

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

In the Matter

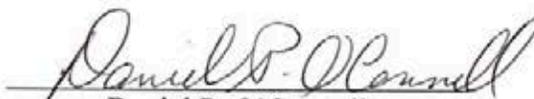
- of -

the Application of **Hynes Electric Supply Company, Inc.**
for Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 59841

RECOMMENDED ORDER

- by -



Daniel P. O'Connell
Administrative Law Judge

August 9, 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 Hynes Electric Supply Company, Inc.¹ (Hynes Electric or applicant) certification as a woman owned business enterprise (WBE) be affirmed for the reasons set forth below.

PROCEEDINGS

In its denial letter dated March 24, 2016 (*see* WBE Exh. 5), the Division determined that Hynes Electric does not meet the eligibility requirements to be certified as a woman owned business enterprise, and denied Hynes Electric's application (*see* WBE Exh. 1). In a letter dated March 31, 2016 (*see* WBE Exh. 9), Lisa Morrow, on behalf of Hynes Electric, appealed from the Division's determination to deny WBE certification.

With a letter dated May 12, 2016, the Division acknowledged Hynes Electric's request to proceed with a written appeal regarding the March 24, 2016 denial, in lieu of a hearing. The notice of written appeal set June 30, 2016 as the due date for applicant's written appeal. The notice also reiterated the Division's bases for the denial.

Lisa Morrow timely filed a written appeal on behalf of Hynes Electric in the form of a letter dated May 16, 2016. The statements and arguments outlined in the May 16, 2016 appeal are generally the same as that presented in the initial appeal letter dated March 31, 2016 (*see* WBE Exh. 9).

Phillip Harmonick, Esq., Assistant Counsel, New York State Department of Economic Development, filed the Division's response, dated July 13, 2016. With the July 13, 2016 response, the Division attached eight exhibits, which include a copy of the completed application form for WBE certification filed by Hynes Electric (WBE Exh. 1 [submitted May 13, 2015]), as well as other application materials. An exhibit chart is attached to this recommended order.

ELIGIBILITY CRITERIA

The eligibility criteria pertaining to certification as a woman owned business enterprise are established by regulation (*see* 5 NYCRR 144.2). To determine whether an applicant should be granted WBE status, the Division assesses the ownership, operation, and control of the business enterprise 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

¹ According to the WBE certification application (*see* WBE Exh. 1), the name of the business enterprise is identified as "Hynes Electrical Supply Co. Inc." This name is used on the business enterprise's letterhead (*see e.g.*, WBE Exh. 9). However, the certificate of incorporation (*see* WBE Exh. 2), the certificates for shares of common stock (*see* WBE Exh. 3), and the company's bylaws (*see* WBE Exh. 8) identify the name of the business enterprise as "Hynes Electric Supply Co. Inc."

representations in the application, information presented in supplemental submissions and, if appropriate, from interviews conducted by Division analysts.

STANDARD OF REVIEW

On this administrative appeal, Hynes Electric, as applicant, bears the burden of proving that the Division's denial of its 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

Hynes Electric

In a letter dated March 31, 2016 (*see* WBE Exh. 9), Lisa Morrow, on behalf of Hynes Electric, appealed from the Division's March 24, 2016 determination to deny WBE certification to Hynes Electric. Ms. Morrow explained that her parents began the business in 1955. In 1993, Ms. Morrow and her husband, James Morrow, bought into the ownership of the business and renamed it Hynes Electrical Supply Company, Inc. In addition, James Morrow became a business partner at that time with his father-in-law. According to Ms. Morrow, she began working full-time for the business enterprise in 2000. Ms. Morrow's brother, John Hynes, became a business partner in 2005.

Ms. Morrow said that she is involved in all daily aspects of the business enterprise. In the March 31, 2016 appeal, Ms. Morrow listed her responsibilities with some detail. Among them, Ms. Morrow manages all accounts, the payroll and tax payments; manages personnel; negotiates insurance and contracts; prepares and reviews bids; as well as purchases and maintains inventory and equipment. In addition, Ms. Morrow explained that she adjusts her salary as necessary to balance cash flow. (*See* WBE Exh. 9.)

