

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

**In the Matter**

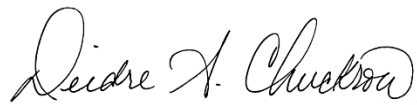
**- of -**

**the Application of Mastro Graphic Arts, Inc.**  
**for Certification as a Woman-Owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 3345**

**RECOMMENDED ORDER**

**-by-**



---

**Deidre A. Chuckrow**  
**Administrative Law Judge**  
**July 30, 2025**

This matter considers the written appeal by Mastro Graphic Arts, Inc. (“Mastro Graphic” 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 September 3, 2024, Mastro Graphic applied for certification as a women-owned business enterprise (“WBE”). Mastro Graphic based its application on Ms. Rae Mastrofilippo. (DED Exhibit 1).
2. On February 12, 2025, the Division denied the application on the following grounds (DED Exhibit 2):
  - (a) The woman owner relied upon for certification is not the highest-ranking officer of the business enterprise, and, where applicable, does not control the board of directors, nor serve as a general partner, as required under 5 NYCRR § 144.2(d)(1).
3. A Request to Appeal was submitted on March 21, 2025. (DED Exhibit 3).
4. A Notice to Proceed via Written Appeal was sent to Mastro Graphic on March 26, 2025. (DED Exhibit 5).
5. A written appeal letter with an attachment, was submitted by the applicant on June 27, 2025. (APP Exhibits A and B).

6. The Division filed an Affirmation of Abdul Bah, Associate Certification Director, dated July 16, 2025, an Affirmation of Lisa Berk, Senior Counsel for the Division, dated July 16, 2025, and a brief of Lisa Berk, Esq., dated July 18, 2025.

### **FINDINGS OF FACT**

7. Mastro Graphic provides printed products including digital printing of plastic, metal, and 3D parts, flexographic printing, industrial name plates, and screen printing including glass, plastics, metal, and paper. (DED Exhibit 1).
8. Ms. Rae Mastrofilippo is the 100% owner of the applicant business. There are 200 shares of Mastro Graphic, all of which are held by Rae Mastrofilippo. (DED Exhibit 1).
9. The members of the Board of Directors are Rae Mastrofilippo, Owner; Ed Beck, President, and Jennifer Mastro (Coltune) and Janet Oliver, Managers. On appeal, the applicant states that the Board of Directors consists of “[Ms. Mastrofilippo’s] attorney, [her] accountants, [her] daughter Jennifer. . . , and Ed Beck.” (DED Exhibit 1; APP Exhibit A).
10. Mastro Graphic’s by-laws, at Article VI, § 1, states “[t]he officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers including a Chairman of the Board as may be determined by the Board of the Directors.” Article VI, § 6 provides “[t]he President shall be the Chief Executive Officer of the Corporation;” and that “he shall have general and active management and control of the business and affairs of the Corporation. . . .”(DED Exhibit 4).
11. Article III, § 5 of the by-laws “Duties of Directors” states “[t]he Board of Directors shall have the control of general management of the affairs and business of the Corporation unless otherwise provided in the Certificate of Incorporation.” (DED Exhibit 4).

12. Article II, § 6 of the by-laws state that a quorum, unless “otherwise provided by law, or by the Certificate of Incorporation or these by-laws,” consists of “the holders of a majority of the shares of the corporation outstanding and entitled to vote. . . and shall constitute a quorum for the transaction of business at all meetings of the shareholders:” (DED Exhibit 4).
13. Article II, § 7 of the by-laws provides that “Every shareholder having the right to vote, has “one vote for each share of stock having voting power.” Further, “the vote of the holders of a majority of the shares. . .shall decide any question. . .” (DED Exhibit 4).
14. Article IV, § 4 of the by-laws governs quorum and voting and states, “At all meetings of the Board of Directors, except as otherwise provided by the Certificate of Incorporation, or by these by-laws, a majority of the Board of Directors shall constitute a quorum.” (DED Exhibit 4).

### **APPLICABLE LAW**

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

Control. Minority group members or women relied upon for certification must have the power to control the business enterprise for which certification is sought. The division shall assess whether minority group members and women possess such control based upon the following criteria:

- (1) 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.

### **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 Mastro Graphic 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. Control - Highest Ranking/Control of the Board**

The Division denied Mastro Graphic’s application for certification on the grounds that Rae Mastrofilippo is not the highest-ranking officer of the business enterprise and does not control the board of directors as required by 5 NYCRR § 144.2(d)(1).

