

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
625 BROADWAY
ALBANY, NEW YORK 12245

In the Matter

- of -

**the Application of Right Price Companies, Inc. DBA Right Price Technologies
for Recertification as a Minority-owned Business Enterprise
pursuant to Executive Law Article 15-A.**

NYS DED File ID No. 48231

RECOMMENDED ORDER

-by-



Theresa Wells
Administrative Law Judge
June 4, 2024

This matter considers the written appeal by Right Price Companies, Inc. DBA Right Price Technologies, (“Right Price” 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 recertification as a minority-owned business enterprise (“MBE”).

PROCEDURAL HISTORY

1. On November 21, 2022, Darin Price, as CEO, applied on behalf of Right Price for recertification as a minority-owned business enterprise (“MBE”). (DED Exhibit 1).
2. On June 12, 2023, the Division denied the application on the grounds that: (DED Exhibit 2)
 - a. The 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. The minority group members or women relied upon for certification 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);
 - c. The minority group members or women relied upon for certification do not possess adequate, industry-specific competence to make critical business

decisions without relying upon other persons, as required by 5 NYCRR §144.2(c)(1);

- d. The minority group members or women relied upon for certification do not 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); and
- e. The minority group members or women relied upon for certification are not the highest-ranking officer(s) of the business enterprise, and, where applicable, control the board of directors or serve as a general partner, as required under 5 NYCRR § 144.2(d)(1).

- 3. Right Price timely filed its Request to Appeal dated June 30, 2023. (APP Exhibit A).
- 4. A Notice to Proceed via Written Appeal was sent to Right Price on July 3, 2023. (DED Exhibit 4).
- 5. Right Price filed its written appeal on August 6, 2023, by counsel Jennifer Granzow, Esq. with The Wladis Law Firm. (APP Exhibit B).
- 6. The Division filed an Affidavit of Raymond Emanuel, Associate Certification Director, dated April 26, 2024, and a brief of Dennie Byam Esq., counsel for the Division, dated April 26, 2024.

FINDINGS OF FACT

- 7. Right Price is a business providing commercial and custom furniture distribution, sales, and installation as well as being a service provider of fiberoptic cable, full service networking, infrastructure layout, installation outside and inside plant, computer and peripheral products, data communications, security, telephone electronic telecommunications and audio visual. (DED Exhibit 1).

8. The critical functions of the applicant business are commercial and custom furniture distribution, sales, and installation. Additionally, the applicant business is a service provider of fiberoptic cables, offering full-service networking infrastructure, data communications, security, and telephone electronic telecommunication. (DED Exhibit 1).
9. In 1997, Paris Price and Darin Price, a married couple, founded Right Price Companies and made an initial capital contribution of \$██████ from their jointly held bank account. (DED Exhibits 1 and 5; APP Exhibit B).
10. On June 16, 2004, Right Price was incorporated. Paris Price held the position of CEO with ██████ shares of Right Price and Darin Price served as COO. (DED Exhibits 1 and 8).
11. On November 9, 2015, Paris Price transferred ██████ shares of stock to Darin Price, giving him a 49% ownership interest. Paris Price remained the CEO and Darin Price continued in his role as COO (DED Exhibits 1 and 8).
12. On December 31, 2020, Paris Price transferred an additional ██████ shares of stock to Darin Price, giving him a 51% ownership interest, while Ms. Price retained a 49% ownership interest. Right Price concedes that Mr. Price did not pay Mrs. Price for the two shares in 2020 because “they are husband and wife and only receive income from this Business that they operate together.” (DED Exhibits 1 and 8; APP Exhibit B).
13. Darin Price became the CEO of Right Price and Paris Price took on the role of the CFO. (DED Exhibits 1 and 2).
14. A check was written to Right Price from Darin and Paris Price’s joint bank account. The check is dated January 12, 2022, which is over one year after Mr. Price took the majority ownership interest. (APP Exhibit B).

