

Torres Rojas, Genara

FOI#12765

From: jscala@couchwhite.com
Sent: Saturday, November 05, 2011 1:15 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: Joseph
Last Name: Scala
Company: Couch White, LLP
Mailing Address 1: 18 Division Street
Mailing Address 2: Suite 301
City: Saratoga Springs
State: NY
Zip Code: 12866
Email Address: jscala@couchwhite.com
Phone: 518-583-4404
Required copies of the records: Yes

List of specific record(s):

Copies of all MWBE denials that were rendered in 2011. Copies of all MWBE denial appeals filed against the PANYNJ in 2011. Copies of all hearing decisions on MWBE appeals that were decided in 2011.

THE PORT AUTHORITY OF NY & NJ

Daniel D. Duffy
FOI Administrator

February 29, 2012

Mr. Joseph Scala
Couch White, LLP
18 Division Street, Suite 301
Saratoga Springs, NY 12866

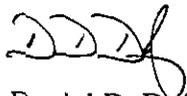
Re: Freedom of Information Reference No. 12765

Dear Mr. Scala:

I am in receipt of your payment in the amount of \$6 and am forwarding herewith the available material responsive to your November 5, 2011 request, which was processed under the Port Authority's Freedom of Information Policy, copy enclosed.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Sincerely,



Daniel D. Duffy
FOI Administrator

Enclosure

THE PORT AUTHORITY OF NY & NJ

October 20, 2011

Mrs. Angela Bost
President

~~Bost Concrete & Construction LLC~~
251 Prospect Drive
Brick, NJ 08724

Via U.S. Mail

Dear Mrs. Bost:

Thank you for submitting the Uniform Certification Application to the Port Authority of New York and New Jersey for consideration as a Woman-owned Business Enterprise. After careful examination of the application and supporting documentation, this office does not deem the applicant, Bost Concrete & Construction LLC eligible for Port Authority certification as a Woman-owned Business Enterprise (WBE) for Port Authority contracts and opportunities. This firm appears not to operate as a woman operated business, but as a family operated business, which is contrary to our guidelines.

The application request for certification has been denied for the following reasons:

The following standards are used in determining whether a firm is owned and controlled by one or more women. The elements of ownership must be clear and apparent for a firm to be considered eligible as a WBE

Our Guidelines state that an eligible WBE must be an independent business. The ownership and control by the woman must be real, substantial and continuing, and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The woman owner shall enjoy the customary incidents of ownership, and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements.

Ms. Angela Bost's resume indicates her responsibilities at Bost Concrete & Construction LLC. as "office management, payroll, finance, and worker's benefits." Angela is a registered nurse and her professional experience shows she has been working in the nursing industry for 10 years. However, a review of Mr. William Bost's resume shows that he has 35 years involvement in the construction, concrete and waste management industries. He is presently responsible for all outside operations, field coordination and consulting, safety oversight, customer services and satisfaction, estimating, and site management. He is OSHA and ACI.

233 Park Avenue South
New York, NY 10003

THE PORT AUTHORITY OF NY & NJ

Should you wish to appeal this decision, you must submit a written request for an appeal hearing within thirty days of the date of this letter. If an appeal hearing is not requested before November 18, 2011, this decision shall be deemed final. Your appeal of this letter must contain information rebutting our determination and you must provide any supporting documentation relevant to the rebuttal. Your appeal-hearing request should be sent to: Roger Hsu, Manager, Certification Unit, The Port Authority of NY & NJ, Office of Business and Job Opportunity, 233 Park Avenue South, 4th Floor, New York, NY 10003.

Counsel at its discretion may represent Bost Concrete & Construction LLC. Should you choose to be represented by counsel, please indicate such in the request for an appeal hearing.

A firm that has been denied certification, as a Woman-owned Business Enterprise cannot reapply for certification until two years from the date of this notice. Therefore, Bost Concrete & Construction LLC will be ineligible for certification until October 20, 2013.

