

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

In the Matter

- of -

the Application of Alternative Micrographics, Inc.
for Recertification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 58438

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
September 15, 2025

This matter considers the written appeal by Alternative Micrographics, Inc. (“Alternative Micrographics” 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 recertification as a woman-owned business enterprise (“WBE”).

PROCEDURAL HISTORY

1. On September 4, 2024, Ms. Lenore Thoms, as President, applied on behalf of Alternative Micrographics for recertification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1)
2. On January 27, 2025, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) Minority group members or women do not share in the risks and profits of the business enterprise in proportion to their equity interests therein, as required under 5 NYCRR § 144.2(b)(3); and
 - (b) Minority group members or women relied upon for certification must be the highest-ranking officer of the business enterprise for which certification is sought, and, where applicable, control the board of directors, as required under 5 NYCRR §144.2(d)(1).
3. Alternative Micrographics timely filed a Request to Appeal on February 4, 2025. (DED Exhibit 3)
4. A notice to proceed via written appeal was sent to Alternative Micrographics on February 12, 2025. (DED Exhibit 4)

5. Alternative Micrographics filed its written appeal by letter dated March 12, 2025, with attachments. (APP Exhibit A)
6. The Division filed an Affidavit of Glenn Butler, Associate Certification Director, dated August 14, 2025, and a brief of Candace Williamson Esq., counsel for the Division, dated August 15, 2025.

FINDINGS OF FACT

7. Alternative Micrographics provides records management services including scanning and microfilm conversion, and imaging. (DED Exhibit 1)
8. Ms. Lenore Thoms is the President and has a 61% ownership interest. Mr. James Thoms, her husband, is a Vice President and has a 20% ownership interest. Their son, Mr. James M. Thoms is a Vice President and has a 19% ownership interest. (DED Exhibit 1)
9. In 2022, Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss for Lenore Thoms, a distribution of \$[REDACTED], and \$[REDACTED] in interest income. The W-2 evidenced wages for Lenore Thoms in the amount of \$[REDACTED]. Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss, a distribution of \$[REDACTED] and interest income in the amount of \$[REDACTED] for James Thoms. The W-2 evidenced wages in the amount of \$[REDACTED] for James Thoms. Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss, a distribution in the amount of \$[REDACTED] and interest income in the amount of \$[REDACTED] for James M. Thoms. The W-2 evidenced wages in the amount of \$[REDACTED] for James M. Thoms. (DED Exhibits 5 and 6)
10. In 2023, Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss for Lenore Thoms, a distribution of \$[REDACTED], and \$[REDACTED] in interest income. The W-2 evidenced wages for Lenore Thoms in the amount of \$[REDACTED]. Schedule K-1 evidenced a -\$[REDACTED] ordinary business

loss, a distribution of \$[REDACTED] and interest income in the amount of \$[REDACTED] for James Thoms. The W-2 evidenced wages in the amount of \$[REDACTED]. Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss, a distribution in the amount of \$[REDACTED] and interest income in the amount of \$[REDACTED] for James M. Thoms. The W-2 evidenced wages in the amount of \$85,569.48. (DED Exhibits 7 and 8)

11. Ms. Thoms and her husband, James Thoms, are co-owners of JLT, LLC, a holding company which owns the property and building leased by Alternative Micrographics. The Commercial Lease Agreement provides that Alternative Micrographics shall pay the sum of \$[REDACTED] per month for the term of the lease. It further provides that Alternative Micrographics shall pay for all utilities and taxes on the leased property. Mr. and Ms. Thoms received \$[REDACTED] in each of 2022 and 2023 as rental income from Alternative Micrographics. (DED Exhibits 1, 11, 12 and 13)

12. The Board of Directors consists of Lenore Thoms, James Thoms and James M. Thoms. (APP Exhibit A)

13. Article III Section 1 of the Bylaws states “The business and affairs of the corporation shall be managed by its Board of Directors.” Article III Section 6 states “A majority of directors ...shall constitute a quorum for the transaction of business at any meeting of the Board of Directors...” Article III Section 7 states “The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.” Article IV, Section 5 states “The President shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the corporation.” (DED Exhibit 9)

APPLICABLE LAW

5 NYCRR §144.2(b)(3) states in relevant part as follows:

Risks and profits. Minority group members and women relied upon for certification must share in the risks and profits of the business enterprise for which certification is sought in proportion to their equity interest therein...

