

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
625 BROADWAY
ALBANY, NEW YORK 12207

In the Matter

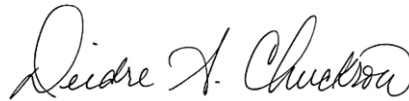
- of -

the Application of Steele Truss and Panel, LLC
for Certification as a Woman-Owned Business Enterprise
pursuant to Executive Law Article 15-A.

NYS DED File ID No. 62621

RECOMMENDED ORDER

-by-



Deidre A. Chuckrow
Administrative Law Judge
January 10, 2024

This matter considers the written appeal by Steele Truss and Panel, LLC. (“STP” 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 June 20, 2018, STP applied for certification as a women-owned business enterprise (“WBE”). STP based its application on Ms. Loretta Steele. (DED Exhibit 1).
2. On November 18, 2020, the Division denied the application on the following grounds (DED Exhibit 2):
 - (a) The contributions of the woman owner are not proportionate to her equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise as required by 5 NYCRR former § 144.2(a)(1);
 - (b) The woman owner does not share in the risks and profits in proportion with her ownership interest in the business enterprise as required under 5 NYCRR former § 144.2(c)(2);
 - (c) The woman owner relied upon for certification does not make decisions pertaining to the operation of the business enterprise, as required under 5 NYCRR former § 144.2(b)(1);

- (d) The woman owner relied upon for certification has not demonstrated adequate managerial experience or technical competence to operate the business enterprise as required under 5 NYCRR former § 144.2(b)(1)(i);
 - (e) The woman relied upon for certification has not demonstrated the working knowledge and ability needed to operate the business enterprise as required by 5 NYCRR former § 144.2(b)(1)(ii); and
 - (f) The applicant business, STP, is not an independent business enterprise as required by 5 NYCRR former § 144.2(c)(2).
3. STP submitted a request to appeal the denial determination, dated December 18, 2020. (DED Exhibit 3).
 4. A Notice to Proceed Via Written Appeal was sent to STP on July 7, 2023 (DED Exhibit 4).
 5. An appeal brief, with submissions, was filed by David G. Burch, Jr., Esq. and Kyra E. Ganswith, Esq., of Barclay Damon LLP on September 19, 2023.
 6. The Division filed an Affidavit of Mathew Lefebvre, Associate Certification Director, dated September 29, 2023, and a brief of William Chen, Esq., counsel for the Division, dated October 13, 2023.

FINDINGS OF FACT

7. STP is engaged in the manufacture of light gauge steel wall panels, and floor and roof trusses in both wood and light gauge steel. (DED Exhibit 1; APP Exhibit A).
8. Loretta Steele, the woman relied upon for certification, is the President of STP and owns 51% of the applicant business and her son, Robert Steele, is the Vice President and owns the remaining 49%. Both Ms. Steele and Robert Steele are Directors of the applicant business. (DED Exhibit 1; APP Exhibit A).

9. The applicant business began operations in December of 2015, and was started by Robert Steele and Alexis McVickers. The application states that Robert Steele contributed \$ [REDACTED] to the founding of the applicant business. Appellant's intent was to start a woman owned business, and Ms. McVickers was the 51% owner until selling her interest to Ms. Leslie Baker on October 3, 2016 for \$ [REDACTED]. (DED Exhibits 1 and 5; APP Exhibit A).
10. Ms. Steele acquired her ownership interest from Ms. Leslie Baker for \$ [REDACTED] on January 1, 2018¹. (DED Exhibit 1; APP Exhibit A).
11. A check, in the amount of \$ [REDACTED], was written to Ms. Baker and dated December 31, 2017, from a joint account owned by Ms. Steele and her husband, Thomas Steele. A copy of the check was submitted with the application and titled, "proof of capitalization and investments." (DED Exhibit 6).
12. Thomas Steele, Ms. Steele's husband, and Robert Steele's father is employed by the applicant business. (DED Exhibits 12).
13. Robert Steele owns 100% of Steele Truss Company, Inc. ("Steele Truss"). Steele Truss is a manufacturer of light gauge steel trusses and is a similar business to the applicant. (DED Exhibit 5; APP Exhibit A).
14. In 2016 and 2017 Steele Truss provided the applicant business with labor, workspace, tools, services, and financing to allow STP to operate. STP purchased raw materials through Steele Truss' vendors. The value of the goods and services provided by Steele Truss to STP was \$ [REDACTED]. (DED Exhibits 5 and 8; APP Exhibit A).