Sincerely,


Weicong Mao

Business Development Representative
Office of Business & Job Opportunity

Att: MWBE Guidelines

THE PORT AUTHORITY OF NY & NJ

July 29, 2011

Ms. Noriko Heying
Treasurer/Secretary
481 8th Ave. Suite 1570
New York, NY 10001

Dear Ms. Heying:

Thank you for submitting the Certification Application to the Port Authority of New York and New Jersey for consideration as a Woman-owned Business Enterprise (WBE). After careful examination of the application and supporting documentation, this office does not deem the applicant, International Protection Group, LLC eligible for Port Authority certification as a WBE for Port Authority contracts and opportunities. This firm appears not to operate as a woman operated business, but as a family operated business, which is contrary to our guidelines.

The application request for certification has been denied for the following reasons:

The following standards are used in determining whether a firm is owned and controlled by one or more women. The elements of ownership must be clear and apparent for a firm to be considered eligible as a WBE.

Our Guidelines state that an eligible WBE must be an independent business. The ownership and control by the woman must be real, substantial and continuing, and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The woman owner shall enjoy the customary incidents of ownership, and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements.

Ms. Noriko Heying's resume indicates her title at International Protection Group, LLC as Secretary/Treasurer. Her entire professional experience is in the accounting field. She does not indicate any education background or professional experience in security guard service. However, a review of Jerry Heying's resume shows that he has over 30 years experience in the high rise facility and estate security, guard force training and management, special event security, and personal protection. He is licensed s private investigator the company is listened as watch, guard or patrol agency under Jerry Heying's name. Although you are the majority shareholder of the International Protection Group, LLC, it appears to us that Mr. Jerry Heying not you possess the expertise necessary to manage the day-to-day operation of this firm, which is contrary to our guidelines.

233 Park Avenue South
New York, NY 10003

THE PORT AUTHORITY OF NY & NJ

Our Guidelines also states that a woman owner shall possess the power to direct and to cause the direction of the management and policies of the firm and to make the day-to-day major decisions on matters of management, policy and operation.

All The service agreements are signed by Mr. Jerry Heying as president of International Protection Group, LLC and not you. Mr. Heying directs the security guard service to be performed in professional manner. It appears to us that Mr. Jerry Heying and not you direct the management and policy of the operation of this company, which is contrary to our guidelines.

In addition, our guidelines state that the woman owner shall enjoy the customary incidents of ownership, and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements.

A review of the W-2 Wage forms, show that Noriko Heying – 51 percent shareholder received \$47,600 and Jerry Heying – 49 percent shareholder received \$84,700 for 2008. In 2009, Noriko Heying was compensated \$46,800 and Jerry Heying compensated \$83,200. Your occupation on your personal tax returns for 2009 and 2008 is accountant and Mr. Heying's occupation is executive. It appears to us that your compensation does not commensurate with your ownership interest, which is contrary to our guidelines.

Based upon the foregoing, we have determined that International Protection Group, LLC is a family operated business. It appears to us that you rely heavily on the expertise of Mr. Jerry Heying. This arrangement may be good business practice, but it does not meet the requirements as a WBE firm for Port Authority contracts and opportunities.

Should you wish to appeal this decision, you must submit a written request for an appeal hearing within thirty days of the date of this letter. If an appeal hearing is not requested before August 29, 2011, this decision shall be deemed final. Your appeal of this letter must contain information rebutting our determination and you must provide a supporting documentation relevant to the rebuttal. Your appeal hearing request should be sent to: Roger Hsu, Manager, Certification Unit, The Port Authority of NY & NJ, Office of Business Diversity and Civil Rights, 233 Park Avenue South, 4th Floor, New York, NY 10003.

Counsel at its discretion may represent International Protection Group, LLC. Should you choose to be represented by counsel, please indicate such in the request for an appeal hearing? A firm that has been denied certification as a Woman-owned Business Enterprise cannot reapply for

THE PORT AUTHORITY OF NY & NJ

certification until two years from the date of this notice. Therefore International Protection Group, LLC will be ineligible for certification until July 29, 2013.

