

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

**In the Matter**

**- of -**

**the Application of The Big Deal Casino Academy, LLC  
for Certification as a Woman-owned Business Enterprise  
pursuant to Executive Law Article 15-A.**

**NYS DED File ID No. 3436942**

**RECOMMENDED ORDER**

**-by-**



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

This matter considers the appeal by The Big Deal Casino Academy, LLC (“BDCA” 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 4, 2023, Ms. Wendy Rubin, as President, applied on behalf of BDCA for certification as a woman-owned business enterprise (“WBE”). (DED Exhibit 1)
2. On August 18, 2023, the Division denied the application on the following grounds (DED Exhibit 2):
  - (a) Minority group members or women relied upon for certification must possess adequate, industry-specific competence to make critical business decisions without relying upon other persons, as required under 5 NYCRR §144.2(c)(1);
  - (b) Minority group members or women relied upon for certification must devote time on an ongoing basis to the daily operation of the business enterprise, as required under 5 NYCRR §144.2(c)(3); and
  - (c) The business enterprise must operate independently, as required under 5 NYCRR §144.2(e).
3. On September 12, 2023, BDCA submitted a Request to Appeal via a Hearing. (DED Exhibit 3).
4. On February 23, 2024, a Notice of Hearing was sent to all parties (DED Exhibit 4).
5. On June 5, 2024, a hearing was held and concluded.

## **FINDINGS OF FACT**

6. BDCA is a licensed private school engaged in the business of providing instruction for budding casino dealers (APP Exhibit 1).
7. Ms. Wendy Rubin is the 100% owner of BDCA and 100% owner of The Big Deal Ltd. (“BDL”) (DED Exhibit 1).
8. Ms. Rubin has been running the business (including The Big Deal Ltd.) for over 10 years. She is “responsible for all management and operations at Big Deal Casino Academy”. She designed and submitted the entire curriculum; oversees the entire program; hires industry professionals as teachers; maintains connections with USA casinos; is responsible for all paperwork, including audits and filing requirements; sets up auditions for graduated students; handles all business development; handles updating curricula and Handbook; handles all press and public relations; handles payroll and human resources; and holds the Director License for the BDCA. She is not licensed to teach the classes, but she handles every other aspect of the business. (APP Exhibit A/ Hearing Testimony of Wendy Rubin).
9. Ms. Rubin devotes approximately 100 hours per week between BDCA and BDL, with approximately 60 hours per week devoted to BDL and 40 hours per week devoted to BDCA. (Hearing Testimony of Wendy Rubin).
10. BDCA shares office space and equipment with BDL. BDL pays the rent for the office space. BDCA does not reimburse BDL for the rent. (DED Exhibit 1/ Hearing Testimony of Wendy Rubin).

## **APPLICABLE LAW**

5 NYCRR §144.2(c) 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;
  - (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...
- (3) Time devoted to operation of the business enterprise. Minority group members and women relied upon for certification must devote time on an ongoing basis to the daily operation of the business enterprise for which certification is sought.

5 NYCRR §144.2(e) states as follows:

Independence. Business enterprises for which certification is sought must operate independently. In order to determine whether such business enterprises operate independently, the division shall consider but not be limited to the following criteria:

- (1) Whether the business enterprise shares resources with another entity, including, but not limited to, personnel, equipment, office space, warehouse and other storage space, and yard space;
- (2) Whether the business enterprise transacts business primarily with one other entity; and
- (3) Whether the business enterprise receives tangible benefits as a result of a connection to another entity, and whether such benefits are consistent with standard industry practices.

### **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 BDCA 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**

Ms. Wendy Rubin appeared at the hearing on behalf of BDCA. The following witnesses testified on behalf of BDCA: Wendy Rubin; Sarah Mohammed, Associate Group Director; John Evans, former BDCA student and floor manager at Hard Rock; Paul Weiss, President of the Oasis Institute; Rebecca Churchill, Independent Business Consultant; and Daniel Wise, founder of Les Hub, an artist incubator. BDCA offered APP Exhibit A and APP Exhibits 1 through 18. APP Exhibit A and APP Exhibits 2, 3, 6, 7, and 12 through 18 were admitted into evidence.

Mr. Michael Paff, Counsel, Department of Economic Development, appeared at the hearing on behalf of the Division. The following witness testified on behalf of the Division: James Murphy, Senior Certification Analyst, Division of Minority and Women Business Development. The Division offered the following exhibits which were admitted into evidence: DED Exhibits 1 - 10.

### **I. 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. In *C.W. Brown, Inc. v. Canton*, 216 A.D.2d 841 (3d Dept 1995), the Court affirmed the denial where the woman-

owner had no training or experience in the industry, nor could she specify the “working knowledge” necessary to review the estimates made by or evaluate the work of more experienced employees. 5 NYCRR §144.2(c)(1) states that “this requirement cannot be satisfied by expertise or experience in office management or general business administration, among other things.”

