

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

**In the Matter**

**- of -**

**the Application of Software Guidance & Assistance, Inc  
for Certification as a Woman-owned Business Enterprise  
pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 4677**

**RECOMMENDED ORDER**

**-by-**



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**David A. Murad**  
**Administrative Law Judge**  
**September 20, 2024**

This matter considers the written appeal by Software Guidance & Assistance, Inc. (“SGA” 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 May 5, 2023, Dong Nguyen-Fuoco, as HR Manager, applied on behalf of SGA for certification as a woman-owned business enterprise (“WBE”) (DED Exhibit 1).
2. On October 18, 2023, the Division denied the application on the following grounds (DED Exhibit 2):
  - (a) Minority group members or women relied upon for certification have not demonstrated having made a capital contribution to the business enterprise proportionate to their equity interest therein, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise, as required under 5 NYCRR § 144.2(b)(2); and
  - (b) 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. SGA timely filed a Request to Appeal on November 17, 2023 (APP Exhibit A, DED Exhibit 21).
4. A notice to proceed via written appeal was sent to SGA on November 27, 2023 (DED Exhibit 22).

5. SGA submitted its written appeal by letter dated December 12, 2023, with attachments (APP Exhibit B).
6. The Division filed an Affidavit of Raymond Emanuel, Certification Director, dated July 19, 2024, and a brief of Laurel Wedinger-Gyimesi Esq., counsel for the Division, dated July 23, 2024.

### **FINDINGS OF FACT**

7. SGA provides direct placement, temporary, and other professional staffing in areas such as IT technology, finance, accounting, risk, human resources, creative/marketing, and clinical/life sciences (DED Exhibit 1).
8. The certification application states that Ms. Dorothy Doughty is the President and has a 32.2% ownership interest; Ms. Tara Doughty Taylor is the Managing Partner and has a 27.8% ownership interest; Ms. Theresa Platt is the Director of Finance & Administration and has a 2.5% ownership interest; John Doughty is the Vice President and has a 25% ownership interest; and John Flynn is a Partner and has a 12.6% ownership interest. (DED Exhibit 1).
9. On October 7, 1981, Dorothy Doughty and John Doughty invested \$█ in capital stock of SGA. Dorothy Doughty was issued 51 shares and John Doughty was issued 49 shares. (DED Exhibits 5 and 9). No proof of payment was provided with the application and a document entitled “Details of Stock Ownership-Female Owners Only” states that the records of that transaction are unavailable.” (DED Exhibit 9).
10. On June 29, 2005, SGA authorized a 25.5 to 1 stock split, increased the number of shares to 10,000 and divided the stock into two classes, voting and non-voting, resulting in

Dorothy Doughty owning 1,300.50 voting shares (51 x 25.5) and John Doughty owning 1,249.5 voting shares (49 x 25.5). (DED Exhibits 5, 9 and 17).

11. In December 2012, the Dorothy Doughty Family Trust was created with the Trust receiving 1287 non-voting shares and Dorothy Doughty retaining 13.5 shares of voting stock. (DED Exhibit 5)
12. By Agreement dated December 19, 2018, Dorothy Doughty purchased 317.02 non-voting shares from Valerie Voustas for \$[REDACTED]. (DED Exhibit 18, APP Exhibit B). The “Details of Stock Ownership-Female Owners Only” states “proof of payment unavailable from Dorothy Doughty.” (DED Exhibit 9). Therefore, the Dorothy Doughty Family Trust owned 1,595 non-voting shares and Dorothy Doughty owned 13.5 voting shares at the time of the application, for a total of 1,608.50 shares or 32.2% of SGA (DED Exhibits 1, 6 and 14).
13. On October 1, 2005, Tara Doughty Taylor and Peter Taylor jointly purchased 469 non-voting shares for the sum of \$[REDACTED], secured by a promissory note to SGA. Tara Doughty Taylor was issued 234 non-voting shares and Peter Taylor was issued 235 non-voting shares. No proof of payment was provided with the application. The “Details of Stock Ownership-Female Owners Only” states that the records of that transaction are unavailable. (DED Exhibit 9). On December 30, 2020, SGA issued an Assignment of Stock Purchase Agreement, transferring Ilene Pascale’s 448 non-voting shares to Tara Doughty Taylor for \$[REDACTED] (DED Exhibit 9). The “Details of Stock Ownership-Female Owners Only” states “Tara purchased Ilene’s stock for \$[REDACTED]” (DED Exhibit 9). On December 22, 2022, Peter Taylor gifted his 235 non-voting shares to Tara Doughty Taylor. (DED Exhibits 5 and 10). The “Details of Stock Ownership-Female Owners Only” states “no payment was made” for that transaction. (DED Exhibit 9).