The Division

The Division denied the application filed by Hynes Electric for certification as a woman owned business enterprise in a letter dated March 24, 2016, which is identified in the record of this appeal as WBE Exh. 5. The Division stated that Hynes Electric did not meet the ownership criteria outlined at 5 NYCRR 144.2(c)(2) and 5 NYCRR 144.2(a)(1). With respect to exercising control over the business enterprise, the Division stated further that Hynes Electric did not comply with the requirement at 5 NYCRR 144.2(b)(2). Finally, the Division contended that Hynes Electric did not show that the woman owner makes decisions pertaining to operations of the enterprise, or devotes time on an ongoing basis to the daily operation of the business enterprise as required by 5 NYCRR 144.2(b)(1)(i) and (iii), respectively. (*See* WBE Exh. 5.)

FINDINGS OF FACT

I General

1. Hynes Electric Supply Co., Inc. (Hynes Electric), has business offices located at 2 Hammond Lane, Suite 200, Plattsburgh, New York 12901. Hynes Electric is a wholesale/retail electric supply company that sells electrical wire and components, as well as lighting fixtures for residential, commercial, and industrial applications. (*See* WBE Exh. 1.)
2. In June 1993, Edward Hynes incorporated Hynes Electric Supply Co., Inc. (*see* WBE Exh. 2). Subsequently, Lisa (Hynes) Morrow, who is the daughter of Edward Hynes, and her husband, James Morrow, bought into Hynes Electric as owners. At that time, James Morrow became a business partner of Hynes Electric with Edward Hynes. Edward Hynes and James Morrow each received 50 shares of common stock in Hynes Electric. (*See* WBE Exhs. 1 and 9.)
3. John Hynes is Ms. Morrow's brother. In 1993, John Hynes began working full-time at Hynes Electric. (*See* WBE Exhs. 1, 4 and 9.)
4. In 2000, Lisa Morrow began working full-time at Hynes Electric. In 2013, James Morrow began working full-time at Hynes Electric. (*See* WBE Exhs. 1, 4 and 9.)
5. In 2005, Lisa and James Morrow jointly made a personal loan to John Hynes of an undisclosed amount for Mr. Hynes to purchase an ownership interest in Hynes Electric. John Hynes is in the process of repaying the personal loan to Mr. and Ms. Morrow. (*See* WBE Exh. 9.)
6. On behalf of Hynes Electric, Lisa Morrow submitted an application for WBE certification with the Division on May 13, 2015 (*see* WBE Exh. 1).
7. By letter dated March 24, 2016, the Division denied Hynes Electric's application for certification as a woman owned business enterprise (*see* WBE Exh. 5).

II. Ownership

8. In December 2003, Edward Hynes gifted his 50 shares of common stock in Hynes Electric to his son, John Hynes. In June 2014, James Morrow gifted his 50 shares of common stock in Hynes Electric to his wife, Lisa Morrow. At the same time, John Hynes gifted one share of his common stock in Hynes Electric to his sister, Lisa Morrow. As a result of these exchanges, Ms. Morrow became the majority owner of Hynes Electric with 51 shares of common stock, and her brother, John Hynes, became the minority owner of Hynes Electric with 49 shares of common stock. (*See* WBE Exhs. 1 and 3.)

