

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

In the Matter

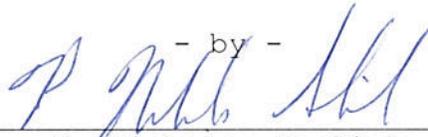
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the Application of
Custom Printers of Guilderland, Inc.
For Certification as a Woman-owned Business Enterprise
Pursuant to Executive Law Article 15-A.

NYS DED File ID No. 48201

RECOMMENDED ORDER

- by -



P. Nicholas Garlick
Administrative Law Judge

November 29, 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 Custom Printers of Guilderland, 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 Custom Printers of Guilderland, Inc. challenging the determination of the Division that the applicant does not meet the eligibility requirements for certification as a woman-owned business enterprise.

Custom Printers of Guilderland, Inc.'s application was received on March 21, 2016 (Exh. DED2). Additional documents were requested and submitted during the review process, but no interview or site visit was conducted (Exh. DED6, disc 2, at 38:00).

The application was denied by letter dated July 15, 2016, 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 two separate eligibility criteria related to Kathleen Szesnat's operation and control of the applicant.

By letter dated July 29, 2016, applicant's counsel requested an in-person hearing regarding the Division's denial determination.

On August 10, 2016, this matter was assigned to me.

By letter dated August 23, 2016, the Division notified the applicant that the hearing would be held on September 13, 2016.

On September 9, 2016 a conference call was held with the parties.

On September 12, 2016, the pre-filed testimony of Division analyst Abdul Bah was received ("Bah Direct").

On September 13, 2016, an administrative hearing was held at the Division's Albany office located at 625 Broadway, Albany, New York. The applicant was represented by Susan Bartkowski, Esq. of the law firm Towne, Ryan & Partners, P.C. The applicant called three witnesses, Cathy Szesnat, Nicholas Ragone, and Scott Ragone. The Division was represented by Phillip Harmonick, Esq., and called one witness, division analyst Abdul Bah. The hearing commenced at 1:30 p.m. and concluded at approximately 3:00 p.m.

The record of this matter closed on or about October 5, 2016 with the receipt of the audio recording of the administrative proceeding.

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, Kathleen Szesnat, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

Second, the Division found that the applicant failed to demonstrate that the woman owner, Kathleen Szesnat, has control of business negotiations through the production of signed contracts as required by 5 NYCRR 144.2(b)(3).

Position of the Applicant

Custom Printers of Guilderland, Inc. 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. Custom Printers of Guilderland, Inc. is a commercial printer that handles all aspects of offset and digital printing including design and all types of binding. It has a business address of 2210 Western Avenue, Guilderland, New York. (Exh. DED2 at 1-3).

2. Custom Printers of Guilderland, Inc. has been in business for at least 30 years and was owned by Joyce Ragone until her sudden death in November 2014 (Exh. DED6, disc 1, at 3:00). The company was certified WBE in 2004 and recertified as such in 2007 and 2014, shortly before Ms. Ragone's death (Exh. DED6, disc 1 at 8:00).

3. Kathy Szesnat has been working for Custom Printers of Guilderland, Inc. for approximately 30 years (Exh. DED6, disc 1, at 3:15). She began as a secretary and at the time of Ms. Ragone's death was office manager (Exh. DED6, disc 1, at 4:00). Ms. Ragone was Ms. Szesnat's sister.

4. In September 2015, Ms. Szesnat and Ms. Ragone's three sons took ownership of the company. At the time of the application, Custom Printers of Guilderland, Inc. was owned by these four individual who also serve as its directors. Kathleen M. Szesnat owns 55% of the company and serves as president. Scott C. Ragone owns 15% of the company and serves as vice president. Nicholas A. Ragone owns 15% of the company and serves as treasurer. Andrew J. Ragone owns 15% of the company and serves as secretary. (Exh. DED2 at 3).

5. According to information provided in the application, Kathleen M. Szesnat has sole managerial responsibility for negotiating insurance and managing and signing payroll. She shares responsibility with male owners for financial decisions, hiring and firing, purchasing equipment/sales, and signing for business accounts. She has no role in estimating, preparing bids, negotiating bonding, marketing and sales, supervising field operations, or negotiating contracts. (Exh. DED2 at 3).

