

**NEW YORK STATE**  
**DEPARTMENT OF ECONOMIC DEVELOPMENT**  
**625 BROADWAY**  
**ALBANY, NEW YORK 12207**

**In the Matter**

**- of -**

**the Application of Besroi Construction Corp.**  
**for Certification as a Woman-Owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 54886**

**RECOMMENDED ORDER**

**-by-**



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**Deidre A. Chuckrow**  
**Administrative Law Judge**  
**December 5, 2023**

This matter considers the written appeal by Besroi Construction Corp., (“Besroi” 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 July 7, 2020, Besroi applied for certification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1).
2. On April 28, 2023, the Division denied the application on the following grounds (DED Exhibit 2):
  - (a) Minority group members or women relied upon for certification have not demonstrated having made a capital contribution to the business enterprise proportionate to their equity interest therein, as demonstrated by but not limited to, contributions of money, property, equipment or expertise, as required under 5 NYCRR §144.2(b)(2);
  - (b) Minority group members or women relied upon for certification do not 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
  - (c) Minority group members or women relied upon for certification do not 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. Besroi submitted a request to appeal the denial determination on May 18, 2023. (DED Exhibit 3).
4. A Notice to Proceed Via Written Appeal was sent to Besroi on May 23, 2023 (DED Exhibit 4).
5. Besroi's written appeal, with exhibits, was filed by Daniel E. Sarzynski, Esq., on June 26, 2023. (APP Exhibit A)
6. The Division filed an Affidavit of Amanda Brennan, Project Director, dated September 21, 2023 and a brief of Karen L. Bernstein, Esq., counsel for the Division, dated September 22, 2023.

#### **FINDINGS OF FACT**

7. Besroi is a construction company engaged in the business of home improvement for residential and commercial clients. (DED Exhibit 1).
8. Besroi based its application on both Dawn Tabaczyski and Gertrude Kaminski. According to the application, Dawn Tabaczyski is the President and 40.2% owner and Gertrude Kaminski, Ms. Tabaczyski's mother, also owns 40.2% of the business enterprise. Brian Kaminski, Ms. Tabaczyski's brother, is the Secretary, and owns 19.7% of Besroi. (DED Exhibit 1).
9. Besroi was established in 1960 and has had several ownership changes since its creation. Richard and Gertrude Kaminski, Ms. Tabaczyski's parents, gifted equity in the business enterprise to their children. Ms. Kaminski obtained her share in 1988. Ms. Tabaczyski and Mr. Brian Kaminski obtained their shares in 1995. As per the application, the shares were gifted, and no consideration was paid by Ms. Kaminski, Ms. Tabaczyski, or Mr. Kaminski for their ownership interests. Narratives regarding capital contribution, submitted with the

application, state that Ms. Tabaczynski “was gifted equity over the course of several years in recognition of her work in the business.” (DED Exhibits 1 and 6).

10. Besroi’s Board of Directors consists of Ms. Tabaczynski and Mr. Kaminski. The business enterprise has three managerial employees which include Ms. Tabaczynski, President and Treasurer, Mr. James Hockwater, Operations Manager, and Mr. Brian Tabaczynski, Office Manager. (DED Exhibit 1).
11. The critical functions of the business, based on the products and services provided and the means by which contracts and orders are obtained by Besroi are roofing, siding, window replacement, and gutter installation for residential and commercial clients. Preparing bids, obtaining contracts, and supervising field operations are all critical functions of the business enterprise. (DED Exhibit 1).
12. Ms. Tabaczynski’s resume states that she was a secretary for the applicant business for over 30 years, and in that role performed administrative functions, and has been the President of Besroi for the past 10 years. As President she “completes cost and time estimates,” manages office functions, which include accounts payable and receivable, and manages the day-today operations of the business. (DED Exhibit 8).
13. Ms. Kaminski’s resume states that she has 39 years of experience as an office manager for the business enterprise, where she answered phones, communicated with clients, engaged in payroll and accounting, and managed office employees. (DED Exhibit 8).
14. Mr. Brian Kaminski’s resume states that he has worked at Besroi for almost 50 years, and in that time has worked as a roofing and siding technician, an office manager, as foreman, and business manager. His experience includes completing roofing and siding operations,

managing office staff, supervising field operations, and day-to-day management of business operations. (DED Exhibit 8).

