

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

In the Matter

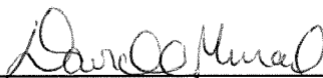
- of -

the Application of CCS Custom Construction Services Corp.
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 72099

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
March 25, 2025

This matter considers the written appeal by CCS Custom Construction Services Corp. (“CCSC” 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 19, 2024, Ms. Katarzyna Jaroszuk, as President, applied on behalf of CCSC for certification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1)
2. On June 28, 2024, 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) Ownership must not have been allocated to the minority group members or women relied upon for certification solely for the purpose of securing certification, as required under 5 NYCRR §144.2(b)(5);
 - (c) 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

(d) 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. CCSC timely filed a Request to Appeal on July 27, 2024. (DED Exhibit 19)
4. A notice to proceed via written appeal was sent to CCSC on July 29, 2024. (DED Exhibit 20)
5. CCSC submitted its written appeal by letter dated September 29, 2024, with attachments. (APP Exhibit A)
6. The Division filed an Affidavit of Matthew LeFebvre, Associate Certification Director, dated February 28, 2025, and a brief of Laurel Wedinger-Gyimesi Esq., counsel for the Division, dated March 7, 2025.

FINDINGS OF FACT

7. CCSC is engaged in the business of general contracting and mill work. (DED Exhibit 1)
8. Ms. Katarzyna Jaroszuk is the President and became a 99% owner in December 2023. CCSC was established in 2018. (DED Exhibits 1 and 17)
9. The invoices submitted for equipment purchases in support of Ms. Jaroszuk's claimed capital contribution reflect purchases by a company named Build LTD and billed to that company and George Jaroszuk (aka Jerzy Jaroszuk), applicant's husband. (DED Exhibits 1 and 5)
10. Invoices for two Mercedes automobiles show one invoice in the name of Ms. Jaroszuk, and the other in the name of Build AD Contracting LTD. (DED Exhibit 6)

11. Applicant stated, “initial contribution was made as we own BUILD AD CONTRACTING LTD, and after Katarzyna join me... we...switched all assets to CCS CUSTOM CONSTRUCTION SERVICES CORP.... Build AD Contracting LTD was old company own by Jerzy Jaroszuk, in 2018 he moved this company to CCS Custom Construction Service Corp... Katarzyn Jaroszuk she has nothing to do with Build AD Contracting LTD, she never was part of this company” (DED Exhibit 1)
12. Pursuant to the establishment of CCRS in 2018, Ms. Jaroszuk and Mr. Jaroszuk each received 50 shares of stock in CCSC, and their two children each received one share, for a total of 102 shares issued and outstanding. At that time 98 shares of CCRS remain unissued. On November 1, 2021, Mr. Jaroszuk transferred two shares to Ms. Jaroszuk, and Ms. Jaroszuk directed CCSC to issue the 98 shares to herself, resulting in her owning 150 shares. In December 2023, Mr. Jaroszuk transferred his remaining 48 shares to Ms. Jaroszuk, resulting in Ms. Jaroszuk owning 198 shares. Each transfer was based on the value of \$ [REDACTED]. (DED Exhibits 7 and 17)
13. Ms. Jaroszuk was asked about the stock ownership in her interview. She stated that “In the beginning, it was half/half. Since we want to be a Woman Business Enterprise, to fit central criteria, as he is my spouse he just give it to me.” When asked if “that was the sole reason why you became the majority owner?”, Ms. Jaroszuk stated “Pretty much. We want to work with city and state to get more jobs.” When asked if she paid anything when she received her majority shares of stock, Ms. Jaroszuk stated “No, that’s how our lawyer explained it. He’s my spouse, so he tried to give it to me.” (DED Exhibit 18)

14. Ms. Jaroszuk alleges that her contribution to the business started years before she obtained her ownership interest, as she was the primary financial provider for the family when her husband was significantly ill. (APP Exhibit A)
15. Ms. Jaroszuk has a master's degree in business administration and is a phlebotomy and EKG/ECG technician. She worked as a research coordinator from 2008 – 2016. (DED Exhibit 12)
16. Ms. Jaroszuk has a 30-hour OSHA certificate and registration as a general contractor with the New York City Dept. of Buildings. (DED Exhibit 13)
17. Mr. Jaroszuk attended Construction School and has a General Construction license. He has experience as a Construction Superintendent, Site Safety Supervisor and Supervisor of Flammable Finishing Operations. He was the owner of Build AD Contracting from 2008 - 2017 and he has been the manager of CCSC from 2018 – 2024. (DED Exhibit 12)
18. Mr. Jaroszuk is registered with the New York City Dept. of Buildings as a general contractor, and as a Construction Superintendent. He has trainings in site safety, FDNY supervision of Flam/Comb, Finishing Operations certification, 8-hour site safety manager, NYC 4 hour supported scaffold user certification, Home Improvement Salesperson license, and is licensed as a NYC Site Safety Supervisor (DED Exhibit 13)
19. Mr. Jaroszuk's duties are: "check daily office/shop and job site safety, look and hire subcontractors/employee, look and buy materials and equipment, responsible for DOB code requirements, pay bills..." (DED Exhibit 1)
20. Mr. Jaroszuk "is a fully qualified Project Manager and is licensed by the City of New York and is absolutely essential for CCSC to conduct day-to-day operations." (DED Exhibit 17)