Sincerely,

Ms. Weicong Mao

Business Analyst, Certification Unit
Office of Business Diversity and Civil Rights

Att. M/WBE Guidelines

233 Park Avenue South
New York, NY 10003

February 04, 2011

Ms. Luz M. Adelis
President
Adelis International Security, Inc.
One Cross Island Plaza

Room 202

Rosedale, NY 11422

RE: WBE CERTIFICATION APPLICATION - DENIAL

Dear Ms. Adelis:

Thank you for submitting an M/WBE Certification Application to the Port Authority of New York and New Jersey (Port Authority) for consideration as a Women-owned Business Enterprise (WBE). After careful examination of the application and supporting documents, this office does not deem the applicant, Adelis International Security, Inc., eligible for Port Authority certification as a WBE.

Adelis International Security Inc.'s application for certification has been denied for the following reasons:

Although it appears you, Ms. Adelis, have been employed in the security business for some time, and that your application indicates you are the majority shareholder of the company; it appears you have only functioned in an administrative capacity in the security business. Based on the documentation submitted, you do not have the relevant technical background (e.g., education/training) and expertise in security, particularly in the areas your company operates. Additionally, your current role in Adelis seems focused on the non-technical administration of the company's operations. All other core functions that seem to convey and require strong technical knowledge and expertise (e.g., estimating, bid preparation, marketing, sales, fieldwork, etc.) are undertaken by your husband, Mr. James Adelis. It appears Mr. James Adelis has been in the industry much longer than you have been, and has all the appropriate formal credentials, training and expertise in security operations. As such, it seems reasonable to infer that Adelis International Security may have been structured to qualify for certification as a WBE, and that it does not appear to be operated and controlled by a minority or woman. The documentation provided seems to suggest Mr. Adelis, not you Ms. Adelis, is the one at the helm of the company.

The Port Authority's guidelines state: "The ownership and control by minorities or women shall be real, substantial and continuing, and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents." It goes on further to say that "the minority or woman owner(s) shall also possess the power to direct and to cause the direction of the management and policies of the firm, and to make the day-to-day as well as major decisions on matters of management, policy and operations."

There seems to be a consistent theme throughout your application and supporting documents that point to Mr. Adelis as the one having the essential security related credentials to control and operate the company. Additionally, his role and responsibilities seem more aligned with the technical operation of the company. For example, according to P.5 of the application: Section III: Company Management, some of the essential areas of work for which Mr. Adelis is responsible include estimating, preparing bids, negotiating bonding, marketing and sales, and negotiating contracts. It seems the person best positioned to oversee those areas is the one with the strongest security related credentials and who would be most effective in managing them. Conversely, while important, the areas for which you are responsible are less security related. This means that one does not necessarily need a background or other knowledge in security work to be effective at executing those responsibilities. Also, the information conveyed in each of your resumes is also telling. For example, Mr. Adelis' experience in the security business extends to managing hundreds of employees, and engaging in high-level interactions

with the FAA, US Customs, and the Port Authority Police regarding security issues. Your experience, on the other hand, seems more focused on managing the office and staff, and overseeing related issues such as payroll, hiring and firing, purchases, etc—none of which seem to require a background in security in order to be effective at carrying out those responsibilities.

~~Therefore, given the information in your application and supporting documents, it does not seem that your affiliation with Adelis International Security goes "beyond pro forma ownership of the firm as~~

reflected in its ownership documents." Essentially, there seems very little beyond the application and some of your supporting documents indicating you are the 51% majority shareholder of the company, and that that ownership is as true and substantial on paper as it is in actual execution and representation of the company. Additionally, the information in the application and supporting documents do not seem to indicate that you actually have the uncontested "power to direct and to cause the direction of the management and policies of the firm, and to make the day-to-day as well as major decisions on matters of management, policy and operations." These factors of authority and control over the company seem more evident in your husband's role and responsibilities in the firm.

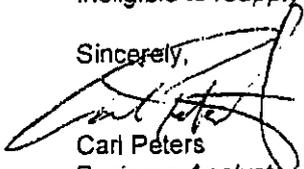
It should be noted that the above analysis and determination regarding your eligibility for certification does not question whether you are the (legal) majority owner of the company or not; nor does it question the manner in which the company is structured and operates. This determination is based on our analysis of how well your company's elements of ownership and control meet the eligibility criteria of our guidelines for the WBE Program. As such, based on our guidelines, Adelis International Security does not seem to meet our eligibility criteria for ownership and control. Therefore, the firm is deemed ineligible for certification as a WBE with the Port Authority of NY & NJ.

