

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

In the Matter

- of -

**the Application of Now What? Mardi Gras! Inc. dba Featuring
for Certification as a Minority and Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 72883

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
June 24, 2025

This matter considers the written appeal by Now What? Mardi Gras! Inc. dba Featuring (“NWMI” 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 and woman-owned business enterprise (“MWBE”).

PROCEDURAL HISTORY

1. On September 10, 2024, Ms. Arnyce Foster-Hernandez, as President, applied on behalf of NWMI for certification as a minority and woman-owned business enterprise (“MWBE”) (DED Exhibit 1)
2. On January 6, 2025, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) Minority group members or women relied upon for certification have not demonstrated having made a capital contribution to the business enterprise proportionate to their equity interest therein, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required under 5 NYCRR § 144.2(b)(2);
 - (b) Minority group members or women do not share in the risks and profits of the business enterprise in proportion to their equity interests therein, as required under 5 NYCRR §144.2(b)(3); and
 - (c) The business enterprise does not operate independently, as required under 5 NYCRR § 144.2(e).

3. NWMI timely filed a Request to Appeal on January 7, 2025. (DED Exhibit 11)
4. A Notice to Proceed via Written Appeal was sent to NWMI on January 10, 2025. (DED Exhibit 3)
5. NWMI submitted its written appeal by letter dated April 4, 2025. (APP Exhibit A)
6. The Division filed an Affirmation of Matthew LeFebvre, Associate Certification Director, dated May 15, 2025, and a brief of Lisa Berk, Esq., senior counsel for the Division, dated May 20, 2025.
7. The Division withdrew its denial under 5 NYCRR §144.2(b)(3) in its May 20, 2025, brief.

FINDINGS OF FACT

8. NWMI is a corporation that operates a cafe that serves seasonal organic products. (DED Exhibit 1)
9. Ms. Arnyce Foster-Hernandez is the President and has a 100% ownership interest in both NWMI and its subsidiary, Featuring the Center for Culinary Arts, a not-for-profit corporation. (DED Exhibit 1)
10. NWMI was formed on June 6, 2006. The business did not open until June 8, 2024. No capital contributions were made to the company in 2006. (DED Exhibit 1)
11. The capital contributions made to NWMI include funds from an account in the name of Danny Hernandez, funds from an account in the name of Featuring The Center for Culinary Arts, Inc., a grant from Citizens NYC to Featuring The Center for Culinary Arts, Inc., and donations received from friends and family. (DED Exhibits 1, 4, 5, and 6)
12. Featuring the Center for Culinary Arts received a grant in the amount of \$████ from Citizens NYC in 2023. A spreadsheet of donor box donations lists donations received by

Featuring The Center for Culinary Arts between 8/12/2022 and 8/20/2024, with a total amount of \$ [REDACTED] received. “We [NWMI] used those funds to open the café.” Featuring transferred \$ [REDACTED] to the NWMI bank account on April 1, 2024. Ms. Foster-Hernandez’s husband, Danny Hernandez, deposited \$ [REDACTED] into NWMI’s account on April 11, 2024, and another \$ [REDACTED] on June 7, 2024. (DED Exhibits 1 and 5)

13. “Both entities [NWMI and Featuring the Center for Culinary Arts] will fully operate together... we promote both on social media, customer engagement, email campaigns, and participations in business development programs.” (DED Exhibit 1)
14. “The Center for Culinary Arts will be the entity to hire, train, and provide resources to employees; Now What? Mardi Gras! Inc. DBA Featuring currently pays for the operating cost and inventory for the café. As we expand into other locations, this will be the business model.” (DED Exhibit 1)
15. Ms. Foster-Hernandez oversees both businesses. She is the executive chef and 100% owner of both companies. Both businesses have the same address. (DED Exhibit 1)
16. NWMI’s email domain is @featuringculinaryarts.com and its website is www.featuringculinaryarts.com (DED Exhibit 1)
17. NWMI’s website allows donors to make contributions to Featuring The Center for Culinary Arts. (DED Exhibit 7)
18. Applicant submitted a Dripos Services Agreement dated 3/25/2024 between Frostbyte Technologies, Inc. and Featuring The Center for Culinary Arts. This agreement is for the use of Dripos services and products by Featuring The Center for Culinary Arts. (DED Exhibit 8)

19. Itemized order receipts list the name of the business as Featuring The Center for Culinary Arts. (DED Exhibit 8) A Quick Books document submitted lists deposits made from Dripos to Featuring – The Café. (DED Exhibit 9)
20. A Harlem Business Alliance Business Spotlight submitted showcases Arnyce Foster-Hernandez and Featuring the Center for Culinary Arts and references the organic café as Featuring – The Café. (DED Exhibit 10)

APPLICABLE LAW

5 NYCRR §144.2(b)(2) states as follows:

Capital contribution. Minority group members and women relied upon for certification must demonstrate a capital contribution to the business enterprise for which certification is sought proportionate to their equity interest therein.

