. She learned how to read architect drawings and is able to show the electricians, plumbers and labor workers “where everything goes.” (Hearing Testimony of Fabiola Molina; DED Exhibits 5 and 8)

14. Ms. Molina controls estimating and preparing bids. She has Emilexis Medina type up the estimates and bids based upon numbers furnished by Ms. Molina. Ms. Molina meets with the clients to determine the scope of work. She speaks with the subcontractors and requests quotes. She prepares the proposal by also getting quotes from the electrician and plumber, when needed. She meets again with the client to finalize the proposal. If the bid is not competitive, Ms. Molina will revise and negotiate with the client. Once the proposal is signed, Ms. Molina meets with the management company to discuss the scope of the work, any additional requirements and to obtain project approval. Ms. Molina handles the timing of the project dealing with everything from contacting the demolition company, the electrician and plumber, and the laborers, to make sure the project stays on schedule. She handles the ordering of the supplies and makes sure they are timely delivered to the project site. (Hearing Testimony of Fabiola Molina; DED Exhibit 8)
15. Ms. Molina testified that “everything that needs to be done is supervised by me” and she “approves everything before the work is done.” She personally handles all last-minute changes to the contract. Ms. Molina accompanies the plumber and electrician to the job site and “tells them what they have to do” as far as placement of the plumbing and wiring. She has every aspect of every project videotaped and she reviews everything from start to finish. She also goes to see the project. (Hearing Testimony of Fabiola Molina; DED Exhibit 8)
16. Ms. Molina obtains the permits, makes sure the insurance is in place, ensures that all inspections are done and that everyone is following the plans. No job is done without her approval and supervision. (Hearing Testimony of Fabiola Molina).

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) Competence in the industry. 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. In evaluating whether a minority group member or woman possesses adequate, industry-specific competence, the division shall consider factors, including, but not limited to:
 - (i) Whether individuals employed by the business enterprise for which certification is sought are required to obtain licenses or certifications to provide products or services to the clients of the business enterprise;
 - (ii) The extent to which academic credentials exist for persons employed in the industry; and
 - (iii) The extent to which industry-specific expertise may be obtained via direct work experience.
- (2) Operational decisions. 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.

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 ASA for certification as a MWBE 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

Fabiola Molina, President, appeared at the hearing on behalf of ASA and was the only witness that testified. ASA offered no exhibits.

JaMone Turner, Associate Counsel, Department of Economic Development, appeared at the hearing on behalf of the Division. The following witness testified on behalf of the Division: Stephanie Samuel, MWBE Associate, Division of Minority and Women Business Development. The Division offered the following exhibits which were admitted into evidence: DED Exhibits 1 - 16.

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).

The Division has interpreted this regulation to require an applicant to demonstrate that the owner relied upon for certification has the working knowledge necessary to review or evaluate the

work of more experienced employees. See *In the Matter of Upstate Electrical, LLC v. New York State Department of Economic Development*, 179 A.D.3d 1343 (3d Dept. 2020). The Division's regulations, however, "do not require an applicant to possess formal academic training or to have completed an apprenticeship in order to demonstrate technical competence to operate a business." (*Matter of Northern Scapes Inc.*, Recommended Order, May 18, 2018; Final Order 18-31, July 5, 2018) What is required is that the woman owner possesses adequate competence to make decisions without having to rely on others. See *Northern Scapes, supra*.

The Division argued that the applicant failed to provide sufficient evidence to establish that Ms. Molina possessed adequate, industry-specific competence to make critical business decisions without relying upon other persons. The Division determined that Ms. Molina's lack of electrical and plumbing experience equates to her lack of experience in home improvement and home renovations. (DED Exhibit 2; Hearing Testimony of Stephanie Samuel)

Stephanie Samuel testified that Ms. Molina has no licenses, certifications, academic credentials or direct work experience in home improvement, electrical or plumbing work. She therefore must rely on her employees to make critical business decisions. However, Ms. Molina testified that not all projects require an electrician or a plumber and that some projects involve plastering and painting. Additionally, the applicant has a Home Improvement Contractor License issued by NYC Consumer and Worker Protection and a General Contractor license issued by NYC DOB. Applicant also holds an EPA Certificate and an OSHA Lead Paint Certificate (Hearing Testimony of Stephanie Samuel; Hearing Testimony of Fabiola Molina; DED Exhibits 4, 5, 6, 7 and 8)

Fabiola Molina's resume indicates that she is currently an associate real estate broker. Her education and certifications are listed as follows:

