

NEW YORK STATE  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
633 THIRD AVENUE  
NEW YORK, NY 10017

In the Matter

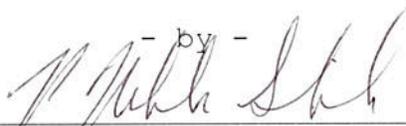
- of -

the Application of  
**AJ Images, Inc.**  
For Certification as a  
Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 60693

RECOMMENDED ORDER

- by -



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P. Nicholas Garlick  
Administrative Law Judge

February 27, 2017

## **SUMMARY**

This report recommends that the determination of the Division of Minority and Women's Business Development ("Division") of the New York State Department of Economic Development to deny the application of AJ Images, Inc. ("applicant") for certification as a woman-owned business enterprise ("WBE") be affirmed for the reasons set forth below.

## **PROCEEDINGS**

This matter involves the appeal, pursuant to New York State Executive Law ("EL") Article 15-A and Title 5 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") Parts 140-144, by AJ Images, Inc. challenging the determination of the Division that applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

AJ Images, Inc.'s application was submitted on May 14, 2016 (Exh. DED1).

The application was denied by letter dated July 15, 2016, from Bette Yee, Director of Certification Operations. As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet three separate eligibility criteria related to Janet Greebel's ownership and control of the applicant (Exh. DED2).

By letter dated August 4, 2016, applicant requested a hearing.

By letter dated September 19, 2016, the Division notified Ms. Greebel that the hearing in this matter would occur at 1:30 pm on November 22, 2016 at the Division's office located at 633 Third Avenue, New York, New York.

On September 23, 2016, this matter was assigned to Administrative Law Judge ("ALJ") Richard Sherman.

Due to workload issues, this matter was assigned to me on October 28, 2016.

On November 4, 2016 a conference call was held with the parties to discuss the upcoming hearing.

On November 22, 2016, a hearing in this matter was convened at the Division's New York City Office. Applicant was represented by Paul Biddelman, Esq. and he called three witnesses: Janet Greebel, Lisa Greebal, and William Felong. The Division was represented by Phillip Harmonick, Esq. and he called one witness, Matthew LeFebvre, Senior Certification Analyst with the Division. The hearing concluded at approximately 2:30 pm.

The record closed upon receipt of the recording of the hearing on or about January 5, 2017.

#### **ELIGIBILITY CRITERIA**

For the purposes of determining whether an applicant should be granted or denied woman-owned business enterprise status, regulatory criteria regarding the applicant's ownership, operation, control, and independence are applied on the basis of information supplied through the application process.

The Division reviews the enterprise as it existed at the time the application was made, based on representations in the application itself, and on information revealed in supplemental submissions and interviews that are conducted by Division analysts.

#### **STANDARD OF REVIEW**

On this administrative appeal, applicant bears the burden of proving that the Division's denial of applicant's WBE certification 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 the Division's conclusions and factual determinations are not supported by "such relevant proof as a reasonable mind may accept as adequate" (Matter of Ridge Rd. Fire Dist. v Schiano, 16 NY3d 494, 499 [2011] [internal quotation marks and citations omitted]).

## **POSITIONS OF THE PARTIES**

### Position of the Division

In its denial letter, the Division asserts that the application failed to meet three separate criteria for certification.

First, the Division found that applicant failed to demonstrate that the woman owner Janet Greebel's capital contributions are 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 144.2(a)(1).

Second, the Division found that applicant failed to demonstrate that the woman owner Janet Greebel shares in the risks and profits in proportion to her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2).

Third, the Division found that applicant failed to demonstrate that the woman owner, Janet Greebel, is permitted by the corporate documents and relevant business agreements to make business decisions without restriction, as required by 5 NYCRR 144.2(b)(2).

### Position of the Applicant

AJ Images, Inc. asserts that it meets the criteria for certification and that the Division erred in not granting it status as a woman-owned business enterprise pursuant to Executive Law Article 15-A.

## **FINDINGS OF FACT**

1. AJ Images, Inc. is in the business of offset printing, binding, finishing, addressing, mailing, digital printing, posters, signs, booklets, pamphlets, flyers, brochures, postcards and other printed material (Exh. DED1 at 4). The firm has a business address of 259-263 East 1st Avenue, Roselle, NJ 07203 (Exh. DED1 at 1).