- (i) Sources of capital contribution. Minority group members and women may demonstrate a capital contribution by providing documentary evidence of, for example and without limitation, one or more of the following:
1. Money;
 2. Property;
 3. Equipment; or
 4. Expertise, provided that the contribution of such expertise must be uncompensated, the expertise must be specialized and directly applicable to one or more critical aspects of the operation of the business enterprise, and a reasonable assessment of the fair market value of the expertise must be clearly documented.

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 NWMI for certification 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. Ownership

The Division interprets 5 NYCRR §144.2(b)(2) to require an applicant to demonstrate that the woman-owner's contribution came from assets belonging solely to the woman-owner. Given this criterion, the Division consistently denies applications for WBE certification where, as here,

an applicant fails to substantiate the source of the capital contribution by the woman-owner. See *Matter of Otone Mechanical Construction, Inc.*, Recommended Order dated April 24, 2015 (Final Order 17-28, May 2, 2017), *Matter of Spring Electric, Inc.*, Recommended Order dated March 17, 2017 (Final Order 17-21, dated March 27, 2017).

The Applicant bears the burden in establishing that she has met this certification 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).

It is the responsibility of the applicant “to clearly identify, quantify, and explain on the certification application, what is to be considered a capital contribution.” *Matter of Scherzi Systems*, Final Order 19-16, dated September 6, 2019, *Scherzi Systems, LLC v. White*, 197 AD 3d 1466 (3d Dept. 2021).

The capital contributions made to NWMI include funds from an account in the name of Danny Hernandez, funds from an account in the name of Featuring The Center for Culinary Arts, Inc., a grant from Citizens NYC to Featuring The Center for Culinary Arts, Inc., and donations received from friends and family. (DED Exhibits 1, 4, 5, and 6)

Featuring the Center for Culinary Arts received a grant in the amount of \$[REDACTED] from Citizens NYC in 2023, and donations from friends and family. A spreadsheet of donor box donations lists donations received by Featuring The Center for Culinary Arts between 8/12/2022 and 8/20/2024, with a total amount of \$[REDACTED] received. “We [NWMI] used those funds to open the café.” Featuring The Center for Culinary Arts transferred \$[REDACTED] to the NWMI bank account on April 1, 2024. Ms. Foster-Hernandez’s husband, Danny Hernandez, deposited \$[REDACTED] into NWMI’s account on April 11, 2024, and another \$[REDACTED] on June 7, 2024. (DED Exhibits 1 and 5)

Ms. Foster-Hernandez did not identify any capital contribution to the company at the time it was formed in 2006. She also did not individually make any of the cash contributions identified in the application. Those contributions were made by Featuring The Center for Culinary Arts, Danny Hernandez, and friends and family (DED Exhibits 1, 4-8)

On appeal, Ms. Foster-Hernandez stated “I have made substantial monetary capital contributions to the corporation since its formation in 2006. These contributions included personal financial investments utilized for initial startup costs, ongoing operational expenses, and subsequent business development.” (APP Exhibit A) However, she does not identify what operational and business expenses she is referring to and failed to provide documentation to substantiate the claim. Cash infusions to fund the business that are not made in exchange for ownership interest do not constitute capital contributions. See *Matter of Minority Components*, Recommended Order dated February 11, 2025, Final Order 25-02, dated March 4, 2025. Also, the \$██████ contribution made by Featuring The Center for Culinary Arts, not by Ms. Foster-Hernandez, does not qualify as a capital contribution. See *Matter of Gordon & Zoerb Electrical Contractors, Inc.*, Recommended Order dated April 30, 2020, Final Order 20-07, dated June 2, 2020. In addition, contributions made by Danny Hernandez, not Ms. Foster-Hernandez, even if from a joint account, do not qualify as assets coming solely from the woman-owner. See *Matter of Spring Electric, Inc.*, Recommended Order dated March 17, 2017, Final Order 17-21, dated March 27, 2017.