In evaluating this regulation, the Division requests a list of the applicant business’ corporate directors and regularly examines an applicant’s by-laws and operating agreements. *See Matter of ADK Water Solutions, Inc.*, Recommended Order, June 12, 2023 (Final Order 23-07, Aug. 10, 2023), *Matter of LHS International, Inc.*, Recommended Order, June 26, 2023 (Final Order 23-07, Aug. 11, 2023), and *Matter of S.C. Spencer Electric, Inc.* Recommended Order July 29, 2021 (Final Order 22-04, March 31, 2022).

Here, the application identifies Ms. Mastrofilippo as the owner of the applicant business with no other title. (DED Exhibit 1). Applicant’s appeal submission also identifies Ms.

Mastrofilippo as the Owner of the business and does not provide any indication that she holds any other position at the business. (APP Exhibit A).

On appeal, Applicant provides a revised and unexecuted copy of by-laws and states that the Board of Directors consists of “[Ms. Mastrofilippo’s] attorney, [her] accountants, [her] daughter Jennifer. . . , and Ed Beck.” (APP Exhibits A and B). Applicant also states, for the first time on appeal, that Ms. Mastrofilippo considers the Board as “advisors, and. . . appreciate[s] their input and advice, [she has] never been outvoted.” This information was not before the Division at the time of the denial determination and is therefore new evidence which will not now be considered. *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

Here, nothing in any of the documents presented demonstrates that Ms. Mastrofilippo is or holds herself out to be the highest ranking member of the applicant business. The application is clear that while she is listed as the owner, she holds no other title, and that Mr. Beck is the President of Mastro Graphics. (DED Exhibit 1). Article VI, § 6 of the by-laws state, “The President shall be the Chief Executive Officer of the corporation” and the President “shall have general and active management and control of the business and affairs of the corporation, subject to the control of the Board of Directors. . . .” (DED Exhibit 4). Thus, Ms. Mastrofilippo is not the highest ranking officer of the applicant business.

However, contrary to the Division’s finding, Ms. Mastrofilippo does control the Board of Directors. The applicant business’ Board of Directors is made up of four members: Rae Mastrofilippo, Owner; Ed Beck, President; Jennifer Mastro (Coltune), Manager; and Janet Oliver, Manager. (DED Exhibit 1). Article III, § 5 of the by-laws, states that, “The Board of Directors shall have the control of general management of the affairs and business of the Corporation”, and that such “management and business of the corporation” must be consistent with the by-laws.

(DED Exhibit 4). Article II, § 7 of the by-laws also provide that, “[a]t any meeting of the shareholders, every shareholder having the right to vote shall be entitled to vote. . .”, and, has “one vote for each share of stock having voting power.” Further, “the vote of the holders of a majority of the shares. . .shall decide any question. . .” (DED Exhibit 4). In this instance, Ms. Mastrofilippo is the sole shareholder of the applicant business, and therefore, she is the only board member who has the right to vote on any issue before the board.

Thus, while the Division’s determination that the woman owner, relied upon for certification, does not control the board of directors, is not supported by substantial evidence, its determination that she is not the highest-ranking officer of the business enterprise, as required by 5 NYCRR § 144.2(d)(1) is supported by substantial evidence.

### **CONCLUSION**

Mastro Graphic Arts, Inc. 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(d)(1) was not based on substantial evidence.

### **RECOMMENDATION**

The Division’s determination to deny Mastro Graphic Arts, Inc. application for certification as a woman-owned business enterprise should be affirmed, and a final order be issued.

In the Matter of Mastro Graphic Arts, Inc.  
DED File ID No. 3345  
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Appeal Letter	Y	Y
APP B	Revised By-Laws	Y	N
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Request to Appeal	Y	Y
DED 4	Company By-Laws	Y	Y
DED 5	Notice to Proceed Via Written Appeal	Y	Y
DED 6	Counsel's email dated May 15, 2025	Y	Y
DED 7	Counsel's email dated May 29, 2025	Y	Y
DED 8	Appellant's email dated May 30, 2025	Y	Y
DED 9	Appellant & counsel's emails dated June 10, 2025	Y	Y
DED 10	Counsel's email dated June 24, 2025	Y	Y
DED 11	Appellant's email dated June 26, 2025	Y	Y
DED 12	Counsel's email dated June 27, 2025	Y	Y