6. No contracts with its clients that were signed by Ms. Szesnat were provided with the application materials (Bah Direct at A15). The only contract provided was signed by Scott Ragone (Exh. A2, same as Exh. DED5).

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. Szesnat's operation and control of Custom Printers of Guilderland, Inc. Each basis is discussed individually, below.

Operation

In its denial letter, the Division stated it denied the application because the applicant failed to demonstrate that the woman owner, Kathleen Szesnat, makes decisions pertaining to the operations of the company, as required by 5 NYCRR 144.2(b)(1).

At the hearing, Ms. Szesnat gave a brief history of the firm and her changing roles over the past thirty years. The firm was originally owned by her sister Joyce Ragone who died suddenly in November 2014 (Exh. DED6, disc 1 at 3:30). At the

time of Ms. Ragone's death, Ms. Szesnat served as office manager for the firm (Exh. DED6, disc 1 at 4:00). The firm had been granted WBE certification in 2004 and recertified twice in 2007 and 2014 (Exh. DED6, disc 1 at 4:30 - 9:00). In September 2015, Ms. Ragone's shares in the firm were divided between her sons, Scott, Nicholas, and Andrew, who each received 15%; the remaining 55% of the firm was sold to Ms. Szesnat (Exh. DED6, disc 1 at 15:30).

Ms. Szesnat also testified that before she took a majority ownership share of the firm, her duties had been administrative (Exh. DED6, disc 1 at 9:30). Since taking ownership her duties have increased and she is now in charge of all business decisions, including purchases of equipment (Exh. A8), sales, operational decisions, decisions on outside projects and purchasing insurance (Exh. DED6, disc 1 at 18:15). She also resolves all customer complaints, including investigating problems and deciding how to fix them (Exh. DED6, disc 1 at 28:15). She also decides on staffing levels (Exh. DED6, disc 1 at 35:00), calls corporate meetings (Exh. DED6, disc 1 at 37:30), and deals with all accounting, tax and financial issues (Exh. DED6, disc 1 at 39:00, Exh. A10, A11 & A12). She also assists on the production floor on an as-needed basis (Exh. DED6, disc 2 at 5:45).

She testified that everybody at the firm comes to her to run things by her for final decision (Exh. DED6, disc 1 at 22:45). This was confirmed by two of her nephews who also testified, Nick (Exh. DED6, disc 2 at 19:30) and Scott (Exh. DED6, disc 2 at 20:15). The credible testimony of the applicant's three witnesses presented a picture of a small, family-run business where Ms. Szesnat was trying to teach her nephews the printing business after the sudden death of their mother. When asked on cross examination why she had not included all her duties on her application (Exh. DED2 at 3-4), she replied she didn't want to put her name in every category, creating the impression she was trying to enhance the roles of her nephews in the business.

In his written pre-filed testimony, division analyst Bah stated that he had reviewed the application materials and concluded that they demonstrate that Ms. Szesnat does not manage

the core functions of the business (Bah Direct at A5). He testified that, based on the nature of the business, core functions included managing printing operations, selecting printing equipment, preparing estimates, and marketing (Bah Direct at A6). He stated he reviewed the application (Exh. DED2) and sent a request for more information to Ms. Szesnat (Exh. DED2 at 8-9).

He testified that in response to the request, documents listing the job description of the owners were provided (Exh. DED3). These documents identified Nicholas Ragone and Andrew Ragone as being primarily responsible for printing and binding operations (Bah Direct at A9). These documents also indicated that Ms. Szesnat was responsible for financial aspects of the management of the business, not printing activities (Bah Direct at A10). The resumes of the owners (Exh. DED4) confirmed that the male owners made decisions related to the core functions of the business (Bah Direct at A12 & A13). Mr. Bah admitted on cross examination that based on the testimony at the hearing, Ms. Szesnat makes decisions regarding some core functions, but the documents describe her role as more of an office manager (Exh. DED6, disc 2 at 44:00).

The application shows that Ms. Szesnat has sole managerial responsibility for negotiating insurance and managing and signing payroll. She shares responsibility with male owners for financial decisions, hiring and firing, purchasing equipment/sales, and signing for business accounts. The application states she has no role in estimating, preparing bids, negotiating bonding, marketing and sales, supervising field operations, or negotiating contracts. (Exh. DED2 at 3).

