

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

**In the Matter**

**- of -**

**the Application of Green Island Group Corp.**  
**for Recertification as a Minority and Woman-owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 58285**

**RECOMMENDED ORDER**

**-by-**



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**David A. Murad**  
**Administrative Law Judge**  
**April 1, 2024**

This matter considers the written appeal by Green Island Group Corp. (“GIG Corp.” 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 recertification as a minority and woman-owned business enterprise (“MWBE”).

### **PROCEDURAL HISTORY**

1. On November 29, 2022, Ms. Jessica Dussan, as CEO, applied on behalf of GIG Corp. for recertification as a minority and woman-owned business enterprise (“MWBE”) (DED Exhibit 1).
2. On July 19, 2023, the Division denied the application on the following ground (DED Exhibit 2):
  - (a) The business enterprise does not operate independently, as required under 5 NYCRR § 144.2(e).
3. GIG Corp. timely filed a Request to Appeal on August 17, 2023 (APP Exhibit A/ DED Exhibit 3).
4. A notice to proceed via written appeal was sent to GIG Corp. on August 21, 2023 (DED Exhibit 4).
5. GIG Corp. filed its written appeal by letter dated September 15, 2023, with attachments (APP Exhibit B).

6. The Division filed an Affidavit of Robyn Clarke, Senior Certification Analyst, dated January 19, 2024, and a brief of Misha Wright Esq., counsel for the Division, dated January 25, 2024.

### **FINDINGS OF FACT**

7. GIG Corp. is engaged in the construction industry providing environmental services including asbestos abatement, water/fire damage restoration, mold remediation and oil spills, along with construction, waste management and transportation services (DED Exhibit 1).
8. Ms. Jessica Dussan is the CEO and has a 51% ownership interest. Her husband, Mr. Leo Torres has a 49% ownership interest (DED Exhibit 1).
9. Ms. Dussan and Mr. Torres both own interests in two other business affiliates, Green Island Group Transportation (“GIG Transportation”) and Green Island Group Services (“GIG Services”) (DED Exhibit 1).
10. The applicant stated: “Green Island Group Services and Green Island Group Transportation are “sister” companies of Green Island Group Corp. The companies share office space, personnel, and resources. Green Island Group Corp. services customers in the public sector. Green Island Group Services serves private companies, homeowners, and jobs related to insurance claims. Green Island Group Transportation provides waste management (dumpsters, waste hauling, and disposal) for all projects...and to clients looking just for hauling services.” (DED Exhibit 6).

## 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 GIG Corp. for recertification as a MWBE 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. Prior Certification

The Division acknowledges that GIG Corp. was previously certified as a minority and woman-owned business enterprise. The Division asserts that it is not bound to recertify a MWBE if its prior determinations were made in error. The Division argues that based on the application and supplemental material submitted by applicant, Division staff correctly determined that applicant was not eligible for recertification.

The Division is correct that it is not obligated to certify GIG Corp. based on its prior determinations. It is well settled that the doctrine of equitable estoppel cannot, as a general rule, be invoked against a governmental agency in the exercise of its governmental function. See *Matter of Daleview Nursing Home v. Axelrod*, 62 NY2d 30 (1984); *Matter of Atlantic States Legal Found., Inc. v. New York State Dept. of Environmental Conservation*, 119 AD3d 1172 (2014).

With the expiration of its certification, GIG Corp. had the burden to demonstrate compliance with the eligibility criteria outlined at 5 NYCRR §144.2 when it submitted the November 29, 2022, application and supporting materials and cannot rely on the past determinations of the Division.

### II. Independence

The Division found that GIG Corp. is not an independent business enterprise, as required under 5 NYCRR §144.2(e). This section considers “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... 5 NYCRR §144.2(e)(1), and “whether the business

enterprise receives tangible benefits as a result of a connection to another entity...”. 5 NYCRR §144.2(e)(3).

Ms. Dussan and Mr. Torres both own interests in GIG Transportation and GIG Services. The applicant stated: “Green Island Group Services and Green Island Group Transportation are “sister” companies of Green Island Group Corp. The companies share office space, personnel, and resources. Green Island Group Corp. services customers in the public sector. Green Island Group Services serves private companies, homeowners, and jobs related to insurance claims. Green Island Group Transportation provides waste management (dumpsters, waste hauling, and disposal) for all projects...and to clients looking just for hauling services.” (DED Exhibit 1).

GIG Corp. does not operate independently of its sister companies, GIG Services and GIG Transportation. They share office space, personnel, and resources. All three are in the same construction services related industry. The businesses are so intertwined that GIG Corp. cannot be considered an independent business entity. See *Matter of Skyline Specialty Systems, Inc. v. Gargano*, 294 AD 2d 742 (3d Dept. 2002) (The 51% woman-owner, and her husband, the 49% owner of the applicant business, participated in several other businesses engaged in the same industry where the businesses all share one office space and perform the same services, such that the businesses were so “intertwined” that applicant business could not be deemed to be an independent business entity).

On appeal, applicant provided Lease Agreements for GIG Services and GIG Transportation, reflecting new addresses for both. (APP Exhibit B) These were not before the Division at the time of the application and denial determination. Applicant also provided separated Employee Lists for GIG Corp., GIG Services and GIG Transportation. (APP Exhibit B) These were also not before the Division at the time of the application and denial

determination. Both the Lease Agreements and Employee Lists are new evidence which were available to applicant but not provided with the application and will therefore not be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

The Division's determination to deny the application on the basis that GIG Corp. failed to demonstrate that the business is an independent enterprise, as required under 5 NYCRR §144.2(e), is supported by substantial evidence.

### **CONCLUSION**

GIG Corp. did not meet its burden to demonstrate that the Division's determination to deny its application for recertification as a minority and woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR § 144.2(e) 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 GIG Corp.'s application for recertification as a minority and woman-owned business enterprise.

In the Matter of Green Island Group Corp.  
DED File No. 58285  
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Request to Appeal	Y	Y
APP B	Written Appeal Submission	Y	Y
DED 1	Certification Application	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Request to Appeal	Y	Y
DED 4	Notice to Proceed Via Written Appeal	Y	Y
DED 5	2021 Personal Tax Returns	Y	Y
DED 6	MWBE Response 5/24/2023	Y	Y
DED 7	DASNY Pilgrim – Green Island Group Corp. Subcontract Agreement	Y	Y
DED 8	Echostar Construction – Green Island Group Corp. Dumpster Rental Agreement	Y	Y
DED 9	Servepro – Green Island Group Corp. Dumpster Rental Agreement	Y	Y
DED 10	NYS Dept. of Environmental Conservation Division of Materials Management, Waste Transporter Permit	Y	Y