21. Ms. Jaroszuk's duties are: "review and sign contracts, discuss contract details, hire subcontractors and employee, check office and job site safety, responsible for DOB code requirements..." (DED Exhibit 1)
22. Ms. Jaroszuk's day-to-day activities include meeting with super/project manager for a report, checks emails, orders materials, attends meetings, looks for work, goes to the job site for meetings, payment requests, and invoicing. (DED Exhibit 18)
23. Ms. Jaroszuk does "not do our own estimates, I hired a professional estimator... It is I who deal with all of the insurance, Workers Comp and Disability, Liability Insurance and Automotive Insurance... I have been the financial party responsible for payroll, insurance, accounting, job progress, progress payments, change orders, etc... I am the one who maintains and organizes the project files and sets up payments and maintains the complex paperwork required on almost a daily basis. I am the one who makes the payroll checks and makes payment for everything from materials to taxes. I am the one who knows where all of this is, because my husband is the one who is the project manager on site and he is the company interface with the fireman and the workers." (APP Exhibit A)

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 or 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(b)(5) states as follows:

Pro forma ownership. Ownership interests in a business enterprise may not be allocated to minority group members or women, either through business formation or the transfer of ownership interests, solely for the purpose of securing certification of such business enterprise as a minority or woman-owned business enterprise. Where a minority group member or woman relied upon for certification obtains his or her ownership interest in a business enterprise through a transfer from another person, such minority group member or woman must demonstrate that such transfer was supported by reasonable consideration and must meet all other certification criteria described herein.

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.

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 CCSC 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 interprets 5 NYCRR §144.2(b)(2) to require an applicant to demonstrate that the woman-owner's contribution came from assets belonging solely to the woman-owner. Given this criterion, the Division consistently denies applications for WBE certification where, as here, an applicant fails to substantiate the source of the capital contribution by the woman-owner. See *Matter of Otone Mechanical Construction, Inc.*, Recommended Order dated April 24, 2015 (Final Order 17-28, May 2, 2017), *Matter of Spring Electric, Inc.*, Recommended Order dated March 17, 2017 (Final Order 17-21, dated March 27, 2017).

The Applicant bears the burden in establishing that she has 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).

Even if the ownership interest in the business has been inherited or gifted, the Division requires the woman-owner to demonstrate that her contribution is proportionate to her equity interest. *Matter of Coverco, Inc.*, Recommended Order dated January 23, 2017, Final Order 17-06, dated January 30, 2017.

The invoices submitted for equipment purchases in support of Ms. Jaroszuk's claimed capital contribution reflect purchases by a company named Build LTD and billed to that company and George Jaroszuk (aka Jerzy Jaroszuk), applicant's husband. (DED Exhibits 1 and 5) Invoices for two Mercedes automobiles show one invoice in the name of Ms. Jaroszuk, and the other in the name of Build AD Contracting LTD. (DED Exhibit 6)

Applicant stated, "initial contribution was made as we own BUILD AD CONTRACTING LTD, and after Katarzyna join me... we...switched all assets to CCS CUSTOM CONSTRUCTION SERVICES CORP.... Build AD Contracting LTD was old company own by Jerzy Jaroszuk, in 2018 he moved this company to CCS Custom Construction Service Corp... Katarzyn Jaroszuk she has nothing to do with Build AD Contracting LTD, she never was part of this company" (DED Exhibit 1)

Pursuant to the establishment of CCRS in 2018, Ms. Jaroszuk and Mr. Jaroszuk each received 50 shares of stock in CCSC, and their two children each received one share, for a total of 102 shares issued and outstanding. At that time 98 shares of CCRS remain unissued. On November 1, 2021, Mr. Jaroszuk transferred two shares to Ms. Jaroszuk, and Ms. Jaroszuk directed CCSC to

issue the 98 shares to herself, resulting in her owning 150 shares. In December 2023, Mr. Jaroszuk transferred his remaining 48 shares to Ms. Jaroszuk, resulting in Ms. Jaroszuk owning 198 shares. Each transfer was based on the value of \$[REDACTED]. (DED Exhibits 7 and 17)

