

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

In the Matter

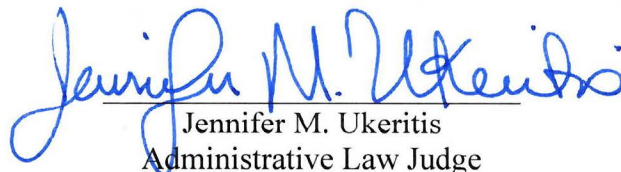
- of -

the Application of Catalyst Research, Inc.
for Certification as a Women-Owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 62093

RECOMMENDED ORDER

-by-



Jennifer M. Ukeritis
Administrative Law Judge
April 17, 2024

This matter considers the hearing held virtually on January 16, 2024, regarding the appeal by Catalyst Research, Inc., (Applicant) pursuant to the 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 women-owned business enterprise (WBE). ALJ Timothy MacPherson conducted the virtual hearing on January 16, 2024, and the matter was reassigned to me on April 5, 2024.

PROCEDURAL HISTORY

1. On June 14, 2021, Applicant applied for certification as WBE, basing its application on Doctor Meghan Guinee. (DED Exhibit 1).
2. On March 17, 2023, the Division denied the application based upon the following grounds (DED Exhibit 2):
 - a. The minority group members or women must own at least fifty-one percent of the business enterprise and be United States citizens or permanent resident aliens, 5 NYCRR § 144.2(b)(1);
 - b. The minority group members or women relied upon for certification must have 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,
5 NYCRR § 144.2(b)(2); and

- c. The minority group members or women relied upon for certification must share in the risks and profits of the business enterprise in proportion to their equity interests therein, 5 NYCRR § 144.2(b)(3).
3. Applicant submitted a request to appeal the denial determination in a virtual hearing on April 12, 2023. (DED Exhibit 3).
4. Applicant and DED had a prehearing conference on October 11, 2023.
5. A virtual hearing was held in front of ALJ MacPherson on January 16, 2024.

FINDINGS OF FACT

1. ALJ MacPherson convened the hearing at approximately 10 a.m. on January 16, 2024, virtually on the WebEx platform.
2. Dr. Meghan Guinnee appeared on behalf of the Applicant and provided testimony.
3. Ms. Anequa Pond, Esq., appeared for the DED, representing the Division, and called one witness, Virginia Spadaro, Senior Certification Analyst, at the hearing.
4. A list of exhibits received during the hearings is appended to this report.
5. Consistent with 5 NYCRR 145.1(m), a recording of the virtual hearing was made with the Webex platform.
6. Prior to the start of the hearing, Ms. Pond stated that the DED would not be proceeding with the second of three grounds for denial of certification related to capital contribution (5 NYCRR §144.2[b][2]) at the hearing. (*See* Hearing Record at 09:20 and 58:05.)

7. The parties stipulated to the admission of all the Division's exhibits into evidence. (*See* Hearing Record 41:00.)
8. The Applicant is engaged in the business of program evaluation, program design, grant writing, data collection, and data analysis. (*See* DED Exhibit 1.)
9. Dr. Guinee is the woman owner relied upon for certification. (*See* DED Exhibit 1; and Hearing Record at 28:55.)
10. The application states that Dr. Guinee is the 51% owner of the company and Dr. Daniel Webb is the 49% owner. (*See* DED Exhibit 1.)
11. Tax information submitted states that in Fiscal Year (FY) 2019, Dr. Webb and Dr. Guinee were each 50% owners and split profits and losses 50/50. (*See* DED Exhibit 10 and 12, Hearing Record 37:20 to 40:55 and 59:36 to 1:04:30.)
12. The amended operating agreement provides in Article 4 that losses are first prorated based upon capital contribution and then in the end equally between Dr. Guinee and Dr. Webb. (*See* DED Exhibit 5; Hearing Record 1:06:25 to 1:08:10.)
13. Tax information submitted states that in FY 2021 Dr. Webb had 58% of the profits and losses while Dr. Guinee had 42% of the profits and losses. (*See* DED Exhibits 11 and 13; Hearing Record 1:08:10 to 1:14:52.)