“Lehman College- Bronx, NY/ Real Estate Studies
Mortgage Course – Bronx, NY
EPA Certificate
Lead Paint Certificate Osha”

(DED Exhibit 7)

Fabiola Molina stated “I am a real estate broker. I purchase some houses and renovate for some investment, and I start to like it.” She described her technical training as “Most of the courses I have to do is online...That knowledge, I got all those courses online. That’s what I have, online courses.” (DED Exhibit 8)

Ms. Molina testified that she has experience purchasing and renovating distressed properties for investment. She was “involved in everything”, including doing the repairs, the contracts and the materials and learned everything to “be in compliance”. She has taken online courses for certification with OSHA, EPA and DCA. She has a General Contractor License. She explained that she needed to have “all knowledge in construction” to obtain her General Contractor License. She knows how to read architect drawings to show the electricians, plumbers and labor workers “where everything goes.” (Hearing Testimony of Fabiola Molina; DED Exhibit 8)

Ms. Molina’s credible testimony and her responses contained in the site interview demonstrated that she has the working knowledge necessary to review or evaluate the work of more experienced employees and that she possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons. She has a General Contractor license, and is certified with EPA, OSHA and DCA. She has experience purchasing distressed properties and renovating them for investment. Her experience and online certification courses allow her to “know everything about construction”, including interior improvement. She testified that she had to learn the “construction book” in order to receive her General Contractor license from NYC DOB. (Hearing Testimony of Fabiola Molina: DED Exhibit 8)

Ms. Molina stated that her language barrier may have affected her responses in the application. Ms. Molina’s testimony clarified information that was included in the application and site interview. (Hearing Testimony of Fabiola Molina; DED Exhibit 1) “It is not only appropriate for an agency to consider the testimony offered at an administrative hearing in rendering its decision, it is required, as “[n]o decision, determination or order shall be made except upon consideration of the record as a whole.”” *Scherzi*, 197 A.D.3d 1469.

The Division’s determination to deny the application on the basis that ASA failed to demonstrate that Fabiola Molina possesses adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1), is not supported by substantial evidence.

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 eligibility criteria for WBE certification requires that the woman owner “exercises the authority to control independently the day-to-day business decisions of the enterprise”. See *In the Matter of Upstate Electrical, LLC v. New York State Department of Economic Development*, 179 A.D. 3d 1343 (3rd Dept. 2020). 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...” *J.C. Smith, Inc. v. New York State Department of Economic Development*, 163 A.D.3d 1517 (4th Dept. 2018).

Even where a woman-owner had no training or experience in the industry, and was denied certification, the Court still found that “so long as the woman seeking certification retains operational control of the enterprise, technical expertise is not necessary...” *C.W. Brown Inc. v. Canton*, 216 A.D.2d 841, 842 (3d Dept. 1995)

Here, the Division argued that the applicant failed to provide sufficient evidence to establish that Ms. Molina makes operational decisions, on a day-to-day basis with respect to the critical functions of the business. The Division determined the critical functions to be “home improvement contractors and home improvement renovation” (DED Exhibit 2)

The application states that Fabiola Molina handles financial decisions, negotiating bonding, hiring and firing, purchasing equipment/sales, managing and signing payroll, negotiating contracts and acts as signatory for business accounts. Emilexis Medina, the manager, handles estimating and preparing bids. Stephanie Molina, the secretary, handles negotiating insurance. Amairanis Merced, the marketing manager, handles marketing and sales. Alessandro Galiardo, the field manager, handles supervising field operations. (DED Exhibit 1)

Fabiola Molina’s resume lists her duties at ASA as follows:

- “Oversee all business operations including budgeting, construction oversight, contract negotiation, and vendor management
- Supervise project managers and construction teams across multiple job sites
- Ensure full compliance with DOB, insurance, city/state building codes, and permit requirements
- Lead business development, estimating, subcontractor management, and quality control
- Directly responsible for hiring, financing, marketing, and legal oversight of the company”

(DED Exhibit 7)

A narrative provided with the application states that Fabiola Molina is “responsible for overseeing all daily operations including budgeting, client negotiations, subcontractor

coordination, permitting, and quality control. I work a minimum of 50 hours per week managing job sites, purchasing materials, reviewing project scopes, approving financials, and supervising staff". She also leads "strategic planning and ensure compliance with state and city regulations." (DED Exhibit 9) Her role is to "manage, supervise, control." (Hearing Testimony of Fabiola Molina)