Ms. Jaroszuk was asked about the stock ownership in her interview. She stated that “In the beginning, it was half/half. Since we want to be a Woman Business Enterprise, to fit central criteria, as he is my spouse he just give it to me.” When asked if “that was the sole reason why you became the majority owner?”, Ms. Jaroszuk stated “Pretty much. We want to work with city and state to get more jobs.” When asked if she paid anything when she received her majority shares of stock, Ms. Jaroszuk stated “No, that’s how our lawyer explained it. He’s my spouse, so he tried to give it to me.” (DED Exhibit 18)

Ms. Jaroszuk failed to establish that she contributed assets belonging solely to her. The assets came from Mr. Jaroszuk’s prior business. Ms. Jaroszuk stated that she was not part of that business. (DED Exhibits 1, 5 and 6) Also, Ms. Jaroszuk stated that she did not pay anything for her majority shares (DED Exhibit 18)

On appeal, Ms. Jaroszuk alleges that her contribution to the business started years before she obtained her ownership interest, as she was the primary financial provider for the family when her husband was significantly ill. However, Ms. Jaroszuk did not establish that monies earned by her purchased the equipment that was transferred to CCSC. (APP Exhibit A) She also did not quantify the claimed value of the services she rendered in order to obtain her ownership interest in CCSC.

5 NYCRR §144.2(b)(2)(i) states that “Minority group members or women may demonstrate a capital contribution by providing documentary evidence of ... (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.” Where applicant provided no valuation of the owner’s expertise, the Division was not able to ascertain whether the contribution was proportionate. *Matter of JVR Electric, Inc.*, Recommended Order dated August 31, 2016, Final Order 16-43 dated September 9, 2016.

Ms. Jaroszuk does not claim expertise in the business. She failed to quantify the alleged value of the services she rendered until submission of the appeal papers. This information was not before the division at the time of the denial determination and is therefore new evidence which will not be considered. Scherzi Systems, LLC v. White, 197 A.D.3d 1466 (3d Dept 2021). Even considering this argument, the appeal papers fail to establish how the claimed \$[REDACTED] capital value of the services rendered to her family, and not the business, were directly applicable to one or more critical aspects of the operation of the business enterprise, as required under 5 NYCRR §144.2(b)(2)(i). (APP Exhibit A)

The Division’s determination to deny the application on the basis that CCSC failed to demonstrate that Ms. Jaroszuk made contributions to CCSC in proportion to her ownership interest, as required under 5 NYCRR §144.2(b)(2) is supported by substantial evidence.

Where a woman relied upon for certification obtains her ownership interest through a transfer from another person, the applicant “must demonstrate that such transfer was supported by reasonable consideration and must meet all other certification criteria...” 5 NYCRR §144.2(b)(5).

Ms. Jaroszuk was asked about the stock ownership in her interview. She stated that “In the beginning, it was half/half. Since we want to be a Woman Business Enterprise, to fit central criteria, as he is my spouse he just give it to me.” When asked if “that was the sole reason why you became the majority owner?”, Ms. Jaroszuk stated “Pretty much. We want to work with city and

state to get more jobs.” (DED Exhibit 18) Therefore, the transfer was made solely for the purpose of obtaining WBE certification. Also, the transfer was not made for reasonable consideration. As stated above, the assets from Build AD Contracting LTD can only be attributed to Jerzy Jaroszuk, not from Kathryn Jaroszuk, and the ownership interests were all valued at \$[REDACTED]. In addition, Ms. Jaroszuk stated that she did not pay anything for her ownership shares (DED Exhibits 1, 5, 6, 7 and 18)

The Division’s determination to deny the application on the basis that Ms. Jaroszuk failed to demonstrate that the ownership interest she received was not for the sole purpose of securing certification as required under 5 NYCRR §144.2(b)(5), is supported by substantial evidence.

II. Operation

5 NYCRR §144.2(c)(1) requires that the woman-owner possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. 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 AD3d, 1517 (4th Dept. 2018).