2. AJ Images, Inc. was established on March 16, 1995 when two existing businesses, Whitcomb Printing Company (Exh. A4) and Dimensional Graphics, were merged (Exh. DED1 at 2).

3. At the time of the application, Janet Greebel owned 51% of the firm, her husband Arnold owned 34%, and a portion of the remaining stock is owned by other family members (Exh. DED1 at 3).

4. The application claims Janet Greebel made contributions to the firm of [REDACTED] and Arnold Greebel made contributions of [REDACTED] (Exh. DED 1 at 3). Applicant's 2015 tax return showed [REDACTED] in common stock and [REDACTED] in additional paid-in capital (Exh. DED6 at 53:00, DED5 at 5 line 22 & 23). No proof of these claimed contributions were included with the application materials.

5. In 2015, Janet Greebel and her husband Arnold received the same salary of [REDACTED] (Exh. DED4 at 8). In 2014, Janet Greebel received the same salary as her husband (Exh. DED6 at 44:00).

6. The bylaws of AJ Images, Inc. states that a minimum of 55% of the shares entitled to vote must be present to represent a quorum (Exh. DED3 at 3). It also states that a quorum of 100% of the total number of directors is required for the board to transact business at a meeting of the directors (Exh. DED3 at 6).

6. After the application was filed, Arnold Greebel assigned his interest in the company to his wife (Exh. A1).

7. AJ Images, Inc. is a certified WBE in the State of New Jersey (Exh. A5).

## **DISCUSSION**

This report considers applicant's appeal from the Division's determination to deny certification as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The Division's denial letter sets forth three bases related to Janet Greebel's ownership and operation of AJ Images, Inc. Each basis is discussed individually, below.

### **Ownership**

In its denial letter, the Division concluded that applicant failed to demonstrate that the woman owner Janet Greebel's

capital contributions were 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 144.2(a)(1). Specifically, the letter states that while Janet Greebel owns 51% of the stock of the company and the application lists her capital contributions, no documents were included with the application to confirm her contribution. (Exh. DED2 at 2).

At the hearing Janet Greebel testified that prior to 1995, she owned a company called Whitcomb Printing Company and her husband, Arnold, owned a type-setting company called Dimensional Graphics. In 1995, the two companies were merged to form AJ Images, Inc. and at that time she brought a large piece of equipment that she owned into the business that originally cost approximately \$385,000 (Exh. DED6 at 4:00-8:00, A6). She also testified that she subsequently bought other pieces of equipment and that her husband brought equipment with negligible value (Exh. DED6 at 21:00). She also stated that many of the firm's early records were lost during tropical storm Irene (Exh. DED6 at 7:00). On cross examination, she admitted that she had not provided documentation to support her claimed capital contribution and that she had overlooked this requirement (Exh. DED6 at 23:30).

In his testimony, DED analyst LeFebvre testified that he reviewed the capital contribution information submitted by the applicant. Specifically, he reviewed the information in the application that stated Janet Greebel had contributed [REDACTED] and Arnold Greebel had contributed [REDACTED] (Exh. DED 1 at 3). He stated that the only documentation to support this claim that was submitted was a lease agreement for certain business equipment dated February 2015 (Exh. DED5). He testified that this did not coincide with the information on the application and that applicant did not provide any evidence of a capital contribution (Exh. DED6 at 43:00). He further testified that none of this information was consistent with the amounts listed on applicant's 2015 tax return which showed [REDACTED] in common stock and [REDACTED] in additional paid-in capital (Exh. DED6 at 53:00, DED5 at 5 line 22 & 23).

Based on the evidence in the record, including Janet Greebel's admission that she failed to provide evidence of a capital contribution to the firm, applicant failed to demonstrate that the woman owner Janet Greebel's capital contributions are 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 144.2(a)(1). The Division's denial determination on this ground was based on substantial evidence.

In its denial letter, the Division also concluded that the applicant failed to demonstrate that the woman owner, Janet Greebel, shares in the risks and profits in proportion to her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2). Specifically, the letter states that Janet Greebel's compensation from the firm is equal to that of her husband, Arnold Greebel (Exh. DED2 at 2).