¹ The date on the application of January 1, 2017 is in error. The check written for the purchase of the business was written on December 31, 2017, and affidavits of Ms. Steele and Robert Steele state that Ms. Steele took ownership in January of 2018. (DED Exhibits 1 and 5).

15. Applicant signed a 10-year lease with Steele Truss on January 1, 2018 for office space and workspace. The lease includes the use of Steele Truss equipment, such as fabrication tables, saws, and hole punches. In addition, furnishings are included in the lease, and include jiggling tables, forklift, office furniture, carts, and hand tools. Under the lease, Steele Truss pays for all utilities, services and charges. (DED Exhibit 9; APP Exhibit A).
16. The lease lists the monthly rent for the 10-year term as \$ [REDACTED], or \$ [REDACTED] annually. The annual rent listed as paid by STP is \$ [REDACTED]. (DED Exhibits 9 and 10; APP Exhibit A).
17. Robert Steele owns RT Steele, Inc., a real estate holding company. Applicant reclassified the loan from Steele Truss in 2018 as a loan from RT Steele, Inc. The amount of the reclassified loan is \$ [REDACTED] and applicant states that the loan is being repaid. (DED Exhibits 5, 10 and 11; APP Exhibit A).
18. STP's 2018 tax return, submitted with the application, provides the following information regarding the compensation of officers and employees:

Name	2018 Compensation
Loretta Steele	\$ [REDACTED]
Robert Steele	\$ [REDACTED]
Thomas Steele	\$ [REDACTED]

(DED Exhibit 12).

19. Thomas Steele also received \$ [REDACTED] from Steele Truss in 2018. In 2017, Thomas Steele received \$ [REDACTED], and Ms. Steele \$ [REDACTED], from Steele Truss. In 2016 Ms. Steele earned \$ [REDACTED] from Steele Truss and Thomas Steele earned \$ [REDACTED]. (DED Exhibits 7, 13, and 14).

20. Ms. Steele worked for Steele Home MFG from 1986 to 1989 in the role of Co-CEO and has worked for Steele Truss as a secretary and Treasurer since 1990. Ms. Steele also has experience in banking. (DED Exhibit 15; APP Exhibit A).
21. Applicant states that Ms. Steele “has experience in accounting, business management and customer service . . .” Applicant also states that “[Ms.] Steele oversees all aspects of [STP]. . . [and] is responsible for bookkeeping, accounting and financial aspects of the business.” She “oversees all aspects of the fabrication process and scheduling. . . [and] along with Robert Steele, oversees purchasing for projects and assists in setting the monthly budget for STP.” (DED Exhibit 5; APP Exhibit A).
22. The application lists Ms. Steele as solely responsible for negotiating bonding, insurance, hiring and firing, and purchasing equipment and sales. She shares responsibility with Robert Steele for financial decisions, marketing and sales, managing and signing payroll, negotiating contracts, and signing for business accounts. (DED Exhibit 1; APP Exhibit A).
23. Robert Steele shares responsibility for estimating with another employee, and has sole responsibility for supervising field operations. He is also in charge of marketing, sales, and customer service for STP. (DED Exhibits 1 and 5; APP Exhibit A).
24. Robert Steele has a Bachelor of Science degree in business. He has 19 years of experience working for Steele Truss and has worked as a laborer, doing truss fabrication and crane operation, and in sales and estimation. He took on the role of CEO of Steele Truss in 2014, and in that role works in sales and estimating, is the administrator for the company’s departments, including wood and steel trusses, panels, decking, and accessories. In addition, he supervises direct employees and works on the development of new product lines. (DED Exhibit 16).

APPLICABLE LAW

5 NYCRR former § 144.2 (a)(1) states as follows:

Ownership. For the purposes of determining whether an applicant should be granted or denied minority – or woman-owned business enterprise.

- (1) the contribution of the minority group member(s) or woman owner must be proportionate to their equity interest in the business enterprise, as demonstrated by, but not limited to, contributions of money, property, equipment or expertise;
- (2) the business enterprise must demonstrate that it is an independent, continuing entity which has been actively seeking contracts or orders and regularly and actively performing business activities.

5 NYCRR former § 144.2 (b)(1) states as follows:

Control. Determinations as to whether minority group members or women control the business enterprise will be made according to the following criteria:

- (1) Decisions pertaining to the operations of the business enterprise must be made by minority group members or women claiming ownership of that business enterprise. The following will be considered in this regard:
 - (i) Minority group members or women must have adequate managerial experience or technical competence in the business enterprise seeking certification.
 - (ii) Minority group members or women must demonstrate the working knowledge and ability needed to operate the business enterprise.