With regard to managerial experience, the minority/woman-owner must identify the management experience and day to day management activities she engaged in. See *Scherzi Systems, LLC v. White*, 187 AD3d 1466 (3<sup>rd</sup> Dept. 2021).

The Division’s regulations “do not require an applicant to possess formal academic training or to have completed an apprenticeship in order to demonstrate technical competence to operate a business.” *Matter of Northern Scapes Inc.*, Recommended Order dated May 18, 2018, Final Order 18-31, dated June 5, 2018 (applicant relied on for certification, who has managed projects through oversight of project managers and possesses managerial experience has the competence to operate the applicant business). Further, there is no regulatory requirement for any formal academic training, only that the woman owner possesses adequate competence to make decisions and to make those decisions on a day-to-day basis. See *Northern Scapes*, supra.

Ms. Rubin testified that she has been running the business (including The Big Deal Ltd.) for over 10 years. She is “responsible for all management and operations at Big Deal Casino Academy”. She designed and submitted the entire curriculum; oversees the entire program; hires industry professionals as teachers; maintains connections with USA casinos; is responsible for all paperwork, including audits and filing requirements; sets up auditions for graduated students; handles all business development; handles updating curricula and Handbook; handles all press and public relations; handles payroll and human resources; and holds the Director License for the BDCA. She is not licensed to teach the classes, but she handles every other aspect of the business. (APP Exhibit A/ Hearing Testimony of Wendy Rubin).

John Evans testified that he was a prior student at BDCA. He stated that Ms. Rubin set up an audition for him after he completed the classes, that she “helped him out with everything” and that he “saw her every day” when he took the classes (Hearing Testimony of John Evans).

Paul Weiss testified that he is the CEO of a non-profit, Oasis Institute. He has known Ms. Rubin for the last 10 years. He stated that Ms. Rubin is the only one who’s ever run the school; that she does the marketing, handles the relationships with casinos, and does everything for the business “from soup to nuts.” He testified that she can’t run the business and handle every part of it at the same time. (Hearing Testimony of Paul Weiss).

Rebecca Churchill testified that she is an Independent Business Consultant and has worked with Ms. Rubin over the past four years. She knows Ms. Rubin to be fully dedicated to the business of BDCA (Hearing Testimony of Rebecca Churchill).

Daniel Wise testified that he runs a charity that is an “artist incubator” called Les Hub. He has known Ms. Rubin for the last 12 years. He stated Ms. Rubin “works all day long”; that she is “an extremely efficient and driven person” and “can run the business without anyone’s help.” He stated he believed she devotes at least “60 to 80 hours per week” to BDCA. (Hearing Testimony of Daniel Wise)

James Murphy, Senior Certification Analyst testified that Ms. Rubin does not have any industry specific expertise; her skills are related to general business or office management. The critical functions of the business are as a private school providing instruction for budding casino dealers, as stated in the application. He stated that Ms. Rubin’s resume reflects that she handles administrative tasks, including financials, pricing, HR and payroll. She does not have the education, training, or experience to oversee the critical functions of the business. He testified Ms. Rubin cannot supervise the teachers without being able to teach herself and that she doesn’t have

the training or experience to write the manuals as she claimed without any experience teaching (Hearing Testimony of James Murphy).

Ms. Rubin has handled all aspects of BDCA's business, including designing the curriculum, hiring industry professionals as teachers, overseeing the entire program, and holding the Director License. The only aspect of the business that she does not handle is teaching the classes. She is in constant contact with the Unions, maintains relationships with Casinos, and handles all accreditation matters for the Academy. (Hearing Testimony of Wendy Rubin). She therefore has the necessary competence to run the business of BDCA.

. Based on the foregoing, I find that the Division's determination to deny BDCA's certification under 5 NYCRR §144.2(c)(1) was not based on substantial evidence.

The application was also denied on the ground that the woman-owner does not devote sufficient time on an ongoing basis to the daily operation of the business, as required by 5 NYCRR§144.2(c)(3). The Division has consistently found that part-time work for a business does not qualify as devoting time to the daily operation of the business. See *Matter of Brandt Equipment*, Recommended Order dated April 28, 2020, Final Order 20-06, dated June 2, 2020.

Wendy Rubin testified that she devotes approximately 100 hours per week between BDCA and BDL, with approximately 60 hours per week devoted to BDL and 40 hours per week devoted to BDCA. She stated that running the business is not a "9 to 5 job", and when the application was submitted, she didn't think she needed to provide a breakdown of her hours devoted or her daily duties. She noted her extensive duties and responsibilities in the management and operation of BDCA. (Hearing Testimony of Wendy Rubin/ APP Exhibit A).

Paul Weiss testified that he is in frequent contact with Ms. Rubin and he believes she devotes 70 – 100 hours per week at BDCA; handling sales, marketing, hiring, etc. and is "constantly on the job". (Hearing Testimony of Paul Weiss).



Daniel Wise testified that Ms. Rubin “works all day long”, and he believes she devotes a “minimum of 60 – 80 hours per week for BDCA”. (Hearing Testimony of Daniel Wise).

