

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

In the Matter

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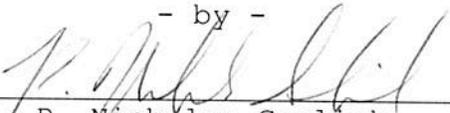
the Revocation of
Certifications as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A of

**Van Bortel Motorcar, Inc. and
Van Bortel Chevrolet.**

NYS DED File ID Nos. 6065 and 58801

RECOMMENDED ORDER

- by -



P. Nicholas Garlick
Administrative Law Judge

August 5, 2016

SUMMARY

This report recommends that the determinations of the Division of Minority and Women's Business Development ("Division") of the New York State Department of Economic Development to revoke the certifications of Van Bortel Motorcar, Inc. and Van Bortel Chevrolet as woman-owned business enterprises ("WBEs") 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 Motorcar, Inc. and Van Bortel Chevrolet challenging the determination of the Division that the certificate holders do not meet the certification requirements for woman-owned business enterprises.

The certificate of Van Bortel Motorcar, Inc. was revoked by letter dated December 30, 2015, from Rita Rivas, Senior Certification Analyst for the Division (Exh. DED1). As explained in Ms. Rivas's letter, the certification was revoked because the Division had received information that the net worth of the woman owner, Mary Van Bortel, when adjusted for inflation, exceeded the amount set forth in regulation.

The certificate of Van Bortel Chevrolet was revoked by letter dated January 5, 2015, from Cleneice Mincey, Senior Certification Analyst for the Division (Exh. DED1). As explained in Ms. Rivas's letter, the certification was revoked because the Division had received information that the net worth of the woman owner, Mary Van Bortel, when adjusted for inflation, exceeded the amount set forth in the regulations.

In letters dated January 19, 2016 and February 29, 2016, Mary Van Bortel, on behalf of the certificate holders, filed appeals from the Division's revocation determinations. Ms. Van Bortel included with her papers an appeal in a related matter: the denial of the WBE application of Van Bortel Ford, Inc. (DED file no. 47491). That denial is discussed in a separate

recommended order. Included with the appeals were two exhibits identified as exhibits A1 to A2 in the attached exhibit charts.

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

On June 7, 2016, these matters were assigned to me.

ELIGIBILITY CRITERIA

For the purposes of determining whether a WBE certificate should be revoked, regulatory criteria regarding the applicant's ownership, operation, control, independence, and net worth are applied on the basis of information received by the Division.

The Division, upon receiving specific allegations based on facts which indicate that a certified business enterprise is no longer entitled to WBE status, may investigate the allegations. If the allegations are determined to be true, the Division may move to revoke such certification.

STANDARD OF REVIEW

In this administrative appeal, as in administrative proceedings to revoke certifications, due process requires application of the preponderance of the evidence standard (see Matter of Miller v DeBuono, 90 NY2d 783, 794 [1997]). This certification revocation proceeding is brought pursuant to 5 NYCRR 144.6. Division staff, as the party initiating the proceeding, bears the burden of proving that the woman owner, Mary Van Bortel, no longer meets certification standards (see State Administrative Procedure Act § 306[1]). The Division must meet that burden by a preponderance of the credible record evidence. This means that Division staff must establish by a fair preponderance of the credible evidence that the claim it makes is true. Credible evidence means testimony or exhibits that, upon review, are worthy to be believed. A preponderance of the evidence means the greater part of such evidence, taking into account its quality and giving it the appropriate weight.

POSITIONS OF THE PARTIES

Position of the Division

In its revocation letters, the Division asserts that the certificate holders no longer meet one criterion for certification, specifically that the woman owner, Mary Van Bortel, has an adjusted personal net worth that is more than 3.5 million dollars, as adjusted for inflation to reflect 2015 dollars, as required by 5 NYCRR 140.1(tt)(1)(4).¹

Position of the Applicant

Van Bortel Motorcar, Inc. and Van Bortel Chevrolet assert that they continue to meet this criterion for certification and that the Division erred revoking their certificates as a woman-owned business enterprises pursuant to Executive Law Article 15-A.

