

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

In the Matter

- of -

the Application of RMF Printing Technologies, Inc.
for Certification as a Minority Woman-owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 52357

RECOMMENDED ORDER

-by-



David A. Murad
Administrative Law Judge
March 8, 2024

This matter considers the written appeal by RMF Printing Technologies, Inc., (“RMF” 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 woman-owned business enterprise (“MWBE”).

PROCEDURAL HISTORY

1. On September 16, 2020, Ms. Monica Castano, as President, applied on behalf of RMF for certification as a minority woman-owned business enterprise (“MWBE”) (DED Exhibit 1).
2. On April 10, 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);
 - (b) Minority group members or women must not be encumbered in their ability to realize the benefits of ownership of the business enterprise for which certification is sought, or subject to undue restrictions against alienating such ownership interests, as required under 5 NYCRR §144.2(b)(4);
 - (c) Minority group members or women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1);

- (d) Minority group members or women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required under 5 NYCRR §144.2(c)(2);
 - (e) Minority group members or women relied upon for certification do not devote time on an ongoing basis to the daily operation of the business enterprise, as required under 5 NYCRR §144.2(c)(3); and
 - (f) Minority group members or women 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, as required under 5 NYCRR §144.2(d)(1).
3. RMF timely filed a Request to Appeal on May 3, 2023 (APP Exhibit A/ DED Exhibit 3).
 4. A notice to proceed via written appeal was sent to RMF on May 12, 2023 (DED Exhibit 4).
 5. RMF filed its written appeal by letter from its attorney, Horace Flowers, Esq. dated September 26, 2023, with attachments (APP Exhibit B).
 6. The Division filed an Affidavit of Raymond Emanuel, Associate Director, dated January 4, 2024, and a brief of Karen Bernstein Esq., counsel for the Division, dated January 5, 2024.

FINDINGS OF FACT

7. RMF is engaged in the business of commercial printing, including thermal rolls, business forms, manifold, paper converting, offset and flexographic printing, and security printing (DED Exhibit 1).
8. Ms. Monica Castano is the President and has a 52% ownership interest. Thomas Greg & Sons Limited (“TG&S”) has a 48% ownership interest. Felipe Bautista Palacio is the

President of TG&S and is married to Ms. Monica Castano. Section 2C of the application states: “The company was founded in 1982. The current owners bought the company through the holding company Midwest bank note [“MWBN”] in 2007. In 2016, Midwest bank note and RMF printing technologies merged, forming a single entity called RMF printing, and the ownership of Monica then became directly to the RMF and not through Midwest Bank Note Company.” (DED Exhibit 1).

9. Section 2E of the application states Ms. Castano’s capital contribution was in the form of a gift and an assumption of debt in the amount of \$ [REDACTED] on March 15, 2007, and TG&S’s capital contribution was in the form of an ownership transfer from Cameron Development with a value of \$ [REDACTED] on June 15, 2010 (DED Exhibit 1).
10. The application included a copy of a letter from Felipe Bautista Palacio to Monica Castano regarding “Gift of Shares in MWBN Holding Company” dated October 22, 2012. This letter states “The purpose of this letter is to memorialize my irrevocable gift to you of the following property in consideration of my love and affection for you: Five Hundred Twenty (520) common shares of no par value (the “Shares”), of MWBN Holding Company... subject to any and all liabilities which may inhere to or accompany such Shares as of the date of this letter. The shares are further subject to the terms and conditions contained in that certain Option Agreement between us of even date herewith...” (DED Exhibit 7).
11. The application also included a “Certification of Assumption of Indebtedness” dated October 22, 2012. The certification states “The undersigned, Monica Castano, hereby acknowledges and agrees to expressly assume and pay the indebtedness of Felipe Bautista Palacio under that certain promissory note dated July 22, 2009 to Cameron Development, Inc., a Panama Corporation, in the original principal amount of \$ [REDACTED] and to pay the

indebtedness evidenced by such Note in strict accordance with the terms of that certain Gift Letter of even date herewith from Felipe Bautista Palacio to the undersigned.” (DED Exhibit 7).

