

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

In the Matter

- of -

the Application of **Euro Technology Siding & Contracting Inc.**
for Certification as a Women-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 59647

RECOMMENDED ORDER

- by -



Richard A. Sherman
Administrative Law Judge

June 21, 2016

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 Euro Technology Siding & Contracting Inc. ("Euro Tech" or "applicant") certification as a women-owned business enterprise ("WBE") be 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 ("5 NYCRR") Parts 140-144, challenging the determination of the Division that Euro Tech does not meet the eligibility criteria for certification as a WBE.

The Division denied Euro Tech's application for WBE certification by letter dated September 29, 2015 (exhibit 7). The denial letter sets forth two grounds under 5 NYCRR 144.2 for the denial. By letter dated October 19, 2015, Euro Tech appealed from the Division's determination. The Division advised applicant that the hearing on this matter would be held on April 5, 2016 (Notice of Appeal Hearing from the Division to Judith Trangucci, dated March 4, 2016).

The matter was assigned to me on March 7, 2016. I convened the hearing at approximately 11:00 a.m. on April 5, 2016, at the Division's offices, 633 Third Avenue, New York, New York. Consistent with 5 NYCRR 145.1(m), an audio recording of the hearing was made and the recording was provided to this office on April 26, 2016. A list of the exhibits received during the hearing is appended to this report.

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, 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 Euro Tech'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 cites two bases for its determination to deny Euro Tech's application for WBE certification (exhibit 7). Specifically, the Division determined that applicant failed to demonstrate that (1) "the minority or woman owner(s) make decisions pertaining to the operations of the enterprise or devote time on an ongoing basis to the daily operation of the enterprise;" and (2) "the minority or woman owner(s) listed on corporate documents and relevant business agreements permit the minority or woman owner(s) to make business decisions without restrictions" (id. at 2 [citing 5 NYCRR 144.2]).

Position of Applicant

Applicant states in its request for a hearing that the woman owner, Judith Trangucci, is involved "in the daily function of this business" (letter from Judith Trangucci to the Division, dated October 19, 2015). Applicant asserts that Ms. Trangucci has "stayed in the background" because "construction is basically a male oriented business" (id.).

FINDINGS OF FACT

1. Euro Tech is a corporation, established in 1996, that is engaged in the business of home improvements and renovations (exhibit 9, items 1.Q, 1.R, 3.B-D, 4.C).
2. Euro Tech's corporate by-laws designate the president of the enterprise as the "chief executive officer of the Corporation" with "general charge of the entire business of the Corporation" (exhibit 8 at 13¹).
3. Judith Trangucci and Nicholas Trangucci are married and own 51% and 49% shares in applicant, respectively (exhibit 9, item 2.A; hearing recording [CD] at 3:50).
4. Nicholas Trangucci is the president of applicant (exhibit 9, item 2.A; CD at 20:40).
5. Judith Trangucci is the vice president and secretary of applicant (exhibit 9, item 2.A; CD at 2:00).

¹ Page references to exhibit 8 are "as numbered" in the document. The first page of the exhibit is numbered page "4."

6. Prior to establishing Euro Tech, Judith Trangucci held administrative positions with several organizations. At various times Judith Trangucci had the title of "Controller," "Full charge bookkeeper," and "bookkeeper" (exhibit 11).

7. To conduct its business, applicant is required to have a Suffolk County Home Improvement Contractor License ("contractor license") (exhibits 9, item 3.A; 10 at 2). Nicholas Trangucci holds a contractor license, and Judith Trangucci does not (id., CD at 23:20).

DISCUSSION

This report considers applicant's appeal from the Division's determination to deny certification of Euro Tech as a women-owned business enterprise² pursuant to Executive Law Article 15-A.

As noted above, the Division cites two bases in its denial of Euro Tech's WBE application. For the reasons set forth below, I recommend that the Division's denial be affirmed.

Decision Making - 5 NYCRR 144.2(b)(1)

The applicable regulatory criterion states that "[d]ecisions pertaining to the operations of the business enterprise must be made by minority group members or women claiming ownership of that business enterprise" (5 NYCRR 144.2[b][1]).

Applicant argues that Judith Trangucci has controlled the business enterprise from its inception and that she manages the enterprise "from the office" (CD at 3:50-4:35). In support of this argument, applicant introduced exhibits indicating that Ms. Trangucci controls the accounting, insurance, banking and advertising functions of the business (exhibits 1-6; CD at 4:45-10:30). Judith Trangucci also testified that she manages all the accounting, advertising, billing, and books for the enterprise (CD at 11:45).