5 NYCRR §144.2(d)(1) states as follows:

Control of business management. A minority group member or woman relied upon for certification must be the highest-ranking officer of the business enterprise for which certification is sought, and, where applicable, control the board of directors or serve as a general partner. Any agreements describing the management of the business enterprise shall be consistent with the foregoing.

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 Alternative Micrographics for recertification 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. Prior Certification

The Division acknowledges that Alternative Micrographics was previously certified as a woman-owned business enterprise. The Division asserts that it is not bound to recertify a WBE if its prior determinations were made in error. The Division argues that based on the application and supplemental material submitted by applicant, Division staff correctly determined that applicant was not eligible for recertification.

The Division is correct that it is not obligated to certify Alternative Micrographics based on its prior determinations. It is well settled that the doctrine of equitable estoppel cannot, as a general rule, be invoked against a governmental agency in the exercise of its governmental function. See *Matter of Daleview Nursing Home v. Axelrod*, 62 N.Y.2d 30 (1984); *Matter of Atlantic States Legal Foundation, Inc. v. New York State Department of Environmental Conservation*, 119 A.D.3d 1172 (2014).

With the expiration of its certification, Alternative Micrographics had the burden to demonstrate compliance with the eligibility criteria outlined at 5 NYCRR former §144.2 when it submitted the September 4, 2024, application and supporting materials, and cannot rely on the past determinations of the Division.

II. Ownership

5 NYCRR §144.2(b)(3) requires that the woman-owner must enjoy the customary incidents of ownership and must share in the risks and profits in proportion to her ownership interest in the business.

The Division routinely denies certification where the woman-owner does not share in the risks and profits in proportion with her ownership interest. See *Matter of Spring Electric, Inc.*, Recommended Order dated March 17, 2017, Final Order 17-21 dated March 27, 2017; *Matter of C.W. Brown, Inc. v. Canton*, 216 A.D. 3d 841 (3rd Dept. 1995).

In 2022, Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss for Lenore Thoms, a distribution of \$[REDACTED], and \$[REDACTED] in interest income. The W-2 evidenced wages for Lenore Thoms in the amount of \$[REDACTED]. Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss, a distribution of \$[REDACTED] and interest income in the amount of \$[REDACTED] for James Thoms. The W-2 evidenced wages in the amount of \$[REDACTED] for James Thoms. Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss, a distribution in the amount of \$[REDACTED] and interest income in the amount of \$[REDACTED] for James M. Thoms. The W-2 evidenced wages in the amount of \$[REDACTED] for James M. Thoms. (DED Exhibits 5 and 6)

In 2023, Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss for Lenore Thoms, a distribution of \$[REDACTED], and \$[REDACTED] in interest income. The W-2 evidenced wages for Lenore Thoms in the amount of \$[REDACTED]. Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss, a distribution of \$[REDACTED] and interest income in the amount of \$[REDACTED] for James Thoms. The W-2 evidenced wages in the amount of \$[REDACTED]. Schedule K-1 evidenced a -\$[REDACTED] ordinary business loss, a distribution in the amount of \$[REDACTED] and interest income in the amount of \$[REDACTED] for James M. Thoms. The W-2 evidenced wages in the amount of \$[REDACTED]. (DED Exhibits 7 and 8)

Ms. Thoms received less compensation than both James Thoms and James M. Thoms in each of 2022 and 2023. Therefore, she does not share in the profits in proportion to her 61% ownership interest.

Ms. Thoms and her husband, James Thoms, are co-owners of JLT, LLC, a holding company which owns the property and building used by Alternative Micrographics. The Commercial Lease Agreement provides that Alternative Micrographics shall pay the sum of \$█████ per month for the term of the lease. It further provides that Alternative Micrographics shall pay for all utilities and taxes on the leased property. Mr. and Ms. Thoms received \$█████ in each of 2022 and 2023 as rental income from Alternative Micrographics. (DED Exhibits 1, 11, 12 and 13)