15. A narrative included in the application states that Mr. Brian Kaminski is not involved with the day-to-day operations of the business. (DED Exhibit 1).
16. Mr. Hockwater's resume states that he has worked for Besroi for 36 years and is the Operations Manager of New Work Construction. He schedules and manages new work construction, orders materials for that construction, engages in blueprint reading and estimating, and supervises and organizes work crews. Mr. Hockwater devotes approximately 50 hours a week to the business enterprise. (DED Exhibits 1 and 8).
17. Mr. Brian Tabaczynski's resume states that he has experience in the sales and installation of granite, field production installation of siding and roofing for residential homes and has worked for Besroi for 5 years as the Office Manager for the rework residential division where he prepares bids for existing residential homes and handles marketing and advertising for the business enterprise. Mr. Tabaczynski devotes approximately 50 hours a week to the business enterprise. (DED Exhibits 1 and 8).
18. According to the application, Ms. Tabaczynski is responsible for Besroi's financial decisions, negotiating insurance, marketing and sales, hiring and firing, supervising field operations, purchasing equipment/sales, managing and signing payroll, and negotiating contracts. She is also the authorized signatory for the business accounts. Ms. Tabaczynski, Mr. Hockwater, and Mr. Tabaczynski share the responsibilities of estimating and preparing bids. (DED Exhibit 1).
19. Narratives provided with the application also state that Ms. Tabaczynski oversees all facets of the business enterprise and "exercises authority over every business decision relating to day-to-day managerial operations of the Corporation," and that "her duties may change on a daily

basis depending on the needs of the business, . . .” In addition, during her time at Besroi she has “refined her knowledge of the materials and installation procedures used in the field by accompanying the founders and the labor teams on job sites to develop an expertise for the installation of the materials . . .” etc. (DED Exhibits 1, 5, and 9).

20. Ms. Tabaczynski devotes approximately 50 hours a week to the applicant business. (DED Exhibits 1 and 5).

21. Ms. Kaminski’s job duties include advising the business on financial issues and decisions on future business growth. She does not have designated hours at the business enterprise. (DED Exhibits 1 and 5).

### **APPLICABLE LAW**

5 NYCRR § 144.2 (b)(2) states as follows:

Capital Contribution. Minority group members and women relied upon for certification must demonstrate a capital contribution to the business enterprise for which certification is sought proportionate to their equity interest therein.

- (i) Sources of capital contribution. Minority group members and women may demonstrate a capital contribution by providing documentary evidence of, for example and without limitation, one of more of the following:
  1. Money;
  2. Property;
  3. Equipment; or
  4. Expertise, provided that the contribution of such expertise must be uncompensated the expertise must be specialized and directly applicable to one or more critical aspects of the operation of the business enterprise, and a reasonable assessment of the fair market value of the expertise must be clearly documented.

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

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:

- (ii) 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;
- (iii) The extent to which academic credentials exist for persons employed in the industry; and
- (iv) The extent to which industry-specific expertise may be obtained via direct work experience.

5 NYCRR § 144.2 (c)(2) states as follows:

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 critical 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 GPN Electric 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. Ownership

The Division denied Besroi’s application for certification as a WBE on the basis that Besroi failed to demonstrate that the parties relied upon for certification made capital contributions proportionate to their equity interest therein, as required by 5 NYCRR § 144.2(b)(2). (DED Exhibit 2). The Division interprets this regulation to require an applicant to demonstrate that the women owners contributed, “as demonstrated by, but not limited to, contribution of money, property, equipment, or expertise,” in proportion “to their equity interest in the business enterprise.” (5 NYCRR § 144.2(b)(2) and see *A.A.C. Contracting, Inc. v NYS Dept. of Economic Development*, 195 A.D. 3d 1284, 151 NYS 3d 187 (3d Dept. 2021)). The applicant must substantiate that the source of the capital contribution is by the minority group member or woman owner. (See *Matter of Otone Mechanical Construction, Inc.*, Recommended Order, April 24, 2015 (Final Order 17-28, May 2, 2017), and *Matter of Spring Electric, Inc.*, Recommended Order, March 17, 2017 (Final Order 17-21, March 27, 2017)). In addition, the Division requires an applicant to demonstrate that the contribution is proportionate to an owner’s equity interest in the business enterprise even if the interest has been inherited or gifted. (See *Matter of Coverco, Inc.*, Recommended Order, December