Ms. Szesnat's role at the firm is described in the application materials as much more limited than her role was described in the testimony at the hearing. Because the Division did not conduct an interview in this case, the Division considered only the written materials submitted by the applicant which do not appear to accurately reflect Ms. Szesnat's management role of the firm. The purpose of the hearing is only to determine if the Division's determination was based on substantial evidence and not whether the firm met certification standards at the time of the denial. In this case the Division

has shown that its decision was based on substantial evidence. The application materials before the Division at the time of its determination show that decisions regarding the operations of the core, revenue producing functions of the applicant are performed by the male owners of the firm. Because of this, the applicant failed to demonstrate that the woman owner, Kathleen Szesnat, makes decisions pertaining to the operations of the enterprise, as required by 5 NYCRR 144.2(b)(1).

Control

The second reason for denial cited by the Division is the applicant failed to demonstrate that the woman owner, Kathleen Szesnat, has control of business negotiations through the production of signed contracts as required by 5 NYCRR 144.2(b)(3).

At the hearing, Ms. Szesnat testified that everybody at the firm comes to her to run things by her for final decision (Exh. DED6, disc 1 at 22:45). This was confirmed by two of her nephews who also testified, Nick Ragone (Exh. DED6, disc 2 at 19:30) and Scott Ragone (Exh. DED6, disc 2 at 20:15). The applicant entered several documents into evidence showing Ms. Szesnat signed contracts on behalf of the firm including: (1) an electronic payment authorization form for New York State (Exh. A1); (2) a life insurance policy for Ms. Szesnat (Exh. A3); (3) a contract for radio advertising (Exh. A4 at 1); (4) a contract for an online promotional auction (Exh. A4 at 2); (5) a health insurance contract (Exh. A5); (6) a contract for web site maintenance (Exh. A6); and (7) various documents related to a pending bid with the New York State Office of Temporary and Disability Assistance (Exh. A7)¹. She also included a payroll check she signed (Exh. A9). On cross examination, she

¹ Ms. Szesnat testified that this bid package, which was submitted after the Division's denial determination, included over thirty signatures from various officers or employees of the firm (Exh. DED6, disc 1 at 53:20). The reason for different signatories was based upon the area of responsibility with the company (Exh. DED6, disc 1 at 54:15). She signed documents relevant to her areas of responsibility, such as certification regarding a drug free workplace (Exh. DED6, disc 1 at 55:30, Exh. A7 at 2).

acknowledged that Exhibits A4, A5, and A7 had not been included with the application materials and were not before the Division when it made its denial determination (Exh. DED6, disc 2 at 11:15).

In his testimony, division analyst Bah stated that he had reviewed the application materials and no contracts between the firm and its customers were provided (Bah Direct at A15). Because of this he requested contracts (Bah Direct at A15). Only one contract was provided (Exh. DED5) and this document was signed by Scott Ragone (Bah Direct at A16). The application indicates that Scott Ragone is solely responsible for negotiating contracts (Exh. DED2 at 3). Because no evidence was provided with the application materials to show that Ms. Szesnat negotiates contracts for the firm, Mr. Bah concluded that she did not satisfy this criteria for certification (Bah Direct at A18).

Based on the evidence in the record and the discussion above, the applicant failed to demonstrate that the woman owner, Kathleen Szesnat, has control of business negotiations through the production of signed contracts as required by 5 NYCRR 144.2(b)(3). The Division's denial was based on substantial evidence.

CONCLUSIONS

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

2. The applicant failed to demonstrate that the woman owner, Kathleen Szesnat, has control of business negotiations through the production of signed contracts as required by 5 NYCRR 144.2(b)(3).

RECOMMENDATION

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

**Matter of
Custom Printers of Guilderland, Inc.**

**DED File ID No. 48201
Exhibit List**

Exh. #	Description
DED1	Division's denial letter
DED2	Application
DED3	Job descriptions
DED4	Resumes
DED5	Contract with NYS OTDA
DED6	Recording of hearing (on disc)
A1	NYS ACH Electronic Payment Authorization
A2	Contract with ODTA
A3	Life Insurance Policy
A4	Contract with I heart media
A5	Contract with CDPHP
A6	Contract with MWH Design
A7	Bid packet for ODTA
A8	Email regarding machinery
A9	Payroll check
A10	Accounts payable check
A11	Profit and Loss statement for 1/16-8/16
A12	Balance sheet dated 8/31/16