Should you wish to appeal this decision, you must submit a written request for an appeal hearing within thirty days of the date of this letter. If an appeal hearing is not requested before March 10, 2011, this decision shall be deemed final. Your appeal letter must contain information rebutting our determination, and you must provide supporting documentation relevant to the rebuttal. The appeal-hearing request should be sent to:

Mr. Roger Hsu
 Manager, Certification Unit
 The Port Authority of NY & NJ
 Office of Business & Job Opportunity
 233 Park Avenue South, 4th Floor
 New York, NY 10003

Counsel at its discretion may represent Adelis International Security, Inc. Should you choose to be represented by counsel, please inform us accordingly in the request for an appeal hearing. A firm that has been denied certification as a Woman-Owned Business Enterprise cannot reapply for certification until two years from the date of this notice. Consequently, Adelis International Security, Inc. will be ineligible to reapply for certification until February 9, 2013.

Sincerely,



Carl Peters
 Business Analyst
 Office of Business & Job Opportunity

Cc: Lash Green, Roger Hsu

Enclosure: Guidelines

January 28, 2011

Ms. Sarah Klein

President

Franklin Equipment Services Corp.
22-04 119th St.
College Point, NY 11356

Via US Mail

Dear Ms. Klein:

Thank you for submitting the Certification Application to the Port Authority of New York and New Jersey for consideration as a Woman-owned Business Enterprise (WBE). After careful examination of the application and supporting documentation, this office does not deem the applicant, Franklin Equipment Services Corp. eligible for Port Authority certification as a WBE for Port Authority contracts and opportunities. This firm appears not to operate as an independent woman operated business, which is contrary to our guidelines.

The application request for certification has been denied for the following reasons:

The following standards are used in determining whether a firm is an independent business owned and controlled by one or more women. The elements of ownership must be clear and apparent for a firm to be considered eligible as a WBE.

Our Guidelines state that an eligible WBE must be an independent business. The ownership and control by the woman must be real, substantial and continuing, and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The woman owner shall enjoy the customary incidents of ownership, and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements.

The fact that a business is separately incorporated or is recognized as a separate entity for tax purposes is not necessarily sufficient to support the conclusion that the business is an independent entity entitled to WBE certification.

In your application, you stated that Franklin Equipment Services Corp bought Ensign Petroleum which was the previous supplier of Franklin Company Contractors Inc and took advantage of vertical integration of Franklin Company allowing it to control the supply chain. The business arrangement appears to us that Franklin Equipment Services Corp came to existence to support Franklin Company so it could effectively manage the supply chain of its products and services.

that the firm is eligible for certification in our Small Business Enterprise (SBE) program.
~~Therefore, Franklin Equipment Services Corp is certified as SBE with Port Authority
NY/NJ.~~

Should you wish to appeal this decision, you must submit a written request for an appeal hearing within thirty days of the date of this letter. If an appeal hearing is not requested before February 28, 2011, this decision shall be deemed final. Your appeal of this letter must contain information rebutting our determination and you must provide a supporting documentation relevant to the rebuttal. Your appeal hearing request should be sent to:

Roger Hsu, Manager, Certification Unit, The Port Authority of NY & NJ, Office of Business and Job Opportunity, 233 Park Avenue South, 4th Floor, New York, NY 10003.

Counsel at its discretion may represent Franklin Equipment Services Corp. Should you choose to be represented by counsel, please indicate such in the request for an appeal hearing? A firm that has been denied certification as a Woman-owned Business Enterprise cannot reapply for certification until two years from the date of this notice. Therefore Franklin Equipment Services Corp. will be ineligible for certification until January 28, 2013.

Sincerely,

Ms. Weicong Mao

Business Analyst, Certification Unit
Office of Business and Job Opportunity

Att. M/WBE Guidelines



THE PORT AUTHORITY OF NY & NJ

February 1, 2011

Ms. Hazuki Mounier
President
Infinite Glass and Metal, Inc.
201 Route 59 Building C3
Hillburn, NY 10931

Dear Ms. Mounier:

Thank you for submitting the Uniform Certification Application to the Port Authority of New York and New Jersey for consideration as a Woman-owned Business Enterprise. After careful examination of the application and supporting documentation you submitted on **December 2, 2010**, this office does not deem the applicant, **Infinite Glass and Metal, Inc.** eligible for Port Authority certification as a Woman-owned Business Enterprise (WBE) for Port Authority contracts and opportunities.

