

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

**In the Matter**

**- of -**

**the Application of C EZ Key Service  
for Recertification as a Woman-owned Business Enterprise  
pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 59842**

**RECOMMENDED ORDER**

**-by-**



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**David A. Murad**  
**Administrative Law Judge**  
**January 5, 2024**

This matter considers the written appeal by C EZ Key Service, (“C EZ” 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 March 3, 2021, Ms. Ellen Addington, as owner, applied on behalf of C EZ for recertification as a woman-owned business enterprise (“WBE”) (DED Exhibit 1).
2. On June 1, 2023, the Division denied the application on the following grounds (DED Exhibit 2):
  - (a) Minority group members or women relied upon for certification do not own at least fifty-one (51) percent of the business enterprise for which certification is sought, as required under 5 NYCRR § 144.2(b)(1);
  - (b) 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);
  - (c) 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); and
  - (d) Minority group members or women relied upon for certification do not negotiate

- business contracts and represent themselves to clients as the principals of the business enterprise, as demonstrated by fully executed business agreements, as required under 5 NYCRR §144.2(d)(2); and
3. C EZ timely filed a Request to Appeal on June 21, 2023 (APP Exhibit A/ DED Exhibit 3).
  4. A notice to proceed via written appeal was sent to C EZ on June 22, 2023 (DED Exhibit 3).
  5. C EZ filed its written appeal by undated letter with attachments (APP Exhibit B).
  6. The Division filed an Affidavit of Abdul Karim Bah, Senior Certification Analyst, dated October 4, 2023, and a brief of Deidre Chuckrow Esq., counsel for the Division, dated October 11, 2023.

#### **FINDINGS OF FACT**

7. C EZ is engaged in the business of the duplication and generation of automotive keys and remotes (DED Exhibit 1).
8. Ms. Ellen Addington states that she is the 100% owner of the business (DED Exhibit 1).
9. Both Ms. Addington and her husband, Mr. Christopher Addington, have worked for the business since 2012. Ms. Addington's resume lists her as the owner of C EZ and Mr. Addington's resume states that he is the Chief Financial Officer and Service Tech for the business. Ms. Addington worked for the Albany County Airport Authority as a Senior Account Technician from 2003 to 2020. (DED Exhibits 10 and 11).
10. Both Ms. Addington and Mr. Addington operate the business, take customer calls, provide quotes, set up appointments, and check inventory, and order keys when necessary (DED Exhibits 8 and 9).
11. Tax Returns for the years 2019 through 2022 list Mr. Addington as the sole proprietor of

the business, and only Mr. Addington is listed on Schedule SE of those returns. The only W2s included with the application are for Ms. Addington, for the years 2019 through 2021, issued by the Albany County Airport Authority (DED Exhibits 4, 5, 6 and 7).

12. Ms. Addington's duties at the Albany County Airport Authority included reconciling financials, submitting items for billing, checking contractor's invoices, paying invoices, and reconciling various general ledgers, as well as monitoring FAA and NYS Grants (DED Exhibit 10).
13. Mr. Addington's work history includes 15 years as a tow truck operator in the field of auto repossession, and then several years working for another company where he generated and trained automotive keys (DED Exhibit 11).
14. The business had no current projects underway at the time of the application, and no history of bidding on work either as a prime vendor or as a subcontractor (DED Exhibit 1).

### **APPLICABLE LAW**

5 NYCRR §144.2(b)(1) states in relevant part as follows:

Fifty-one percent ownership interest. Minority group members and women relied upon for certification must own at least fifty-one (51) percent of the business enterprise for which certification is sought...

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 of 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.

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

Control of business negotiations. Minority group members and women relied upon for certification must negotiate business contracts and represent themselves to clients as the principals of business entities for which certification is sought, as demonstrated by fully executed business agreements.

### **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 C EZ 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 C EZ 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 C EZ 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 NY2d 30 (1984); *Matter of Atlantic States Legal Found., Inc. v. New York State Dept. of Environmental Conservation*, 119 AD3d 1172 (2014).

With the expiration of its certification, C EZ had the burden to demonstrate compliance with the eligibility criteria outlined at 5 NYCRR former §144.2 when it submitted the March 3, 2021, application and supporting materials and cannot rely on the past determinations of the Division.