14. On December 22, 2023, Taylor Doughty Taylor purchased 473 treasury stock shares for \$██████, which was allegedly financed by a reduction in an owed distribution of \$██████. (DED Exhibit 5, 7, 9, 13 and 14). Therefore, Taylor Doughty Taylor owned 1,390 shares (27.8%) of SGA at the time of the application. (DED Exhibit 1, APP Exhibit B). No proof was submitted with the application evidencing payment for the initial 469 shares obtained by Peter Taylor and Tara Doughty Taylor, the gifting of 235 shares from Peter Taylor to Tara Doughty Taylor, or the 473 treasury stock shares.
15. On October 1, 2005, Theresa Platt purchased 124 non-voting shares (2.5%) of SGA for \$██████. She executed a promissory note for the purchase price (DED Exhibit 16). No proof of payment was provided. The document entitled “Details of Stock Ownership-Female Owners Only” states that the “note payable was paid off prior to 2006, records unavailable.” (DED Exhibit 9).
16. The application lists Dorothy Doughty as President and John Doughty as Vice President. No other officers are named. Tara Doughty Taylor is listed as Managing Partner and Theresa Platt is listed as Director of Finance and Administration. (DED Exhibit 1).
17. Article IV, Section 3 of the By Laws provides that the President shall be the Chief Executive Officer and shall have the management of the business of the corporation. Article IV, Section 4 provides that “during the absence or disability of the president, the vice-president... shall have all the powers and functions of the president (DED Exhibit 19).
18. Dorothy Doughty and John Doughty are the only members of the Board of Directors SGA and the only shareholders with voting rights. (DED Exhibit 4).
19. Article III, Section 1 of the By Laws states: “the business of this Corporation shall be managed by its Board of Directors...”. Article III, Section 7 of the By-Laws states “a

majority of the entire board shall constitute a quorum for the transaction of business...”

Article III, Section 8 provides that “...the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board. Each director present shall have one vote regardless of the number of shares, if any, which he may hold.” (DED Exhibit 19).

### **APPLICABLE LAW**

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

Capital contribution. 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 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(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 SGA for certification as a WBE is not supported by substantial evidence (*see* State Administrative Procedure Act § 306[1]). The substantial evidence standard "demands only that a given inference is reasonable and plausible, not necessarily the most probable," and applicant must demonstrate that Division staff's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact." (*Matter of Ridge Rd. Fire Dist. v Schiano*, 16 NY3d 494, 499 [2011]).

The review is limited to such information that was before the division at the time of the denial determination (5 NYCRR 145.2(b)(1)). Evidence that seeks to clarify and explain previously submitted materials will be considered, however new evidence will not be considered. *See Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

## **DISCUSSION**

### **I. Ownership**

The Division interprets 5 NYCRR §144.2(b)(2) to require an applicant to demonstrate that the woman-owner's contribution came from assets belonging solely to the woman-owner. Given this criterion, the Division consistently denies applications for WBE certification where, as here, an applicant fails to substantiate the source of the capital contribution by the woman-owner. See *Matter of Otone Mechanical Construction, Inc.*, Recommended Order dated April 24, 2015 (Final Order 17-28, May 2, 2017), *Matter of Spring Electric, Inc.*, Recommended Order dated March 17, 2017 (Final Order 17-21, dated March 27, 2017).

The 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). The applicant must show how the woman-owner's contribution was proportionate to her equity interest even where the business has been either inherited or gifted. *See Matter of Beam Mack Sales & Services, Inc.*, Recommended Order dated October 31, 2016, Final Order 16-55 dated November 1, 2016.

