

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
625 BROADWAY
ALBANY, NEW YORK 12245

In the Matter

- of -

**the Application of Cornerstone Hardware & Supplies, LLC
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 70910

RECOMMENDED ORDER

-by-



Theresa Wells
Administrative Law Judge
April 29, 2024

This matter considers the written appeal by Cornerstone Hardware & Supplies, LLC, (“Cornerstone” 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 May 25, 2023, Jamie Buell, as President, applied on behalf of Cornerstone for certification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1).
2. On September 25, 2023, the Division denied the application on the ground that: (DED Exhibit 2)
 - (a) The business enterprise must operate independently under 5 NYCRR § 144.2(e).
3. Cornerstone submitted its Request to Appeal by letter dated September 27, 2023. (APP Exhibit A).
4. A Notice to Proceed via Written Appeal was sent to the Applicant on October 2, 2023. (DED Exhibit 4).
5. Cornerstone submitted its written appeal by letter dated October 27, 2023. (APP Exhibit B).
6. The Division filed an Affidavit of Eugenio Alcantara, Certification Director, dated February 7, 2024, and a brief of Michael Paff Esq., counsel for the Division, dated February 8, 2024.

FINDINGS OF FACT

7. Cornerstone is a wholesale and retail supply store providing hardware store supplies, lumber, concrete & supplies, plumbing & heating supplies, steel & supplies, electrical & supplies, lighting & supplies, plumbing & heating supplies, household repair needs, bathroom fixtures, household and janitorial cleaning supplies, tools, nails, nuts, bolts, window repair & supplies, including sale of residential and commercial windows, safety supplies, home and office supplies, paint and painting supplies/accessories, outdoor lawn and garden, pet supplies, seasonal supplies, equipment rental and miscellaneous items. Cornerstone provides bulk items for contractors who need to purchase supplies for jobs. (DED Exhibits 1 and 5).
8. Jamie Buell is the President of Cornerstone, the only employee and has a 100% ownership interest. (DED Exhibit 1).
9. Besides Cornerstone, Ms. Buell has an ownership interest in the following businesses: Ridgestone Properties, LLC (“Ridgestone”); JMB Operations, LLC (“JMB”); Valley Ridge Estates, LLC (“Valley Ridge”); Cassety Hollow Laundromat (“Cassety”); and Buell Demolition & Disposal (“BDD”). Jamie Buell shares her ownership interest in Ridgestone, JMB and Valley Ridge, with her husband, Jeremy Buell. (DED Exhibit 1).
10. Cornerstone and Ridgestone share a business address at [REDACTED]
[REDACTED] This is also Jamie Buell’s home address. (DED Exhibit 1).
11. Cornerstone also leases a separate property, which is owned by Ridgestone, located at 181 N. Main Street, Oriskany Falls, New York 13425, for additional office/storage space. The leased property consists of two rooms on the first floor and office space/storage on the

second floor which are used for hardware sales & supplies. Cornerstone pays Ridgestone \$██████ per month for the space. (DED Exhibits 1 and 8).

12. JMB and Valley Ridge share a business address at 7656 US Route 20, Sangerfield, NY. (DED Exhibit 1).
13. During the application process, Cornerstone provided invoices for five different customers including: JMB; Joa-Lyn Enterprise, Inc., Shilpika Simet/Simco Supply, LLC, Noreast Property Management Corp., and MJ Contracting Services (“MJ”). Purchases by Joa-Lyn Enterprise, Inc., and Noreast Property Management Corp., were shipped to MJ’s business address. (DED Exhibit 9; Tribunal I).
14. The narrative in the application states that 80% of the Applicant’s business is generated by Shilpika Simet/Simco Supply LLC. The invoices submitted with the application show that purchases by Shilpika Simet/Simco Supply LLC generated 26% of goods sold by Cornerstone. (DED Exhibits 1 and 9; Tribunal I).
15. MJ is one of Cornerstone’s customers. A narrative in the application states that 15% of direct shipment and billing goes to MJ. Cornerstone’s invoices show that between December 2021 and July 2023, MJ purchased 56% of goods sold by Cornerstone. (DED Exhibits 1 and 9).
16. Jamie Buell is employed by MJ which is located at 379 N. Stafford Avenue, Waterville, NY. Jamie Buell’s husband, Jeremy Buell, owns MJ. Ms. Buell is MJ’s office manager, with responsibilities such as accounts payable, filing, training, managing day to day office operations including staffing, phones, supply needs, and orientation of new employees. She has been MJ’s office manager since January 2022. Ms. Buell’s son also works for MJ. (DED Exhibits 1, 5 and 6).