Ms. Molina originally wanted to become an architect but became a real estate broker. In 1998, Ms. Molina purchased and began renovating distressed properties for investment and "started liking it". She was "involved in everything", including doing the repairs, the contracts and the materials and learned everything required to "be in compliance". She has taken online courses for certification with OSHA, EPA and DCA and has a Home Improvement Contractor License issued by NYC Consumer and Worker Protection. She has a General Contractor License with NYC DOB and had to learn the "construction book" in order to obtain this license. She explained that she needed to have "all knowledge in construction" to obtain her General Contractor License. She learned how to read architect drawings and is able to show the electricians, plumbers and labor workers "where everything goes." (Hearing Testimony of Fabiola Molina; DED Exhibits 5 and 8)

Stephanie Samuel testified that the estimating, bidding and supervising field operations are the critical functions of the business. She testified that the application reflects that these duties are performed by the employees, not Fabiola Molina. (Hearing Testimony of Stephanie Samuel)

Ms. Molina controls estimating and preparing bids. She has Emilexis Medina type up the estimates and bids based upon numbers furnished by Ms. Molina. Ms. Molina meets with the clients to determine the scope of work. She speaks with the subcontractors and requests quotes. She prepares the proposal by also getting quotes from the electrician and plumber, when needed. She meets again with the client to finalize the proposal. If the bid is not competitive, Ms. Molina

will revise and negotiate with the client. Once the proposal is signed, Ms. Molina meets with the management company to discuss the scope of the work, any additional requirements and to obtain project approval. Ms. Molina handles the timing of the project dealing with everything from contacting the demolition company, the electrician and plumber, and the laborers, to making sure the project stays on schedule. She handles the ordering of the supplies and makes sure they are timely delivered to the project site. (Hearing Testimony of Fabiola Molina; DED Exhibit 8)

Ms. Molina testified that “everything that needs to be done is supervised by me” and she “approves everything before the work is done.” She personally handles all last-minute changes to the contract. Ms. Molina accompanies the plumber and electrician to the job site and “tells them what they have to do” as far as placement of the plumbing and wiring. She has every aspect of every project videotaped and she reviews everything from start to finish. She also goes to see the project. (Hearing Testimony of Fabiola Molina; DED Exhibit 8)

Ms. Molina obtains the permits, makes sure the insurance is in place, ensures that all inspections are done and that everyone is following the plans. No job is done without her approval and supervision. (Hearing Testimony of Fabiola Molina).

Ms. Molina’s credible testimony and her responses contained in the site visit interview confirmed that she does make operational decisions on a day-to-day basis with respect to the critical functions of the business. She obtains the quotes and provides the numbers for completing the estimates and bids. She personally meets with the clients to determine the scope of work, and conveys that information to the electrician, plumber and labor workers. She reviews all phases of the projects through the videos “from start to finish”, meets with the inspectors every time the electrician and plumber complete their work, to obtain the sign off on their work before the rest of the work is done, and directs the labor workers every day with their assignments. She makes sure

the final walkthrough is “immaculate clean.” (Hearing Testimony of Fabiola Molina; DED Exhibit 8)

The Division’s determination to deny the application on the basis that ASA failed to demonstrate that Fabiola Molina makes 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 not supported by substantial evidence.

CONCLUSION

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

RECOMMENDATION

For the reasons set forth above, I recommend that the Director reverse the Division’s determination to deny ASA’s application for certification as a minority and woman-owned business enterprise.

In the Matter of ASA Corner Stone Builders Corp.
 DED File ID No. 73941
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
Tribunal 1	Notice of Hearing	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Appellant's Request to Appeal Form	Y	Y
DED 4	Lead Awareness Training Certificate	Y	Y
DED 5	Home Improvement Contractor License	Y	Y
DED 6	Lead-Safe Certificate	Y	Y
DED 7	Fabiola Molina Resume	Y	Y
DED 8	Site Visit Interview Recording	Y	Y
DED 9	Duties and Responsibilities Narrative	Y	Y
DED 10	2023 U.S. Corporation Income Tax Return	Y	Y
DED 11	2024 U.S. Corporation Income Tax Return	Y	Y
DED 12	2023 U.S. Individual Income Tax Return	Y	Y
DED 13	Invoice 1	Y	Y
DED 14	Invoice 2	Y	Y
DED 15	Invoice 3	Y	Y
DED 16	Certification Application Affidavit	Y	Y