15. Right Price's signature card dated September 21, 2022, for its PathFinder Bank account, designates signer #1 as Paris Price as CEO, and signer #2 as Darin Price as COO. (DED Exhibit 17).
16. Right Price Companies, Inc.'s 2021 tax return was signed on September 10, 2022 by Paris Vanderpool-Price, as President. The 2021 tax K1s issued and the form 1125-E state that Paris Vanderpool Price owns 51% of the business stock, and Darin Price owns 49% of the business stock. (DED Exhibit 9).
17. Right Price's 2021 tax returns state Paris Price received \$ [REDACTED] in compensation and her K-1 states she had ordinary business income of \$ [REDACTED] and distributions of \$ [REDACTED]. The 2021 tax returns state Darin Price received \$ [REDACTED] in compensation and his K-1 states he had ordinary business income of \$ [REDACTED] and distributions of \$ [REDACTED] (DED Exhibit 9).
18. Right Price employee 2021 W-2's state Darin Price's wages, as 51% owner, were \$ [REDACTED] Paris Price, as 49% owner, had \$ [REDACTED] in wages. Project Manager and Logistics Director Jerryl Price had \$ [REDACTED] in wages. Right Price employee Jeffrey Detor had \$ [REDACTED] in wages. Right Price employee Gabrielle Vanderpool had \$ [REDACTED] in wages. (DED Exhibit 10).
19. Right Price employee 2022 W-2s state Darin Price's wages were \$ [REDACTED]. Paris Price had \$ [REDACTED] in wages. Jerryl Price had \$66,863.02 in wages. Jeffrey Detor had \$ [REDACTED], in wages. Gabrielle Vanderpool had \$ [REDACTED] in wages. Site supervisor/inventory management James D. Miller had \$ [REDACTED] in wages. (DED Exhibit 11).

20. In 2012, Darin Price and Paris Price decided to expand their business into technology materials and service and hired experts in the technology field to help them build the business. (DED Exhibit 14).
21. Darin Price's resume states that from 1997 to Present, he has been the Chief Operating Officer of the applicant business, responsible for the overall management and direction of Right Price. His primary duties include setting and meeting daily business goals, managing sales logistics, overseeing deliveries and installations and supervising sales operations staff. In 2021, Mr. Price enrolled and completed the Goldman Sachs 10,000 Small Business Program. (DED Exhibits 12, 14 and 16).
22. Paris Price's education included a psychology degree and a master's degree in Divinity. Her resume states that from 2004 to Present, Paris Price has been the CEO /Owner of the applicant business. (DED Exhibits 13 and 16).
23. Paris Price is primarily responsible for Right Price's revenue and operational management, strategies and forecast development, executive advisory and decision support for all departments. She is responsible for handling the financial operations of the company, managing the certifications, accounts receivable/payable and overseeing off staff. (DED Exhibits 13 and 16).
24. In 2012, Richard Sparks was hired by Right Price as an IT Network Administrator Manager and Sales Manager/Project Manager. Mr. Sparks has 30 years of experience in Information Technology, Telecom and Project Management. Mr. Sparks is responsible for market development and managing all technical resources relative to RPC Technology which includes managing customer/supplier/vendor relationships and managing the focus on Fiber Optic & related materials for the Telecommunications & Broadband industry for Tier

1, Tier II, Tier III markets. Mr. Sparks was successful in helping Right Price to “close the digital divide,” coordinating Right Price’s technology engagement with the NYS Broadband for ALL Project, which was a multi-year project which included Tier I, Tier II, Tier III companies as well as Telecom Supply Vendor partners, and has established successful relationships and clientele in the field. (DED Exhibits 1 and 15).

25. Mr. Sparks has received certificates of continuing education including Fiber to the Home Continuing Education Credit, Attendance Certificate - FTTH Connectivity Discussion with Industry Experts, certificate of completion introduction to Caliz Support Cloud (EME), certificate of completion Configuring E7 services, Certificate of completion - Configuring E7 Ethernet Transport, certificate of completion LAN Cabling Fundamentals, certificate of completion Cabling Infrastructure Standards, Technology, and Design, certificate of completion Data Center Design Standards and network technologies, certificate of completion Power Distribution in the data center, and certificate of completion Fiber Cabling Fundamentals. (DED Exhibit 15).