Division staff argues that Judith Trangucci's role is principally administrative and that her husband, Nicholas Trangucci, is responsible for decision making in relation to the core revenue generating functions of the enterprise (CD at 26:40, 31:45). The Division analyst noted that Nicholas Trangucci holds the contractor license that is required for the enterprise to conduct its business (CD at 23:20; exhibit 10 at 2). The analyst testified that the application materials indicate that Judith Trangucci manages the office functions, but does not have experience in construction (CD at 26:40; see also exhibit 11). The analyst also testified that Euro Tech indicated on its WBE application that Nicholas and Judith Trangucci are equally responsible for managing the various operational components of Euro Tech's business (CD 23:50; see also exhibit 9, items 4.A.1 - 4.A.12).

² 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 5 NYCRR 140.1[t] [defining a women-owned business enterprise as one that is, inter alia, "at least 51 percent owned by one or more United States citizens or permanent resident aliens who are women"]).

Applicant argues that Judith Trangucci's "job is just as important as [Nicholas Trangucci's] job" and that a woman owner should not have to "swing a hammer" to become certified as a WBE (CD at 33:20). The Division notes that Euro Tech is a small construction company with no employees other than its principals, and argues that it is "essential" for such small companies to demonstrate that the woman owner is capable of performing the revenue generating functions of the enterprise (CD 31:45-32:15; see also exhibit 9, item 1.W [indicating that applicant has no employees]). Here, Nicholas Trangucci performs these functions (CD at 23:20, 26:50, 32:30; exhibit 10 at 2).

Applicant has failed to meet its burden to demonstrate that the Division's determination regarding decision making authority within the enterprise is not supported by substantial evidence. Accordingly, the Division's determination that applicant does not satisfy this criterion should be affirmed.

Corporate By-laws - 5 NYCRR 144.2(b)(2)

The applicable regulatory criterion states that the enterprise's "[a]rticles of incorporation, corporate bylaws, partnership agreements and other agreements . . . must permit minority group members or women who claim ownership of the business enterprise to make [decisions pertaining to business operations] without restrictions" (5 NYCRR 144.2[b][2]).

The record establishes that applicant has failed to meet this criterion. Applicant's corporate by-laws expressly state that the president "shall be the chief executive officer of the Corporation, and shall have general charge of the entire business of the Corporation" (8 at 13). Nicholas Trangucci is the president of Euro Tech (findings of fact ¶ 4).

At the hearing, applicant did not controvert the express provisions of applicant's by-laws with regard to the role of the president. Nor did applicant proffer evidence to demonstrate that Nicholas Trangucci was no longer president. Although Judith Trangucci testified that she "run[s] everything" for applicant (CD at 13:25), she did not testify that the corporate by-laws had been modified or that she had been named president.

Applicant failed to meet its burden and the Division's determination that applicant does not satisfy this control criterion should be affirmed.

CONCLUSION

Applicant failed to meet its burden to demonstrate that the two bases cited by the Division for the denial were not supported by substantial evidence. Specifically, I conclude that applicant failed to demonstrate that (1) "[d]ecisions pertaining to the operations of the business enterprise [are] made by minority group members or women claiming ownership of that business enterprise" (5 NYCRR 144.2[b][1]);" and (2) the "corporate bylaws . . . permit minority group members or women who claim ownership of the business enterprise to make [decisions pertaining to business operations] without restrictions" (5 NYCRR 144.2[b][2]). Accordingly,

the Division's determination to deny Euro Tech's application for WBE certification should be affirmed.

RECOMMENDATION

The Division's determination to deny Euro Tech's application for certification as a women-owned business enterprise should be affirmed, for the reasons stated herein.

**Matter of Euro Technology Siding & Contracting Inc.
DED File ID No. 59647**

Exhibit List

Exhibit #	Description
1	Two letters from Mark S. Ring to the Division (dated October 16, 2015 and April 4, 2016, respectively)
2	NYS Insurance Fund, Simplified Audit Information Forms (various audit dates from 2006 through 2015)
3	Letter from Empire National Bank to the Division (dated October 15, 2015)
4	Letter from Central Island Insurance regarding Euro Tech (dated March 31, 2016)
5	Fax from Supermedia to Judith Trangucci (dated March 21, 2014, enclosing a Marketing Services Agreement)
6	Seven Checking Account Statements from Hudson City Savings Bank for Account of "Judith M. Trangucci Trustee" (various dates from August 31, 2010 to April 30, 2015)
7	WBE Application Denial Letter (dated September 29, 2015)
8	Euro Tech Corporate By-Laws (undated)
9	Euro Tech WBE Certification Application (submitted April 8, 2015)
10	NYS Driver Licenses for Judith and Nicholas Trangucci; Suffolk County Home Improvement Contractor License for "Nichola (sic) J. Trangucci"; and NYS Registration for Euro Tech Vehicle
11	Resume of Judith Trangucci