12, 2017 (Final Order 17-06), January 30, 2017; *Matter of Beam Mack Sales & Services, Inc.*, Recommended Order, May 25, 2017 (Final Order 16-55, Nov. 1, 2016); *Matter of Friend Commercial Contracting, Corp.*, Recommended Order May 11, 2016, (Final Order 16-15, May 16, 2016)).

The regulations also require that women owners, relied on for certification, own at least 51% of the business. Where two or more owners are relied upon for certification, while their ownership shares may be combined to reach 51%, each must reach all other thresholds for ownership individually. (See 5 NYCRR §§ 144.2(a) and 144.2(b)(1)). Therefore, **each** woman “relied upon for certification must demonstrate a capital contribution to the business enterprise ... proportionate to their equity interest therein.” (emphasis added) (5 NYCRR § 144.2(b)(2)).

The Applicant bears the burden in establishing that they have met this certification requirement. Failure to satisfy this burden is proof that the denial was supported by substantial evidence. See *A.A.C. Contracting, Inc. v. NYS Dept. of economic Development*, 195 A.D. 3d 1284, 151 NYS 3d 187 (3d Dept. 2021).

As a threshold matter, this Tribunal must address that Applicant’s written appeal submission only addresses the denial determination as it relates to Ms. Tabaczynski and is silent regarding Ms. Kaminski. Besroi’s application, however, lists both Dawn Tabaczynski and Gertrude Kaminski as women owners, and states that each owns 41 shares of the business, or 40.2%. (DED Exhibit 1). Therefore, both Ms. Tabaczynski and Ms. Kaminski must be relied upon for certification, and as such each must independently satisfy all the certification criteria. (5 NYCRR § 144.2(a)).

Applicant’s appeal submission also includes an affidavit of Ms. Tabaczynski that states, “As of today, I own 67.12% of Besroi.” (APP Exhibit A). This one sentence indicates a possible

change in ownership since the time of the application, however, no additional information is presented in Applicant's appeal regarding the change. This information is new and was not before the Division at the time of its determination, thus, it cannot now be considered. (See 5 NYCRR § 145.2(b)(2) and *Lida Strategic Solution, Inc.*, Recommended Order, March 6, 2019 (Final Order 19-02, June 5, 2019) and *Scherzi Sys.*, supra).

The application, and the appeal submission, evidence that no monetary contributions were made by either Ms. Tabaczynski or Ms. Kaminski for their respective ownership shares. (DED Exhibit 1 and APP Exhibit A). Section 2.E. of the application states, "Shares were gifted so there [are] no recorded capital contributions." (DED Exhibit 1). However, applicant now, for the first time on appeal, states that Ms. Tabaczynski's consideration is her expertise. Specifically, the applicant states that Ms. Tabaczynski's "skill, expertise, and experience gained by working in the business for 41 years. . . is sufficient to conclude that her contribution for her equity . . . is demonstrated by her expertise." (APP Exhibit A). In support of that argument, the applicant relies on the original information before the Division, submits an affidavit of Ms. Tabaczynski, and argues that under *Scherzi Sys.*, supra, that Ms. Tabaczynski's expertise should now, on appeal, be considered as satisfying the capital contribution requirement.<sup>1</sup> (APP Exhibit A).