The application request for certification has been denied for the following reasons:

1. The ownership and controlled interest of the business by the woman is less than 51%
(Seen on the 2009, 2008, and 2007 Tax Form 1120s Schedule K-1)
2. The woman owner does not exercise real control over the critical aspects of the business
(Woman-Owner did not sign off on major agreements like office lease agreement, and equipment agreements)
3. The ownership and control by a woman is not real, substantial and continuing, and does not go beyond the pro forma ownership of the firm as reflected in its ownership documents.
4. The woman does not possess the power to direct the management and policies of the firm, and to make the day-to-day decisions of the operations. *(Woman-owner does not hold the expertise/experience in the line of work seen on resume)*

Based upon the foregoing, we have determined that **Infinite Glass and Metal, Inc.** does not meet the requirements as a WBE firm for Port Authority contracts and opportunities.

Should you wish to appeal this decision, you must submit a written request for an appeal hearing within thirty days of the date of this letter. If an appeal hearing is not requested before **March 1, 2011**, this decision shall be deemed final. Your appeal of this letter must contain information rebutting our determination and you must provide any supporting documentation relevant to the rebuttal. Your appeal-hearing request should be sent to: Rodger Hsu, Operational Support & Compliance. The Port Authority of NY & NJ, Small Business Programs, 233 Park Avenue South, 4th Floor, New York, NY 10003.

233 Park Avenue South, 4th Floor
New York, NY 10003
T: 212 435 7802



THE PORT AUTHORITY OF NY & NJ

~~Counsel at its discretion may represent **Infinite Glass and Metal, Inc.** Should you choose to be represented by counsel, please indicate such in the request for an appeal hearing.~~

A firm that has been denied certification, as a Woman-owned Business Enterprise cannot reapply for certification until two years from the date of this notice. Therefore, **Infinite Glass and Metal, Inc.** will be ineligible for certification until February 1, 2013.

Sincerely,

Marvin Morency
Business Development Representative
Office of Business & Job Opportunity

233 Park Avenue South, 4th Floor
New York, NY 10003
T: 212 435 7802



THE PORT AUTHORITY OF NY & NJ

January 25, 2011

Ms. Alina Seyler
Vice President
Carpet Fashion Floor Coverings, Inc.
501 5th Avenue
New York, NY 10017

RE: Denial of Minority Woman Business Enterprise (MWBE) Certification

Dear Ms. Seyler:

Thank you for submitting your DBE Certification Application to The Port Authority of New York and New Jersey for consideration as a Minority Woman Business Enterprise (MWBE). Based upon examination of the documentation submitted and additional information received, this office has concluded that Carpet Fashions Floor Coverings, Inc. does not meet the eligibility criteria set forth by The Port Authority of NY & NJ for certification as a Disadvantaged Business Enterprise.

Accordingly, Carpet Fashions Floor Coverings, Inc. is hereby denied MWBE certification and is deemed ineligible to participate in The Port Authority of NY & NJ Minority Woman Business Enterprise (MWBE) Program.

An eligible MBE or WBE shall be an independent business. The ownership and control by minorities or women shall be real, substantial and – continuing, shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The minority or women owners shall enjoy the customary incidents of ownership interests, as an examination of the substance rather than the form of arrangements. It appears Carpet Fashions Floor Coverings Inc. is not being operated as an independent Minority Woman Business Enterprise.

