

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

In the Matter

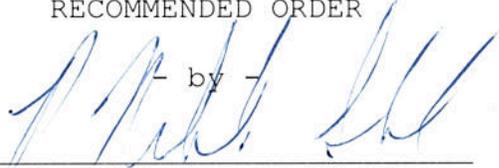
- of -

the Application of  
**KA Bryant Enterprises**  
For Certification as a  
Woman-owned Business Enterprise  
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 60341

RECOMMENDED ORDER

- by -

  
\_\_\_\_\_  
P. Nicholas Garlick  
Administrative Law Judge

October 26, 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 KA Bryant Enterprises ("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 KA Bryant Enterprises challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

KA Bryant Enterprises's application was submitted on December 30, 2015 (Exh. DED1).

The application was denied by letter dated March 24, 2016, from Bette Yee, Director of Certification Operations. As explained in an attachment to Ms. Yee's letter, the application was denied for failing to meet three separate eligibility criteria related to Kelly Bryant's ownership and operation of the applicant (Exh. DED4).

By letter dated April 18, 2016, Kelly Bryant appealed from the Division's denial determination.

By letter dated May 12, 2016, the Division notified Ms. Bryant that her written appeal should be submitted on or before June 30, 2016.

By letter dated June 20, 2016, Kelly Bryant submitted a written appeal which consisted of a two page letter and six exhibits, listed in the attached exhibit chart as A1 - A6.

In a five page memorandum dated October 5, 2016, the Division responded. Attached to the response were eight exhibits, listed on the attached exhibit chart as DED1-DED8.

On October 6, 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, 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 three separate criteria for certification.

First, the Division found that the applicant failed to demonstrate that the woman owner Kelly Bryant'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).

Second, the Division found that the applicant failed to demonstrate that the woman owner, Kelly Bryant, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(1)(i)&(ii).

Third, the Division found that the applicant failed to demonstrate that the woman owner, Kelly Bryant, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

#### Position of the Applicant

KA Bryant Enterprises 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. KA Bryant Enterprises is in the business of finish carpentry and installing molding and trim (Exh. DED1 at 3). It has a business address of 10 Commodore Circle, Baldwinsville, New York (Exh. DED1 at 1).

2. KA Bryant Enterprises was established on February 2, 2010 and is a sole proprietorship owned by Kelly Bryant (Exh. DED1 at 2). The firm employs her husband Chadwick J. Bryant (Exh. DED3).

3. There is nothing in the record to show that Ms. Bryant made a capital contribution to the firm. In a written response to questions, she states that "because materials are not routinely purchased, there is no need to invest cash in the business. The cash flow generated by the labor efforts of the employees is sufficient to meet payroll and the financial obligations of the business" (Exh. DED6).

4. Ms. Bryant's resume shows that prior to her founding KA Bryant Enterprises, she was employed as a substitute teacher, a travel sales consultant, and co-owner of CJ Bryant Enterprises. She has earned a Bachelor of Science in childhood education and a Masters of Science in teaching students with disabilities. (Exh. DED2.)

5. Mr. Bryant's resume shows that prior to working for KA Bryant Enterprises, he owned and worked for CJ Bryant Enterprises for ten years, another construction firm. Prior to that he worked for DB Countertops for seven years building and installing custom countertops and stairs (Exh. DED3).

6. Ms. Bryant's roles with the company include soliciting work, scheduling work, negotiating contracts, bookkeeping, and invoice preparation (Exh. DED5 & DED7).

7. Mr. Bryant's roles with the company include responsibility for performing construction related tasks and making sure the other employees understand what fabrication techniques are to be utilized (Exh. DED8).

### **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 sets forth three bases related to Ms. Bryant's ownership and operation of KA Bryant Enterprises. Each basis is discussed individually, below.

#### **Ownership**

In its denial letter, the Division concluded that the applicant failed to demonstrate that the woman owner Kelly Bryant's capital contributions were 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, Ms. Bryant states she has sole ownership of the firm. She attaches four letters from other businesses attesting to her sole control (Exhs. A1, A2, A3, & A5). She also attaches a letter from her bank stating she has sole signature authority on the business's account (Exh. A4). Finally, she attaches a form showing she is solely authorized to do the firm's payroll (Exh. A6). She states that she didn't need to put any capital into her business because when it was started, she had all the tools and equipment she needed.