FINDINGS OF FACT

1. As part of the application materials for another business, Van Bortel Ford, Inc., Mary Von Bortel, the owner of that company, provided a signed Personal Financial Statement Worksheet indicating she has an adjusted personal net worth of \$ [REDACTED] (Exh. DED2). This information lead to a review of the certificates for Van Bortel Chevrolet and Van Bortel Motorcar, Inc., which are both owned by Ms. Van Bortel. Upon review of the information in this worksheet, the Division determined that: (1) for the purposes of the certificate of Van Bortel Motorcar, Inc., Ms. Van Bortel's net worth was \$ [REDACTED]; and (2) for the purposes of the certificate of Von Bortel Chevrolet, Ms. Van Bortel's net worth was \$ [REDACTED].

DISCUSSION

This report considers the appeals of the certificate holders from the Division's determination to revoke their certifications as woman-owned business enterprises pursuant to Executive Law Article 15-A. The Division's revocation letters

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

set forth one common basis related to Ms. Van Bortel's net worth.

In the revocation letters, the Division determined that the woman owner of the certificate holders, Mary Van Bortel, has an adjusted personal net worth that is more 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]. The worksheet is not complete. She makes no representation that the information is accurate or true and does not supply any written explanation or supporting documents to corroborate the information provided in this corrected form. In addition, there is no explanation as to why this document differs from the one submitted with the application for Van Bortel Ford, Inc. In sum, because there is no representation that the information in this document is true and no explanations are provided with it, I recommend that this document be given no weight and not be considered credible evidence.

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 the application for another business, Van Bortel Ford, Inc. (Exh. DED2). As part of the review of the application, the Division reviewed Ms. Van Bortel's financial information, and made several adjustments, to conclude that for the purposes of the relevant regulations, her personal net worth exceeded the threshold for certificate holders.²

² The Division states that the relevant sections of law provide that Ms. Van Bortel's ownership interest in each certified business should be disregarded in determining personal net worth for that particular business, pursuant to Executive Law 310(19). For the purposes of evaluating her net worth for the certification for Van Bortel Chevrolet (subtracting the value of her ownership interest in Van Bortel Chevrolet from assets), the Division calculates her net worth at \$ [REDACTED]. For the purposes of evaluating her net worth for the certification for Van Bortel Motorcar, Inc. (subtracting the

In response to the corrected statement provided with the appeals, the Division notes that appellant omits items on the form previously submitted and, in addition, miscalculates the value of her real property holdings. The corrected form 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 certain property instead of present net value. Because the Division's analysis is based on information provided in a completed form by Ms. Van Bortel that is signed and dated, I recommend that the original, dated and signed Personal Financial Statement Worksheet (Exh. DED2) be given considerable weight and be considered credible evidence.

Based on the evidence in the record and the discussion above, the Division has demonstrated that the woman owner, Mary Van Bortel, has an adjusted personal net worth greater 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 the revocations on this ground were based on the preponderance of credible record evidence.

CONCLUSION

The Division has demonstrate that the woman owner, Mary Van Bortel, has an adjusted personal net worth of more 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 determinations to revoke Van Bortel Motorcar, Inc.'s and Van Bortel Chevrolet's certificates as woman-owned business enterprises should be affirmed, for the reasons stated in this recommended order.

value of her ownership interest in Van Bortel Motorcar, Inc. f [redacted] ther assets), the Division calculates her net worth at \$ [redacted] .

**Matter of
Van Bortel Motorcar, Inc.
DED File ID No. 6065
Exhibit List**

Exh. #	Description	# of pages
A1	Corrected Personal Financial Statement Worksheet (unsigned and undated)	2
DED1	Revocation letter dated December 30, 2015	3
DED2	Personal Financial Statement Worksheet signed December 17, 2015	6

**Matter of
Van Bortel Chevrolet
DED File ID No. 58801
Exhibit List**

Exh. #	Description	# of pages
A1	Corrected Personal Financial Statement Worksheet (unsigned and undated)	2
DED1	Revocation letter dated January 5, 2016	3
DED2	Personal Financial Statement Worksheet signed December 17, 2015	6