While the regulation does provide that expertise may qualify as a capital contribution, the applicant must demonstrate that the expertise is "uncompensated" and is "specialized and directly applicable to one or more critical aspects of the operation of the business enterprise." (5 NYCRR § 144.2(b)(2)(i)(4)). It is the responsibility of the applicant "to clearly identify, quantify, and explain on the certification application, what is considered a capital contribution." (*Scherzi*

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<sup>1</sup> Upon review the only new information included in Applicant's Written Appeal submission are Exhibits D and E. Those exhibits do not provide any clarification on issues before this tribunal and therefore will not be considered. Also included is an affidavit of Ms. Tabaczynski, which restates information already submitted to the Division, except for ¶ 6, regarding a change in the percentage of Besroi now owned by Ms. Tabaczynski.

*Systems, supra.*) Further, it is the responsibility of the applicant to clearly document a “reasonable assessment of the fair market value of the expertise.” (5 NYRR § 144.2(b)(2)(i)(4)). Here, the applicant has failed to clearly identify, quantify, and explain the value of Ms. Tabaczynski’s capital contributions and offers no explanation regarding Ms. Kaminski’s lack of capital contributions. In addition, no evidence has been presented that her work at Besroi went uncompensated. Therefore, as no evidence has been produced regarding adequate consideration for Ms. Tabaczynski’s ownership interests, the applicant has not established that she made capital contributions for her ownership interest, and as such, the Division’s denial is based upon substantial evidence and should be affirmed. (*See, A.A.C. Contracting, supra* (denial upheld where no evidence of adequate consideration for stock transfer provided with application)).

Here, there is no information presented on how Ms. Kaminski obtained her shares in the business, and the application provides that she paid no consideration at the time of their acquisition. Therefore, the applicant has not established that Ms. Kaminski made a capital contribution, of any kind, for her ownership interest, and as such, the Division’s denial is also based upon substantial evidence and should be affirmed as to Ms. Kaminski.

I find that the applicant has not demonstrated that either Ms. Tabaczynski or Ms. Kaminski made capital contributions to Besroi in proportion to their ownership interests. Thus, the Division’s determination that the parties relied upon for certification failed to demonstrate that they made a capital contribution to the business enterprise proportionate to their equity interest therein, as required under 5 NYCRR § 144.2(b)(2) is supported by substantial evidence.

## II. Industry-Specific Competence

The Division also denied Besroi’s application for certification as a WBE on the basis that Besroi failed to demonstrate that Ms. Tabaczynski and Ms. Kaminski, the parties relied upon for

certification possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required by 5 NYCRR § 144.2(c)(1). (DED Exhibit 2). “This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things.” (5 NYCRR § 144.2(c)(1)). The Division interprets this regulation to require an applicant to demonstrate that the woman-owner, relied on for certification, have the working knowledge necessary to review or evaluate the work of more experienced employees. (See *cSide Tch, LLC*, Recommended Order, August 14, 2023 (Final Order 23-08, August 17, 2023); *In the Matter of Upstate Electrical, LLC v New York State Department of Economic Development*, 179 AD3d 1343 (3d Dept. 2020) citing to *C.W. Brown, Inc. v Canton*, 216 AD 841, 842 (1995) (where the Court affirmed the denial where the woman-owner had no training or experience in the industry to make her qualified to supervise the work of her employees.)) The Division consistently requires that women owners be able to perform the core revenue generating functions of the business enterprise. (See *Matter of Bore Tech LLC*, Recommended Order dated June 1, 2021 (Final Order 21-05, dated December 22, 2021), see also, *Matter of Occupational Safety & Environmental Assoc. Inc. v New York State Department of Economic Development*, 161 AD3d 1582 (3d Dept. 2019)).

In evaluating whether a person possesses adequate, industry-specific competence, the Division must consider, but is not limited to: (i) whether the individual is required to obtain licenses or certifications in the industry; (ii) the extent that academic credentials exist for persons employed in the industry; and (iii) the extent to which industry-specific expertise can be obtained through direct work experience. The Applicant bears the burden of establishing that the women-owners relied upon for certification have met this requirement. Failure to satisfy this burden is

proof that the denial was supported by substantial evidence. See *A.A.C. Contracting, Inc. v. NYS Dept. of Economic Development*, 195 A.D. 3d 1284, 151 NYS 3d 187 (3d Dept. 2021).