5 NYCRR former § 144.2 (c)(2) states as follows:

Additional requirements. The following requirements apply to all applicants seeking minority- and women-owned business enterprise status and inclusion in the directory of certified businesses:

- (3) an eligible minority group member or woman applicant must be an independent business enterprise. The ownership and control by the minority group member or woman must be real, substantial and continuing and must go beyond the pro forma ownership of business as reflected in the ownership documents. The minority group member or woman owner must enjoy the customary incidents of ownership and must share in the risks and profits, in proportion with their ownership interest in the business enterprise.

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 STP 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 denied STP's application for certification as a WBE on the basis that the applicant business failed to demonstrate that the woman relied upon for certification did not make contributions proportionate to her equity interest in the business enterprise, as required by 5 NYCRR former § 144.2(a)(1). (DED Exhibit 2; APP Exhibit A). The Division interprets this regulation to require an applicant to demonstrate that the minority and/or woman 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 former § 144.2(a)(1) 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 applicant must substantiate that the source of the capital contribution is by the minority group member or 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 Division consistently denies applications for certification where an applicant fails to substantiate the source of the capital contribution consistent with the eligibility criteria. (See, *Darr Construction Equipment Corp.*, Recommended Order August 30, 2022 (Final Order 22-11, Nov. 7, 2022) and *Matter of Coverco, Inc.*, Recommended Order, Jan. 23, 2017 (Final Order 17-06, Jan. 30, 2017) aff'd by *Coverco, Inc. v. NYS Dept. of Econ. Development*, 159 AD 3d 1538 (4th Dept. 2018)).

The Applicant bears the burden in establishing that they have 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).

Here, Ms. Steele paid \$ [REDACTED] for her equity interest of 51% of the applicant business and Robert Steele contributed \$ [REDACTED] for his 49% equity interest. (DED Exhibits 1 and 6; APP Exhibit A). Thus, Ms. Steele contributed 50% and not the required 51% for her equity interest in STP. In addition, Ms. Steele's contribution came from a joint checking account held by her and her husband, Thomas Steele. (DED Exhibit 1). Applicant admits that Ms. Steele's capital contribution came from jointly held funds, and offers no proof as to the source of the funds being solely attributable to Ms. Steele. (APP Exhibit A). The Division consistently denies applications for WBE certification where the source of the capital contribution comes from a jointly owned bank account and repeatedly interprets the regulation "to require the woman owner to demonstrate that she made

a capital contribution to the business enterprise from her own personal assets, not from jointly held assets.”(*Matter of OTONE, supra*; see also *Matter of Hertel Steel, Inc.*, Recommended Order, dated Feb. 10, 2017 (Final Order 17-12, dated March 15, 2017) (business not eligible for WBE certification where the money to purchase the business was from a jointly owned bank account)).

The Division also determined that Robert Steele provided significantly more capital to the business than did Ms. Steele in the way of a loan made by Steele Truss and RT Steele Inc., both companies owned 100% by Robert Steele. (DED Exhibits 2 and 5; APP Exhibit A). The applicant argues that the loan should not be considered, stating that it is just a loan, needed by the applicant business as an infusion of capital, and one made from one of Robert’s Steele’s companies and thus not a personal contribution. (APP Exhibit A). The information regarding the loan comes from the applicant business’ 2017 and 2018 tax returns which lists a loan owed to Steele Truss in 2017, in the amount of \$ [REDACTED] and then in 2018 is reclassified as a loan owed to RT Steele with an increase in the amount owed to \$ [REDACTED]. (DED Exhibits 8 and 10; APP Exhibit A). No documents were produced, during the application process, regarding the loan or any repayment of the loan, and the application itself states that there are no outstanding loans to STP. (DED Exhibit, 1).