On October 7, 1981, Dorothy Doughty and John Doughty invested \$[REDACTED] in capital stock of SGA. Dorothy Doughty was issued 51 shares and John Doughty was issued 49 shares. (DED Exhibits 5 and 9). No proof of payment was provided with the application and a document entitled "Details of Stock Ownership-Female Owners Only" states that the records of that transaction are unavailable." (DED Exhibit 9). On June 29, 2005, SGA authorized a 25.5 to 1 stock split, increased the number of shares to 10,000 and divided the stock into two classes, voting and non-voting, resulting in Dorothy Doughty owning 1,300.50 voting shares (51 x 25.5) and John Doughty owning 1,249.5 voting shares (49 x 25.5). (DED Exhibits 5, 9 and 17). In December 2012, the Dorothy Doughty Family Trust was created with the Trust receiving 1287 non-voting shares and Dorothy Doughty retaining 13.5 shares of voting stock. (DED Exhibit 5)

By Agreement dated December 19, 2018, Dorothy Doughty purchased 317.02 non-voting shares from Valerie Voustas for \$[REDACTED]. (DED Exhibit 18, APP Exhibit B). The "Details of Stock Ownership-Female Owners Only" states "proof of payment unavailable from Dorothy Doughty." (DED Exhibit 9). Therefore, the Dorothy Doughty Family Trust owned 1,595 non-voting shares and Dorothy Doughty owned 13.5 voting shares at the time of the application, for a total of 1,608.50 shares or 32.2% of SGA (DED Exhibits 1, 6 and 14).



On October 1, 2005, Tara Doughty Taylor and Peter Taylor jointly purchased 469 non-voting shares for the sum of \$[REDACTED], secured by a promissory note to SGA. Tara Doughty Taylor was issued 234 non-voting shares and Peter Taylor was issued 235 non-voting shares. No proof of payment was provided with the application. The “Details of Stock Ownership-Female Owners Only” states that the records of that transaction are unavailable. (DED Exhibit 9). On December 30, 2020, SGA issued an Assignment of Stock Purchase Agreement, transferring Ilene Pascale’s 448 non-voting shares to Tara Doughty Taylor for \$[REDACTED] (DED Exhibit 9). The “Details of Stock Ownership-Female Owners Only” states “Tara purchased Ilene’s stock for \$1.” (DED Exhibit 9). On December 22, 2022, Peter Taylor gifted his 235 non-voting shares to Tara Doughty Taylor. (DED Exhibits 5 and 10). The “Details of Stock Ownership-Female Owners Only” states “no payment was made” for that transaction. (DED Exhibit 9).

On December 22, 2023, Taylor Doughty Taylor purchased 473 treasury stock shares for \$[REDACTED], which was allegedly financed by a reduction in an owed distribution of \$[REDACTED]. (DED Exhibit 5, 7, 9, 13 and 14). Therefore, Taylor Doughty Taylor owned 1,390 shares (27.8%) of SGA at the time of the application. (DED Exhibit 1, APP Exhibit B). No proof was submitted with the application evidencing payment for the initial 469 shares obtained by Peter Taylor and Tara Doughty Taylor, the gifting of 235 shares from Peter Taylor to Tara Doughty Taylor, or the 473 treasury stock shares.

On October 1, 2005, Theresa Platt purchased 124 non-voting shares (2.5%) of SGA for \$[REDACTED]. She executed a promissory note for the purchase price (DED Exhibit 16). No proof of payment was provided. The document entitled “Details of Stock Ownership-Female Owners Only” states that the “note payable was paid off prior to 2006, records unavailable.” (DED Exhibit 9).

On appeal, applicant attempts to introduce new evidence pertaining to additional acquisition of shares, and proof of payment for various stock purchases for the women-owners (APP Exhibit B). The alleged post-denial acquisition of additional ownership percentages by the women owners, alleged proof of payment by Dorothy Doughty for the shares of stock purchased from Valerie Voustas, copies of “proof of repayment of notes” issued to Tara Doughty Taylor and Theresa Platt, updated By Laws and documentation appointing Tara Doughty Taylor CEO and assigning her 6 shares of voting stock, all served post-denial, are new documents that do not clarify, but contradict the information provided in the application, and therefore will not be considered. *See Scherzi Systems, LLC v. White*, 197 A.D.3d 1466 (3d Dept 2021).

The three women relied upon for certification, namely Dorothy Doughty, as 32.2% owner; Tara Doughty Taylor as 27.8% owner; and Theresa Platt as 2.5% owner did not demonstrate that they made capital contributions in accord with their equity interests in the business. Accordingly, the Division’s determination to deny the application pursuant to 5 NYCRR §144.2(b)(2) is supported by substantial evidence.

## II. Control

The Division also denied certification on the ground that Ms. Doughty, Ms. Taylor and Ms. Platt are not the highest-ranking officers or control the board of directors, as required under 5 NYCRR §144.2(d)(1).