The Division’s determination to deny the application on the basis that NWMI failed to demonstrate that Ms. Foster-Hernandez made contributions to NWMI in proportion to her ownership interest, as required under 5 NYCRR §144.2(b)(2) is supported by substantial evidence.

II. Independence

The Division further found that NWMI 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).

“Both entities [NWMI and Featuring the Center for Culinary Arts] will fully operate together... we promote both on social media, customer engagement, email campaigns, and participations in business development programs.” (DED Exhibit 1)

“The Center for Culinary Arts will be the entity to hire, train, and provide resources to employees; Now What? Mardi Gras! Inc. DBA Featuring currently pays for the operating cost and inventory for the café. As we expand into other locations, this will be our business model.” (DED Exhibit 1)

Ms. Foster-Hernandez oversees both businesses. She is the executive chef and 100% owner of both companies. Both businesses have the same address. (DED Exhibit 1)

NWMI’s email domain is @featuringculinaryarts.com and its website is www.featuringculinaryarts.com. This website contains a menu of drinks available at the café and has a section entitled “Featuring the Café”. (DED Exhibits 1 and 7)

NWMI’s website allows donors to make contributions to Featuring The Center for Culinary Arts. These funds are used for operating expenses in the café. (DED Exhibits 1 and 7)

NWMI used donations made to Featuring The Center for Culinary Arts to start NWMI and to pay NWMI’s ongoing operating expenses. Applicant used the \$[REDACTED] in donations made to

Featuring The Center for Culinary Arts and a \$[REDACTED] grant awarded to Featuring The Center for Culinary Arts to start up NWMI. Those donations were made to Featuring The Center for Culinary Arts on the website it shares with NWMI. (DED Exhibits 1, 4, 5, 6 and 7)

Both businesses have the same owner, same physical address, and the same website. Applicant intends to operate a full-service kitchen and use the non-profit company, Featuring The Center for Culinary Arts, to hire, train, and provide resources to employees of NWMI. The two separate entities would work together to grow the brand, mission, and business. Ms. Foster-Hernandez does the marketing for both businesses, promotes both businesses on the same website, and has used donations made to Featuring The Center for Culinary Arts to capitalize NWMI. (DED Exhibit 1)

Applicant submitted a Dripops Services Agreement dated 3/25/2024 between Frostbyte Technologies, Inc. and Featuring The Center for Culinary Arts. This agreement is for the use of Dripops services and products by Featuring The Center for Culinary Arts. (DED Exhibit 8) Although Featuring The Center for Culinary Arts entered into the agreement to receive these products and services, they are being utilized by NWMI, as evidenced by the Dripops customer receipts which show sales for Featuring the Café products, such as coffee and sandwiches. Dripops is the point-of-sale platform used by the café. (DED Exhibits 1, 7 and 8)

On appeal, Ms. Foster-Hernandez states “Now What Mardi Gras Inc. was established in 2006 as a revenue-generating entity dedicated to food and hospitality services. The nonprofit subsidiary was founded later, in January 2022, with the distinct purpose of facilitating job creation and promoting community economic growth. The nonprofit serves as a workforce development platform, where employees gain culinary and hospitality training through employment at the for-

profit enterprise... the nonprofit serves as a training pipeline feeding into the operations of the for-profit entity.” (APP Exhibit A)

NWMI relies on the services and equipment contracted by Featuring The Center for Culinary Arts, and donations made to Featuring The Center for Culinary Arts, in order to operate the business. NWMI’s business is so entangled with Featuring The Center for Culinary Arts, that it is not independent. *See Skyline Specialty Sys, Inc. v. Gargano*, 294 A.D.2d742 (3d Dept. 2002)

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

CONCLUSION

NWMI did not meet its burden to demonstrate that the Division’s determination to deny its application for certification as a minority and woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(b)(2) and 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 NWMI’s application for certification as a minority and woman-owned business enterprise.

In the Matter of Now What? Mardi Gras! Inc. dba Featuring
 DED File ID No. 72883
 Exhibit Chart

Exhibit #	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Appeal Submission	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Notice to Proceed Via Written Appeal	Y	Y
DED 4	Chase Bank Statement account ending 2207	Y	Y
DED 5	Chase Bank Statements account ending 1188	Y	Y
DED 6	Donor Box Donation Spreadsheet	Y	Y
DED 7	Screenshots of Company's Website	Y	Y
DED 8	Dripos Contract and Itemized Receipts	Y	Y
DED 9	Dripos Quickbook Record	Y	Y
DED 10	Harlem Business Alliance Spotlight article	Y	Y
DED 11	Request to Appeal	Y	Y