James Murphy testified that Ms. Rubin failed to provide a breakdown of how much time she devoted to BDCA or what her daily duties involved. The Division was therefore unable to substantiate that she devoted sufficient time on an ongoing basis to the daily operation of the business. (Hearing Testimony of James Murphy).

Ms. Rubin’s credible testimony as to her duties and time devoted to the business, together with corroborating testimony from Paul Weiss and Daniel Wise, is sufficient to show that she satisfied the requirement under 5 NYCRR §144.2(c)(3).

Based on the foregoing, I find that the Division’s determination to deny BDCA’s certification under 5 NYCRR §144.2(c)(3) was not based on substantial evidence.

## II. Independence

The Division further found that BDCA is not an independent business enterprise, as required under 5 NYCRR §144.2(e). This section considers “whether the business enterprise shares resources with another entity, including, but not limited to, personnel, office space, warehouse and other storage space, and yard space... 5 NYCRR §144.2(e)(1), and “whether the business enterprise receives tangible benefits as a result of a connection to another entity...”. 5 NYCRR §144.2(e)(3).

Ms. Rubin testified that BDCA shares office space and equipment with BDL, for efficiency purposes. She stated that the School and event space are two entirely different businesses with separate identification numbers, bank accounts and tax returns. She stated that BDCA owns the equipment and that BDL pays the rent for the office space, but BDCA does not reimburse BDL (Hearing Testimony of Wendy Rubin). In a Narrative provided by Ms. Rubin, she stated “The casino school was the only business that occupied 1 E 28<sup>th</sup> St. 6<sup>th</sup> floor when the lease was signed

in 2014. Big Deal Ltd. was originally incorporated merely as a vehicle to sign the lease so there would be separation in case of a legal issue... The reason that Big Deal Ltd became an actual functioning business was that as of 2015 the gaming commission had bumped the downstate casino licenses for another three years and therefore the school was too early to be a revenue generating business, but I had a seven-year lease. Therefore, I had to pivot and started doing [BDL] events using the school's tables and equipment.” (Hearing Testimony of Wendy Rubin)

James Murphy testified that BDCA and BDL share personnel, equipment and office space, and that BDCA received tangible benefits from BDL as BDL pays the lease and is not reimbursed by BDCA. He stated that the application did not indicate that BDCA owned the equipment. (Hearing Testimony of James Murphy); although Ms. Rubin testified that BDCA owns all the equipment (Hearing Testimony of Wendy Rubin).

BDCA's sharing of office space and equipment with BDL, together with BDCA receiving the tangible benefit of BDL paying the rent, shows that BDCA is not an independent business enterprise.

The Division's determination to deny the application on the basis that BDCA failed to demonstrate that the business is an independent enterprise, as required under 5 NYCRR §144.2(e), is supported by substantial evidence.

### **CONCLUSION**

BDCA met 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(c)(1) and 144.2(c)(3), was not based on substantial evidence. BDCA 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(e) was not based on substantial evidence.

## **RECOMMENDATION**

For the reasons set forth above, I recommend that the Director modify the Division's determination to deny BDCA's application for certification as a woman-owned business enterprise, and as modified, affirm the determination.

In the Matter of The Big Deal Casino Academy, LLC  
DED File ID No. 3436942  
Exhibit Chart

Exhibit #:	Description of the Exhibits	Offered (Yes/No)	Admitted (Yes/No)
APP A	Wendy Rubin day-to-day responsibilities	Y	Y
APP 1	Private Career School Director License	Y	N
APP 2	Enrollment Agendas for all classes	Y	N
APP 3	Examples of manuals, tests, etc.	Y	Y
APP 4	The Big Deal Bartending Academy LLC MWBE certification	Y	N
APP 5	Tioga Downs proposal	Y	N
APP 6	2022 Final Curricula	Y	Y
APP 7	Final Catalog/ School handbook	Y	Y
APP 8	Time devoted last 2 weeks	Y	N
APP 9	BPSS Audit 12/31/23	Y	N
APP 10	Training for Dealer Union	Y	N
APP 11	Emails and texts	Y	N
APP 12	Student graduate photograph	Y	Y
APP 13	Office space and equipment	Y	Y
APP 14	BDL and BDCA credit cards	Y	Y
APP 15	BDL bank statement	Y	Y
APP 16	BDCA bank statement	Y	Y
APP 17	7/31/14 NYC No objection letter	Y	Y

APP 18	Quarters for license application	Y	Y
DED 1	Certification Application	Y	Y
DED 2	Denial Letter	Y	Y
DED 3	Appellant's Appeal Letter	Y	Y
DED 4	Notice of Hearing	Y	Y
DED 5	2021 Taxes	Y	Y
DED 6	2022 Taxes	Y	Y
DED 7	Big Deal Ltd. Lease Extension Agreement	Y	Y
DED 8	Invoices	Y	Y
DED 9	Student advertising website	Y	Y
DED 10	Wendy Rubin Resume	Y	Y