Here, the information provided with the application provides that Ms. Kaminski has 39 years of work experience at Besroi, answering phones, communicating with clients, completing payroll and accounting functions, and managing office employees. (DED Exhibit 8). A narrative, included with the application, states that her current job duties include “advising the business regarding financial issues [and on] decisions on future business growth and expansion, but that she has no designated hours. (DED Exhibit 1). Additionally, nowhere in either the application, nor in anything submitted on appeal, is there any indication that Ms. Kaminski has any education, training, or experience that qualifies as adequate, industry-specific competence, nor is there any evidence about industry-specific experience gained during her employ, which would allow her to make critical business decisions without relying on other persons.

Ms. Tabaczynski’s resume provides that she manages the day-to-day operations of the business, completes cost and time estimates for roofing and siding operations, and is responsible for management of office functions, including accounting. (DED Exhibit 8). Nothing in Ms. Tabaczynski’s educational or work background provides any evidence of industry-specific training or experience. In contrast, Mr. Hockwater’s resume, states, among other functions, that he schedules and manages new work construction and supervises and organizes crews for that work, and that he has engaged in that work for 36 years. (DED Exhibit 8). Brian Tabaczynski’s resume states that he currently works as the office manager for the rework residential division, where he prepares bids and handles marketing and advertising, and states that he has prior experience in the installation of both siding and roofing. (DED Exhibit 8). Mr. Kaminski’s resume states that he currently manages the day-to-day operations of the business and supervises office employees.

(DED Exhibit 8). His experience also includes experience installing roofing and siding, as well as supervising those installations in the field. (DED Exhibit 8).

Applicant argues that Ms. Tabaczynski's 41 years working in the industry have given her adequate industry-specific competence to make critical business decisions. However, her resume, work experience, and information provided in the narratives and the appeal submission all highlight her administrative and general business management skills, not the industry-specific skills of siding and roofing. While Ms. Tabaczynski states that she is responsible for all facets of the business and manages the day-to-day operation, no details are provided regarding her industry-specific skills, which include the installation of roofing and siding. (APP Exhibit A and DED Exhibits 1, 5, 8, and 9). Instead, vague language is used, including "various functions" and "various responsibilities" with an emphasis on Ms. Tabaczynski's work on long-term strategic growth of the business, which while important, does not address her industry-specific knowledge as contemplated by the regulations. (APP Exhibit A). The Division's determination to deny certification where a woman owner has no training or experience and the operations staff have more substantive and more significant experience, has consistently been upheld. (See, *Upstate Electrical, supra*).

I find the argument, that Ms. Tabaczynski's time working at Besroi qualifies as her having industry-specific competence, unpersuasive. All the evidence presented indicates that Ms. Tabaczynski's experience is administrative and focused on office management, while Messrs. Hockwater, Tabaczynski, and Kaminski's experiences demonstrate that they either perform the field supervision required or have the training and background in the field. (DED Exhibits 1 and 8). Businesses where a non-eligible family member has either the education and/or the expertise to perform the specialized work and the owner relied upon for certification handles the

administrative aspects is considered a family-owned business, which does not meet the criteria for WBE certification. (*Matter of Occupational Safety, supra* at 1583).

Thus, the Division's determination that the parties relied upon for certification do not possess adequate, industry-specific competence to make critical business decisions without relying on others, as required under 5 NYCRR § 144.2(c)(1) is supported by substantial evidence.

### III. Operation

Finally, the Division denied Besroi's application for certification as a WBE on the basis that the business enterprise failed to demonstrate that Ms. Tabaczynski and Ms. Kaminski, make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise as required by 5 NYCRR § 144.2(c)(2). According to the regulation, the critical functions of the business enterprise shall be determined by the Division based upon, but not limited to, the following factors: (1) "The products or services the business enterprise provides to clients; and" (2) "The means by which the business enterprise obtains contracts or orders." 5 NYCRR § 144.2 (c)(2). The Division consistently denies certification where the woman-owner has no training, experience, or working knowledge in the core business functions and other employees or owners have more significant or substantive experience, and exercise that experience, such as by supervising or controlling field operations. (*Matter of Panko Electrical and Maintenance Corp. v Zapata et. al*, 172 AD3d 1682 (3d Dept. 2019), See also *Matter of Upstate Electrical, supra*).

