

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

In the Matter

- of -

the Application of Certified Hood & Fire Co, Inc.
for Certification as a Woman-Owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 69502

RECOMMENDED ORDER

-by-



Deidre A. Chuckrow
Administrative Law Judge
January 3, 2024

This matter considers the written appeal by Certified Hood & Fire Co., Inc. (“CHF” 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 October 20, 2022, CHF applied for certification as a women-owned business enterprise (“WBE”). CHF based its application on Ms. Natella Chechkov. (DED Exhibit 1).
2. On April 10, 2023, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) The applicant business did not demonstrate that ownership was not allocated to the woman relied upon for certification solely for the purpose of securing certification as required under 5 NYCRR § 144.2(b)(5);
 - (b) The woman owner relied upon for certification does 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);
 - (c) The woman owner relied upon for certification does 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); and
 - (d) The business enterprise for which certification is sought does not operate independently, as required under 5 NYCRR § 144.2(e).

3. CHF submitted a request to appeal the denial determination, dated May 10, 2023. (Tribunal Exhibit I).
4. A Notice to Proceed Via Written Appeal was sent to CHF on May 16, 2023 (DED Exhibit 3).
5. CHF filed its written appeal by undated letter. (DED Exhibit 4).
6. The Division filed an Affidavit of Matthew LeFebvre, Associate Certification Director, dated October 5, 2023, and a brief of Anequa O. Pond, counsel for the Division, dated October 6, 2023.

FINDINGS OF FACT

7. CHF is engaged in the business of kitchen exhaust cleaning services and kitchen exhaust system fabrication. (DED Exhibit 1).
8. Natella Chechkov, the woman owner relied upon for certification, is the President of CHF and owns 51% of the applicant business. Ms. Chechkov's husband, Jacob Chechkov is the Vice President and owns the remaining 49% of CHF. (DED Exhibit 1).
9. The 2020 business tax return shows that Mr. Chechkov is the 100% owner of the applicant business and Schedule K-1 shows that 100% of the ordinary business income was allocated to him. The 2021 business tax return shows that Ms. Chechkov is the 51% owner and Mr. Chechkov is the 49% owner. (DED Exhibits 5 and 6).
10. The critical functions of the applicant business include the fabrication and cleaning of kitchen exhaust systems, exterior building cleaning services, and heating, ventilation, and air-conditioning contracting. (DED Exhibit 1).
11. Ms. Chechkov and Mr. Chechkov are jointly responsible for managing financial decisions, estimating, preparing bids, marketing and sales, purchasing equipment, managing and signing

payroll, negotiating contracts, and are both signatories for the business applicant's accounts. (DED Exhibit 1).

12. Ms. Checkkov is solely responsible for managing the negotiating of bonding and insurance, and hiring and firing. Mr. Checkkov is solely responsible for supervising field operations. (DED Exhibit 1).

13. Ms. Checkkov's resumes states that she has been the owner and operator of CHF since March of 2019. Her responsibilities at CHF include data analysis to target current business conditions and forecast needs, managing business operations which include, accounting, finance, human resources (HR), marketing, and public relations. Additional duties include the maintenance of administrative records and managing budgetary expenditures. (DED Exhibit 7).

14. Ms. Checkkov has an associate degree in physical therapy. At CHF, Ms. Checkkov prepares proposals and coordinates the jobs from beginning to end and handles all the accounts receivable and payable. Ms. Checkkov works as a bookkeeper at Done Right Hood & Fire Safety ("Done Right") and engages in account management and customer care. Ms. Checkkov also works as a bookkeeper for Green Oil Recycling ("Green Oil"), Filta Kleen ("Filta"), and Envirogreen Solutions ("Envirogreen"). Her prior experience includes working with QuickBooks, monitoring finances, maintaining invoices, deposits, and money logs, filing, managing data, and other financial management duties. (DED Exhibits 1, 7 and 10).

15. Mr. Checkkov also has an associate degree in physical therapy. He has been an owner and operator at CHF since March of 2019, and his responsibilities include data analysis to target current business conditions and forecast needs, managing daily operations, including accounts, finance, HR, marketing and public relations, supervising employee's daily tasks, maintaining administrative records, and managing budgetary expenditures. In addition, Mr. Checkkov

conducts necessary site visits and handles technical difficulties for CHF. (DED Exhibits 1 and 8).