## II. Ownership

The Division found that Ms. Addington does not own at least fifty-one (51) percent of the business enterprise, as required by 5 NYCRR §144.2(b)(1). The application states that Ms. Addington is a 100% owner of the business. The application also lists Mr. Addington as another principal or owner of the business (DED Exhibit 1). Tax Returns for the years 2019 through 2022 all (1) state that Mr. Addington is the sole proprietor of the business and that Ms. Addington is a Senior Account Technician, (2) include a W2 from the Albany County Airport Authority for Ms. Addington, and (3) list Mr. Addington's occupation as self-employed (DED Exhibits 4, 5, 6, and 7).

On appeal, Ms. Addington states that Mr. Addington is listed on Schedule C because his name is listed first on the tax return. She submitted a "Certificate of Doing Business Under an Assumed Name (d/b/a)" which lists C EZ Services as the d/b/a for Ellen L. Addington. She also

submitted other invoices which only list C EZ as the business and a Sunmark Bank statement in her name only (APP Exhibit B). These documents are new, and as such cannot now be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

The Division's determination to deny the application on the basis that C EZ failed to demonstrate that Ms. Addington owns at least fifty-on (51) percent of the business, as required under 5 NYCRR §144.2(b)(1) is supported by substantial evidence.

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 there is a disparity in compensation between the majority shareholder and other owners of the business. See *Matter of Keith Titus Corporation*, Recommended Order dated October 9, 2019, Final Order 19-28, dated January 16, 2020; *Matter of Quality Industries, Inc.*, Recommended Order dated June 4, 2019, Final Order 19-15, dated August 2, 2019; *Matter of Spring Electric*, Recommended Order dated March 17, 2017, Final Oder 17-21, dated March 27, 2017.

Tax Returns for the years 2019 through 2022 list Mr. Addington as the sole proprietor of the business, and only Mr. Addington is listed on Schedules C and SE of those returns. The only W2s included with the application are for Ms. Addington, for the years 2019 through 2021, issued by the Albany County Airport Authority (DED Exhibits 4, 5, 6 and 7). There was no documentation showing any income or distributions made by C EZ to Ms. Addington.

Where tax returns show that a husband earns more than the wife, the Division has denied certification. See *Matter of JVR Electric*, Recommended Order dated August 31, 2016, Final Order 16-43, dated September 9, 2016. Here, the tax returns do not show Ms. Addington as receiving

anything in compensation from the business. Ms. Addington therefore does not share in the profits in proportion to her equity interest.

### III. Control

Women-owners must demonstrate control of negotiations through the production of signed contracts, as required by 5 NYCRR §144.2(d)(2). Negotiating and executing contracts are related to the core business functions. Signing contracts demonstrates that a woman-owner exercises appropriate control over a business enterprise with respect to business negotiations. See *Matter of Darr Construction Equipment Corp.*, Recommended Order dated August 30, 2022, Final Order 22-11, dated November 7, 2022.

On appeal, Ms. Addington submitted a copy of liability insurance coverage listing Ms. Addington as the insured for C EZ. She also submitted a copy of the business's New York sales tax registration, which is addressed to Ms. Addington. These documents are new, and as such cannot now be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

The only documentation submitted with the application was an invoice naming Mr. Addington as the point of contact (DED Exhibit 12). Therefore, applicant failed to demonstrate appropriate control of the business by the woman-owner as required by 5 NYCRR §144.2(d)(2). See *Matter of Jaclyn Building Services*, Recommended Order dated May 23, 2016, Final Order 16-21 dated May 25, 2016 (substantial evidence supported denial where no evidence was presented that the woman-owner signs contracts on behalf of the business).

### **CONCLUSION**

C EZ 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)(1), 144.2(b)(3), 144.2(d)(1) and 144.2(d)(2) 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 C EZ's application for recertification as a woman-owned business enterprise.

In the Matter of C EZ Key Service  
 DED File ID No. 59842  
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Request to Appeal	Y	Y
APP B	Appeal Submission	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Notice to Proceed Via Written Appeal	Y	Y
DED 4	2019 Tax Return	Y	Y
DED 5	2020 Tax Return	Y	Y
DED 6	2021 Tax Return	Y	Y
DED 7	2022 Tax Return	Y	Y
DED 8	Narrative #1	Y	Y
DED 9	Narrative #2	Y	Y
DED 10	Ellen Addington's Resume	Y	Y
DED 11	Christopher Addington's Resume	Y	Y
DED 12	UHS-Key Machine Invoice	Y	Y