Affidavits of Ms. Steele and Robert Steele were submitted with Applicant’s appeal, and provide clarification regarding the loans listed on Applicant’s tax returns. (APP Exhibit A). Robert Steele states that, “Steele Truss . . . supported [STP] in its first two years through the use of some labor for the fabrication process, resulting in a loan to [STP] from Steele Truss . . .” (APP Exhibit A). Ms. Steele also states that Steele Truss provided a loan to STP to support STP’s operations during its first two years of business, and cites to the information contained in the business tax returns, included with the application. (APP Exhibit A). Additional documents including a balance sheet for STP, dated April 30, 2018, and a General Ledger for RT Steele, were also included in the

appeal submissions. Those documents were not before the Division, and thus, cannot now be considered, except for information which clarifies what was already before the Division at the time of application. (See *Scherzi Systems, supra.*) These documents do clarify the information regarding the existence of a loan, as reported in the tax returns already before the Division. However, the loan appears to be financing from one business to another to support the startup of the applicant business, and not a capital contribution by an individual, as determined by the Division. As such, there is insufficient evidence to support the finding that the loan is a capital contribution made by Robert Steele.

Applicant also argues that the Division failed to consider Ms. Steele's expertise when determining her capital contributions. (App. Exhibit A). This argument, to consider Ms. Steele's expertise as a capital contribution, is made for the first time on appeal. While the regulation does allow for expertise to be considered as a capital contribution, it is the responsibility of the applicant "to clearly identify, quantify, and explain on the certification application, what is to be considered as capital contribution." (*In the Matter of Scherzi Systems*, Final Order 19-16, September 6, 2019; *Scherzi Sys., LLC v. White*, 197 A.D.3d 1466 (3d Dept. 2021)). Further, the applicant must provide an assessment, clearly documented, of the fair market value of their expertise. (*Matter of Darr Construction Equipment Corp.*, Recommended Order, dated August 30, 2022 (Final Order 22-11, dated November 7, 2022) and *Matter of JVR Electric, Inc.*, Recommended Order, dated August 31, 2016 (Final Order 16-43, dated September 9, 2016)). Here, no evidence has been presented that, at the time of the transfer, or at any time thereafter, Ms. Steele's expertise was to be considered as a capital contribution, nor was any valuation provided regarding the value of the shares or the value of her expertise.

In this instance, the evidence regarding capital contribution to STP is that Ms. Steele only provided a contribution equal to that of 50% of the business, not the required 51%, as discussed supra. Based on the foregoing, I find that the applicant did not demonstrate that the woman owner relied on for certification made capital contributions to STP in proportion to her ownership interest. Thus, the Division's determination that the party relied upon for certification failed to demonstrate that they made a capital contribution to the business enterprise proportionate to their equity interest therein, as required under 5 NYCRR former § 144.2(a)(1) is supported by substantial evidence.

II. Additional Requirements – Ownership – Risks and Profits

The Division denied STP's application for certification as a WBE on the basis that STP failed to demonstrate that the woman owner, relied upon for certification, shared in the risks and profits of the business enterprise in proportion to her ownership interest as required by 5 NYCRR former §144.2(c)(2). This provision ensures that the woman owner receives the benefits received by a business resulting from State contracting preferences from a WBE certification, and that non-qualifying persons do not receive a disproportionate share of such benefits. See *Matter of Spring Electric, Inc.*, Recommended Order, March 17, 2017 (Final Order 17-21, March 27, 2017). The Division has consistently held that a minority, or woman, owner must share in the risks and profits of the business enterprise in proportion to their ownership interest. (See, *Matter of C.W. Brown v. Canton*, 216 AD2d 841 (3rd Dept. 1995) and *Sunrise Credit Services, Inc. V. Zapata, et al.* 57 Misc. 3d 1225 (NY Sup. Ct. 2017) (petitioner did not demonstrate that relied upon owner shared in the risks and profits proportionate to ownership.). In its determination, 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 Applicant bears the burden to establish that the owner relied upon for certification has met the certification requirements. 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).

In its appeal, the applicant argues that the Division should consider Ms. Steele's household income and combine her income from STP with that of her husband's. (APP Exhibit A). Ms. Steele now states that part of her compensation was paid to her husband, Thomas Steele, on the advice and direction of her accountant for tax purposes. (APP Exhibit A). However, that fact, while maybe appropriate for tax purposes, is not relevant to the Division's evaluation and consideration. The Division appropriately examined the salaries of both officers and employees, and in this instance, even if applicant's argument were to be considered, Ms. Steele still earned far less than Robert Steele, the 49% owner, and thus is not sharing proportionally in the risks and profits of STP. (DED Exhibit 12).

New information, regarding salaries more recently paid to Ms. Steele, Thomas Steele, and Robert Steele, presented in Robert Steele's affidavit, cannot now be considered. (See, *Scherzi Systems*, supra). Robert Steele now states that, "Thomas [Steele] no longer works for the Company and Loretta is paid more than [Robert Steele]." (APP Exhibit A). This information was not before the Division at the time of application, and appears to reflect a change in circumstances postdating the application and in consideration of the Division's denial, and thus will not now be considered.

