

NEW YORK STATE
DEPARTMENT OF ECONOMIC DEVELOPMENT
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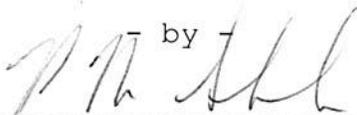
In the Matter

- of -

the Application of
Van Bortel Ford, Inc.
For Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 47491

RECOMMENDED ORDER

 by 

P. Nicholas Garlick
Administrative Law Judge

August 5, 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 the application of Van Bortel Ford, 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 Van Bortel Ford, Inc. challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Van Bortel Ford, Inc.'s application was submitted on September 10, 2014 (Exh. A2).

The application was denied by letter dated December 29, 2015, from Bette Yee, Director of Certification Operations (Exh. DED1). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet one eligibility criterion related to Mary Van Bortel's adjusted personal net worth.

With a cover letters dated January 19, 2016 and February 29, 2016, Mary Van Bortel, on behalf of the applicant, filed an appeal from the Division's denial determination. Ms. Van Bortel included with her papers appeals in two related matters: (1) the revocation of the WBE certification of Van Bortel Motorcar, Inc. (DED file no. 6065); and the revocation of the WBE certification of Van Bortel Chevrolet (DED file no. 58801). These two revocation matters are discussed in a separate recommended order. Included with the appeal were two exhibits identified as exhibits A1 to A2 in the attached exhibit chart.

By memo dated June 3, 2016, the Division responded to the applicant's appeal. Included with the response were two exhibits identified as exhibits DED1 to DED2 in the attached exhibit chart.

On June 7, 2016, this matter was assigned to me.

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, independence, and net worth 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 one criterion for certification, specifically that the applicant failed to demonstrate that the woman owner, Mary Van Bortel, has an adjusted personal net worth that is less than 3.5 million dollars, as adjusted for inflation to reflect 2015 dollars, as required by 5 NYCRR 140.1(tt)(1)(4).¹

¹ In its papers, the Division calculates this amount at \$3.72 million in 2015.

Position of the Applicant

Van Bortel Ford Inc. asserts that it meets this criterion 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. Van Bortel Ford, Inc. is in the business of retailing new and used automobiles and has a business address of 71 Marsh Road, East Rochester, NY 14445 (Exh. A2).

2. As part of the application materials, Mary Von Bortel provided a complete, signed Personal Financial Statement Worksheet indicating she has an adjusted personal net worth of \$ [REDACTED] (Exh. DED2).

DISCUSSION

This report considers the appeal of the applicant 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 set forth one basis related to Ms. Van Bortel's net worth.

In its denial letter, the Division determined that the applicant failed to demonstrate that the woman owner, Mary Van Bortel, has an adjusted personal net worth that is less than 3.5 million dollars, as adjusted for inflation to reflect 2015 dollars, as required by 5 NYCRR 140.1(tt)(1)(4).

In its appeal, Ms. Van Bortel states that she has attached a corrected Personal Financial Statement Worksheet. This document shows that her adjusted net worth is \$ [REDACTED]. She makes no representation that this information was provided to the Division before it made its determination to deny the application.

In its response the Division states that it became aware of Ms. Van Bortel's net worth when it received her Personal Financial Statement Worksheet and supporting papers as part of this application (Exh. DED2). As part of the review of the application, the Division reviewed Ms. Van Bortel's financial

information and adjusted her net worth to deduct the value of the applicant as required by Executive Law 310(19). This adjustment led the Division to conclude that for the purposes of this determination, her personal net worth was \$ [REDACTED]

In response to the corrected statement provided with the appeal, the Division notes that this document omits items listed on the previously submitted form and miscalculates the value of her real property holdings. The corrected form also does not explain the omission of retirement accounts, stocks and bonds, and other personal property. With respect to Ms. Van Bortel's real estate holdings, the Division notes that a property located at 71 Marsh Road in East Rochester is not listed on the corrected form and the corrected form uses the purchase price for properties instead of present net value.

In addition to the arguments made by Division staff, there is no evidence that the corrected Personal Financial Statement Worksheet was before the Division at the time it made its determination to deny the application. The only evidence it had in its possession was the original, signed form dated December 17, 2015 (Exh. DED2).

Based on the evidence in the record and the discussion above, the applicant has failed to demonstrate that the woman owner, Mary Van Bortel, has an adjusted personal net worth that is less than 3.5 million dollars, as adjusted for inflation to reflect 2015 dollars, as required by 5 NYCRR 140.1(tt)(1)(4). The Division has shown that its denial on this ground was based on substantial evidence.

CONCLUSION

The applicant failed to demonstrate that the woman owner, Mary Van Bortel, has an adjusted personal net worth that is less than 3.5 million dollars, as adjusted for inflation to reflect 2015 dollars, as required by 5 NYCRR 140.1(tt)(1)(4).

RECOMMENDATION

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

**Matter of
Van Bortel Ford Inc.
DED File ID No. 47491
Exhibit List**

Exh. #	Description	# of pages
A1	Corrected Personal Financial Statement Worksheet (unsigned and undated)	2
A2	Application	7
DED1	Denial letter dated December 19, 2015	3
DED2	Personal Financial Statement Worksheet signed December 17, 2015	6