17. Jamie Buell uses MJ's business address, as an option for Cornerstone, for the receipt of Cornerstone's shipments. Ms. Buell's son assists her with receiving Cornerstone's shipments at MJ. (DED Exhibits 1 and 9; APP Exhibit B).
18. Ms. Buell is also employed by JMB, where she cashes out the business drawers, submits payroll, and invoices customers. (DED Exhibit 6).
19. JMB is one of Cornerstone's customers. Cornerstone's invoices show JMB purchased 1% of goods sold by Cornerstone. (DED Exhibits 6 and 9).
20. The initial application states that JMB's business address is 7656 US Route 20, Sangerfield, NY 13455. The invoices for JMB's purchases show the goods were sent to 7656 State Route 20, Waterville, NY 13480. (DED Exhibits 1 and 9).

APPLICABLE LAW

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 Cornerstone 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. Independence

5 NYCRR §144.2(e) requires that the business seeking certification as a WBE must operate independently. In determining whether a business enterprise operates independently, the Division considers whether the business enterprise shares resources with another business such as personnel, equipment, and office space, whether the business enterprise transacts business primarily with one other entity, whether the business enterprise receives tangible benefits as a result of a connection to another entity and whether those benefits are consistent with standard industry practices. (5 NYCRR §144.2(e)(1), (2) and (3)).

It is well settled that in cases where the applicant was so entangled with another business by sharing personnel and office space that certification is denied. (See *Matter of Skyline Specialty Systems, Inc. v. Gargano*, 294 AD2d 742 (3rd Dept 2002)). 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; see also *Matter of Skyline Specialty Systems, Inc. v. Gargano*, supra). Where the same family owns two businesses and operates out of the same premises, and where one business leases space to the other, the businesses are not independent. (See *Matter of Acme Lightning Rod*, supra). When an applicant is employed by one company while operating another related company, there is proof of a sharing of resources. (See *Green Team Dumpster Rental Inc.*, Recommended Order dated November 12, 2023, Final Order 23-11 dated December 27, 2023).

The record before the Division evidences that Cornerstone does not operate independently. Cornerstone shares office space with Ridgestone at [REDACTED]. Cornerstone rents additional office/storage space from Ridgestone for \$ [REDACTED] per month, in a separate Oriskany Falls, New York location. Operating out of the same premises as Ridgestone, and leasing space from Ridgestone, shows Cornerstone does not operate independently. (DED Exhibits 1 and 8).

The Division will routinely deny certification where the applicant primarily does business with one other entity. (See *Interior Installations LLC*, Recommended Order dated August 23, 2023, Final Order 23-08 dated September 22, 2023). In the application narratives, the Applicant stated that 80% of its business comes from Shilpika Simet/Simco Supply, LLC and that 15% of direct shipment and billing goes to MJ. The application invoices show Shilpika Simet/Simco

Supply, LLC provided 26% of Cornerstone's sales and MJ provided 56% of the sales. The invoices show that Cornerstone primarily conducted business with MJ, one of Jamie Buell's employers. The invoices also show that JMB, another one of Jamie Buell's employers, provided 1% of Cornerstone's sales. Ms. Buell's employment with MJ and JMB, while operating Cornerstone, establishes a sharing of personnel and resources. Cornerstone does not operate independently. (Exhibits 1, 6, and 9; Tribunal Exhibit I).