Although according to your MWBE application, you are 51% owner of the firm and William Seyler is 49% owner of the firm, Mr. Seyler appears to control the day-to-day operations of the firm. Mr. Seyler holds the title of President of the company according to his resume and you hold the title of Vice President. The Port Authority of NY & NJ Guidelines state a Minority or Woman Business Enterprise owner must hold the highest officer position in the company (CEO or President.) In addition, the Minority or Women Business owners must possess the power to direct or cause the direction of the management and policies of the firm and make day-to-day as well as long-term decisions on matters of management, policy and operations. According to the letter submitted by Chase Bank dated August 31, 2010 William Seyler is the only signer on your business account. It appears your duties as owner of Carpet Fashions Floor Coverings, Inc. is compromised because your restrictions

233 Park Avenue South
New York, NY 10003



THE PORT AUTHORITY OF NY & NJ

as a signatory on the business account. Lastly, according to the Officer Schedule of Salaries, Mr. William Seyler amasses a salary of \$265,000 and you amass a salary significantly lower at \$130,000. In addition, according to your 2009 1120S tax return, Mr. William Seyler was also compensated an amount of \$510,000.

These findings provide the basis for the Port Authority of NY/NJ's determination that Carpet Fashions Floor Coverings, Inc., Inc. does not meet the eligibility criteria for MWBE certification.

Should you wish to appeal this decision, you must submit a written request for an appeal hearing within thirty days of the date of this letter. If an appeal hearing is not requested before February, 24, 2011 this decision shall be deemed final. Your appeal of this letter must contain information rebutting our determination and you must provide any supporting documentation relevant to the rebuttal. Your appeal-hearing request should be sent to: Roger Hsu, Manager, The Port Authority of NY & NJ, Office of Business and Job Opportunity, 233 Park Avenue South, 4th Floor, New York, NY 10003.

Counsel at its discretion may represent Carpet Fashion Floor Coverings, Inc. Should you choose to be represented by counsel, please indicate such in the request for an appeal hearing.

A firm that has been denied certification, as a Minority Woman-owned Business Enterprise cannot reapply for certification until two years from the date of this notice. Therefore, Carpet Fashion Floor Coverings, Inc. will be ineligible for certification until January 25, 2013.

Very truly yours,

Nadir A. Jones
Business Development Representative
The Port Authority of NY & NJ
Office of Business & Job Opportunity
233 Park Avenue South 4th Floor
New York, NY 10003

233 Park Avenue South
New York, NY 10003

THE PORT AUTHORITY OF NY & NJ

February 11, 2011

Ms. Branka Grgas
President
Solar Insulation Co., Inc.
56-32 56 Street
Maspeth, NY 11378

Via U.S. Mail

Dear Ms. Grgas:

Thank you for submitting the Certification Application to the Port Authority of New York and New Jersey for consideration as a Woman-owned Business Enterprise (WBE). After careful examination of the application and supporting documentation, this office does not deem the applicant Solar Insulation Co., Inc. eligible for Port Authority certification as a WBE for Port Authority contracts and opportunities. This firm appears not to operate as a woman operated business, but as a family operated business, which is contrary to our guidelines.

The application request for certification has been denied for the following reasons:

The following standards are used in determining whether a firm is owned and controlled by one or more women. The elements of ownership must be clear and apparent for a firm to be considered eligible as a WBE.

Our Guidelines states that a woman owner shall possess the power to direct and to cause the direction of the management and policies of the firm and to make the day-to-day major decisions on matters of management, policy and operation.

- Ms. Branka Grgas's resume indicates her responsibilities at Solar Insulation Co., Inc. as "office operations, accounts receivable, payroll, general ledger, estimating contracts, financial operations, install software, and troubleshoot hardware and software problems." However, Mr. Marin Grgas is the mechanical insulator who is responsible for the company's core service--install insulation on ductwork and piping. He is the member of International Association of Heat & Frost Insulators and Asbestos. Mr. Marin Grgas's expertise in insulation is critical to the company. It appears to us that you rely on Mr. Marin Grgas's expertise to operate the day-to-day operation.

Our Guidelines also state that an eligible WBE must be an independent business. The ownership and control by the woman must be real, substantial and continuing, and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The woman owner shall enjoy the customary incidents of ownership, and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements.

- The company was originally established by Mr. Marin Grgas's father Mr. Andelko Grgas. You acquired the business from Andelko Grgas without paying fair market value of the ownership interest. That was a transfer instead of purchasing of ownership to acquire the majority shares of the business.