The application lists Dorothy Doughty as President and John Doughty as Vice President. No other officers are named. Tara Doughty Taylor is listed as Managing Partner and Theresa Platt is listed as Director of Finance and Administration. (DED Exhibit 1).

Article IV, Section 3 of the By Laws provides that the President shall be the Chief Executive Officer and shall have the management of the business of the corporation. Article IV,

Section 4 provides that “during the absence or disability of the president, the vice-president... shall have all the powers and functions of the president (DED Exhibit 19). Provision is also made for a secretary (Article IV, Section 5), an Assistant Secretary (Article IV, Section 6), a Treasurer (Article IV, Section 7) and an Assistant Treasurer (Article IV, Section 8). There is no provision for a Managing Partner nor a Director of Finance and Administration. Since Tara Doughty Taylor and Theresa Platt are not officers of SGA, they are not the highest-ranking officers of SGA.

Article III, Section 1 of the By Laws states: “the business of this Corporation shall be managed by its Board of Directors...”. Article III, Section 7 of the By-Laws states “a majority of the entire board shall constitute a quorum for the transaction of business...” Article III, Section 8 provides that “...the vote of a majority of the directors present at the time of the vote, if a quorum is present at such time, shall be the act of the board. Each director present shall have one vote regardless of the number of shares, if any, which he may hold.” (DED Exhibit 19).

Dorothy Doughty and John Doughty are the only members of the Board of Directors of SGA and the only shareholders with voting rights. (DED Exhibit 4).

Since SGA has only two members of the Board of Directors, and a majority is required to constitute a quorum of the Board; a quorum cannot be met without John Doughty being present. Since each director is entitled to only one vote, Dorothy Doughty does not control the Board. Since Tara Doughty Taylor and Theresa Platt are not members of the Board of Directors of SGA, they also do not control the Board.

On appeal, applicant argues “The majority of the female owners of SGA, specifically the founder, Dorothy Doughty, and her daughter, Tara Doughty Taylor, exert control over the company.” (APP Exhibit B). However, stating that they have full control of SGA does not negate

the fact that the By-Laws allow for business and management decisions to be made by the directors. As stated above, they do not have control of the Board of Directors.

The Division's determination to deny the application on the basis that SGA failed to demonstrate that Ms. Doughty, Ms. Doughty Taylor, and Ms. Platt are the highest-ranking officers and/or control the board of directors, as required under 5 NYCRR §144.2(d)(1) is supported by substantial evidence.

### **CONCLUSION**

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

In the Matter of Software Guidance & Assistance, Inc.  
DED File ID No. 4677  
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	Agreement to be bound by Certification Affidavit	Y	Y
DED 4	NYS WBE Response from SGA	Y	Y
DED 5	SGA Stock Ledger	Y	Y
DED 6	The First Amended and Restated Stockholders' Agreement for Software Guidance, dated 12/22/2022 with Amended Schedule A	Y	Y
DED 7	Unanimous Written Consent of the Directors of Software Guidance dated 12/22/2022	Y	Y
DED 8	October 1, 2005, Restricted Stock Purchase Agreement: Peter and Tara Taylor	Y	Y
DED 9	Details of Stock Ownership – Female Owners Only	Y	Y
DED 10	Peter Taylor Deed of Gift	Y	Y
DED 11	October 1, 2005, Restricted Stock Purchase Agreement: Ilene Pascale	Y	Y
DED 12	December 30, 2020, SGA Assignment of Stock Purchase Agreement	Y	Y
DED 13	Restricted Stock Purchase Agreement dated 12/22/2022	Y	Y
DED 14	SGA Common Stock Ownership as of 12/21/2022	Y	Y
DED 15	SGA Banking Records	Y	Y

DED 16	October 1, 2005, Restricted Stock Purchase Agreement: Theresa Platt	Y	Y
DED 17	June 29, 2005, Joint Written Consent – Voting Stock	Y	Y
DED 18	December 19, 2018, Dorothy Doughty Stock Purchase Agreement Purchasing 317.02 shares from Valerie Voutsas	Y	Y
DED 19	SGA By Laws	Y	Y
DED 20	SGA Certificate of Incorporation	Y	Y
DED 21	Request to Appeal	Y	Y
DED 22	Notice to Proceed Via Written Appeal	Y	Y