16. Mr. Chechkov also owns several other businesses which engage in the business of hood and grease trap cleaning. Those businesses include, Done Right, Green Oil, Filta, and Envirogreen. Mr. Chechkov has been in the industry for over 14 years and engages in “end-to-end business processes.” (DED Exhibits 1 and 8).

17. CHF receives business from referrals made by Mr. Chechkov. Mr. Chechkov “does sales and estimates for [Done Right and Green Oil]. If any of the leads require WBE Qualification he will forward these leads to [Ms. Chechkov] . . .” “Jobs that come in directly to [CHF] are handled by [Ms. Chechkov] from preparing estimating to invoicing. [Mr. Chechkov] will only get involved should site visits be required or any technical difficulties. . . arise.” (DED Exhibit 1).

18. CHF shares a common address with Done Right, Filta, Green Oil, and Envirogreen, and operates from the same shared office space. Ms. Chechkov receives wages from those companies. All five businesses “operate in related fields, particularly within the realm of hood cleaning services.” (DED Exhibits 1, 4, 9, and 10).

19. Mr. Chechkov is the landlord for the space leased to CHF. (DED Exhibit 11).

20. Ms. Chechkov states that she holds a “Certificate of Fitness” from the New York City Fire Department and states that she is licensed by both New York City and Nassau County fire marshals. In addition, she states that she has certifications from system manufacturers. (APP Exhibit A and DED Exhibit 4).

APPLICABLE LAW

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 women-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)(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:

- (i) 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;
- (ii) The extent to which academic credentials exist for persons employed in the industry; and
- (iii) 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.

5 NYCRR § 144.2 (e) states as follows:

Independence. Business enterprises for which certification is sought must operate independently. In order to determine whether such business enterprises operate independently, the division shall consider but not be limited to the following criteria:

- (1) Whether the business enterprise shares resources with another entity, including, but not limited to, personnel, equipment, office space, warehouse and other storage space, and yard space;
- (2) Whether the business enterprise transacts business primarily with one other entity; and
- (3) Whether the business enterprise receives tangible benefits as a result of a connection to another entity, and whether such benefits are consistent with standard industry practices.

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 CHF 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 CHF's application for certification on the grounds that the woman owner relied on for certification sought ownership of the business enterprise solely for the purpose of securing certification. The regulation prohibits the allocation of an ownership interest either through formation or through transfer, solely for the purpose of securing certification of a business enterprise as a woman-owned business ownership. (5 NYCRR § 144.2(b)(5)). In pertinent part, the regulation states that "[w]here a . . . woman relied upon for certification obtains [her] ownership interest in a business enterprise through a transfer from another person, such. . . woman must demonstrate that such transfer was supported by reasonable consideration. . ." (5 NYCRR § 144.2(b)(5)).

In this instance, at the time of the application, Applicant stated that Ms. Checkov formed the company with her husband Mr. Checkov, in March of 2019, with ownership being divided between Ms. Checkov and Mr. Checkov at 51% and 40% respectively. (DED Exhibit 1). In contrast, the tax return for the applicant business for 2020 states that Mr. Checkov was the 100% owner, though the 2021 business tax return states that Ms. Checkov is the 51% owner and Mr. Checkov is the 49% owner of CHF. (DED Exhibits 5 and 6). Applicant states in the appeal letter that the 2020 tax return is incorrect regarding the ownership interest, and asserts that the error was due to the business' accountant, and his lack of attention to detail. However, Schedule K-1 evidences that Mr. Checkov was allocated 100% of the ordinary business income in 2020. (APP Exhibit A and DED Exhibit 4). While the applicant states that the ownership interests were corrected in later tax returns, no amended tax return was provided for 2020. (APP Exhibit A and DED Exhibit 4).

In addition, Mr. Checkkov sources clients for the applicant business. (DED Exhibit 9). Mr. Checkkov, through his work for other companies that he owns, which perform the same services as CHF, filters business to send to CHF in instances where those businesses need to contract with WBEs. (DED Exhibits 1 and 9). Once the business is referred to CHF, Ms. Checkkov engages in creating the contract and handling the accounts receivable and payable, but all work relating to field supervision, or issues which arise during the service are handled by Mr. Checkkov. (DED Exhibits 1 and 9).