Here, Ms. Steele earned far less than both Messrs. Steele. (DED Exhibit 12). The Division has shown by substantial evidence that Ms. Steele does not share in the risks and profits in proportion to her ownership interests as required under 5 NYCRR former § 144.2(c)(2).

III. Operation

The Division also denied STP's application for certification as a WBE on the basis that the applicant failed to demonstrate that Ms. Steele made decisions regarding the operation of the business enterprise as required under 5 NYCRR former § 144.2(b)(1). The Division interprets this regulation to require an applicant to demonstrate that the woman-owner, relied on for certification, has the working knowledge necessary to review 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 AD3d 1343 (3d Dept. 2020) citing to *C.W. Brown, Inc. v Canton*, 216 AD 841, 842 (1995) (where 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.)) In addition, the Division consistently requires that women owners "exercise independent operational control over the core functions of the business in order to establish the requisite control for WBE certification. . ." (*J.C. Smith, Inc. v. NYS Dept. of Econ. Development*, 163 AD 3d 1517, 1519 (4th Dept. 2018), lv. denied, 32 NY3d 1191 (2019).

Here, the applicant business manufactures light gauge steel wall panels, and floor and roof trusses in wood and light steel. (DED Exhibit 1; APP Exhibit A). Its core revenue generating functions are the fabrication of such panels and trusses. (DED Exhibit 1; APP Exhibit A). The application states that Ms. Steele is not the person responsible for estimating, preparing bids, or supervising field operations. (DED Exhibit 1; APP Exhibit A). Further, her resume, and the narrative response to questions by the Division, provide that her work experience is in accounting, business management, and customer services, and not in the fabrication, or supervision of, panels or trusses. (DED Exhibit 5; APP Exhibit A).

Nowhere in the materials before the Division is there any evidence that Ms. Steele engages in the review or evaluation of the work done by other employees. Instead, the materials state that Robert Steele is responsible for estimating and supervising field operations, and is also the primary person responsible for marketing and sales. (DED Exhibits 1 and 5; APP Exhibit A). Thus, the Division's determination that the party relied upon for certification does not make decisions regarding the operation of the business enterprise as required under 5 NYCRR former § 144.2(b)(1) is supported by substantial evidence.

IV. Operation – Managerial Experience or Technical Competence

The Division also denied STP's application for certification as a WBE on the basis that the applicant failed to demonstrate that Ms. Steele has adequate managerial experience or technical competence, or the working knowledge or ability needed to operate the business enterprise, as required by 5 NYCRR former §§ 144.2(b)(1)(i) and (ii). The Division consistently denies certification where the woman-owner has no training, experience, or working knowledge in the core business functions and other employees or owners have more significant or substantive experience, and exercise that experience, such as by supervising or controlling field operations. (See *Matter of Panko Electrical and Maintenance Corp. v Zapata et. al*, 172 AD3d 1682 (3d Dept. 2019), see also *Matter of Upstate Electrical, supra*).

Here, the applicant business manufactures and sells light gauge steel wall panels, and floor trusses, and its core revenue generating functions involve that manufacture and sale. (DED Exhibit 1; APP Exhibit A). While Ms. Steele has worked for Steele Truss from 1990 to 2018, her work was as a secretary and treasurer. (DED Exhibit 15; APP Exhibit A). Her resume does not list fabrication of steel panels or trusses, nor does it list estimating as prior experience or as skills. (DED Exhibit 15; APP Exhibit A). In addition, Ms. Steele is not listed as the person responsible

for preparing bids, or in supervising field operations in the application, two of the core business functions. (DED Exhibit 1; APP Exhibit A).

In contrast, Robert Steele, has extensive experience in the fabrication of steel trusses and wall panels, and in the sales and estimations of the same. (DED Exhibit 16). He has six years of experience as a laborer for Steele Truss, and five years of experience in sales and estimating. (DED Exhibit 16). Further, he is the person responsible for supervising field operations and for estimating for STP. (DED Exhibit 1; APP Exhibit A).

It is well settled that where the owner relied upon for certification has no training or experience in the critical functions of the business enterprise and others, with more significant experience, such as an employee or non-qualifying owner, actively engage in the core functions of the business, denial of certification is appropriate. (See *Matter of Panko, supra*, and *Matter of Upstate Electrical, supra*). Here, the evidence presented establishes that Ms. Steele does not possess the managerial experience, technical competence, or working knowledge to operate the applicant business, as required under 5 NYCRR former § 144.2(b)(1)(i) and (ii).