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...

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 the Applicant 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

Ownership – 51% Ownership

The Division denied the Applicant's application for certification as a WBE on the basis that the applicant business failed to demonstrate that the party relied on for certification owned 51% majority of the business, as required under 5 NYCRR § 144.2(b)(1). The application states that Dr. Guinnee is the 51% owner and Dr. Webb is the 49% owner. (*See* DED Exhibit 1.) The 2019 federal tax return and the 2019 business tax return both show Dr. Guinnee as a 50% owner

with Dr. Webb and shared the profits and losses equally. (See DED Exhibits 10 and 12; Hearing Record 37:20 to 40:55 and 59:36 to 1:04:30.) The 2021 tax return and 2021 business tax return both show Dr. Guinnee was responsible for 42% of the profits and losses while Dr. Webb was responsible for 58% of the profits and losses. (See DED Exhibits 11 and 13; Hearing Record 1:08:10 to 1:14:52.) Additionally, the Amended Operating Agreement dated May 15, 2021, in Article 4.2 breaks down how losses are divided between the two doctors, and after the capital contributions are expended, the losses are divided equally. (See DED Exhibit 5; Hearing Record 1:06:25 to 1:11:45.)

Dr. Guinnee did not introduce any evidence but did testify that according to her accountant, the tax documents don't necessarily reflect the 51%-49% ownership of the business, although she could not explain more than that. (See Hearing Record 26:40 to 39:50.)

Based upon the foregoing, the Division's determination to deny the application on the basis that Applicant failed to demonstrate that Dr. Guinnee owned at least 51% of the business, as required by 5 NYCRR § 144.2(b)(1), is supported by substantial evidence.

Ownership – Risks and Profits

The Division also denied the Applicant's application for certification as a WBE on the basis that the applicant business failed to demonstrate that the party relied on for certification must share in the risks and profits in proportion to her ownership interest in the business, as required under 5 NYCRR § 144.2(b)(3). The Division showed that through tax documents, Dr. Guinnee assumed 42% of both the profits and losses in FY 2021. (See DED Exhibits 11 and 13; Hearing Record 1:08:10 to 1:14:52.) Dr. Webb, on the other hand, assumed 58% of both the profits and taxes in FY 2021. (See DED Exhibits 11 and 13; Hearing Record 1:08:10 to 1:14:52.)

Dr. Guinnee did not offer any evidence to refute this, other than testifying that her accountant explained that the equity interest and percent of risk and profits in the tax documents were not the same as the partnership ownership. (*See* Hearing Record 26:40 to 39:50.)

Based upon the foregoing, the Division's determination to deny the application based upon the division of profits and losses not being proportional to ownership, as required by 5 NYCRR § 144.2(b)(3), is supported by substantial evidence.

CONCLUSION

Catalyst Research, Inc., did not meet its burden to demonstrate that the Division's determination to deny its application as a women-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§ 144.2(b)(1) and (3) was not based upon substantial evidence.

RECOMMENDATION

For the reasons set forth above, I recommend that the Director affirm the Division's determination to deny Catalyst Research, Inc., application for certification as a women-owned business enterprise.

In the Matter of Catalyst Research, Inc.
NYS DED File ID No. 62093
Exhibit Chart

<u>Exhibit #</u>	<u>Description</u>
DED 1	Application for Certification
DED 2	Denial Letter
DED 3	Appellant's Appeal Form
DED 4	November 8, 2017, Operating Agreement
DED 5	May 15, 2021, Amended Operating Agreement
DED 6	Appellant May 28, 2021, Capital Contribution Letter
DED 7	Admission of New Member, September 23, 2008
DED 8	Approval of LLC Purchase of Interest of Withdrawing Member, September 23, 2008
DED 9	Copies of Checks Paid to Appellant November 8, 2017
DED 10	Appellant 2019 Federal Tax Return
DED 11	Appellant 2021 Federal Tax Return
DED 12	Appellant 2019 Business Tax Return
DED 13	Appellant 2021 Business Tax Return