Here, the contradictory information regarding the ownership of the applicant business at formation, combined with the information provided in the application regarding Ms. Checkkov's experience and current duties, the involvement of Mr. Checkkov in securing clients for the applicant business, and his ownership of other companies engaged in the identical business as CHF constitutes substantial evidence that the formation of the CHF, with Ms. Checkkov as 51% owner was solely for the purpose of the business enterprise seeking certification as a WBE. Accordingly, the Division's determination under 5 NYCRR § 144.2(b)(5) was based upon substantial evidence.

II. Industry-Specific Competence

The Division denied CHF's application for certification as a WBE on the basis that the applicant failed to demonstrate that Ms. Checkkov possesses 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, has the working knowledge necessary to review or evaluate the work of more experienced employees. (See *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 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)).

The Applicant bears the burden of establishing that the woman-owner relied upon for certification has 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).

The critical functions of the applicant business involve the cleaning of kitchen exhaust systems and the fabrication of kitchen exhaust systems. (DED Exhibit 1). However, the materials provided in the application submission do not demonstrate that Ms. Checkov possesses adequate, industry-specific competence. Her experience is as a bookkeeper and office operations manager, performing tasks involving QuickBooks and accounting, and managing marketing, financing, HR, and public relations. (DED Exhibit 7). On appeal, Ms. Checkov admits that “administrative duties are a significant part of [her] role,” and states that despite that she is actively engaged in all aspects of the business, but then only provides generic broad examples related to decision-making in administrative duties, without specifics relating to the industry-specific functions of the business. (APP Exhibit A). Decision-making in an administrative capacity, such as making decisions

regarding finances and human resources, does not satisfy the regulatory requirements of certification. (See *Upstate Electrical*, supra).

Unlike Ms. Checkkov, Mr. Checkkov has demonstrated that he has adequate industry-specific competence. He owns and operates other businesses engaged in the same industry as the applicant business where he is responsible for and oversees all operations, has over ten years of experience in the business, and is the one responsible for the supervision of field operations at CHF. (DED Exhibits 1 and 8). In addition, it is Mr. Checkkov who assists in the field and with difficult technical matters. (DED Exhibit 1).

On appeal, Ms. Checkkov states that she does have industry specific competence in the form of a Certificate of Fitness from the New York City Fire Department and has licensing from both the New York City and Nassau County Fire Marshals. (APP Exhibit A). She also states that she has certifications from specific system manufacturers, presumably for the systems that CHF cleans and installs. (APP Exhibit A). However, applicant did not provide any documentation to corroborate this assertion in either the certification application nor in the appeal.

The evidence presented here indicates that the woman owner's experience is purely in administration and finance, while Mr. Checkkov's experience and expertise is directed towards the core business functions of CHF. Businesses where the non-eligible spouse has the expertise to perform the specialized work and the owner spouse 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

The Division also denied CHF's application for certification as a WBE on the basis that the applicant failed to demonstrate that Ms. Chechkov makes 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*).

Here, the critical functions of the business, include the cleaning and installation of kitchen exhaust systems. (DED Exhibit 1). The application states that it is Mr. Chechkov who solicits clients for the business enterprise, supervises field operations, and has experience in other businesses in which he is responsible for and oversees all operations. (DED Exhibits 1 and 8). In addition, Mr. Chechkov's resume states that he performs hood cleaning, along with other functions, in those other businesses. (DED Exhibit 8). Further, the application states that in addition to supervising field operations for the applicant business, Mr. Chechkov also is the one who handles all technical difficulties. (DED Exhibit 1). Finally, of the twelve managerial functions listed in the application, seven of them including financial decisions, estimating, preparing bids, negotiating contracts, and marketing and sales are shared between the owners. (DED Exhibit 1).

Thus, evidencing that Ms. Checkkov is reliant on her husband for industry-specific aspects of the business.

By contrast to her husband, Ms. Checkkov has presented no evidence of any expertise or training which would allow her to make operational decisions relating to the critical functions of the business. On appeal she does cite to certifications and trainings, but has not produced any certificates nor provided any specifics on the nature of those programs. It is well settled that where the owner relied upon for certification has 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 that Ms. Checkkov's role at CHF is administrative while Mr. Checkkov, the non-eligible spouse, is responsible for the day-to-day operations of the business enterprise.