The critical functions of Besroi are roofing, siding, window replacement, and gutter installation. (See DED Exhibit 1). The application materials are clear as it relates to Ms. Kaminski, as she is not listed as being responsible for any of the managerial operations, has no designated hours, and her experience is purely administrative. (DED Exhibits 1 and 8). Thus, it is clear that

she does not make day-to-day decisions with respect to the critical functions of the business enterprise.

The information regarding Ms. Tabaczynski differs. She is listed on the application as being responsible for all of the managerial operations, and there are vague and broad references to her being responsible for day-to-day operations in both the application and in the accompanying narratives, but without any information regarding what those operations entail. In contrast, Mr. Hockwater's resume provides details information and states that he is responsible for managing construction, supervising field operations, ordering materials, reading blueprints, and preparing estimates, all critical functions of the business. (DED Exhibit 8). Mr. Tabaczynski's resume also provides details as to his day-to-day responsibilities, stating that he is responsible for marketing and advertising, preparing estimates and bids, scheduling jobs, and ordering materials. (DED Exhibit 8). The application materials are clear that Ms. Tabaczynski shares the responsibilities of marketing and sales, supervising field operations, and purchasing equipment with both Messrs. Hockwater and Tabaczynski.

The Division is correct in its assertion that Applicant's reliance on *Matter of J.C. Smith, Inc. v NYS Dept. of Econ. Development*, is misplaced. (163 A.D. 3d 1517(4<sup>th</sup> Dept 2018). In *J.C. Smith*, the Court upheld the Division's denial of recertification, notwithstanding a finding that a woman owner, who otherwise exercises independent operational control, does not relinquish eligibility where she delegates responsibilities. (*J.C. Smith*, supra.) The Court's decision centered on the fact that the business, like Besroi, was a family-owned, and as such, family members shared operational control and responsibility for managerial decisions. (*J.C. Smith at 1520*). Here, the applicant emphasizes that it is a "family company," "family-owned business," and a "generational family-run business" in its written appeal submission. (APP Exhibit A).



As is the case with the second denial ground, as discussed *infra*, it is well settled that where the owners relied upon for certification have no training or experience in the critical functions of the business enterprise and others, with more significant experience, such as an employee or non-qualifying owner, actively engage in the core functions of the business, denial based on lack of operational control is appropriate. (See *Matter of Panko, supra*, and *Matter of Upstate Electrical, supra*). Here, the evidence presented establishes, unequivocally, that Ms. Kaminski bears no responsibility for the day-to-day operations at Besroi, and that Ms. Tabaczynski's roles are primarily administrative while others are responsible for the day-to-day operations of the roofing, siding, and gutter installation work.

Based on the foregoing, I find that the Division's determination that Besroi has not demonstrated that Ms. Kaminski and Ms. Tabaczynski 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) is supported by substantial evidence.

### **CONCLUSION**

Besroi did not meet 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(b)(2), 144.2(c)(1), and 144.2(c)(2) was not based on substantial evidence.

### **RECOMMENDATION**

The Division's determination to deny Besroi Construction Corp.'s application for certification as a woman-owned business enterprise should be affirmed.

In the Matter of Besroi Construction Corp.  
 DED File ID No. 54886  
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Written Appeal Submission with Exhibits	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Determination	Y	Y
DED 3	Request to Appeal	Y	Y
DED 4	Notice to Proceed by Written Appeal	Y	Y
DED 5	Application Narrative 1	Y	Y
DED 6	Application “Supplemental” Narrative	Y	Y
DED 7	Meeting Minutes	Y	Y
DED 8	Resumes	Y	Y
DED 9	Application Narrative 2	Y	Y