Ms. Jaroszuk has a master’s degree in business administration and is a phlebotomy and EKG/ECG technician. She worked as a research coordinator from 2008 – 2016. (DED Exhibit 12)

Mr. Jaroszuk attended Construction School and has a General Construction license. He has experience as a Construction Superintendent, Site Safety Supervisor and Supervisor of Flammable Finishing Operations. He was the owner of Build AD Contracting from 2008 – 2017 and he has been the manager of CCSC from 2018 – 2024. (DED Exhibit 12)

Mr. Jaroszuk is registered with the New York City Dept. of Buildings as a general contractor, and as a Construction Superintendent. He has trainings in site safety, FDNY supervision of Flam/Comb, Finishing Operations certification, 8-hour site safety manager, NYC 4 hour supported scaffold user certification, Home Improvement Salesperson license, and is licensed as a NYC Site Safety Supervisor (DED Exhibit 13)

Mr. Jaroszuk’s duties are: “check daily office/shop and job site safety, look and hire subcontractors/employee, look and buy materials and equipment, responsible for DOB code requirements, pay bills...” (DED Exhibit 1)

Mr. Jaroszuk “is a fully qualified Project Manager and is licensed by the City of New York and is absolutely essential for CCSC to conduct day-to-day operations.” (DED Exhibit 17)

Ms. Jaroszuk’s duties are: “review and sign contracts, discuss contract details, hire subcontractors and employee, check office and job site safety, responsible for DOB code requirements...” (DED Exhibit 1)

Ms. Jaroszuk described her duties as follows: “Katarzyna Jaroszuk- president, review and sign contracts, discusses contract details, hire subcontractors and employee, check office and job site safety, responsible for DOB code requirements...” She described Mr. Jaroszuk’s duties as follows: “Jerzy Jaroszuk-manager, check daily office/shop and job site safety, look and hire subcontractors/employee, look and buy materials and equipment, responsible for DOB code requirements, pay bills...” (DED Exhibit 1)

Ms. Jaroszuk stated her day-to-day activities include meeting with super/project manager for a report, checks emails, orders materials, attends meetings, looks for work, goes to the job site for meetings, payment requests, and invoicing. (DED Exhibit 18)

On appeal, Ms. Jaroszuk stated “I do not do our own estimates, I hired a professional estimator... It is I who deal with all of the insurance, Workers Comp and Disability, Liability Insurance and Automotive Insurance... I have been the financial party responsible for payroll, insurance, accounting, job progress, progress payments, change orders, etc... I am the one who maintains and organizes the project files and sets up payments and maintains the complex paperwork required on almost a daily basis. I am the one who makes the payroll checks and makes payment for everything from materials to taxes. I am the one who knows where all of this is because my husband is the one who is the project manager on site and he is the company interface with the fireman and the workers.” (APP Exhibit A)

Ms. Jaroszuk does not have any education, training, or on the job experience in construction or mill work. She is registered as a general contractor with the New York City DOB, but she does not have any training related to the work performed by CCSC that makes her qualified to supervise the employees who perform the work. She also does not have any direct work experience performing that work. She relies on Mr. Jaroszuk to make critical business decisions concerning

the core revenue generating functions of construction and mill work. She handles the administrative functions of the business, which does not satisfy the requirements of 5 NYCRR §144.2(c)(1). (DED Exhibits 1, 12, 13 and 18)

Where it is demonstrated that the woman owner has no training or experience in the critical functions of the business, and is not performing the core business functions, and other employees have more significant experience, and exercise that experience, such as by supervising or controlling field operations, denial based on lack of operational control is appropriate. See *Matter of Panko Electrical and Maintenance Corp. v. Zapata*, 172 AD 3d 1682 (3d Dept. 2019)

The Division's determination to deny the application on the basis that CCSC failed to demonstrate that Ms. Jaroszuk 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.

CONCLUSION

CCSC 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(b)(2), 144.2(b)(5), 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 affirm the Division's determination to deny CCSC's application for certification as a woman-owned business enterprise.

In the Matter of CCS Custom Construction Services Corp.
DED File ID No. 72099
Exhibit Chart

Exhibit #	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Written Appeal	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Agreement to Be Bound by Certification Affidavit	Y	Y
DED 4	CCSC Certificate of Incorporation	Y	Y
DED 5	Invoices for Equipment and Vehicle Purchases	Y	Y
DED 6	Invoices for Purchases of Mercedes Vehicles	Y	Y
DED 7	CCSC Stock Ledger	Y	Y
DED 8	CCSC 2022 Business Tax Return	Y	Y
DED 9	CCSC 2022 W-2s	Y	Y
DED 10	2022 Jaroszuk Joint Personal Tax Return	Y	Y
DED 11	CCSC Bank Signature Document	Y	Y
DED 12	Katarzyna Jaroszuk and Jerzy Jaroszuk Resumes	Y	Y
DED 13	Licensing Documents	Y	Y
DED 14	Leventhal Contract	Y	Y
DED 15	CCSC 2023 Business Tax Return	Y	Y
DED 16	Jaroszuk 2023 Joint Personal Tax Return	Y	Y

DED 17	Z. Robert Jankowski "Letter of Transfer"	Y	Y
DED 18	Recording of Interview of Katarzyna Jaroszuk	Y	Y
DED 19	Request to Appeal	Y	Y
DED 20	Notice to Proceed Via Written Appeal	Y	Y