12. The application included a Demand Promissory Note between Felipe Bautista Palacio and Cameron Development, Inc. dated July 22, 2009. The Note provides that Mr. Bautista Palacio promises to pay a principal sum of \$ [REDACTED], together with interest, to Cameron Development, Inc. (DED Exhibit 8).
13. Section 2H of the application lists the Board of Directors as: Felipe Bautista Palacio, Camilo Bautista Palacio, Fernando Bautista Palacio, and Tatiana Bautista (DED Exhibit 1). Article III, Section 1 of the By-Laws states “The property, business and affairs of the Corporation shall be managed and controlled by a Board of Directors ...” Article III, Section 6 states “...the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these By-Laws directed or required to exercised or done by the shareholders.” Article V, Section 1 of the By-Laws states “The officers of the Corporation shall be elected by the Board of Directors and shall be a President and a Secretary...” Article V, Section 5 states “Any officer elected or appointed by the Board of Directors may be removed at any time with or without cause...” Article V, Section 15 states “The salary or other compensation of officers shall be fixed from time to time by the Board of Directors...” (DED Exhibit 11).
14. Ms. Castano’s resume reflects that she has been the CEO of RMF since 2012. Her prior work experience includes employment as a PA to the CEO, Business Analyst, General Manager, and Export Director. She has a Bachelor of Business Administration degree

(DED Exhibit 11). She lists her duties and responsibilities as: “I supervise the development of policies that are discussed and agreed upon by me and the Directors of the Company.

We are currently concentrating in:

- Improving the playslip production process with the purchase of a Sanden machine
- Implementing the tracking system requested by our customer Gtech. The Plant Manager of RMF reports directly to me, with whom I hold daily meetings. I receive and review weekly reports on the development of the agreed activities and policies that have been implemented, including revisions of financial reports and sales orders. I also ensure customer satisfaction of our production and delivery of our products and that they meet customer needs. I also participate and manage client relationships of RMF... I dedicate about 55% of my time to RMF.” (DED Exhibit 1).

She shares responsibility for financial decisions, estimating, preparing bids, negotiating bonding, negotiating insurance, hiring and firing, purchasing equipment/sales, managing and signing payroll, negotiating contracts, and acting as signatory for business accounts (DED Exhibit 1).

15. Thomas J. Walter’s resume reflects that he has been the Plant Manager for RMF since 2019, with responsibilities of managing the daily administration and production operations. He has worked in the printing and production for over 40 years and has extensive expertise in print manufacturing operations, business planning, project management, and operational budgets. His prior work experience includes employment as Vice President of Operations, Secure Operations Manager, and Production Supervisor, with responsibilities including

managing production teams, production departments, and production facilities (DED Exhibit 12). He is solely responsible for supervising field operations and shares responsibility for financial decisions, hiring and firing, purchasing equipment/sales, managing and signing payroll, and acting as a signatory for business accounts (DED Exhibit 1).

APPLICABLE LAW

5 NYCRR §144.2(b)(2) states in relevant part 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)(4) states as follows:

Customary incidents of ownership. Minority group members and women relied upon for certification must not be encumbered in their ability to realize the benefits of ownership of the business enterprise for which certification is sought, or subject to undue restrictions against alienating such ownership interests.

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

Minority group members and women relied upon for certification must make day-to-day decisions concerning the operation of the business enterprise for which certification is sought. The division shall evaluate whether minority group members or women operate a business enterprise for which certification is sought based upon the following criteria:

- (1) Minority group members and women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons. This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things...
- (2) Minority group members and women relied upon for certification must make operational decisions on a day-to-day basis with respect to the functions of the business enterprise for which certification is sought. The critical functions of a business enterprise shall be determined by the division based upon the following factors, but is not limited to:
 - (i) The products or services the business enterprise provides to clients; and
 - (ii) The means by which the business enterprise obtains contracts or orders.
- (3) Minority group members and women relied upon for certification must devote time on an ongoing basis to the daily operation of the business enterprise for which certification is sought.

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

- (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 RMF 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 MWBE certification where, as here, an applicant fails to substantiate the source of the capital contribution by the minority/woman-owner. See *Matter of Otone Mechanical Construction, Inc.*, Recommended Order dated April 24, 2015 (Final Order 17-28, dated 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).

Section 2C of the application states: "The company was founded in 1982. The current owners bought the company through the holding company Midwest bank note ["MWBN"] in

2007. In 2016, Midwest bank note and RMF printing technologies merged, forming a single entity called RMF printing, and the ownership of Monica then became directly to the RMF and not through Midwest Bank Note Company.” (DED Exhibit 1).

Section 2E of the application states Ms. Castano’s capital contribution was in the form of a gift and an assumption of debt in the amount of \$ [REDACTED] on March 15, 2007, and TG&S’s capital contribution was in the form of an ownership transfer from Cameron Development with a value of \$ [REDACTED] on June 15, 2010 (DED Exhibit 1).