At the hearing, Janet Greebel testified that she and her husband made equal draws from the company (Exh. DED6 at 19:00). She explained that he is the company's leading salesperson who is responsible for more than [REDACTED] of the company's sales (in excess of [REDACTED]). She continued that if he were paid on a commission basis, as other salespeople at the firm are, he would be entitled to [REDACTED] of the sales, and that his salary would be higher than hers (Exh. DED6 at 20:00). It is unclear to what she is referring because [REDACTED] of [REDACTED] would be [REDACTED], which is less than the salary of [REDACTED] that each of the Greebels received in 2015 (Exh. DED4 at 8).

Mr. Lefebvre testified that he reviewed the application materials and found that Janet Greebel received the same salary as her husband in both 2015 (Exh. DED4 at 8) and the year before (Exh. DED6 at 44:00). Based on this, he concluded that Janet Greebel did not share in the profits of the business in proportion to her 51% ownership.

Based on the evidence in the record, specifically the fact that Janet Greebel enjoys the same salary as her husband, applicant has failed to demonstrate that Janet Greebel shares in the risks and profits in proportion to her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2). The Division's denial was based on substantial evidence.

## Control

In its denial letter, the Division found that applicant failed to demonstrate that the woman owner, Janet Greebel, is permitted by the corporate documents and relevant business agreements to make business decisions without restriction, as required by 5 NYCRR 144.2(b)(2). Specifically, the letter notes that while Janet Greebel controls 51% of the company, the company's bylaws require that a minimum of 55% of the shareholders are necessary at a shareholders' meeting to provide a quorum, and that a quorum for the board of directors requires the presence of 100% of the directors (Exh. DED2 at 3).

At the hearing, Janet Greebel stated that she does not contest the Division's assertion that the bylaws do not allow her to take action without the consent of other shareholders and directors. She testified that these provisions in the bylaws have never been a problem because her family members always agree with her on business decisions (Exh. DED6 at 13:30).

Mr. Lefebvre testified that he had reviewed the company's bylaws and determined that the restrictions on Janet Greebel, as majority owner of the firm, are not typical (Exh. DED6 at 47:15). Specifically, he noted that the bylaws of AJ Images, Inc. require that a minimum of 55% of the shares entitled to vote must be present to represent a quorum (Exh. DED3 at 3), and that a quorum of 100% of the total number of directors is required for the board to transact business at a meeting of the directors (Exh. DED3 at 6). He testified that while she had a veto over any decisions other directors or shareholders might want to make, they also had a veto over her decisions and that because of this she did not enjoy control over the company (Exh. DED6 at 47:45)

Based on the provisions in the corporate bylaws quoted above, applicant has failed to demonstrate that the woman owner, Janet Greebel, is permitted by the corporate documents and relevant business agreements to make business decisions without restriction, as required by 5 NYCRR 144.2(b)(2). The Division's denial was based upon substantial evidence. If the bylaws were amended so that Janet Greebel enjoyed control of the corporation, this may constitute a significant change of circumstances forming the basis of the denial which would allow

the applicant to reapply for WBE certification sooner than two years from the date of the written notice denying certification (5 NYCRR 144.4[d]).

#### **CONCLUSIONS**

1. Applicant failed to demonstrate that the woman owner Janet Greebel's capital contributions are 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 144.2(a)(1).

2. Applicant failed to demonstrate that the woman owner, Janet Greebel, shares in the risks and profits in proportion to her ownership interest in the business enterprise, as required by 5 NYCRR 144.2(c)(2).

3. Applicant failed to demonstrate that the woman owner, Janet Greebel, is permitted by the corporate documents and relevant business agreements to make business decisions without restriction, as required by 5 NYCRR 144.2(b)(2).

#### **RECOMMENDATION**

The Division's determination to deny AJ Images, Inc.'s application for certification as a woman-owned business enterprise should be affirmed for the reasons stated in this recommended order.

**Matter of  
AJ Images, Inc.**

**DED File ID No. 60693  
Exhibit List**

<b>Exh. #</b>	<b>Description</b>
DED1	Application
DED2	Denial letter
DED3	Bylaws of AJ Images, Inc.
DED4	IRS form 1120 for 2015
DED5	Ricoh lease agreement
DED6	Recording of hearing on disc
A1	Stock transfer agreement
A2	Customer contracts
A3.1	Machinery contract
A3.2	Used machinery contract
A3.3	Funding proposal
A4	Dunn and Bradstreet report
A5	NJ WBE certificate
A6	Machinery contract and other documents
A7	Cancelled request for additional documents
A8	Email dated July 15, 2016