

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

In the Matter

- of -

the Application of **A&G Title and Abstract Co., Inc.**  
for Certification as a Minority or Women-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 59609

RECOMMENDED ORDER

- by -

A handwritten signature in blue ink that reads "Maria E. Villa". The signature is written in a cursive style and is positioned above a horizontal line.

Maria E. Villa  
Administrative Law Judge

March 1, 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 A&G Title and Abstract Co., Inc. (“A&G” or “applicant”) certification as a women-owned business enterprise (“WBE”) be modified, and as modified affirmed, for the reasons set forth below.

## **PROCEEDINGS**

This matter involves the appeal by 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 (“NYCRR”) Parts 140-144, challenging the determination of the Division that A&G does not meet the eligibility criteria for certification as a WBE.

The Division denied A&G's application for WBE certification (Exhibit 1) by letter dated May 2, 2016. Exhibit 2. The denial letter sets forth two grounds under 5 NYCRR 144.2 for the denial. By letter dated May 5, 2016, applicant appealed from the Division's determination to deny the application. Exhibit 4. The Division responded by letter dated June 1, 2016, providing information as to the appeal process. Exhibit 5.

A&G's appeal was received on August 8, 2016. The appeal included a memorandum of law, the affidavit of Gail Siesfeld, sworn to August 3, 2016 (the “Siesfeld Affidavit”), and the August 4, 2016 affirmation of Richard D. Cirincione, Esq. (the “Cirincione Affirmation”). On February 6, 2017, the Division filed its response to the appeal (“Division Response”). The Division Response included the affidavit of Matthew LeFebvre, a Senior Certification Analyst for the Division, sworn to February 3, 2017 (the “LeFebvre Affidavit”).

Both applicant's appeal and the Division Response were accompanied by exhibits, and those exhibits were marked and received into evidence. A chart of those exhibits is attached. To the extent that the exhibits offered by applicant were duplicates of those offered by the Division, only the Division's exhibit was marked and received.

## **ELIGIBILITY CRITERIA**

The eligibility criteria pertaining to certification as a women-owned business enterprise are established by regulation (see 5 NYCRR 144.2). For the purposes of determining whether an applicant should be granted or denied WBE status, the ownership, operation, and control of the business enterprise are assessed on the basis of information supplied through the application process. The Division reviews the enterprise as it existed at the time that the application was made, based on representations in the application itself, on information revealed in supplemental submissions, and if appropriate, on interviews conducted by Division analysts.

## **STANDARD OF REVIEW**

On this administrative appeal, applicant bears the burden of proving that the Division's denial of A&G'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

### Division

The Division argued that applicant failed to meet two ownership requirements for certification as a woman-owned business, pursuant to Section 144.2 of 5 NYCRR. Division Response, at 1. Specifically, the Division asserted that Ms. Siesfeld had not made a capital contribution proportionate to her equity interest in the business enterprise, as demonstrated by contributions of money, property, equipment or expertise. See Section 144.2(a)(1) of 5 NYCRR. In this regard, the Division cited the following “relevant facts” in the denial letter:

- The owners of the business enterprise have made equal capital contributions of [REDACTED].

Exhibit 2, at 2.

The Division also denied the application because the business enterprise had not issued at least 51% of its stock to women, as required by Section 144.2(a)(5) of 5 NYCRR. In the February 6, 2017 Division Response, the Division stated that it had failed to take into account documentation with respect to this ground for denial that had in fact been submitted with the application, and as a result, the Division would not defend its denial pursuant to Section 144.2(a)(5). Accordingly, the denial should be modified to strike this ground for denial. This recommended order addresses only the capital contribution basis for denial of A&G’s application for certification.

### Applicant

Applicant argued that the requisite capital contributions were made as required, and that because that information was in the record before the Division at the time of the denial, the denial was not supported by substantial evidence. Applicant acknowledged that applicant’s co-owners had made equal financial contributions to A&G in the amount of [REDACTED] each. Nevertheless, applicant went on to assert that Ms. Siesfeld, “as majority owner, has also made additional capital contributions to the Company in the form of expertise and property.” Memorandum of Law, at 4.

## FINDINGS OF FACT

1. A&G was established in 2004 and is a title and abstract company located in Averill Park, New York. Exhibit 1, at 1-3.

2. Gail B. Siesfeld and Gerald Siesfeld each contributed [REDACTED] to the company. Exhibit 1, at 3; Exhibit 3.

## DISCUSSION

This report considers applicant's appeal from the Division's determination to deny certification of A&G as a women-owned business enterprise<sup>1</sup> pursuant to Executive Law Article 15-A. Section 144.2(a)(1) of 5 NYCRR requires that an applicant's capital contributions to a business for which certification is sought "are proportionate to their equity interest in the enterprise." Capital contributions may be in the form of money, property, equipment, or expertise.