On appeal, Ms. Thoms argues that the rental income received in 2022 and 2023, as well as the property taxes paid by Alternative Micrographics, should be included in the calculation of her total compensation. (APP Exhibit A) However, the rental income is paid to Lenore and James Thoms as co-owners of the property. Also, there is no documentation to support the claim that property taxes “amounts to an approximate savings to the Landlord of \$█████ per month.” (APP Exhibit A)

Even if one-half of the rental income was added to the total compensation of each of James and Lenore Thoms, Lenore Thoms still would not share in the profits in proportion to her 61% ownership interest. Attributing one-half of the rental income (\$█████ per year) to each of James Thoms and Lenore Thoms, Lenore Thoms’ total compensation for 2022 would be \$█████, and James Thoms total compensation for 2022 would be \$█████, while James M. Thoms’ total compensation was \$█████. (DED Exhibits 5 and 6) For 2023, Lenore Thoms’ total compensation would be \$█████ and James Thoms’ total compensation would be \$█████; while James M. Thoms’ total compensation was \$█████. (DED Exhibits 7 and 8)

On appeal, Ms. Thoms states “While I may not receive the commiserate (sic) share of income based on my share of ownership, that is a decision I have made for myself and the

company, which will ultimately increase in value due to not having to pay an overburdensome amount to its majority shareholder.” (APP Exhibit A) This does not satisfy the requirement under 5 NYCRR §144.2(b)(3) that she share in the profits in proportion to her ownership interest.

The Division’s determination to deny the application on the basis that Alternative Micrographics failed to demonstrate that Ms. Thoms shared in the profits in proportion to her ownership interest, as required under 5 NYCRR §144.2(b)(3), is supported by substantial evidence.

III. Control

The Division also denied certification on the ground that Ms. Thoms does not control the board of directors, as required under 5 NYCRR §144.2(d)(1).

Lenore Thoms, James Thoms and James M. Thoms are the directors of Alternative Micrographics. (APP Exhibit A)

Article III Section 1 of the Bylaws states “The business and affairs of the corporation shall be managed by its Board of Directors.” Article III Section 6 states “A majority of directors ...shall constitute a quorum for the transaction of business at any meeting of the Board of Directors...” Article III Section 7 states “The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.” Article IV, Section 5 states “The President shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the corporation.” (DED Exhibit 9)

Since there needs to be a majority of the Board of Directors present to transact business, Ms. Thoms cannot make decisions without either James Thoms or James M. Thoms.

Ms. Thoms argues on appeal that “Generally, a majority shareholder (holding more than 50% of the shares) has significant influence over the corporation’s decisions, including the election and removal of board members... If I decided to sell, or mortgage the Corporation, there would [be] no ability... for the minority shares to stop the process.” Ms. Thoms also states, “the Director of Certification failed to recognize the provisions of [Article IV] Section 5 of the By-laws regarding the duties of the President of the By-laws (sic) whereby it states: The President shall be the Principal Executive Officer of the Corporation and, subject to control of the Board of Directors, shall in general supervise and control all of the business of the (sic) affairs of the Corporation.” (APP Exhibit A) However, Article IV, Section 5 clearly states that the President is subject to control of the Board of Directors. Since a majority of the Board of Directors is required to act, Ms. Thoms cannot individually control the Board. (DED Exhibit 9)

The Division’s determination to deny the application on the basis that Ms. Thoms does not control the board of directors, as required under 5 NYCRR §144.2(d)(1), is supported by substantial evidence.

CONCLUSION

Alternative Micrographics did not meet its burden to demonstrate that the Division’s determination to deny its application for recertification as a woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(b)(3) and 144.2(d)(1), 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 Alternative Micrographics’ application for recertification as a woman-owned business enterprise.

In the Matter of Alternative Micrographics, Inc.
DED File ID No. 58438
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Appeal Letter dated March 12, 2025, with exhibits	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	2022 Business Tax Returns	Y	Y
DED 6	2022 W-2 Statements	Y	Y
DED 7	2023 Business Tax Returns	Y	Y
DED 8	2023 W-2 Statements	Y	Y
DED 9	Corporation Bylaws	Y	Y
DED 10	Business Meeting Minutes	Y	Y
DED 11	2022 Joint Personal Tax Return	Y	Y
DED 12	2023 Joint Personal Tax Return	Y	Y
DED 13	Commercial Lease Agreement	Y	Y