Based upon the foregoing, we have determined that Solar Insulation Co., Inc. is a family operated business. This arrangement may be good business practice, but it does not meet the requirements as a WBE firm for Port Authority contracts and opportunities. However, we have determined that the firm is eligible for certification in our Small Business Enterprise (SBE) program. Therefore, Solar Insulation Co., Inc. is certified as SBE with Port Authority NY/NJ.

Should you wish to appeal this decision, you must submit a written request for an appeal hearing within thirty days of the date of this letter. If an appeal hearing is not requested before March 11, 2011, this decision shall be deemed final. Your appeal of this letter must contain information rebutting our determination and you must provide a supporting documentation relevant to the rebuttal. Your appeal hearing request should be sent to: Roger Hsu, Manager, Certification Unit, The Port Authority of NY & NJ, Office of Business and Job Opportunity, 233 Park Avenue South, 4th Floor, New York, NY 10003.

Counsel at its discretion may represent Solar Insulation Co., Inc. Should you choose to be represented by counsel, please indicate such in the request for an appeal hearing? A firm that has been denied certification as a Woman-owned Business Enterprise cannot reapply for certification until two years from the date of this notice. Therefore, Solar Insulation Co., Inc. will be ineligible for certification until February 11, 2013.

Sincerely,
Ms. Weicong Mao
Certification Unit
Office of Business and Job Opportunity
Att. M/WBE Guidelines

233 Park Avenue South
New York, NY 10003

HOWARD SLOTNICK
ATTORNEY AT LAW
399 KNOLLWOOD ROAD
WHITE PLAINS, NEW YORK 10603
TELEPHONE (914) 949-9500
FACSIMILE (914) 949-2366

March 2, 2011

Mr. Roger Hsu – Manager
The Port Authority of New York & New Jersey
Certification Unit
Office of Business and Job Opportunity
233 Park Avenue South – 4th Floor
New York, New York 10003

Received

MAR 7 2011

Re: Solar Insulation Co., Inc.;
Women Business Enterprise Application

Certification Unit
Office of Business & Job Opportunity

Dear Mr. Hsu:

Preliminarily, it should be noted that this office represents Solar Insulation Co., Inc. (Solar), which approximately two years ago applied for appropriate Women Business Enterprise (WBE) certification relative to the Port Authority of New York and New Jersey. In a letter dated February 11, 2011, the unit below denied Solar's application. Accordingly, Solar is appealing the subject decision to the relevant appeal unit and is requesting a hearing regarding the same.

It must be noted that not once during the past two years, commencing from the time Solar interposed its application for certification, did anyone from the lower certification unit interview Ms. Branka Grgas (Branka), who is the prime focus of this process, the President of Solar and the holder of all of its outstanding shares of stock. Had a diligent and thorough investigation occurred, the outcome of this drawn out process would certainly have been otherwise. In fact and during the past two years, Branka has advised that while she attempted to communicate with personnel from the certification unit she apparently had major difficulties in establishing such contact and in addition, experienced a frustrating change in personnel on several occasions. Irrespective of the foregoing, a copy of the February 11th letter (Decision) is annexed as exhibit "A".

Essentially and boiled down to its basics, Ms Mao inexplicably concluded that Mr. Marin Grgas - Branka's husband, appears to be the person responsible for the operation of Solar. This is absolutely and most positively incorrect. In fact, any diligent inquiry would have confirmed that Branka is the key to Solar's administrative operation and essentially does everything for Solar except the actual installation of insulation.

Branka commenced working for Solar over twenty two years ago. Solar was initially owned by her father-in-law. Prior to her becoming the sole owner of Solar, Branka devoted over twelve years towards learning every facet of the insulation business. Finally, and in approximately

Mr. Roger Hsu – Manager
The Port Authority of New York & New Jersey
Certification Unit
Solar Insulation Co., Inc. – WBE Application
March 2, 2011 – Page 2

2001 and after mastering the business, as well as assuming full responsibility for the operations of Solar, all outstanding shares of stock previously held by Branka's father-in-law were transferred to Branka, as evidenced by duly executed stock certificates and related stock powers, annexed as exhibit "B". Branka had in fact paid her dues and became the instrumental driving force of the business, as she remains to this day.