In its appeal, A&G acknowledged that its co-owners had made equal contributions of [REDACTED]. A&G went on to assert that Ms. Siesfeld had made additional contributions of expertise. Ms. Siesfeld stated that "in providing such expertise, I am responsible for all of the Applicant's managerial operations, including financial decisions, estimating, preparing bids, negotiating bonding, negotiating insurance, marketing and sales, hiring and firing, supervising field operations, purchasing equipment and sales, managing and signing payroll, negotiating contracts, and managing business accounts." Siesfeld Affidavit, ¶ 8.

Applicant argued further that Ms. Siesfeld contributed property, including office equipment and computers. In addition, applicant stated that in exchange for her additional share of stock in the company, she "contributed a title plant of more than 500 back titles, developer pad, and other valuable files and materials accumulated over many years of independent work in the title industry prior to the formation of Applicant for the exclusive use and benefit of Applicant." Siesfeld Affidavit, ¶ 10.

In response, the Division pointed out that "Ms. Siesfeld did not claim to have made contributions of property or expertise to A&G Title as part of her application, and accordingly the Appeal's representations that Ms. Siesfeld made such contributions are irrelevant to whether the Department's denial was supported by substantial evidence." Division Response, at 2. The Division's argument is persuasive.

The Division contended that even if Ms. Siesfeld had provided this information as part of the application, the Division would still have concluded that A&G was not eligible for certification. With respect to expertise, the Division observed that there was no evidence in the application or the appeal to demonstrate that Ms. Siesfeld contributed uncompensated management services in consideration for her majority interest. The Division took the position that to the extent that Ms. Siesfeld provided such functions in the ordinary course of her role as president, "Ms. Siesfeld no more contributed expertise to A&G Title than did any employee or

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<sup>1</sup> The term "women-owned business enterprise" applies to an enterprise that meets the requisite criteria on the basis of the ownership and control of one woman or of multiple women (see Section 140.1(tt) of 5 NYCRR (defining a women-owned business enterprise as one that is, among other things, "at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women"))).

officer of the business who is compensated for their expertise and labor.” Division Response, at 3.

The Division countered applicant’s assertions regarding contributions of property by pointing out that there was no documentation to show that Ms. Siesfeld contributed office and computer equipment, and noted that the computer equipment identified in the application was identified as “leased.” Exhibit 1, at 6. The Division went on to note that with respect to the claimed contribution of the title block and materials associated with Ms. Siesfeld’s former employment, “there is no evidence in the record as to the nature and value of these contributions, or any metric by which the Department might have compared these claimed contributions to any contribution of expertise by Mr. Siesfeld to the business.” Division Response, at 3.

On appeal, applicant has the burden to demonstrate that the Division’s denial was not based upon substantial evidence, and that burden has not been met. Applicant did not establish a contribution of money, property, equipment or expertise that would be proportionate to Ms. Siesfeld’s 51% ownership. Moreover, the record supports the Division’s conclusion that Ms. Siesfeld received her majority ownership interest not as a result of such a contribution, but rather in order to establish A&G as a woman-owned business. See Cirincione Affirmation, ¶ 9 (“[b]ecause Applicant intended to become a woman-owned business, [counsel] directed Mr. Siesfeld to transfer stock to Mrs. Siesfeld.”) As the Division observed, “the Appeal fails to explain why these contributions, based on expertise Ms. Siesfeld purportedly brought to the business at the time of its formation, did not merit Ms. Siesfeld owning a greater number of shares in A&G Title than Mr. Siesfeld from its formation in 2004 until January 1, 2015, when Mr. Siesfeld made Ms. Siesfeld the majority owner of A&G Title by conveying one share of common stock to her without consideration.” Division Response, at 3.

Based upon the information provided in the application, it was reasonable for the Division to conclude that applicant had not demonstrated the requisite contributions. The Division’s determination was supported by substantial evidence.

### **CONCLUSION**

As discussed above, applicant did not meet its burden to demonstrate that the Division’s determination to deny A&G’s MWBE application for certification was not based on substantial evidence.

### **RECOMMENDATION**

The Division's determination to deny A&G’s application for certification as a women-owned business enterprise should be modified to strike the ground for denial pursuant to Section 144.2(a)(5) of 5 NYCRR, and as modified affirmed, for the reasons stated herein.

**Matter of A&G Title & Abstract Co., Inc.**  
**DED File ID No. 59609**

**Exhibit List**

Exhibit No.	Description
1	April 6, 2015 application
2	May 2, 2016 denial letter
3	February 3, 2015 letter from Fred Zeitler, CPA, to Richard Cirincione, Esq., McNamee Lochner re capitalization of A&G Title and Abstract
4	May 5, 2016 appeal notice
5	June 1, 2016 letter from Olga Candelaria to Gail Siesfeld re written appeal submission
6	Stock certificates, summary, transfer ledger
7	Stock certificates (2016)
8	March 23, 2016 email trail transmitting 2016 stock certificates