Cornerstone receives tangible benefits from MJ. Applicant uses a space at MJ for receipt of Cornerstone's shipments. Jamie Buell and her son work for MJ. Her son assists Jamie Buell when Cornerstone's shipments are delivered to MJ. The invoices show two of Cornerstone's customers, Joa-Lyn Enterprise, Inc. and Noreast Property Management Corp, also have their purchases shipped to MJ. Besides primarily doing business with MJ, the entanglements and tangible benefits between Cornerstone and MJ, such as sharing personnel and storage space, and operating out of the same premises for deliveries, show shared resources. The record supports the Division's finding that Cornerstone is not operating independently. (DED Exhibits 1, 5, 6 and 9; APP Exhibit B).

In the appeal submission, Applicant states that each of Jamie Buell's business enterprises operates independently and that Jamie Buell makes 100% of Cornerstone's day-to-day operational decisions. Applicant states Cornerstone does not share contact information, contracts, equipment, vehicles, or office/warehouse/storage/yard space with any other business enterprise. Applicant states her business is growing, and that she does not primarily interact with one other entity, but she transacts with at least five business entities. Applicant also states that the area used for shipments at MJ's is a vacant space that is not occupied, and that MJ's is not the primary shipping and receiving point. She uses MJ's space to help build Cornerstone's business and to lower

overhead. She states that her son's assistance with Cornerstone's shipments is not a tangible benefit or connection. Rather, as her son, she can get his help whenever needed. She states that as 100% owner of Cornerstone she gets to choose who she gets to help her. (APP Exhibit B).

Based on the evidence in the record, including the application itself, the Applicant failed to demonstrate that the woman owner, Jamie Buell, operates Cornerstone independently, as required by 5 NYCRR 144.2(e). Cornerstone operates out of the same premises as Ridgestone, and Ridgestone leases another office/storage space to Cornerstone. The invoices showed Cornerstone transacts business primarily with MJ. Cornerstone also transacts business with JMB. Jamie Buell's employment with MJ, and JMB, while operating Cornerstone, is proof of sharing of personnel and resources. The record shows that Cornerstone receives tangible benefits, such as MJ receiving deliveries of Cornerstone's shipments and receipt of Cornerstone's customer shipments. Jamie Buell's son, who works for MJ, assists her with receiving these shipments sent to MJ. These arrangements are not consistent with standard industry practices. These tangible benefits show the entanglements between Cornerstone with Ridgestone, JMB and MJ. Cornerstone does not operate independently. (DED Exhibits 1, 5, 6, 8 and 9).

The Division's denial of Cornerstone's application for certification as a WBE on the basis that Cornerstone failed to demonstrate that the business operates independently, as required by 5 NYCRR § 144.2 (e) is supported by substantial evidence.

CONCLUSION

Cornerstone 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(e) was not based on substantial evidence.

RECOMMENDATION

The Division's determination to deny Cornerstone application for certification as a woman-owned business enterprise should be affirmed.

In the Matter of Cornerstone Hardware & Supplies, LLC
 DED File ID No. 70910
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Applicant Request to Appeal	Y	Y
APP B	Applicant Appeal Submission	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Determination	Y	Y
DED 3	Request to Appeal a Denial Determination	Y	Y
DED 4	Notice to Proceed Via Written Appeal	Y	Y
DED 5	Resume of Jamie Buell	Y	Y
DED 6	List of Outside Employment	Y	Y
DED 7	Cornerstone Operating Agreement	Y	Y
DED 8	Lease	Y	Y
DED 9	Cornerstone Invoices	Y	Y
Tribunal I	Shilpika Simet/Simco Supply LLC Invoices	Y	Y