In its response, the Division states that Ms. Bryant failed to demonstrate that she made a capital contribution to the firm. When asked to provide evidence of her contribution (Exh. DED1 at 8), Ms. Bryant provided two documents. The first focused on her duties and the second indicated that no contribution was made, rather that the firm's cash flow allowed it to satisfy its obligations without any contribution (Exhs. DED5 & DED6). The Division points to the appeal where Ms. Bryant states that she didn't put any capital into the business because she had all the tools and equipment. The Division inferred that this meant that these tools came from her husband's business, CJ Bryant Enterprises, which ceased operations immediately prior to the formation of KA Bryant Enterprises.

Because Ms. Bryant did not put any capital into the firm and apparently used the tools and equipment from her husband's closed business, the applicant failed to demonstrate that the woman owner Kelly Bryant'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 determination on this ground was based on substantial evidence.

### **Operation**

In its denial letter, the Division asserted two grounds for denying the application for failure to meet certification criteria related to the operation of the applicant. First, the Division found that the applicant failed to demonstrate that the woman owner, Kelly Bryant, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(1)(i)&(ii).

On the appeal, Ms. Bryant states that her expertise is in obtaining and maintaining professional relationships with homebuilders and contractors. Her role in negotiating contracts and keeping job sites running is very important. She states that her background in education provides her with the management skills to run the office operations of the firm and the communications skills to keep her customers satisfied. She also states that she teaches basic construction to high school aged students at her local B.O.C.E.S. program.

In its response, the Division states that Ms. Bryant has no training or experience in the carpentry industry prior to forming KA Bryant Enterprises and has delegated the core functions of the firm to her husband, who has over twenty years of experience in the carpentry business, including the supervision of employees. The Division states it concluded that Ms. Bryant's lack of training and experience does not allow her to evaluate the work of her husband or other employees. The Division concludes that the general business skills listed in the appeal are not sufficient to demonstrate her ability to operate a trim carpentry business. With respect to her claim to teach basic construction to high school students, the Division responds that there is no proof of this claim in the application materials.

Because nothing in the record demonstrates that Ms. Bryant has any training or experience in the field of trim carpentry, the applicant has failed to demonstrate that the woman owner, Kelly Bryant, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(1)(i)&(ii). The Division's denial determination on this ground was based on substantial evidence.

The second ground asserted for denial on operational grounds was that the applicant failed to demonstrate that the woman owner, Kelly Bryant, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b).

On the appeal, Ms. Bryant makes no claim that she works in the field for her company, rather she relies on subcontractors and employees, including her husband, for field work.

In its response, the Division states that it determined that the core functions of the business were managed by Mr. Bryant. The application lists Mr. Bryant as having sole responsibility for estimating and purchasing equipment; it also states that he shares responsibility for overseeing field operations with his wife (Exh. DED1 at 4-5). Ms. Bryant's resume describes her role as managing office operations and customer service for day-to-day operations (Exh. DED2). The narratives of the respective roles of Mr. and Ms. Bryant also state that her role is primarily administrative and performed in

the office (Exh. DED7) while Mr. Bryant's role is related to construction tasks and overseeing employees (Exh. DED8). The Division concluded from this information that Mr. Bryant is responsible for the field operations of the firm.

The record contains no information that Ms. Bryant makes decisions regarding the core, or revenue generating, functions of providing trim carpentry services. Because of this and based on the discussion above, the applicant has failed to demonstrate that the woman owner, Kelly Bryant, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1). The Division's denial determination on this ground was based on substantial evidence.

### **CONCLUSIONS**

1. The applicant failed to demonstrate that the woman owner Kelly Bryant'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).

2 The applicant failed to demonstrate that the woman owner, Kelly Bryant, has the experience or technical competence, working knowledge or ability needed to operate the enterprise, as required by 5 NYCRR 144.2(b)(1)(i)&(ii).

3. The applicant failed to demonstrate that the woman owner, Kelly Bryant, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

### **RECOMMENDATION**

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

**Matter of  
KA Bryant Enterprises**

**DED File ID No. 60341  
Exhibit List**

<b>Exh. #</b>	<b>Description</b>	<b># of pages</b>
DED1	Application	9
DED2	Resume of Kelly A. Bryant	1
DED3	Resume of Chadwick J. Bryant	1
DED4	Denial letter	3
DED5	Narrative of duties of K.A. Bryant	1
DED6	Narrative of capital contribution	1
DED7	Narrative of time devoted	1
DED8	Narrative of duties of Chad Bryant	1
A1	Blanchard memo	1
A2	Ruggeri memo	1
A3	Merle memo	1
A4	Fulton Savings Bank memo	1
A5	Doucette memo	1
A6	Elation Systems memo	1