The application included a copy of a letter from Felipe Bautista Palacio to Monica Castano regarding “Gift of Shares in MWBN Holding Company” dated October 22, 2012. This letter states “The purpose of this letter is to memorialize my irrevocable gift to you of the following property in consideration of my love and affection for you: Five Hundred Twenty (520) common shares of no par value (the “Shares”), of MWBN Holding Company... subject to any and all liabilities which may inhere to or accompany such Shares as of the date of this letter. The shares are further subject to the terms and conditions contained in that certain Option Agreement between us of even date herewith...” (DED Exhibit 7).

The application also included a “Certification of Assumption of Indebtedness” dated October 22, 2012. The certification states “The undersigned, Monica Castano, hereby acknowledges and agrees to expressly assume and pay the indebtedness of Felipe Bautista Palacio under that certain promissory note dated July 22, 2009 to Cameron Development, Inc., a Panama Corporation, in the original principal amount of \$ [REDACTED] and to pay the indebtedness evidenced by such Note in strict accordance with the terms of that certain Gift Letter of even date herewith from Felipe Bautista Palacio to the undersigned.” (DED Exhibit 7).

The application included a Demand Promissory Note between Felipe Bautista Palacio and Cameron Development, Inc. dated July 22, 2009. The Note provides that Mr. Bautista Palacio promises to pay a principal sum of \$ [REDACTED], together with interest, to Cameron Development, Inc. (DED Exhibit 8).

The application contains no evidence that Ms. Castano paid for the shares of RMF issued to her in 2016. Mr. Bautista Palacio gifted Ms. Castano her shares in MWBN in 2012. MWBN purchased RMF on March 15, 2007. The assumption of the Demand Promissory Note indebtedness does not represent a capital contribution by Ms. Castano to RMF. It is a debt owed by Mr. Bautista Palacio to Cameron. Also, there is no documentation showing what the Note is for and the Certificate of Assumption of Indebtedness does not state what the assumption is for. (DED Exhibits 1, 7 and 8). The application did not show any payments made on the note from the personal assets of Ms. Castano. See *Matter of Gordon & Zoerb Electrical Contractors, Inc.* Recommended Order dated April 30, 2020, Final Order 20-07, dated June 2, 2020 (the Division requires that the assets to make the capital contributions belong solely to the woman-owner).

On appeal, applicant states the debt assumption “did not maintain a schedule for repayment”, and Ms. Castano “has satisfied” the debt assumption, and provides bank statements reflecting payments to Cameron (APP Exhibit B). This is new information that was not before the Division at the time of the application and denial determination and will therefore not be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021). Also, the debt assumption did maintain a repayment schedule under the terms of the Promissory Note, which provided for “Interest only payments shall be due and payable monthly on the first day of each month beginning September 1, 2009 and on the first day of each month thereafter until the entire outstanding principal balance on this Note and accrued but unpaid interest thereon is paid in full.”

(DED Exhibits 7 and 8). In addition, the source of the funds paid to Cameron is not proven. The statements provided indicate the sender as Ms. Castano, but no proof showing the account owner was provided (DED Exhibit B). Therefore, there is no proof that the payments to Cameron have been made from Ms. Castano's personal assets.

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

NYCRR §144.2(b)(4) requires that the woman-owner must not be encumbered in her ability to realize the benefits of ownership of the business enterprise and/or be subject to undue restrictions against alienating such ownership interest.

Section 2H of the application lists the Board of Directors as: Felipe Bautista Palacio, Camilo Bautista Palacio, Fernando Bautista Palacio, and Tatiana Bautista (DED Exhibit 1). Article III, Section 1 of the By-Laws states "The property, business and affairs of the Corporation shall be managed and controlled by a Board of Directors ...". Article III, Section 6 states "...the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law or by the Certificate of Incorporation or by these By-Laws directed or required to exercised or done by the shareholders." Article V, Section 1 of the By-Laws states "The officers of the Corporation shall be elected by the Board of Directors..." Article V, Section 5 states "Any officer elected or appointed by the Board of Directors may be removed at any time with or without cause..." Article V, Section 15 states "The salary or other compensation of officers shall be fixed from time to time by the Board of Directors..." (DED Exhibit 11).

RMF is managed and controlled by the Board of Directors. As stated above, Ms. Castano is not on the Board of Directors. The Board determines the duties and authority of all officers. The

President is elected by the Board and may be removed by the Board at any time with or without cause. The Board has control over the salaries of the officers. Therefore, Ms. Castano is encumbered in her ability to realize the benefits of her ownership.

The Division's determination to deny the application on the basis that RMF failed to demonstrate that Ms. Castano is not encumbered in her ability to realize the benefits of ownership of the business and/or be subject to undue restrictions against alienating such ownership interest, as required under 5 NYCRR §144.2(b)(4) is supported by substantial evidence.

