

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

In the Matter

- of -

the Application of Corewind LLC

**for Certification as a Minority-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 69056

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
April 30, 2024

This matter considers the appeal by Corewind LLC, (“Corewind” 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 minority-owned business enterprise (“MBE”).

PROCEDURAL HISTORY

1. On July 26, 2021, Mr. Bruno Manh, as owner, applied on behalf of Corewind for certification as a minority-owned business enterprise (“MBE”). (DED Exhibit 1)
2. On March 22, 2023, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) 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
 - (b) 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).
3. On March 27, 2023, Corewind submitted a Request for a Hearing. (DED Exhibit 3).
4. On March 4, 2024, a Notice of Hearing was sent to all parties. (DED Exhibit 4).
5. On April 24, 2024, a hearing was held and concluded.

FINDINGS OF FACT

6. Corewind LLC dba TeamLogic IT, is engaged in the business of managing IT services, cloud services, cybersecurity services, and computer services (DED Exhibit 1).
7. Mr. Bruno Manh is the 100% owner of Corewind. (DED Exhibit 1).
8. A copy of the franchise agreement between Corewind and TeamLogic, Inc. (the “Franchisor”) was provided with the certification application. The franchise agreement, among other provisions, states that (a) Corewind, “the Franchisee” is authorized and obligated to sell TeamLogic IT products, services, and equipment including Core Services, Non-Core Services, and SystemWatch IT Managed Services in accordance with the franchise agreement and operations manual; (b) Corewind must have a minimum of one (1) qualified technician; (c) Corewind shall spend a minimum of \$██████ per month on local advertising; (d) Corewind must operate the business in accordance with the operations manual supplied by TeamLogic, Inc.; (e) Corewind must use the Trademarks in connection with the operation of the TeamLogic IT business; (f) Corewind agreed to a Covenant Not to Compete, within a one hundred (100) mile radius of any TeamLogic IT location without proper written consent from the Franchisor (DED Exhibit 5).

APPLICABLE LAW

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

Control of business management. A minority group member or 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 Corewind for certification as a MBE 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

Mr. Bruno Manh testified at the hearing on behalf of Corewind as the 100% owner of the business. He offered no exhibits. Mr. Manh used a power point presentation in his testimony. He testified that he has been working in IT for 35 years and that he entered into a franchise agreement between Corewind and TeamLogic, Inc. (DED Exhibit 5). He paid the sum of \$ [REDACTED] for the franchise fee, which allowed him to conduct business between Saugerties and Poughkeepsie, New

York. He acknowledged that the agreement requires that he pay TeamLogic, Inc. an annual software license fee, █% of monthly sales (minimum █/month) for continuing franchise fees, █% of gross sales for advertising fees (minimum █/month), a managed service fee and an email hosting fee. He also acknowledged that the agreement provides a number of provisions requiring his handling of his business, including: (1) that he maintain his business location; (2) that he obtain prior consent to relocate his business; (3) that he cannot relocate inside another TeamLogic franchise's territory; (4) that he is obligated to sell TeamLogic managed services; (5) that he is required to have at least one technician; (6) that he is required to have minimum TeamLogic signage; (7) that he spend a minimum of \$█ per month on local advertising; (8) that Corewind must operate the business in accordance with the operations manual supplied by TeamLogic IT, Inc.; (9) that Corewind must use the Trademarks in connection with the operation of the TeamLogic IT business; and (10) that Corewind agreed to a Covenant Not to Compete, within a one hundred (100) mile radius of any TeamLogic IT location without proper written consent from the Franchisor (DED Exhibit 5).

He testified that the majority of these requirements would be met regardless of whether the franchise agreement required them, since they are "best practices" matters for any business. He further testified that the operations manual is the result of 15 years of best practices for both franchisors and franchisees. He stated the required minimum local advertising expense is not enforced against his business, but he acknowledged that the agreement provides that he must spend that amount. He further testified that the fees paid for the RMM software represent less than █% of the software that Mr. Manh uses and that the requirement to have at least one technician is something he would do anyway; that it is necessary as his business grows to hire more and more technicians. He testified that the business insurance requirement is something that he does anyway,

regardless of the franchise agreement. He testified that, as the sole owner of Corewind, he has complete control over all its operations. (Hearing Testimony of Mr. Manh)

Mr. Manh additionally testified that he can do business outside of the territory depicted in the franchise agreement so long as there is not another TeamLogic IT franchise. Mr. Manh credibly testified that the closest Team LogicIT franchise is in White Plains, New York. Therefore, the restrictions only pertain to a small territory of Corewind's business. (Hearing Testimony of Mr. Manh)

Amy O'Connor, Counsel, Department of Economic Development, appeared at the hearing on behalf of the Division. The following witness testified on behalf of the Division: Andrew Oliver, Senior Certification Analyst, Division of Minority and Women Business Development. The Division offered the following exhibits which were admitted into evidence: (DED Exhibits 1 through 15).