9. In section 2.C of the application (*see* WBE Exh. 1), Hynes Electric identified two capital contributions made in 1993 to the business enterprise. The first contribution was made by Edward Hynes, and is identified as “Champlain Electronic.” Presumably Champlain Electric is the predecessor corporation to Hynes Electric. No dollar value was assigned to this contribution. The second contribution came from James Morrow, which consisted of a cash contribution in the amount of \$25,000.
10. WBE Exh. 6 is a set of correspondence and statements from Champlain National Bank concerning loans and a capital line of credit for Hynes Electric. Hynes Electric filed this document with its application for WBE certification. In the application, this information is identified as *Hynes_Capitalization.pdf*. (*See* WBE Exh. 1 at 8.)
11. Effective December 2002, Champlain National Bank renewed a line of credit for Hynes Electric in the amount of \$150,000. The line of credit matured on October 1, 2003. For the line of credit, John Hynes signed for Hynes Electric as its president. With a cover letter dated December 15, 2003, Champlain National Bank renewed the line of credit until October 31, 2004. (*See* WBE Exh. 6.)
12. By letter dated November 30, 2004, Champlain National Bank approved a loan request for interim financing by Hynes Electric. For this loan request, John Hynes signed for Hynes Electric as its president. (*See* WBE Exh. 6.)
13. WBE Exh. 6 also includes a set of loan billing statements from Champlain National Bank dated August 1, 2005, August 1, 2008, and December 1, 2011.
14. WBE Exh. 7 consists of copies of the W-2 forms from 2014 for Lisa Morrow, James Morrow and John Hynes. Hynes Electric filed this set of documents with its application for WBE certification. In the application, this information is identified as *W2's.pdf*. (*See* WBE Exh. 1 at 9.) In 2014, Lisa Morrow’s compensation from Hynes Electric was approximately [REDACTED]. In 2014, John Hynes’s compensation from Hynes Electric was approximately [REDACTED] which is more than 1.5 times greater than Ms. Morrow’s.

III. Operation

15. Section 4.A of the application for WBE certification (*see* WBE Exh. 1) requests information about the individuals who are responsible for the managerial operations at the business enterprise. According to this section of the application filed by Hynes Electric, Ms. Morrow is not responsible at Hynes Electric for operations related to estimating, preparing bids, marketing and sales, as well as supervising field operations. Ms. Morrow is responsible for financial decisions, along with her brother and husband, however. (*See* WBE Exh. 1.)
16. The information in the application concerning the additional operations at Hynes Electric that Lisa Morrow manages are consistent with the responsibilities outlined in Ms. Morrow’s résumé. (*See* WBE Exh. 1 and 4.)

17. WBE Exh. 4 is a set of resumes for Lisa Morrow, James Morrow and John Hynes. Hynes Electric filed this document with its application for WBE certification. In the application, this information is identified as *Lisa_Jim_John_Resumes(2).docx*. (See WBE Exh. 1 at 9.)
18. According to Lisa Morrow's résumé, she has worked full-time for Hynes Electric since 2000. From 2000 to 2014, Ms. Morrow was the treasurer and secretary. During this period, Ms. Morrow was responsible for financial management, such as accounts receivable and accounts payable. Ms. Morrow was also responsible for human resources including the payroll, as well as customer service. From 2014 to the present, Ms. Morrow's résumé states that she is the president of Hynes Electric. From 2014 to the present, Ms. Morrow's responsibilities at Hynes Electric are the same as her responsibilities from 2000 to 2014. (See WBE Exh. 4.)
19. From 2013 to the present, James Morrow's résumé states that he has been the vice-president and secretary of Hynes Electric. During this period, Mr. Morrow has been responsible for managing the warehouse and the inventory, as well as building maintenance. (See WBE Exh. 4.)
20. From 1993 to the present, John Hynes's résumé states that he has been the president and vice-president of Hynes Electric. His responsibilities include store and inventory management, customer sales, purchasing, and financial reviews. (See WBE Exh. 4.)

IV. Control

21. WBE Exh. 8 is a copy of a document entitled, *Minutes and By-Laws of Hynes Electric Supply Co., Inc., from July 1, 1993 to PRESENT*. Hynes Electric filed this document with its application for WBE certification. In the application, this information is identified as *Hynes_1st_Minutes_By_Laws_Jul_1993.pdf*. (See WBE Exh. 1 at 8.)
22. After the cover sheet of the by-laws, the next page in WBE Exh. 8 has the following heading: Corporation Status Sheet. According to the status sheet, John Hynes, who is Lisa Morrow's brother, is the president of Hynes Electric. Margery Hynes, who is Lisa Morrow's mother, is the secretary and treasurer. (See WBE Exh. 8.)
23. According to the bylaws, the president of Hynes Electric is the chief executive officer of the corporation and, as such, has active management and control of the business and its affairs, subject to the control of the board of directors (see WBE Exh. 8 at Article VI, section 6).

DISCUSSION

This recommended order considers Hynes Electric's May 16, 2016 appeal (see WBE Exh. 9) from the Division's March 24, 2016 determination to deny certification of Hynes Electric as a woman-owned business enterprise pursuant to Executive Law Article 15-A. The discussion that follows addresses the bases for the Division's denial.

Referring to the eligibility criteria outlined at 5 NYCRR 144.2, the Division identified the following as the bases for the denial. Concerning ownership of the business enterprise, the Division asserted that Hynes Electric did not demonstrate that the woman owner enjoys the customary incidents of ownership, and shares in the risks and profits in proportion to her ownership interest in the enterprise as required by 5 NYCRR 144.2(c)(2). According to the Division, Hynes Electric did not show that the capital contributions by the woman owner 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). (*See* WBE Exh. 5.)

With respect to exercising control over the business enterprise, the Division asserted that Hynes Electric did not demonstrate that the woman owner listed on corporate documents and relevant business agreements permits the woman owner to make business decisions without restrictions as required by 5 NYCRR 144.2(b)(2). Furthermore, the Division asserted that Hynes Electric did not show that the woman owner makes decisions pertaining to operations of the enterprise, or devotes time on an ongoing basis to the daily operation of the business enterprise as required by 5 NYCRR 144.2(b)(1)(i) and (iii), respectively. (*See* WBE Exh. 5.) Each basis is addressed below.

I. Ownership

In June 1993, Edward Hynes incorporated Hynes Electric Supply Co., Inc. (*see* WBE Exh. 2). Subsequently, Lisa Morrow and her husband, James Morrow, bought into Hynes Electric as owners. At that time, James Morrow became a business partner of Hynes Electric with Edward Hynes. Edward Hynes and James Morrow each received 50 shares of common stock in Hynes Electric. (*See* WBE Exhs. 1 and 9.)

In December 2003, Edward Hynes gifted his 50 shares of common stock in Hynes Electric to his son, John Hynes. In June 2014, James Morrow gifted his 50 shares of common stock in Hynes Electric to his wife, Lisa Morrow. At the same time, John Hynes gifted one share of his common stock in Hynes Electric to his sister, Lisa Morrow. As a result of these exchanges, Ms. Morrow became the majority owner of Hynes Electric with 51 shares of common stock, and her brother, John Hynes, became the minority owner of Hynes Electric with 49 shares of common stock. (*See* WBE Exhs. 1 and 3.)

The Division argued that demonstrating ownership of the business enterprise is a two-pronged test. The first is the capital contribution test, which considers whether the capital contributions by the woman owner to the business are proportionate to her equity interest in the enterprise (*see* 5 NYCRR 144.2[a][1]). The Division argued that the purpose of the requirement is to guard against the installation of women owners as the majority shareholders for the purpose of obtaining WBE certification.

In section 2.C of its application for WBE certification (*see* WBE Exh. 1), Hynes Electric identified two capital contributions made in 1993 to the business enterprise. The first contribution was made by Edward Hynes, and is identified as “Champlain Electronic.”

Presumably this is the predecessor corporation to Hynes Electric. In the application materials, no dollar value was assigned to this contribution. The second contribution identified in the application came from James Morrow, which consisted of a cash contribution in the amount of \$25,000.

Lisa Morrow, as the woman owner of Hynes Electric, did not make the two capital contributions identified in section 2.C of the application. Furthermore, Ms. Morrow offered no information with the application about other potential forms of contributions that she may have made to the business enterprise, such as property or expertise. Therefore, I conclude that the Division's determination to deny WBE certification to Hynes Electric because the woman owner did not make any contributions of capital, property or expertise in proportion to her equity interest in the enterprise as required by 5 NYCRR 144.2(a)(1) is supported by substantial evidence.

The second of the two part ownership test requires the woman owner to enjoy the customary incidents of ownership and to share in the risks and profits in proportion to her ownership in the business enterprise as required by 5 NYCRR 144.2(c)(2). According to the Division, the purpose of this requirement is to ensure that the woman owner realizes the significant benefits that may accrue to the business after obtaining WBE certification. The Division argued that an additional purpose of this requirement is to prevent any benefits associated with WBE certification from disproportionately flowing to persons who are not members of a protected class.

WBE Exh. 6 consists of a set of letters and statements from Champlain National Bank concerning loans and a capital line of credit for Hynes Electric. Hynes Electric filed this document with its application for WBE certification. In the application, this information is identified as *Hynes_Capitalization.pdf*. Based on a review of WBE Exh. 6, Champlain National Bank renewed a line of credit for Hynes Electric in the amount of \$150,000, effective December 2002 until October 1, 2003. For the line of credit, John Hynes signed for Hynes Electric as its president. With a cover letter dated December 15, 2003, Champlain National Bank subsequently renewed the line of credit until October 31, 2004. (*See* WBE Exh. 6.)

WBE Exh. 6 also shows that by letter dated November 30, 2004, Champlain National Bank approved a loan request for interim financing by Hynes Electric. For this loan request, John Hynes signed for Hynes Electric as its president. In addition, WBE Exh. 6 includes a set of loan billing statements from Champlain National Bank dated August 1, 2005, August 1, 2008, and December 1, 2011. (*See* WBE Exh. 6.)

The Division argued that contrary to statements outlined in the March 31, 2016 and May 16, 2016 appeals, Ms. Morrow does not personally guarantee any of the business debt identified in the application. Rather, the information offered in WBE Exh. 6 shows that John Hynes, who is Ms. Morrow's brother, is responsible for Hynes Electric's business loans and lines of credit, as the president. Therefore, I conclude that Lisa Morrow does not share in the risks in proportion to her ownership in the business enterprise as required by 5 NYCRR 144.2(c)(2).

WBE Exh. 7 consists of copies of the W-2 forms from 2014 for Lisa Morrow, James Morrow and John Hynes. Hynes Electric filed this set of documents with its application for WBE certification. In the application, this information is identified as *W2's.pdf*. (See WBE Exh. 1 at 9.) In 2014, Lisa Morrow's compensation from Hynes Electric was approximately [REDACTED]. In 2014, John Hynes's compensation from Hynes Electric was approximately [REDACTED], which is more than 1.5 times greater than Ms. Morrow's.

Ms. Morrow explained that she adjusts her salary as necessary to balance cash flow (*see* WBE Exh. 9.) In the May 16, 2016 appeal, Ms. Morrow explained further that John Hynes is compensated at a greater rate than she is because Mr. Hynes's financial responsibilities are greater. For example, Mr. Hynes has twins who are in prep school with the expectation that they will be attending college in the near future. In addition, Ms. Morrow stated that:

this is a family business and we have all decided rather than add financial strain to the company this is a much more palatable option (WBE Exh. 9 at 3).

Based on a review and comparison of the W-2 forms (*see* WBE Exh. 7) offered, the Division correctly observed that John Hynes's salary is significantly greater than Lisa Morrow's. The Division acknowledged the gesture of family solidarity associated with Mr. Hynes receiving greater compensation due to his greater financial responsibilities. However, the Division noted that this compensation structure is inconsistent with the remedial purpose of the WBE program as reflected in the eligibility criteria. Given the significant difference in compensation between Mr. Hynes and Ms. Morrow, the Division concluded that Ms. Morrow is not sharing in the profits of the business in proportion to her ownership.

Finally, in both the March 31, 2016 request for appeal (WBE Exh. 9), and the subsequent May 16, 2016 written appeal, Ms. Morrow explained that she and her husband financed an expansion of Hynes Electric in 2005 when they loaned John Hynes his contribution to join the business enterprise. According to the appeal documents, John Hynes submits monthly payments to the Morrows, rather than to Hynes Electric, to repay the loan. In the response, the Division said that staff did not evaluate this transaction because the application did not include sufficient information about it.

Hynes Electric's appeal does not explain how the personal loan to Mr. Hynes by Mr. and Mrs. Morrow relates to any of the eligibility criteria for certification as a woman business enterprise. Accordingly, I make no conclusions about this circumstance as it relates to WBE certification.

Other than the information presented in WBE Exhs. 6 and 7, the record of this appeal includes no other information about how the corporate officers are compensated, or any other information about the company's finances, such as whether earnings are reinvested into the business enterprise. Therefore, I conclude that the Division's determination to deny WBE certification to Hynes Electric on the ground that Lisa Morrow, as the woman owner, does not share in the profits in proportion to her ownership in the business enterprise as required by 5 NYCRR 144.2(c)(2) is supported by substantial evidence.

II. Operation

The Division argued that the operational requirements at 5 NYCRR 144.2(b)(1)(i) and (iii), which the Division cited in the March 24, 2016 denial letter (WBE Exh. 5) as a basis for denying Hynes Electric's application for WBE certification, should focus on the core functions of the business enterprise. To support this position, the Division cited *Matter of Northeastern Stud Welding Corp. v. Webster* (211 AD2d 889 [1995]). Because Hynes Electric is a wholesaler, the Division assigned significant weight to the management of estimating and sales to identify those individuals at Hynes Electric who manage these core functions of the business enterprise.

According to section 4.A of the application (*see* WBE Exh. 1), Lisa Morrow is not responsible at Hynes Electric for operations related to estimating, preparing bids, marketing and sales, as well as supervising field operations. Rather, Ms. Morrow is responsible for financial decisions, along with her brother and husband. In contrast, John Hynes manages many functions that Ms. Morrow does not, such as, estimating, preparing bids, marketing and sales, and purchasing equipment, which the Division asserts are the core functions of this business enterprise. (*See* WBE Exh. 1.)

In considering the eligibility criteria related to operations, the Division also relied on the résumés provided with the application. WBE Exh. 4 is a set of resumes for Lisa Morrow, James Morrow, and John Hynes. Hynes Electric filed this document with its application. In the application, this information is identified as *Lisa_Jim_John_Resumes(2).docx*. (*See* WBE Exh. 1 at 9.)

According to Lisa Morrow's résumé, she has worked full-time for Hynes Electric since 2000. From 2000 to 2014, Ms. Morrow was the treasurer and secretary, and was responsible for financial management, such as accounts receivable and accounts payable. Ms. Morrow was also responsible for human resources including the payroll, as well as customer service. From 2014 to the present, Ms. Morrow's résumé states that she is the president of Hynes Electric. However, Ms. Morrow's responsibilities at Hynes Electric, as described in her résumé, remain the same as her responsibilities from 2000 to 2014. (*See* WBE Exh. 4.)

James Morrow's résumé states that since 2013, he has been the vice-president and secretary of Hynes Electric, and has been responsible for managing the warehouse and the inventory, as well as building maintenance. From 1993 to the present, John Hynes's résumé states that he has been the president and vice-president of Hynes Electric. His responsibilities include store and inventory management, customer sales, purchasing, and financial reviews. (*See* WBE Exh. 4.)

Based upon a review of his résumé, Division staff concluded that John Hynes actively manages critical business functions related to sales, among other duties. On appeal, however, Lisa Morrow claimed that she is also responsible for estimating, and procurement, among other things. In the response, the Division observed that such claims are not supported by the application materials reviewed by staff at the time of the denial.

The record of this appeal shows that Lisa Morrow, together with her husband, James Morrow, and her brother, John Hynes, share control of the operations and management of Hynes Electric. Because the responsibilities for managerial decisions and business transactions are shared, Ms. Morrow does not exert independent control as required by the regulations. Therefore, based on the record of this appeal, I conclude that the Division's determination that Hynes Electric does not comply with the eligibility criteria at 5 NYCRR 144.2(b)(1)(i) and (iii), which require the woman owner to make decisions pertaining to the operations of the enterprise, and to devote time on an ongoing basis to the daily operation of the enterprise, respectively, is based on substantial evidence.

III. Control

Several certification criteria are associated with control (*see* 5 NYCRR 144.2[b][1] through [3]). The issue on appeal is whether Hynes Electric conforms with the requirements at 5 NYCRR 144.2(b)(2), which states, in full, that:

[a]rticles of incorporation, corporate bylaws, partnership agreements and other agreements including, but not limited to, loan agreements, lease agreements, supply agreements, credit agreements or other agreements must permit minority group members or women who claim ownership of the business enterprise to make those decisions without restrictions.

WBE Exh. 8 is a copy of a document entitled, *Minutes and By-Laws of Hynes Electric Supply Co., Inc., from July 1, 1993 to PRESENT*. Hynes Electric filed this document with its application for WBE certification. In the application, this information is identified as *Hynes_1st_Minutes_By_Laws_Jul_1993.pdf*. (*See* WBE Exh. 1 at 8.) After the cover sheet of the bylaws, the next page in WBE Exh. 8 has the following heading: "Corporation Status Sheet." According to the status sheet, John Hynes, who is Lisa Morrow's brother, is the president of Hynes Electric. (*See* WBE Exh. 8.) The bylaws provide that the president of Hynes Electric is the chief executive officer of the corporation and, as such, has active management and control of the business and its affairs, subject to the control of the board of directors (*see* WBE Exh. 8 at Article VI, section 6).

In the response, the Division argued that when, as here, the corporate bylaws and other business agreements vest the authority to direct the business in individuals who are not women, the woman owners are not in control of the business enterprise. The Division acknowledged that Lisa Morrow has identified herself as the president of Hynes Electric in the application at section 1.P (*see* WBE Exh. 1) and in her résumé (*see* WBE Exh. 4). However, WBE Exhs. 1 and 4 are not the corporate bylaws which, according to the corporation status sheet identifies John B. Hynes as the president (*see* WBE Exh. 8). According to the Division, Hynes Electric has not offered any evidence to show that the officers of the corporation have changed and are different from those identified on the corporate status sheet.

Based on the information presented with the application materials, Hynes Electric's bylaws and the corporate status sheet (*see* WBE Exh. 8), demonstrate that John Hynes is the president of Hynes Electric, rather than Lisa Morrow, and that Mr. Hynes has the authority to

manage the business enterprise. Therefore, I conclude that Hynes Electric did not demonstrate compliance with the requirement outlined at 5 NYCRR 144.2(b)(2). As noted in the Division's reply, this conclusion is consistent with the court's determination in *Matter of CW Brown, Inc. v Canton* (216 AD2d 841, 843 [3d Dept 1995]).

Hynes Electric had the burden to demonstrate compliance with the eligibility criteria outlined at 5 NYCRR 144.2 when it filed the May 13, 2015 application and supporting materials. Based on the foregoing, Hynes Electric did not meet that burden. Hynes Electric may take the steps necessary to comply with the criteria outlined at 5 NYCRR 144.2. Subsequently, as provided by the regulations (*see* 5 NYCRR 144.5[b]), Hynes Electric may reapply for certification as a woman owned business enterprise.

CONCLUSIONS

For the reasons discussed above, Hynes Electric did not meet its burden to show that the Division's March 24, 2016 determination to deny the application for WBE certification was not based on substantial evidence.

RECOMMENDATION

For the reasons set forth above, the Division's determination to deny Hynes Electric's application for certification as a woman-owned business enterprise should be affirmed.

Attachment: Exhibit List

Division of Minority and Women's Business Development

Exhibit Chart

Matter of Hynes Electric Supply Co., Inc.

File ID No. 59841

WBE Exhibit No.	Description
1	Hynes Electric Supply Co., Inc. Application Form, submitted May 13, 2015 File No. 59841
2	Certificate of Incorporation of Hynes Electric Supply Co., Inc. June 15, 1993
3	Hynes Electric Stock Certificates and Transfers
4	Hynes Electric Resumes: Lisa A. Morrow James F. Morrow John B. Hynes
5	Division's Denial Letter dated March 24, 2016
6	Hynes Electric Business Loans
7	Hynes Electric W2s from 2014 Lisa Morrow James Morrow, Jr. John Hynes
8	Minutes and Bylaws of Hynes Electric Supply Co., Inc. From July 1, 1993 to PRESENT
9	Appeal by Hynes Electric dated March 31, 2016