

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

**In the Matter**

**- of -**

**the Application of Schneps Media, LLC**  
**for Certification as a Woman-owned Business Enterprise**  
**pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 67832**

**RECOMMENDED ORDER**

**-by-**



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**David A. Murad**  
**Administrative Law Judge**  
**April 3, 2024**

This matter considers the written appeal by Schneps Media. LLC, (“Schneps LLC” or “applicant”) pursuant to New York State Executive Law Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York (5 NYCRR) parts 140-144, challenging the determination of the Division of Minority and Women’s Business Development (“Division”) of the New York State Department of Economic Development (“DED”) that the business enterprise does not meet the eligibility criteria for certification as a woman-owned business enterprise (“WBE”).

### **PROCEDURAL HISTORY**

1. On January 20, 2022, Ms. Victoria Schneps, as President, applied on behalf of Schneps LLC for certification as a woman-owned business enterprise (“WBE”) (DED Exhibit 1).
2. On July 13, 2023, the Division denied the application on the following grounds (DED Exhibit 2):
  - (a) Minority group members or women relied upon for certification do not own at least fifty-one (51) percent of the business enterprise for which certification is sought, as required under 5 NYCRR § 144.2(b)(1); and
  - (b) The applicant does not meet the definition of “women-owned business enterprise” as required under 5 NYCRR § 140.1(uu)(1)(v), inadvertently listed in the denial letter as 5 NYCRR § 140.1(bb)(5);
3. Schneps LLC timely filed a Request to Appeal on August 11, 2023 (APP Exhibit A/ DED Exhibit 3).
4. A notice to proceed via written appeal was sent to Schneps LLC on August 14, 2023 (DED Exhibit 4).

5. Schneps LLC filed its written appeal by letter dated August 31, 2023, with attachments (APP Exhibit B).
6. The Division filed an Affidavit of Raymond Emanuel, Associate Director, dated February 23, 2024, and a brief of Misha Wright Esq., counsel for the Division, dated February 26, 2024.

### **FINDINGS OF FACT**

7. Schneps LLC is a New York media company, publishing and doing business under various trade names and media outfits (DED Exhibit 1). It is a media holding company within another holding company, Schneps Publications, Inc. (“SPI”), its “Corporate Parent”. The merger of all the Schneps Communications entities took effect beginning January 2019 (the “2019 Reorganization”) (DED Exhibit 5).
8. Ms. Victoria Schneps is the President and states that she is the 51% owner of the business, and that Mr. Joshua Schneps, her son is the CEO and has a 49% ownership interest (DED Exhibit 1).
9. As a result of the 2019 Reorganization: (1) Victoria Schneps’ ownership interest in SPI decreased from 95% to 50.52%, and her interest in Schepps LLC decreased from 51% to 21.77%; (2) Joshua Schneps’ ownership interest in SPI increased from 5% to 49.48% and his interest in Schneps LLC decreased from 49% to 20.92%; and (3) SPI obtained 57.31% ownership of Schneps LLC (DED Exhibit 5). The “net beneficial ownership in Schneps LLC after allocation of SPI interest” is 50.72% for Victoria Schneps and 49.28% for Joshua Schneps (DED Exhibit 7).

10. Schneps LLC is owned in part by another company (SPI). SPI was not established for the exclusive and sole purpose of leasing machinery, equipment, or vehicles exclusively to Schneps LLC (DED Exhibit 1).
11. Applicant's 2020 business tax return lists SPI as an entity owning 50% or more of Schneps LLC, and that SPI is entitled to a "maximum percentage" of 69.51% of the business' profits, losses or capital (DED Exhibit 6).
12. 5 NYCRR § 140.1(uu)(1)(v) and 5 NYCRR § 140.1(bb)(5) contain identical language except the former relates to women-owned business entities and the latter relates to minority-owned business enterprises.

#### **APPLICABLE LAW**

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

Fifty-one percent ownership interest. Minority group members and women relied upon for certification must own at least fifty-one (51) percent of the business enterprise for which certification is sought...