II. Operation

5 NYCRR §144.2(c)(1) requires that the minority woman-owner possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, and that "this requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things". In *Upstate Electrical, LLC v. N.Y. State Dept. of Economic Development*, 2020 NY Slip Op. 340 (N.Y. App. Div. 2020), the Court affirmed the denial where the woman-owner had no training or experience in the industry to make her qualified to supervise the work of her employees.

Ms. Castano does not have any industry-specific expertise; her skills are related to general business or office management. She does not possess any academic or technical training relevant to the business' industry. Ms. Castano's resume reflects that she has been the CEO of RMF since 2012. Her prior work experience includes employment as a PA to the CEO, Business Analyst, General Manager, and Export Director. She has a Bachelor of Business Administration degree (DED Exhibit 11). She lists her duties and responsibilities as: "I supervise the development of policies that are discussed and agreed upon by me and the Directors of the Company. We are currently concentrating in:

- Improving the playslip production process with the purchase of a Sanden machine
- Implementing the tracking system requested by our customer Gtech. The Plant Manager of RMF reports directly to me, with whom I hold daily meetings. I receive and review weekly reports on the development of the agreed activities and policies that have been implemented, including revisions of financial reports and sales orders. I also ensure customer satisfaction of our production and delivery of our products and that they meet customer needs. I also participate and manage client relationships of RMF... I dedicate about 55% of my time to RMF.” (DED Exhibit 1).

She shares responsibility for financial decisions, estimating, preparing bids, negotiating bonding, negotiating insurance, hiring and firing, purchasing equipment/sales, managing and signing payroll, negotiating contracts, and acting as signatory for business accounts (DED Exhibit 1).

These are administrative functions which do not involve the critical functions which are specific to this business. Her resume confirms that her role at the business is primarily business management and administrative and does not reflect any academic or technical training to manage the employees of the business (DED Exhibit 11).

On appeal, applicant offers new evidence regarding her work experience and current duties and responsibilities (APP Exhibit B). This information was not before the Division at the time of the application and denial determination and will therefore not be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021). In addition, it is unknown when and how Ms. Castano allegedly obtained the experience listed – whether she took classes, learned through direct

work experience, or was mentored by another individual. Applicant also offered “updated information” stating that Mr. Walters and Ms. Seege are no longer employed with RMF (APP Exhibit B). This purported fact, without any supporting evidence, does not negate the fact that Ms. Castano has not demonstrated industry-specific competence.

5 NYCRR §144.2(c)(2) states that “... minority group members and women relied upon for certification must make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise for which certification is sought. The critical functions of a business enterprise shall be determined by the division based upon the following factors but is not limited to: (i) the products or services the business enterprise provides to clients; and (ii) the means by which the business enterprise obtains contracts or orders”.

The minority woman-owner “must exercise independent operational control over the core functions of the business in order to establish the requisite control for MWBE certification”. See *J.C. Smith, Inc. v. New York State Department of Economic Development*, 163 AD3d, 1517 (4th Dept. 2018).

RMF is engaged in printing of thermal rolls, business forms, manifold, paper converting, offset and flexographic printing, and security printing (DED Exhibit 1). Ms. Castano does not have experience in the business’ critical functions (DED Exhibit 11). Mr. Thomas J. Walter’s resume reflects that he has been the Plant Manager for RMF since 2019, with responsibilities of managing the daily administration and production operations. He has worked in the printing and production for over 40 years and has extensive expertise in print manufacturing operations, business planning, project management, and operational budgets. His prior work experience includes employment as Vice President of Operations, Secure Operations Manager, and Production Supervisor, with responsibilities including managing production teams, production

departments, and production facilities (DED Exhibit 12). He is solely responsible for supervising field operations and shares responsibility for financial decisions, hiring and firing, purchasing equipment/sales, managing and signing payroll, and acting as a signatory for business accounts (DED Exhibit 1).

Mr. Walters is relied upon for managing the core functions of the business, such as supervising field operations (DED Exhibits 1 and 12).

On appeal, applicant states that Mr. Walters, Ms. Seege, and Mr. Mora do not have experience and roles in RMF that “encompass the nature of the services, that being security printing business that requires certain protocols critical to meet the security related requirements Applicant Business requires.” (APP Exhibit B). However, security printing is only one type of printing which RMF provides (DED Exhibit 1), and Mr. Walters has over 40 years’ experience in the printing industry. Applicant’s statement that RMF “cannot fulfil its contract scope of services without [Ms. Castano’s] role in meeting client’s security related protocols” is not supported by the documentation submitted (APP Exhibit B, DED Exhibit 1).