V. Independence

The Division denied STP's application for certification as a WBE on the basis that the applicant business failed to demonstrate that it operates independently, as required by 5 NYCRR former §§ 144.2(a)(2) and 144.2(c)(2). (DED Exhibit 2). The Division consistently denies certification where, as in this case, a family owns multiple businesses which operate out of the same space, where one business leases the space to the other, and where the applicant business is dependent on the other for capitalization and other basic functions. (See *Matter of Acme Lightning Rod, LLC*, Recommended Order dated March 6, 2020, Final Order dated April 21, 2020) (holding that where the same family owns two businesses, operates out of the same premises, and where

one business leases space to the other, and where the applicant business is dependent on the other business for capitalization, office, and basic functions, the business is not independent as required by the regulations). See also, *Matter of Skyline Specialty Systems, Inc. v. Gargano*, 294 AD 2d 742 (3rd Dept. 2002) (holding the applicant business was so entangled with another business by sharing personnel, office, etc. that it clearly was not independent).

Here, the applicant business and Steele Truss, the business owned and operated by Robert Steele, are in similar lines of business. (DED Exhibit 5; APP Exhibit A). STP, has received assistance from Steele Truss, since its inception, in the form of labor, materials, and finances. (DED Exhibit 5; APP Exhibit A). Applicant admits in their appeal submission that both businesses are similar, and that Steele Truss has provided the support necessary for STP to operate. (APP Exhibit A). The value of this assistance in 2017 was \$ [REDACTED]. (DED Exhibit 8). That assistance, in the form of a loan, has since grown to over \$ [REDACTED], evidencing continuing assistance, beyond that of the initial two years of operation of STP. (DED Exhibit 10; APP Exhibit A).

Further, the applicant business has a ten-year lease with Steele Truss, with beneficial terms to STP. (DED Exhibit 9; APP Exhibit A). The lease provides for a standing rental fee of \$ [REDACTED] per month, without increase, for the entirety of the term, and includes all utilities for services and charges under the lease. (DED Exhibit 9; APP Exhibit A). In addition, the lease provides for the use of Steele Truss equipment by STP for its manufacturing processes. (DED Exhibit 9; APP Exhibit A). Included in this is the use of electrical amperage and outlets for the fabrication process, and fabrication tables, saws, and hole punches, as well as jiggling tables, forklift, office furniture, carts, and hand tools. (DED Exhibit 9; APP Exhibit A). This sharing of labor, workspace, and equipment is all evidence of a lack of independence.

Based on the foregoing, I find that the applicant has not demonstrated that STP operates independently. Accordingly, the Division's determination that the business enterprise does not operate independently, as required under 5 NYCRR former §§ 144.2(a)(2) and 144.2(c)(2) is supported by substantial evidence.

CONCLUSION

STP 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 former §§ 144.2(a)(1), 144.2(a)(2), 144.2(b)(1), 144.2(b)(1)(i) and (ii), and 144.2(c)(2) was not based on substantial evidence.

RECOMMENDATION

The Division's determination to deny Steele Truss and Panel, LLC's application for certification as a woman-owned business enterprise should be affirmed.

In the Matter of Steele Truss and Panel, LLC
DED File ID No. 62621
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Applicant Written Appeal and exhibits	Y	Y
DED 1	Application for Certification	Y	Y
DED 2	Denial Determination	Y	Y
DED 3	Applicant's Request to Appeal	Y	Y
DED 4	Notice to Proceed by Written Appeal Submission	Y	Y
DED 5	Applicant's Response to ESD Supplemental Q's	Y	Y
DED 6	Copies of Checks	Y	Y
DED 7	2017 Loretta & Thomas Steele Tax Return	Y	Y
DED 8	2017 Applicant Tax Return	Y	Y
DED 9	Applicant's Lease Agreement with Steele Truss	Y	Y
DED 10	2018 Applicant's Federal Tax Return	Y	Y
DED 11	2018 Robert Steele Federal Tax Return	Y	Y
DED 12	2018 Applicant W2s and W3	Y	Y
DED 13	2018 Loretta & Thomas Steele Tax Return	Y	Y
DED 14	2016 Loretta and Thomas Steele Tax Return	Y	Y
DED 15	Loretta Steele Resume	Y	Y
DED 16	Robert Steele Resume	Y	Y