

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

**In the Matter**

**- of -**

**the Application of Scanga Woodworking Corp.**  
**for Certification as a Woman-owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 68853**

**RECOMMENDED ORDER**

**-by-**



---

**David A. Murad**  
**Administrative Law Judge**  
**January 12, 2024**

This matter considers the written appeal by Scanga Woodworking Corp., (“Scanga” 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 April 23, 2021, Ms. Laura Hammond, as President, applied on behalf of Scanga for certification as a woman-owned business enterprise (“WBE”) (DED Exhibit 1).
2. On April 6, 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 relied upon for certification do not possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1); and
  - (c) 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),
3. Scanga timely filed a Request to Appeal on May 3, 2023 (APP Exhibit A).

4. A notice to proceed via written appeal was sent to Scanga on May 9, 2023 (DED Exhibit 3).
5. Scanga filed its written appeal by letter dated June 2, 2023, with attachments, from its attorney, Arthur Muller III Esq. of Trivella & Forte, LLP (APP Exhibit B).
6. The Division filed an Affidavit of Amanda Brennan, Project Director, dated October 16, 2023, and a brief of Deidre Chuckrow Esq., counsel for the Division, dated October 19, 2023.

### **FINDINGS OF FACT**

7. Scanga is engaged in the business of custom architectural woodwork and millwork manufacturing (DED Exhibit 1).
8. The business was formed in 1986 by Ms. Hammond's father. In 2009, ownership was transferred by gift to each of Ms. Hammond (33.33%) and her brothers, John Scanga (33.33%) and Mark Scanga (33.33%). On December 21, 2020, John Scanga and Mark Scanga each transferred 9% ownership interests to Ms. Hammond, resulting in Ms. Hammond having a 51.33% ownership interest, and each of John Scanga and Mark Scanga having a 24.33% ownership interest. The shares were transferred for no cash consideration to Ms. Hammond to give her control of the business (DED Exhibits 4, 5 and 6)
9. Ms. Laura Hammond is the President and has a 51.33% ownership interest. Mr. John Scanga is the Vice President and has a 24.33% ownership interest. Mr. Mark Scanga is the Vice President and has a 24.33% ownership interest (DED Exhibit 1).
10. Ms. Hammond holds a Bachelor of Science degree in Business Administration, with a concentration in finance, and a Masters of Business Administration. She lists her work experience and expertise as a Chief Financial Officer and Investment Analyst. She has

worked for Scanga since 2005 and began as its Chief Financial Officer and Human Resources Coordinator. She became President in 2010 (DED Exhibit 7).

11. Mr. John Scanga and Mr. Mark Scanga each joined the company after high school, and each hold the title of Owner and Vice President of Sales and Operations. Their resumes both list business and channel development, contract negotiations, account executive, and oversight of estimating, production, and project management teams (DED Exhibits 8 and 9).
12. The application states that Steve Schnebly is solely responsible for estimating contracts, that Adam Cefaloni, Luis Patrocinio and Chris Graff are responsible for preparing bids, and that John and Mark Scanga are both responsible for marketing and sales, and supervising field operations. Ms. Hammond is listed as being solely responsible for managing and signing payroll. Ms. Hammond, John Scanga and Mark Scanga all share the responsibilities regarding financing decisions, hiring and firing, and signing 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(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.

### **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 Scanga 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 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).

Ms. Hammond acquired 33.33% ownership interest by gift from her parents and the remaining 18% by transfer from her brothers without any monetary payment (DED Exhibits 4, 5

and 6). Where shares are gifted, an applicant must still demonstrate that the woman-owner has made a contribution proportionate to her equity interest in the business. See *Matter of Coverco, Inc.*, Recommended Order dated December 12, 2017, Final Order 17-06, dated January 30, 2017; *Matter of Beam Mack Sales & Services, Inc.*, Recommended Order dated October 31, 2016, Final Order 16-55, dated November 1, 2016. There is no evidence that Ms. Hammond made any contributions for any of her shares.