It is also noteworthy that at or about the time the transfer of stock was made, the office of the company was relocated to 154 Hillside Boulevard, New Hyde Park, New York, which is where Branka resides, but most importantly is where she maintains her full-time separate office. Annexed as exhibit "C" is the amended and filed Certificate of Incorporation manifesting the above. Currently, and for the past eleven years Branka has been the sole and exclusive owner of Solar and is its operational force, notwithstanding the Decision below.

Before I advance into what Branka does, which the documents annexed will substantiate, it appears that Ms. Mao in the Decision doubted either Branka's expertise or questioned the validity of her indispensable nature to Solar. Perhaps this office had been faced with too many questionable applications in the past and projected this cynicism on to Branka. To dispel any notion that the Appeal Board may have towards Branka's credentials, and that she may merely be a figure head for Solar, I make the following request: This board is invited to bring any insulation expert in the HVAC field to the appeal hearing and question Branka as to any facet of HVAC insulation, including materials, labor rate jurisdiction, general operational aspects of the expertise of an insulation contracting company, submittals of shop standard material, estimates or any other questions that such Board member, expert or anyone else for that matter may deem appropriate. The foregoing manifests the confidence level that Branka has in this particular field which unfortunately was disregarded or cynically questioned by the lower certification unit. Noteworthy is that Solar has already received WBE status from the New York City School Construction Authority, as evidenced by the certification annexed as exhibit "D". Why the unit below decided as it did is a question which we will inquire of, given the incorrect nature of the same and the consequent unfortunate denial of WBE certification. In fact, it is someone like Branka that the minority program is geared to protect.

For the past twenty years, but in particular over the past decade or more, Branka has been responsible for all administrative and other activities of Solar. She solely estimates projects and negotiates contracts with mechanical contractors, is singularly responsible for assembling shop standards and submittals, negotiates insurance premiums and audits with relevant carriers and the State Insurance Fund, issues payroll, is responsible for handling the financial affairs of Solar, and is the singular individual who deals with Solar's accountant, bank officers, insurance agents and any other business associates. To corroborate the foregoing, the following documents are collectively annexed as exhibit "E":

Mr. Roger Hsu – Manager
The Port Authority of New York & New Jersey
Certification Unit
Solar Insulation Co., Inc. – WBE Application
March 2, 2011 – Page 3

- a) A letter from Solar's accountant;
- b) Samples of purchase orders issued by United Air Conditioning Corp., Grand Mechanical Corp., and M & G Mechanical Corp., all issued to Branka Grgas;
- c) Samples of Solar's quotations, submitted for bidding projects all performed by Branka;
- d) Letters from the B & G Group, which is Solar's insurance carrier;
- e) A letter from HSBC which is Solar's bank;
- f) A letter from United Air Conditioning Corp.;
- g) A letter from Grand Mechanical Corp.;
- h) Unlimited continuing guarantee issued by HSBC confirming Branka as the sole guarantor of Solar's line of credit;
- i) New York State Insurance Fund premium audit showing the resolution of the audit conducted with Branka;
- j) Samples of quarterly unemployment insurance returns executed by Branka with all information compiled by her;
- k) Copies of tax returns issued on behalf of Solar covering years 2006, 2007 and 2008, all signed by Branka Grgas as President and who is also responsible for compiling all corporate financial data; and
- l) Copies of various emails to Branka soliciting quotations for a variety of projects issued by Grand Mechanical Corp., which is Solar's largest client.

It must be noted that the foregoing are mere samples illustrating some correspondence and documentation showing Branka to be the prime communicative agent and operational force of Solar. In the event this panel requires additional documents, the same can easily be provided.

Comment must also be made as to the assertion below that Marin Grgas – Branka's husband, is the main force behind Solar. That remark made by an individual who clearly did not appropriately investigate the facts underlying Solar's operations, is not only unfortunate, but is utterly incorrect. An employee list showing a variety of employees employed by Solar over the past 6 – 8 years, who would be sought by Branka from the relevant union local and corresponding payroll register all prepared by Branka, are annexed as exhibit "F". Simply put, Mr. Grgas is not the only insulation laborer used by Solar. He may be its most important field laborer but is far from the characterization that was portrayed below. In fact, Mr. Grgas is relegated to purely field installation services. All financial, management and other services are performed by one person – