

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

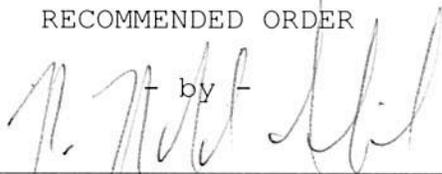
In the Matter

- of -

the Application of
Quality Shredding Corp.
For Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 59410

RECOMMENDED ORDER

 - by -

P. Nicholas Garlick
Administrative Law Judge

September 8, 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 Quality Shredding Corp. ("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 Quality Shredding Corp. challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Quality Shredding Corp.'s application was submitted on February 23, 2015 (Exh. DED4).

The application was denied by letter dated April 14, 2016, from Bette Yee, Director of Certification Operations (Exh. DED8). As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet two separate eligibility criteria related to Tobi Innerfield's ownership of the applicant (Exh. DED8).

With a cover letter dated May 3, 2016, the applicant's counsel submitted its written appeal which consisted of a twelve page appeal and forty-seven exhibits (listed in the attached exhibit chart as A1-A47).

In a four page memorandum dated June 29, 2016, the Division responded to the applicant's appeal. Enclosed with the response were ten exhibits (listed in the attached exhibit chart as DED1-DED10).

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

In papers dated July 12, 2016, applicant's counsel replied to the Division's papers with a cover letter, a nine page brief,

and five exhibits (listed in the attached exhibit chart as A48-A52).

By email dated July 26, 2016, counsel for the Division declined to submit a sur-response.

On July 28, 2016, the last of the documents submitted by the applicant were forwarded to me and the record closed.

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, and independence 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 two separate criteria for certification.

First, the Division found that the applicant failed to demonstrate that the woman owner, Tobi Innerfield, enjoys the customary incidents of ownership and shares in the risks and profits in proportion with her ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2).

Second, the Division found that the applicant failed to demonstrate that the woman owner Tobi Innerfield's capital contributions 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).

Position of the Applicant

Quality Shredding Corp. asserts that it meets the criteria 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. Quality Shredding Corp. is in the business of secure information destruction and is a registered electronic recycler (Exh. DED4). The firm is also a NYS licensed document destruction contractor (Exh. DED5).

2. Quality Shredding Corp. was established on September 2, 2010 (Exh. DED1). At that time Tobi R. Innerfield held 64 shares and her husband Steven Innerfield held 16 shares. Ms. Innerfield was named president, CEO, and treasurer. Mr. Innerfield was named vice-president and secretary. (Exh. DED2).

3. At the time of the application was made, February 23, 2015, Ms. Innerfield owned 55% of the corporation, her husband owned 25%, and two other investors, Daniel Gropper and Gayle Gropper, owned 10% each (Exh. DED3; DED4 at 2).

4. Steven Innerfield has worked exclusively for Quality Shredding Corp. since it was incorporated (Exh. DED6). Tobi Innerfield has also worked at Quality Shredding Corp. since it began, but also was employed full-time as the Director of Congregational Education for the Old Westbury Hebrew Congregation until July 2015 (Exh. DED7).

5. Mr. Innerfield received [REDACTED] in wages in 2015 from Quality Shredding Corp. and his wife received [REDACTED] (Exh. DED10 at 7).

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 two bases related to Ms. Innerfield's ownership of Quality Shredding Corp. Each basis is discussed individually, below.

In its denial letter, the Division cited two bases to deny the application based on Ms. Innerfield's failure to meet ownership criteria. First, the Division determined that the applicant failed to demonstrate that the woman owner, Tobi Innerfield, enjoys the customary incidents of ownership and shares in the risks and profits in proportion with her ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2).

On the appeal, applicant's counsel argues that because the firm is an S corporation, gains and losses are taken by each shareholder in accordance with their equity position in the company.

In its response, the Division states its denial on this ground was based on the fact that Mr. Innerfield receives more compensation from the firm than his wife, and therefore, receives a greater proportion of its benefits. The Division cites tax information supplied with the application that shows Mr. Innerfield received [REDACTED] in wages in 2015 and his wife received [REDACTED] (Exh. DED10 at 7). With respect to the applicant's claim on the appeal that because the firm is an S corporation, income and losses are allocated to each owner in proportion to each's ownership interest, the Division states that it goes beyond business income in its analysis. The Division looks at all forms of remuneration, including wages, benefits, and other forms of benefits to determine if profits are proportionately shared. In this case, the Division concluded, Mr. Innerfield enjoys a disproportionate share of the profits of the corporation.

In its response, applicant's counsel argues that Ms. Innerfield [REDACTED] in 2015 so that it could afford a new truck (Exh. A52) which shows her assumption of the firm's risks. He makes no argument that she shared proportionately in the benefits of the corporation as her husband does as evidenced by [REDACTED].

Based on the evidence in the record and the discussion above, the applicant failed to demonstrate that the woman owner, Tobi Innerfield, enjoys the customary incidents of ownership and shares in the risks and profits in proportion with her ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2). The Division's denial on this ground was based on substantial evidence.

The second ownership basis cited in the denial letter stated that the Division had determined that the applicant failed to demonstrate that the woman owner Tobi Innerfield's capital contributions 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).

On the appeal, applicant's counsel asserts that Ms. Innerfield contributed a total of [REDACTED] for her 55% share of the company during the years 2010-2015 and presents a series of exhibits as proof (Exh. A35-A48). These contributions were in the form of an inheritance (Exh. A35) and income she earned from a full-time job she worked at during nights and weekends (Exhs. A36, A38, A41, A42, & A43). The total of these amounts is summarized in a spreadsheet showing the investment of both Mr. and Ms. Innerfield dated May 3, 2016, after the Division's denial on April 14, 2016 (Exh. A48). Counsel also seems to argue that Ms. Innerfield's contribution to the firm was in the form of expertise and offers a series of magazine articles and photographs to demonstrate Ms. Innerfield's expertise (Exhs. A2-A32). There is no dispute that the other woman owner of the firm, Gayle Gropper invested [REDACTED] on August 21, 2014 for her 10% share of the firm (Exhs. A46 & A47).

In its reply, the Division asserts that Ms. Innerfield has not substantiated any capital contribution to the firm. When requested to provide proof of such contribution, Ms. Innerfield

provided a 42 page document consisting of bank records dated between September 2010 and May 2014 (Exh. DED9). The Division notes that at the time the application was considered, no documents were provided to identify the sources of funds deposited in the bank account. Because no proof was provided of the source of the funds in the account, the Division argues that the applicant failed to prove she contributed to the corporation. The Division also states that the documents that were supplied with the appeal do not include proof of Ms. Innerfield's contribution. With respect to the claim that Ms. Innerfield made contributions from her income, the Division states that the dates and values of these sources are not supported by the bank records. The Division concludes that the appeal fails to identify any information that was before the agency when it made its determination showing Ms. Innerfield made a capital contribution to the firm.

In its response, applicant's counsel argues that the bank records provided with the application (Exh. DED9) show and highlight the electronic transfers from Mr. and Ms. Innerfield's personal checking account into the business. He further argues that the Division's request for supporting documentation, such as cancelled checks, deposit slips, or other documents, is not in accordance with modern banking practice where such documents seldom exist and are no longer provided. Counsel also states that the Division was in possession of Ms. Innerfield's W2 forms (Exhs. A36, A38, A41, A42, & A43) and inheritance check (Exh. A35) at the time it made its determination and these documents provide substantial evidence of Ms. Innerfield's contributions. He refers again to the spreadsheet prepared after the denial showing all contributions (Exh. A48). Attached to the response is additional information including a forensic analysis of every financial transaction from 2010 to July 2014 showing 272 financial transactions with Mr. and Ms. Innerfield's funding of the firm (Exh. A50) and corresponding bank statements (Exh. A51). He concludes that this forensic review showed a total contribution of [REDACTED].

There are several problems with the applicant's claims to show Ms. Innerfield's contribution to the firm. First, some of the documentation was generated and submitted after the Division made its determination to deny the application and cannot be

considered on appeal. Second, and more importantly, even if all the documentation provided is accurate, it only shows the contribution of both Innerfields and cannot be attributed to Ms. Innerfield alone. Applicant's counsel admits that the bank transfers came from a joint account, which is jointly owned by the Innerfields. His argument that these monies originated from Ms. Innerfield's income and inheritance, alone, is not confirmed by information in the record, including Mr. Innerfield's W2 forms (Exhs. A39, A40, A44).

Based on the evidence in the record and the discussion above, the applicant has failed to demonstrate that the woman owner Tobi Innerfield's capital contributions 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). The Division's denial on this ground was based on substantial evidence.

CONCLUSIONS

1. The applicant failed to demonstrate that the woman owner, Tobi Innerfield, enjoys the customary incidents of ownership and shares in the risks and profits in proportion with her ownership interest in the enterprise, as required by 5 NYCRR 144.2(c)(2).

2. The applicant failed to demonstrate that the woman owner Tobi Innerfield's capital contributions 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).

RECOMMENDATION

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

**Matter of
Quality Shredding Corp.**

**DED File ID No. 59410
Exhibit List**

Attached to Applicant's Appeal

Exh. #	Description	# of pages
A1	Division's denial letter	3
A2	Article from Time Magazine	2
A3	Newspaper article	4
A4	Speaking announcement	2
A5	Newspaper article	3
A6	WBENC certificate	1
A7 - A18	Series of "Tobi says" articles	25
A19	Letter regarding fundraising	1
A20	Resolution regarding fundraising	1
A21 - A33	Series of photographs	5
A34	Application	7
A35	Copy of check	1
A36	2010 W2 for Tobi Innerfield	1
A37	2010 W2 for Steven Innerfield	1
A38	2011 W2 for Tobi Innerfield	1
A39	2011 W2 for Steven Innerfield	1
A40	2011 W2 for Steven Innerfield	1
A41	2012 W2 for Tobi Innerfield	1
A42	2013 W2 for Tobi Innerfield	1

A43	2014 W2 for Tobi Innerfield	1
A44	2014 W2 for Steven Innerfield	1
A45	NYS-45-ATT Quarterly withholding form	1
A46	Email regarding wire transfer	1
A47	Information regarding wire transfers	1
A48	Spreadsheet regarding investment	5

Attached to Division's Response

DED1	NYS DOS filing receipt	1
DED2	Documents relating to the inception of the corporation	12
DED3	Stock certificates	6
DED4	Application	7
DED5	Information relating to document destruction	5
DED6	Resume of Steven I Innerfield	2
DED7	Resume of Tobi R. Innerfield	2
DED8	Denial letter	3
DED9	Bank statements	42
DED10	2015 tax information	8

Attached to Applicant's Reply

A49	Division's response	4
A50	Analysis of pay equity	7

A51	Financial and banking documents	89
A52	Photo of trucks	1
A53	Applicant's appeal and cover letter with exhibits, listed above	13