26. Site Supervisor James Miller has 39 years of experience in telecommunications, designing and engineering with an extensive background in a wide variety of installations from start to finish, Tower Foundations, Road and Drainage, Gin pole operations 60ft to 120 track poles, boom truck operator, Hoist Operator Sweep tester both PIM and Anritsu, Electrician, alarm installations, UPS installations and maintenance, Generator commissions and maintenance. He is responsible for supervising and inspecting the General Contractors and all their Sub Contractors on a NYC and Long Island for multiple site builds for the Metro Transit Authority Police, (MTA), Site utility’s mark out, excavation, concrete foundations, lines, antennas, testing, generator install, generator commissioning, UPS installation and

maintenance, alarm configurations, punch the blocks down, ground testing, tower erection, grounding, generator commissions and maintenance, reporting problems with the solutions directly to the Harris Corp Senior Director's, Engineers, Senior Project managers, and Lead Program Managers. He has attended the Roadway Worker Protection Training Course for MTA's Long Island Railroad. (DED Exhibit 15).

27. Project Manager and Logistics Director Jerryl Price has completed an RF Safety/EME Awareness course. Al McKinnon, a Right Price employee, received an Onondaga Community college Workforce Development certificate. This certificate states he successfully completed the CompTIA A+ course. His responsibilities include directing the full cycle project management process, including ideation and the execution of over 20 critical projects annually, leading all operations, logistics, and financial planning for a \$500,000 annual budget including proposals, analysis, and reporting, designing and initiating detailed project timelines and adjustments to set clear expectations for each working group, spearheading RFP analysis, presentations, contract negotiations, and vendor supply management, actively identifying and managing risks, issues and changes tied to product development initiatives, and resolving daily issues that arise and follow up with projects through until completion. (DED Exhibit 15).

APPLICABLE LAW

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

Capital Contribution. Minority group members and women may 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(b)(3) states in relevant part as follows:

Risks and profits. Minority group members and women relied upon for certification must share in the risks and profits of the business enterprise for which certification is sought in proportion to their equity interest therein. In determining whether the profits of the business enterprise are shared proportionately with minority group members or women, the division may consider, for example and without limitation, means by which the proceeds of the business enterprise are conveyed to individuals or entities.

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

Operation. 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) Competence in the industry. 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. In evaluating whether a minority group member or woman possesses adequate, industry-specific competence, the division shall consider factors including, but not limited to:

- (i) Whether individuals employed by the business enterprise for which certification is sought are required to obtain licenses or certifications to provide products or services to the clients of the business enterprise; and

- (ii) The extent to which academic credentials exist for persons employed in the industry; and
- (iii) The extent to which industry-specific expertise may be obtained via direct work experience.

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

Operational decisions. 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.

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

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 Right Price for recertification as an MBE 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 minority-owner's contribution came from assets belonging solely to the minority group owner. Given this criterion, the Division consistently denies applications for MBE certification where an applicant fails to substantiate the source of the capital contribution by the minority-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 Division interprets this regulation to require an applicant to demonstrate that the minority owner contributed, "as demonstrated by, but not limited to, contributions of money, property, equipment or expertise," in proportion "to their equity interest in the business enterprise." (5 NYCRR §144.2(b)(2) and see *A.A.C. Contracting, Inc. v NYS Dept. of Economic Development*, 195 A.D. 3d 1284, 151 NYS 3d 187 (3d Dept. 2021)). The Division requires an applicant to demonstrate that the minority owner's contribution is proportionate to his equity interest in the business enterprise even if the interest in the business enterprise has been inherited or gifted. (See *Matter of Coverco, Inc.*, Recommended Order dated December 12, 2017, and Final Order 17-06 dated January 30, 2017). The Division will deny an application where there was no evidence provided in the application to demonstrate adequate consideration for a stock transfer. (See *Matter of A.A.C. Contracting, Inc.*, supra).