Andrew Oliver testified that he has worked at the NYS Department of Economic Development for 3 years. He reviewed the documentation submitted by Corewind and determined that (a) TeamLogic, Inc. controls the business operations of Corewind LLC and Mr. Manh is not the highest-ranking officer of TeamLogic, Inc., or control its Board of Directors; and (b) Mr. Manh does not negotiate business contracts and represent himself to clients as the principal of Corewind LLC, since all invoices, quotes and checks provided were in the name of TeamLogic IT, not Corewind LLC.

Mr. Oliver testified that the various requirements in the franchise agreement mentioned above shows that Mr. Manh does not have discretion with those matters – that he must comply with the restrictions imposed by the franchisor (DED Exhibit 5). He stated that Mr. Manh is the owner of Corewind, but TeamLogic, Inc. has control of Corewind's operations through the franchise

agreement and operating agreement. He further testified that the quotes, invoices and checks in Exhibits 10 through 15 all reference TeamLogic IT and that there is no mention of Corewind in any of these documents. He stated that since Corewind is the applicant, not TeamLogic, Inc., Corewind failed to demonstrate that Mr. Manh negotiates business contracts and represents himself to clients as the principal of the business entity for which certification is sought. (Hearing Testimony of Mr. Oliver)

Mr. Manh is the sole owner, highest-ranking officer, and controls the business enterprise (Corewind) for which certification is sought (DED Exhibit 1). As the sole owner, he has agreed to terms under the franchise agreement and operating agreement to further his business interests. (Hearing Testimony of Mr. Manh) This does not negate the fact that Mr. Manh meets the requirements of 5 NYCRR §144.2(d)(1). In addition, the franchise agreement states: “Franchisee is solely responsible for the day-to-day control of Franchisee’s TeamLogic IT Business” (DED Exhibit 5).

Also, the documents in Exhibits 10-15 reference TeamLogic IT, not TeamLogic, Inc. In addition, the Lease in Exhibit 8 references Corewind LLC dba TeamLogic IT. The applicant is Corewind LLC dba TeamLogic IT. Mr. Manh has represented himself to his clients as TeamLogic IT, which is the dba for Corewind, the entity subject to this application. He has not represented his business as TeamLogic, Inc. The Division’s reliance on the documents referencing TeamLogic IT instead of Corewind is misplaced. The application clearly is under Corewind LLC dba TeamLogic IT, and therefore Mr. Manh has properly represented his business to his clients.

Accordingly, I find that Corewind did demonstrate at the time of its application that Mr. Manh is the highest-ranking officer of the business enterprise for which certification is sought, and control its board of directors, as required under 5 NYCRR §144.2(d)(1), and Mr. Manh negotiates

business contracts and represents himself to clients as the principal of the business entity for which certification is sought, as demonstrated by fully executed business agreements, as required under 5 NYCRR §144.2(d)(1).

CONCLUSION

Corewind did meet its burden to demonstrate that the Division's determination to deny its application for certification as a minority-owned business enterprise with respect to the eligibility criteria found at 5 NYCRR §144.2(d)(1) and 5 NYCRR §144.2(d)(2), was not based on substantial evidence.

RECOMMENDATION

For the reasons set forth above, I recommend that the Director reverse the Division's determination to deny Corewind's application for certification under 5 NYCRR §144.2(d)(1) and 5 NYCRR §144.2(d) (2), as a minority-owned business enterprise.

In the Matter of Corewind LLC
 DED File ID No. 69056
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
DED 1	Certification Application	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Appellant's Appeal Form	Y	Y
DED 4	Notice of Hearing	Y	Y
DED 5	Franchise Agreement	Y	Y
DED 6	Wire Transfer for Franchise Fee	Y	Y
DED 7	Certificate of Assumed Name	Y	Y
DED 8	Office Lease	Y	Y
DED 9	Radio Kingston 1099	Y	Y
DED 10	3 Enrollment Marketing Quote	Y	Y
DED 11	ColorPage Invoice	Y	Y
DED 12	Farley Pierson Invoice	Y	Y
DED 13	Field of Dreams Invoice	Y	Y
DED 14	The Solvents Company Invoice	Y	Y
DED 15	DeForest Group Payments	Y	Y