

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

**In the Matter**

**- of -**

**the Application of Parise Marketing Group, Inc.**  
**for Certification as a Woman-owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 69920**

**RECOMMENDED ORDER**

**-by-**



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**David A. Murad**  
**Administrative Law Judge**  
**December 4, 2023**

This matter considers the written appeal by Parise Marketing Group, Inc., (“PMG” 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 October 27, 2020, Ms. Adele Santomassimo, as President, applied on behalf of PMG for certification as a woman-owned business enterprise (“WBE”) (DED Exhibit 1).
2. On April 1, 2023, 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); and
  - (b) Ownership must not have been allocated to the minority group members or women relied upon for certification solely for the purpose of securing certification, as required under 5 NYCRR §144.2(b)(5).
3. PMG timely filed a Request to Appeal on April 21, 2023 (APP Exhibit 1).
4. A notice to proceed by written appeal was sent to PMG on May 24, 2023 (DED Exhibit 3).
5. PMG submitted its written appeal by letter from its counsel, Outside General Counsel Solutions, dated June 16, 2023. (APP Exhibit 2).

6. The Division filed an Affidavit of Amanda Brennan, Project Director, dated August 24, 2023, and a brief of Deidre Chuckrow Esq., counsel for the Division, dated August 29, 2023.

### **FINDINGS OF FACT**

7. PMG is a graphics design and marketing business. (DED Exhibits 1 and 4).
8. Ms. Adele Santomassimo is the President and Mr. Charles Williams is the Vice President. The application states that Ms. Santomassimo has a 51% ownership interest and Mr. Williams has a 49% ownership interest (DED Exhibit 1).
9. The business was established in 1991 and was purchased by Ms. Santomassimo and Mr. Williams in January 2011. Both Ms. Santomassimo and Mr. Williams purchased the business for \$ [REDACTED] and for prior contributions made to the business by both buyers, valued at \$ [REDACTED]. The stock purchase agreement does not reflect any allocation of the purchase price between the two owners and does not reflect the percentage owned by each shareholder (DED Exhibit 4). The stock transfer ledger reflects that Ms. Santomassimo received 51 shares and Mr. Williams received 49 shares on January 11, 2011. However, the ledger does not reflect the share price or amount paid by each shareholder (DED Exhibit 10).
10. The 2018, 2019 and 2020 tax returns all state that Ms. Santomassimo and Mr. Williams each own 50% of the business, while the 2021 tax return states that Ms. Santomassimo owns 51% and Mr. Williams owns 49% (DED Exhibits 6, 7, 8 and 9).
11. The 2018 corporate tax return evidences that Ms. Santomassimo received 1.76% more in compensation than Mr. Williams. The 2019 corporate tax return indicates that both Ms. Santomassimo and Mr. Williams received the same compensation. The 2020 and 2021

corporate tax returns evidence that Ms. Santomassimo received 0.025% more in compensation than Mr. Williams (DED Exhibits 6, 7, 8 and 9).

### **APPLICABLE LAW**

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

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 of 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(b)(5) states as follows:

Ownership interests in a business enterprise may not be allocated to minority group members or women, either through business formation or the transfer of ownership interests, solely for the purpose of securing certification of such business enterprise as a minority or woman-owned business enterprise. Where a minority group member or woman relied upon for certification obtains his or her ownership interest in a business enterprise through a transfer from another person, such minority group member or woman must demonstrate that such transfer was supported by reasonable consideration and must meet all other certification criteria described herein.

### **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 PMG 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. 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 only information provided in the submitted documents is the overall purchase price and the names of the buyers. None of the documents reflects any information regarding how much either of the owners paid individually for their respective shares (DED Exhibits 4, 5 and 10). There was no proof as to Ms. Santomassimo’s individual capital contribution. No documentation was

submitted in support of the purported \$ [REDACTED] additional capital contributions made by Ms. Santomassimo and Mr. Williams for their “prior contributions to the business”, nor was there any allocation of said amount between the two owners (DED Exhibit 4).

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.” *In the Matter of Scherzi Systems*, Final Order 19-16, dated September 6, 2019, *Scherzi Systems, LLC v. White*, 197 AD 3d 1466(3<sup>rd</sup> Dept. 2021). No information was provided regarding the source or amounts of the capital contributions made by Ms. Santomassimo.

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

The Division also denied certification on the ground that the woman owner relied upon for certification was only allocated majority ownership solely for the purpose of securing WBE certification, contrary to 5 NYCRR §144.2(b)(5). To qualify for WBE certification, the woman owner must own at least 51% of the business. See *Matter of Upstate Electrical v. NYS Dept. of Economic Development*, 179 AD 3d 1343 (3<sup>rd</sup> Dept. 2020).

The Application and Stock Transfer Ledger reflect that Ms. Santomassimo owns 51% and Mr. Williams owns 49% of the business (DED Exhibits 1 and 10). However, the Stock Purchase Agreement and Promissory Note do not state the percentage of ownership for each (DED Exhibits 4 and 5). Also, the corporate tax returns provide contrary information regarding ownership. The 2018, 2019 and 2020 corporate tax returns all state that Ms. Santomassimo and Mr. Williams each own 50% of PMG, while the 2021 tax return states that Ms. Santomassimo owns 51% and Mr. Williams owns 49% of PMG (DED Exhibits 6, 7, 8 and 9). No documentation was provided to

explain the change in ownership. The fact that the tax returns reflect a change in ownership from 50% each in 2018, 2019 and 2020 to a 51%/49% split in 2021, just before the submission of the application, is substantial evidence that that the reason to allocate 51% to Ms. Santomassimo is solely to qualify for MBE status.

The 2018 corporate tax return provides that Ms. Santomassimo received 1.76% more in compensation than Mr. Williams. The 2019 corporate tax return provides that both Ms. Santomassimo and Mr. Williams received the same compensation. The 2020 and 2021 corporate tax returns provide that Ms. Santomassimo received 0.025% more in compensation than Mr. Williams (DED Exhibits 6, 7, 8 and 9). Applicant admits that Ms. Santomassimo and Mr. Williams share equally in all company profits (APP Exhibit 2), which further indicates that Ms. Santomassimo and Mr. Williams are equal owners of the business.

The Division's determination to deny the application on the basis that Ms. Santomassimo did not demonstrate that she was allocated majority ownership other than solely for the purpose of securing WBE certification, as required under 5 NYCRR §144.2(b)(5) is supported by substantial evidence.

### **CONCLUSION**

PMG 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(b)(2) and 144.2(b)(5) 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 PMG's application for certification as a woman-owned business enterprise.

In the Matter of Parise Marketing Group, Inc.  
DED File ID No. 69920  
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
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	Stock Purchase Agreement	Y	Y
DED 5	Promissory Note Satisfaction Notice	Y	Y
DED 6	2018 Corporate Tax Return	Y	Y
DED 7	2019 Corporate Tax Return	Y	Y
DED 8	2020 Corporate Tax Return	Y	Y
DED 9	2021 Corporate Tax Return	Y	Y
DED 10	Stock Transfer Ledger	Y	Y
APP 1	Request to Appeal	Y	Y
APP 2	Written Appeal Submission	Y	Y