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.” (See *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 record before the Division at the time of certification did not evidence Mr. Price made a capital contribution proportionate to his equity interest in Right Price. The application states that the business ownership changed since the previous certification. A narrative included in the application stated that Darin and Paris Price contributed \$[REDACTED] from their personal bank account when the business was created in 1997. On June 16, 2004, Ms. Price acquired all [REDACTED] shares of Right Price stock. On November 9, 2015, she transferred [REDACTED] shares to Mr. Price and gave him [REDACTED] additional shares on December 31, 2020, which gave him 51% of the shares. Ms. Price retained 49% of the shares. The Right Price stock transfer ledger is blank and does not show any transaction or transfer of shares. The record does not include evidence showing the transfer of ownership shares and does not include documentation showing there was money exchanged for the transfers of ownership to Mr. Price. Furthermore, there are documents included with the application which show that Ms. Price is acting in the capacity of CEO/President, such as on the bank signatory card and the business income tax returns. (DED Exhibits 1, 2, 5, 6, 8, 9 and 17).

On appeal, Right Price states that the initial capital contribution of \$[REDACTED] was from Mr. and Mrs. Price’s joint bank account and that they have continued to contribute their combined funds to the business. Right Price also argues that Mr. Price has personally guaranteed multiple business lines of credit and has personally guaranteed a SB EIDL Loan to ensure the business has

access to funds. Right Price concedes that Mr. Price did not pay Mrs. Price for the two shares in 2020 because “they are husband and wife and only receive income from this Business that they operate together.” Right Price argues that Mr. Price has contributed “very specialized expertise in managing and operating a successful small business in custom furniture and telecommunication industries” through his participation in “various business and leadership courses.” Right Price states that a reasonable assessment of this expertise is equal to the value of Mrs. Price’s expertise. (APP Exhibit B).

Right Price has not demonstrated that this contribution came from assets belonging solely to the applicant owner and has not shown the contribution was made contemporaneously with the transfer of ownership interest. Right Price included a copy of a check written to Right Price from Darin and Paris Price’s joint bank account. The check is dated January 12, 2022, which is over one year after Mr. Price took the majority ownership interest. The application did not detail how Mr. Price’s expertise was uncompensated, specialized or directly applicable to a critical aspect of the operation of the business. (5 NYCRR § 144.2 (b)(2)(i)(4))

The record before the division at the time of its determination to deny the MBE application contains substantial evidence to support its finding that Right Price failed to demonstrate Darin Price made contributions to Right Price in proportion to his ownership interest, as required under 5 NYCRR §144.2(b)(2).

5 NYCRR §144.2(b)(3) requires that the minority-owner must enjoy the customary incidents of ownership and must share in the risks and profits in proportion to his ownership interest in the business. The Division routinely denies certification where the minority-owner does not share in the risks and profits in proportion with his ownership interest. (See *Matter of Spring Electric*, Recommended Order dated March 17, 2017, Final Order 17-21 dated March 27, 2017;

Matter of C.W. Brown, Inc. v Canton, 216 AD2d 841 (3d Dept. 1995). When evaluating whether a minority/woman owner receives “a proportional ‘profit’ to their equity interest” it is both rational and necessary “to review relative compensation.” (See *Matter of Darr Construction Equip. Corp.* (Final Order 22-11, Nov. 7, 2022)). In addition, the Division may consider and compare wages between the owner relied on for certification and other non-qualifying co-owners in its determination regarding this regulation. (See *Matter of JP Race Painting*, Recommended Order, March 27, 2018 (Final Order 18-21, March 30, 2018)).