In applicant’s Request to Appeal, applicant states that Ms. Castano “possesses tie-breaking authority involving all critical activity of the business.” (APP Exhibit 1/ DED Exhibit 3). In its written appeal, applicant states that Ms. Castano’s “duties include final authority with respect to all major activities critical to the operation of RMF, including financial, investment and hiring decision, estimating, preparing bids, negotiating.” (APP Exhibit B). However, the application states that Ms. Castano shares responsibilities for the listed managerial operations (DED Exhibit 1).

The Division’s determination to deny the application on the basis that RMF failed to demonstrate that Ms. Castano possesses adequate, industry-specific competence to make critical

business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1), and make operational decisions on a day-to-day basis with respect to the critical functions of the business, as required under 5 NYCRR §144.2(c)(2) is supported by substantial evidence.

The application was also denied on the ground that the minority woman-owner does not devote sufficient time on an ongoing basis to the daily operation of the business, as required by 5 NYCRR§144.2(c)(3). The Division has consistently found that part-time work for a business does not qualify as devoting time to the daily operation of the business. See *Matter of Brandt Equipment*, Recommended Order dated April 28, 2020, Final Order 20-06, dated June 2, 2020.

As noted above, Ms. Castano devotes about 55% of her time to RMF. The Division consistently denies certification where the minority woman-owner relied upon does not perform full-time duties for the business. See, e.g., *Matter of HVAC Systems Corp.*, Recommended Order dated August 9, 2023, Final Order 23-08 dated August 17, 2023.

On appeal, applicant states that Ms. Castano “devotes full time services on an on-going basis to manage the daily operations of RMF.” (APP Exhibit B). This information was not before the Division at the time of the application and denial determination and will therefore not be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021). Also, applicant’s statement, without further explanation, is not sufficient proof. Applicant does not state how many hours Ms. Castano devotes to RMF on a regular basis and does not explain why this is different from the information provided in the application.

The Division’s finding that Ms. Castano does not devote time to the daily operation of the business as required under 5 NYCRR §144.2(c)(3) is supported by substantial evidence.

III. Control

The Division also denied certification on the ground that Ms. Castano is not the highest-ranking officer or control the board of directors, as required under 5 NYCRR §144.2(d)(1).

As noted above, RMF is managed by the Board of Directors. The Board determines the duties and authority of all officers. The President is elected by the Board and may be removed by the Board at any time with or without cause. The Board has control over the salaries of the officers. Therefore, Ms. Castano does not control the Board. Ms. Castano serves at the pleasure of the Board. She does not even sit on the Board. (DED Exhibits 1 and 10).

Applicant's appeal states "All governing documents such as the By-laws are limited to policy making decisions and the By-laws confer upon the President the role as the highest ranking officer and role to manage the day to day activities involving the critical activities of the Applicant Business." (APP Exhibit B). However, the By-Laws are clear that the President serves at the discretion of the Board (DED Exhibit 10).

The Division's determination to deny the application on the basis that RMF failed to demonstrate that Ms. Castano is the highest-ranking officer and/or controls the board of directors, as required under 5 NYCRR §144.2(d)(1) is supported by substantial evidence.

CONCLUSION

RMF did not meet its burden to demonstrate that the Division's determination to deny its application for certification as a minority woman-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§144.2(b)(2), 144.2(b)(4), 144.2(c)(1), 144.2(c)(2), 144.2(c)(3) and 144.2(d)(1) 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 RMF's application for certification as a minority woman-owned business enterprise.

In the Matter of RMF Printing Technologies, Inc.
DED File ID No. 52357
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	Applicant's Request to Appeal	Y	Y
DED 4	Notice to Proceed Via Written Appeal	Y	Y
DED 5	RMF Stock Ledger	Y	Y
DED 6	RMF Articles of Incorporation	Y	Y
DED 7	Proof of Capitalization Letter; Certification of Assumption of Indebtedness; Stock Certificates of MWBN Holding Company; Escrow Agreement; Consent in Lieu of Board of Meeting of Board of Directors of MWBN Holding Company; Share Register of MWBN Holding Company	Y	Y
DED 8	Demand Promissory Note	Y	Y
DED 9	RMF Stock Certificate Nos. 9 and 10	Y	Y
DED 10	RMF By-Laws	Y	Y
DED 11	Resume of Monica Castano	Y	Y
DED 12	Resume of Thomas J. Walters	Y	Y
DED 13	Bank Signature Card	Y	Y