Based on the foregoing, I find that the Division's determination that CHF has not demonstrated that the woman owner relied upon for certification makes 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.

IV. Independence

The Division also denied CHF's application for certification as a WBE on the basis that the applicant business failed to demonstrate that it operates independently, as required by 5 NYCRR § 144.2(e). (DED Exhibit 2). To determine whether a business operates independently the Division must consider, but is not limited to the following: "(1) Whether the business enterprise shares resources with another entity, including, but not limited to, personnel, office space,

warehouse and other storage space, and yard space; (2) Whether the business enterprise transacts business primarily with one other entity; and (3) Whether the business enterprise receives tangible benefits as a result of a connection to another entity, and whether such benefits are consistent with standard industry practices.” 5 NYCRR § 144.2 (e) (1) (2) & (3)

Here, the Checkkovs actively participate together in several businesses, all engaged in the same industry, and all located at the same location. (DED Exhibits 1, 4, and 9; APP Exhibit A). The other businesses, Done Right, Green Oil, Filta, and Envirogreen are owned and operated by Mr. Checkkov, and Ms. Checkkov works for those businesses performing bookkeeping and administrative tasks. (DED Exhibits 1 and 10). Applicant admits in their appeal submission that all of the businesses “operate in related fields, particularly within the realm of hood cleaning services.” and that the businesses operate from the same shared office space. (DED Exhibit 4 and APP Exhibit A). Further, as per the lease agreement for CHF, Mr. Checkkov is the landlord for the leased space. (DED Exhibit 11).

On appeal, while Ms. Checkkov asserts that the businesses operate independently, stating that the company has its own trucks, employees, equipment, and certification, no information regarding those items is provided. Additionally, both Ms. Checkkov and Mr. Checkhov work for the different businesses, with Ms. Checkkov providing bookkeeping and administrative services and Mr. Checkkov providing the industry expertise. (DED Exhibit 4; APP Exhibit A). Moreover, the businesses all share one office space and perform the same services as the applicant business. (DED Exhibit 4 and APP Exhibit A). The information presented is that the businesses listed on the application and CHF are intertwined, and as such CHF is not an independent business entity. A business which shares office space, rents storage space, acts as a subcontractor, and shares employees is not considered to operate independently. See *Matter of Acme Lighting Rod, LLC.*,

Recommended Order dated March 6, 2020 (Final Order 20-02, dated April 21, 2020). As was the case in *Matter of Skyline Specialty Systems, Inc. v. Gargano*, 294 AD2d 742 (3rd Dept 2002), where the applicant was so entangled with another business by sharing personnel, office, etc., that it clearly was not independent, so is the instant case. Here, CHF relies heavily on Mr. Checkkov's expertise and on the work he does through other entities, and thus, is not eligible for WBE certification.

Based on the foregoing, I find that the applicant has not demonstrated that CHF operates independently. Accordingly, the Division's determination that the business enterprise does not operate independently, as required under 5 NYCRR § 144.2(e) is supported by substantial evidence.

CONCLUSION

CHF 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(c)(1), 144.2(c)(2), and 144.2(e) was not based on substantial evidence.

RECOMMENDATION

The Division's determination to deny Certified Hood and Fire Co., Inc.'s application for certification as a woman-owned business enterprise should be affirmed.

In the Matter of Certified Hood and Fire Co., Inc.
 DED File ID No. 69502
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
DED 1	Application for Certification	Y	Y
DED 2	Denial Determination	Y	Y
DED 3	Notice to Proceed by Written Appeal Submission	Y	Y
DED 4	Appellant's Appeal Letter and Submissions	Y	Y
DED 5	2020 Tax Documents	Y	Y
DED 6	2021 Tax Documents	Y	Y
DED 7	Resume of Natella Checkkov	Y	Y
DED 8	Resume of Jacob Checkkov	Y	Y
DED 9	Appellant's 10-31-22 Application Narrative Responses	Y	Y
DED 10	Natella Checkkov W-2s	Y	Y
DED 11	Certified Hood and Fire Co. Inc. Lease	Y	Y
Tribunal I	Applicant Request to Appeal	N	Y