The application included copies of Right Price’s 2021 business tax returns and 2021-2022 employee W-2s. The returns showed Mr. Price received \$ [REDACTED] in compensation and an ordinary business income loss of -\$ [REDACTED] and distributions of \$ [REDACTED]. Ms. Price received \$ [REDACTED] in compensation and an ordinary business income loss of -\$ [REDACTED] and distributions of \$ [REDACTED]. The 2021 W-2s evidence that Darin Price’s wages, as 51% owner, were \$ [REDACTED] while Paris Price, as 49% owner, had \$ [REDACTED] in wages. Project Manager and Logistics Director Jerryl Price earned \$53,696.00, Jeffrey Detor earned \$ [REDACTED], and Gabrielle Vanderpool had \$ [REDACTED] in wages. (DED Exhibit 10). The 2022 W-2s state Mr. Price’s wages were \$ [REDACTED], while Mrs. Price had \$ [REDACTED] in wages. Jerryl Price earned \$ [REDACTED], Mr. Detor earned \$ [REDACTED], and Ms. Vanderpool earned \$ [REDACTED] in wages. Site supervisor/inventory management James D. Miller had \$ [REDACTED] in wages in 2022. (DED Exhibits 9, 10 and 11).

The record reflects that Mr. Price does not share in the risks and profits in proportion with his ownership interest. Mr. Price’s K1 showed ordinary business losses and distributions that were less than Ms. Price, although the application indicated Mr. Price is now the CEO. Right Price’s 2021 and 2022 W2s show that Mr. Price is the fourth highest paid employee. (DED Exhibits 9, 10 and 11).

The record before the division at the time of its determination to deny the MBE application contains substantial evidence to support its finding that Right Price has not established that Darin Price shares in the risks and profits in proportion to his ownership interest, as required under 5 NYCRR §144.2(b)(3).

II. Operation

The Division denied Right Price's application for certification as an MBE on the basis that Right Price failed to demonstrate that Darin Price, the minority owner relied upon for certification, possesses adequate, industry specific competence to make critical business decisions without relying upon other persons, and does not make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required by 5 NYCRR §144.2(c)(1) and (c)(2). (DED Exhibit 2). "This requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things." (5 NYCRR §144.2(c)(1). The Division consistently requires that the minority or woman owners be able to perform the core revenue generating functions of the business enterprise to determine eligibility. (See *Matter of Bore Tech LLC*, Recommended order dated June 1, 2021, Final Order 21-05 dated December 22, 2021). The Division interprets this regulation to require an applicant to demonstrate that the minority owner relied on for certification has the working knowledge necessary to review estimates or evaluate the work of more experienced employees. (See *In the Matter of Upstate Electrical, LLC v. New York State Department of Economic Development*, 179 AD 3d 1343 (3d Dept. 2020), citing to *C.W. Brown, Inc. v. Canton*, 216 AD 841, 842 (1995)). In *Upstate Electrical, LLC v. N.Y. State Dept. of Economic Development*, *supra*, 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.

The Division also requires the Applicant to show that the minority group member owner “exercises the authority to control independently the day-to-day business decisions of the enterprise.” (See *In the Matter of Upstate Electrical, LLC v. New York State Department of Economic Development*, supra). The minority group member owner “must exercise independent operational control over the core functions of the business in order to establish the requisite control” for MBE certification. (See *J.C. Smith, Inc. v New York State Department of Economic Development*, 163 AD3d 1517, 1519 (4th Dept 2018)).

Right Price’s critical revenue generating functions are commercial and custom furniture distribution, sales, and installation. Additionally, the applicant business expanded and is now a service provider of fiberoptic cables, offering full-service networking infrastructure, data communications, security, and telephone electronic telecommunication. (DED Exhibit 1).

Mr. Price is responsible for the overall management and direction of Right Price. His primary duties include setting and meeting daily business goals, managing sales logistics, overseeing deliveries and installations and supervising sales operations staff. His resume states he has a liberal arts degree and professional experience as a corrections officer and real estate broker and has been Right Price’s COO since 1997. (DED Exhibits 12, 14 and 16).