Applicant argues that the shares transferred to her from her brothers were transferred in recognition of past work as President that was undercompensated (DED Exhibit 6; APP Exhibit B), and that her prior undercompensated work should have been considered as non-cash capital contributions. However, she did not submit any evidence of her expertise, or the value of the claimed expertise. To establish whether an owner's contribution of expertise to the business is proportionate to the owner's equity interest, an applicant must provide evidence of the value of the owner's contributions. See *Matter of Darr Construction Equipment Corp.*, Recommended Order dated August 30, 2022, Final Order 22-11, dated November 7, 2022. Ms. Hammond did not provide evidence of the value of her expertise in the business. Without evidence of an agreement specifically detailing the precise expertise to be used and the specific dollar value associated with that expertise, prior work cannot be considered as consideration towards the purchase of her shares. See *Matter of Whitman Engineering*, Recommended Order dated March 20, 2017, Final Order 17-23, dated March 27, 2017. A reasonable assessment of the fair market value of the expertise must be clearly documented in accord with 5 NYCRR §144.2(b)(2)(i)(4).

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

## II. Operation

5 NYCRR §144.2(c)(1) requires that the 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. Hammond 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. Hammond holds a Bachelor of Science degree in Business Administration, with a concentration in finance, and a Masters of Business Administration. She lists her work experience and expertise as a Chief Financial Officer and Investment Analyst. She has worked for Scanga since 2005 and began as its Chief Financial Officer and Human Resources Coordinator. She became President in 2010. There is no reference in her resume regarding academic credentials or direct work experience related to the critical functions of custom architectural woodwork and millwork manufacturing, 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 7).

Mr. John Scanga and Mr. Mark Scanga each joined the company after high school, and each hold the title of Owner and Vice President of Sales and Operations. Their resumes both list



business and channel development, contract negotiations, account executive, and oversight of estimating, production, and project management teams (DED Exhibits 8 and 9).

On Appeal, applicant submitted affidavits from Ms. Hammond, John Scanga, Mark Scanga, Steven Schnebly, Ian Malings, Gary Cassiello, Charles Schlesinger, and Arthur J. Muller III (APP Exhibit B). This information was not before the Division at the time of the application and is therefore new evidence which will not be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021). While these affidavits may support Ms. Hammond's claim that she does possess industry-specific competence to make business decisions without relying on others, all of the affidavits were produced after the denial determination. The information before the Division at the time of the application clearly evidenced the shared responsibilities of running the business (DED Exhibit 1). Applicant's failure to produce any of this information at the time of the application, and to provide information only regarding Ms. Hammond's administrative, financial and management skills, supports the Division's finding that Ms. Hammond lacked industry-specific competence without relying on others.

5 NYCRR §144.2(c)(2) states that "... 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 woman-owner "must exercise independent operational control over the core functions of the business in order to establish the requisite control for WBE certification". See *J.C. Smith, Inc. v. New York State Department of Economic Development*, 163 AD3d, 1517 (4<sup>th</sup> Dept. 2018).

Scanga is engaged in custom architectural woodwork and millwork manufacturing (DED Exhibit 1). Ms. Hammond does not have experience in the business' critical functions (DED Exhibits 1 and 7). Steve Schnebly is solely responsible for estimating contracts. Adam Cefaloni, Luis Patrocinio and Chris Graff are responsible for preparing bids. John and Mark Scanga are both responsible for marketing and sales, and supervising field operations. Ms. Hammond is listed as being solely responsible for managing and signing payroll. Ms. Hammond, John Scanga and Mark Scanga all share the responsibilities regarding financing decisions, hiring and firing, and signing for business accounts (DED Exhibit 1).

On appeal, applicant offered new information regarding Ms. Hammond's role at the business. This information was not before the Division at the time of the application and is therefore new evidence which will not be considered. See *Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

The Division's determination to deny the application on the basis that Scanga failed to demonstrate that Ms. Hammond 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.

### **CONCLUSION**

Scanga 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), 144.2(c)(1) and 144.2(c)(2) 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 Scanga's application for certification as a woman-owned business enterprise.

In the Matter of Scanga Woodworking Corp.  
DED File ID No. 68853  
Exhibit Chart

| Exhibit #: | Description of the Exhibits                             | Offered<br>(Yes/No) | Admitted<br>(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      | Scanga Stock Transfer Ledger                            | Y                   | Y                    |
| DED 5      | Unanimous Consent and Resolutions of Board of Directors | Y                   | Y                    |
| DED 6      | Narrative   | Y                   | Y                    |
| DED 7      | Laura Hammond's Resume                                  | Y                   | Y                    |
| DED 8      | John P. Scanga's Resume                                 | Y                   | Y                    |
| DED 9      | Mark Scanga's Resume                                    | Y                   | Y                    |