

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

In the Matter

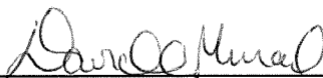
- of -

the Application of Overlook Services, Inc.
for Certification as a Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 71426

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
October 3, 2024

This matter considers the written appeal by Overlook Services, Inc. (“OSI” 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 January 4, 2024, Ms. Jenine Mangini, as President, applied on behalf of OSI for certification as a woman-owned business enterprise (“WBE”) (DED Exhibit 1).
2. On April 8, 2024, the Division denied the application on the ground that the business enterprise does not operate independently, as required under 5 NYCRR § 144.2(e). (DED Exhibit 2).
3. OSI filed a Request to Appeal on April 23, 2024 (APP Exhibit A).
4. A notice to proceed via written appeal was sent to OSI on April 26, 2024 (DED Exhibit 3).
5. OSI submitted its written appeal by letter dated June 6, 2024 (APP Exhibit B).
6. The Division filed an Affidavit of Raymond Emanuel, Associate Certification Director, dated August 28, 2024, and a brief of Lisa Berk Esq., counsel for the Division, dated August 29, 2024.

FINDINGS OF FACT

7. OSI is engaged in the business of painting contracting (DED Exhibit 1).
8. Ms. Jenine Mangini is the President and has a 100% ownership interest. (DED Exhibit 1).

9. A narrative submitted with the application states “Overlook Services Inc. is a newly formed business. It started as a painting contractor and is looking to transition into supplying material... Overlook Services Inc. originally subcontracted out painting work but will be transitioning into sales, which will be self-performing... Overlook Services Inc. consists only of myself... It does not have employee payroll.” (DED Exhibit 4).
10. Ms. Mangini’s brother, Dennis Carollo, is the sole owner of OV Painting and Supply, Inc. (“OV”) Ms. Mangini works part-time for this business. OV “has served as a 100% subcontractor to Overlook Services, Inc.” (DED Exhibits 4 and 5).
11. Applicant listed only one project with JDS Development. (DED Exhibit 1). Applicant entered into a contract with JDS Construction Group LLC for painting work which was “subcontracted to OV Painting and Supply Inc. and completed by the employees of OV Painting and Supply Inc.” (DED Exhibits 5, 10 and 11). OSI received \$ [REDACTED] and paid OV Painting and Supply, Inc. \$ [REDACTED] for the work it performed. (DED Exhibits 10 and 11). OSI “has not performed any work for any other clients...” (DED Exhibit 5).
12. Ms. Mangini’s brother, Dennis Carollo, owns Chelsea General Contracting. Ms. Mangini works part-time at this business. Overlook shares space with Chelsea General Contracting at 261 Chelsea Street, Staten Island, New York (DED Exhibits 1, 5 and 13).

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 OSI 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

The Division found that OSI 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), “whether the business enterprise transacts business primarily with one other entity,” 5 NYCRR §144.2(e)(2), and “whether the business enterprise receives tangible benefits as a result of a connection to another entity...”. 5 NYCRR §144.2(e)(3).

A narrative submitted with the application states “Overlook Services Inc. is a newly formed business. It started as a painting contractor and is looking to transition into supplying material... Overlook Services Inc. originally subcontracted out painting work but will be transitioning into sales, which will be self-performing... Overlook Services Inc. consists only of myself... It does not have employee payroll.” (DED Exhibit 4).

Ms. Mangini’s brother, Dennis Carollo, is the sole owner of OV Ms. Mangini works part-time for this business. OV “has served as a 100% subcontractor to Overlook Services, Inc.” (DED Exhibits 4 and 5).

Applicant was requested to provide a list of the three largest active projects on which the applicant is working. Applicant listed only one project with JDS Development. (DED Exhibit 1). Applicant entered into a contract with JDS Construction Group LLC for painting work which was “subcontracted to OV Painting and Supply Inc. and completed by the employees of OV Painting and Supply Inc.” (DED Exhibits 5, 10 and 11). OSI received \$ [REDACTED] and paid OV Painting and Supply, Inc. \$ [REDACTED] for the work it performed. (DED Exhibits 10 and 11). OSI “has not performed any work for any other clients...” (DED Exhibit 5).

Ms. Mangini’s brother, Dennis Carollo, owns Chelsea General Contracting. Ms. Mangini works part-time at this business. Overlook shares space with Chelsea General Contracting at 261 Chelsea Street, Staten Island, New York (DED Exhibits 1, 5 and 13). Applicant provided a lease-rental agreement purporting to establish that OSI was leasing the location from June 1, 2023, for

a period of one year (DED Exhibit 12). However, this lease was not signed. OSI therefore failed to provide proof that it rents a physical location to store its supplies the company uses for painting jobs.

OSI (a) shares space with Ms. Mangini's brother's company, Chelsea General Contracting (DED Exhibits 1, 5 and 13); (b) transacts business with primarily one company, JDS Construction Group LLC (DED Exhibits 1, 5 and 10); subcontracts this work to OV and (c) receives tangible benefits as a result of Ms. Mangini's connection with OV Painting and Supply Inc. (DED Exhibits 4 and 5); and therefore, does not operate independently. See *Matter of AJ Nesti*, Recommended Order dated January 12, 2024, Final Order 24-02 dated February 22, 2024 (applicant denied certification where company subcontracted all of its labor and relied primarily on one subcontractor to perform the core functions of the business enterprise); *Matter of Acme Lightning Rod, LLC*, Recommended Order dated February 25, 2020, Final Order 20-02 dated April 21, 2020 (applicant denied certification where it shared board members, personnel, office space, etc. with another entity, and paid the same other entity as a subcontractor to perform the majority of work it provided); *Matter of Twist Mgmt*, Recommended Order dated May 14, 2019, Final Order 19-25 dated October 9, 2019 (applicant denied certification where business inextricably linked to other family-owned businesses);⁹ ; and *Matter of KJ Direct LLC*, Recommended Order dated June 25, 2018, Final Order 18-37 dated July 30, 2018 (applicant denied certification where a majority of its revenue was from a contract with the husband's company, for which both companies shared office space, supplies, equipment, staff, and a phone number)

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

CONCLUSION

OSI 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

For the reasons set forth above, I recommend that the Director affirm the Division's determination to deny OSI's application for certification as a woman-owned business enterprise.

In the Matter of Overlook Services, Inc.
DED File ID No. 71426
Exhibit Chart

Exhibit #	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Request to Appeal	Y	Y
APP B	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	Narrative dated February 14, 2024	Y	Y
DED 5	Narrative dated March 6, 2024	Y	Y
DED 6	Statement on Company Wages	Y	Y
DED 7	Statement on 1099 Forms	Y	Y
DED 8	2022 Business Tax Return	Y	Y
DED 9	Jenine Mangini's Resume	Y	Y
DED 10	JDS Construction Contract, change orders and proof of payment	Y	Y
DED 11	Subcontractor agreements, change orders and proof of payment	Y	Y
DED 12	Lease Rental Agreement	Y	Y
DED 13	Jenine Mangini's 2022 Individual Tax Return	Y	Y