Mr. Price’s responsibilities are more administrative in nature and related to office management or general business administration rather than on the work sites for Right Price’s distribution, sales, and installation. While he has received a certificate from Goldman Sachs, the record before the Division did not include information about Mr. Price’s industry specific competence, education or expertise. The application did not show Mr. Price had any licenses or certifications to perform the work, or any academic or technical trainings or any prior direct work experience related to the work. Although Mr. Price has been in the business of sales, first with

sales of furniture and then printers and toners, since 1997, the application did not include information about Mr. Price's direct work experience in the field of telecommunications technology and service. The record does not establish that Mr. Price has actual experience, education, training and expertise himself, without relying on his employees for those industry specific aspects of the business. It does not appear that Mr. Price would be able to step into the work site and perform the work that his employees carry out for the business. (DED Exhibits 1, 14 and 16).

Mr. Price relies upon other employees to carry out Right Price's critical revenue generating business functions and to make the operational decisions on a day-to-day basis with respect to Right Price's critical functions. Richard Sparks, as the IT Network Administrator Manager and Sales Manager/Project Manager, has 30 years of experience in Information Technology, Telecom and Project Management and has education in the field with certificates of continuing education in a variety of industry specific areas. Site Supervisor James Miller has 39 years of experience in telecommunications, designing and engineering with an extensive background in a wide variety of installations from start to finish and is responsible for supervising and inspecting the General Contractors and all their Sub Contractors. Project Manager and Logistics Director Jerryl Price has completed an RF Safety/EME Awareness course. Al McKinnon is responsible for directing the full cycle project management process, including ideation and the execution of projects. (DED Exhibits 14 and 15).

The application narrative states that when Mr. and Mrs. Price decided to grow their business into technology materials and service, they hired experts in the technology field. Mr. and Mrs. Price relied on learning from Mr. Sparks how to coordinate and manage information technology products. Right Price is relying on Mr. Spark's expertise, knowledge, training and

certifications in information technology to run the business. Right Price also relies on the other employees' experience and knowledge. Given their education, experience and expertise, Mr. Sparks, Mr. Miller, Jerryl Price, and Mr. McKinnon, are the individuals who are making the critical business decisions. (DED Exhibits 14, 15 and 16).

On appeal, Applicant attempts to show Mr. Price's knowledge and skills in the field and provided copies of certificates, invoices, purchase orders and letters from businesses that Right Price works with regularly. Applicant claims that Mr. Price was "successfully working in the telecommunications industry before hiring James Miller and Richard Sparks to work in the telecommunications branch of the Business." When Darin and Paris Price started Right Price, they initially sold office products with a focus on toners and printers and then grew the business to computers and other technology materials and service. Mr. Price states that as Right Price's CEO, his core competencies are identifying talent and conducting market research opportunities, along with engaging and managing key employees to move the business forward. The appeal states Mr. Price is "involved in every essential and major decision" for Right Price which include "customer and manufacturer relations, sales and distribution, financial issues, purchasing, personnel training and management." (DED Exhibit 14; APP Exhibit B).

This information on appeal does not show how Mr. Price exercises independent operational control over the core functions of the business or demonstrate Mr. Price is making operational day-to-day decisions with regard to the critical functions of the business. The information provided in the appeal is also inconsistent with what was before the Division at the time of certification. Since these documents were not before the Division at the time of certification and do not clarify or explain information included in the denial grounds, these documents will not be considered. (See *Scherzi Systems, LLC v. White*, supra).

The record before the division at the time of its determination to deny the MBE application contains substantial evidence to support its finding that Right Price has not established that Darin Price 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 does not make operational decisions on a day-to-day basis with respect to the critical functions of the business enterprise, as required by 5 NYCRR §144.2(c)(2).

III. Control

The Division denied Right Price's application for certification as an MBE on the basis that Right Price failed to demonstrate Darin Price is the highest-ranking officer and/or controls the board of directors and/or serves as a general partner, as required by 5 NYCRR §144.2(d)(1). (DED Exhibit 2).

The Division will deny certification in circumstances where sole management authority for the business is vested in non-qualifying business owners for the purposes of certification. (See *Matter of C.W. Brown Inc. v Canton*, supra). Certification will also be denied where the agreements describing the management of the business enterprise are not consistent with the regulation. (See *In the Matter of ADK Water Solutions, Inc.*, Recommended Order dated June 12, 2023 and Final Order 23-07 dated August 10, 2023).

The record is inconsistent with the information included on Right Price's application. The application states that on December 31, 2020, the ownership of Right Price changed, and Mr. Price became 51% owner and Mrs. Price was 49% owner. However, the record before the Division does not support that there was change in the leadership structure giving Mr. Price the majority ownership. The record included a copy of a Path Finder Bank signature card dated September 21, 2022. The signature card states that signer #1 on Right Price's bank account is Paris Vanderpool

Price, as CEO, and the card is signed by Paris Price. The card states that signer #2 is Darin Price as COO and is signed by Darin Price. Mr. Price's resume states that from 1997 to present, he has been the Chief Operating Officer of Right Price. Ms. Price's resume states that from 2004 to present, she has been the CEO and owner of Right Price. Right Price's 2021 business tax returns were included with the application, which were signed on September 10, 2022, by Paris Price as President. The K1s and form 1125-E show that Ms. Price owns 51% of the business stock and Mr. Price owns 49% of the business stock. The stock transfer ledger is blank. The record does not show there was a change in ownership interest between Mr. and Mrs. Price as stated in the application and has not shown Mr. Price is the highest-ranking officer of Right Price. (DED Exhibits 1, 2, 8, 9, 12, and 17).

On appeal, Applicant provided updated resumes and stated that the PathFinder Bank signature card has now been updated to reflect that Mr. Price is Right Price's CEO. The appeal details that Mr. and Mrs. Price did not engage the assistance of an attorney at the time of transferring ownership and as such, the documents were not updated. (APP Exhibit B) Since these updated documents are being offered for the first time on appeal, and do not clarify or explain information that was before the Division, these documents will not be considered. (See *Scherzi Systems, LLC v. White*, supra).

The record before the Division at the time of its determination to deny the MBE application contains substantial evidence to support its finding that Darin Price is not the highest-ranking officer and/or does not control the board of directors and/or serve as a general partner, as required by 5 NYCRR §144.2(d)(1).

CONCLUSION

Right Price did not meet its burden to demonstrate that the Division's determination to deny its application for recertification as a minority-owned business enterprise with respect to the eligibility criteria at 5 NYCRR §§ 144.2(b)(2), 144.2(b)(3), 144.2(c)(1), 144.2(c)(2) and 144.2(d)(1) was not based on substantial evidence.

RECOMMENDATION

The Division's determination to deny Right Price's application for recertification as a minority-owned business enterprise should be affirmed.

In the Matter of Right Price Companies, Inc. DBA Right Price Technologies
 DED File ID No. 48231
 Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Request to Appeal Form	Y	Y
APP B	Applicant's Appeal Submission	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Request to Appeal Form	Y	Y
DED 4	Notice to Proceed Via Written Appeal	Y	Y
DED 5	May 3, 2023 Initial Capital Contribution Narrative	Y	Y
DED 6	Right Price Technologies Stock Ledger	Y	Y
DED 7	Certification Application Affidavit	Y	Y
DED 8	May 3, 2023 Ownership History Narrative	Y	Y
DED 9	2021 Business Tax Returns	Y	Y
DED 10	2021 W-2s	Y	Y
DED 11	2022 W-2s	Y	Y
DED 12	Darin Price Resume	Y	Y
DED 13	Paris Price Resume	Y	Y
DED 14	Narrative of Owners' Experience- Undated	Y	Y
DED 15	Employee Resumes, Certificates, Degrees, and Trainings	Y	Y

DED 16	May 11, 2023, Question 11 Narrative	Y	Y
DED 17	PathFinder Bank Signature Card	Y	Y
DED 18	Verizon Contract- Undated	Y	Y