5 NYCRR § 140.1(uu)(1)(v) defines "women-owned business enterprise" in relevant part as follows:

A business enterprise that is: (i) at least 51 percent owned by... women... (v) an enterprise owned, either directly or through a holding company established for the exclusive and sole purpose of leasing machinery, equipment, or vehicles exclusively to the certified minority or women-owned business enterprise, by an individual or individuals, whose ownership, control and operation are relied upon for certification...

#### **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 Schneps LLC 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 found that Ms. Schneps does not own at least fifty-one (51) percent of the business enterprise, as required by 5 NYCRR §144.2(b)(1), and that the applicant does not meet the definition of “women-owned business enterprise” as required under 5 NYCRR § 140.1(uu)(1)(v), inadvertently listed in the denial letter as 5 NYCRR § 140.1(bb)(5). 5 NYCRR § 140.1(uu)(1)(v) and 5 NYCRR § 140.1(bb)(5) contain identical language except the former relates to women-owned business entities and the latter relates to minority-owned business enterprises.

Applicant has the burden of proof in demonstrating that the woman-owner owns at least 51% of the business enterprise. See *A.A.C. Contr., Inc. v. New York State Dept. of Economic Development*, 195 AD 3d 1284 (3d Dept. 2021). If a business is owned wholly or in part by a holding company, the trier of fact will look to the holding company’s individual women-owners and evaluate the percentages of their ownership interests. See *Matter of EIA Datacom, Inc.*, Recommended Order dated September 5, 2023, Final Order 23-09, dated September 22, 2023.

The application states that Ms. Schneps is a 51% owner of the business, and Mr. Schneps is a 49% owner (DED Exhibit 1). However, as a result of the 2019 Reorganization: (1) Victoria Schneps ownership interest in SPI decreased from 95% to 50.52%, and her interest in Schepps LLC decreased from 51% to 21.77%; (2) Joshua Schneps' ownership interest in SPI increased from 5% to 49.48% and his interest in Schneps LLC decreased from 49% to 20.92%; and (3) SPI obtained 57.31% ownership of Schneps LLC (DED Exhibit 5). The "net beneficial ownership in Schneps LLC after allocation of SPI interest" is 50.72% for Victoria Schneps and 49.28% for Joshua Schneps (DED Exhibit 7).

Schneps LLC is owned in part by another company (SPI). SPI was not established for the exclusive and sole purpose of leasing machinery, equipment, or vehicles exclusively to Schneps LLC (DED Exhibit 1). (5 NYCRR § 140.1(uu)(1)(v))

Applicant's 2020 business tax return lists SPI as an entity owning 50% or more of Schneps LLC, and that SPI is entitled to a "maximum percentage" of 69.51% of the business' profits, losses, or capital (DED Exhibit 6).

On appeal, applicant submitted the 2021 tax filings for SPI in an attempt to explain Ms. Schneps' actual ownership interest in the holding company, and Schneps LLC's Corporate Parent from the Schedule K-1 Summary (APP Exhibit B). However, this document was available at the time of the application, but not submitted with 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).

Ms. Schneps' 50.72% ownership interest does not meet the 51% ownership requirement and therefore does not satisfy the 5 NYCRR §144.2(b)(1) and 5 NYCRR §140.1(uu)(1)(v) requirements for women-owned businesses.

The Division's determination to deny the application on the basis that Schneps LLC failed to demonstrate that Ms. Schneps owns at least fifty-one (51) percent of the business, as required under 5 NYCRR §144.2(b)(1) and 144.1(uu)(i)(v) is supported by substantial evidence.

### **CONCLUSION**

Schneps LLC 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)(1) and 144.1(uu)(i)(v) 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 Schneps LLC's application for certification as a woman-owned business enterprise.

In the Matter of Schneps Media, LLC  
 DED File ID No. 67832  
 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	Request to Appeal	Y	Y
DED 4	Notice to Appeal Via Written Appeal	Y	Y
DED 5	Reorganization Agreement	Y	Y
DED 6	2020 Government Copy of Schneps Media LLLC Tax Returns	Y	Y
DED 7	Schneps Media LLC Membership Ledger	Y	Y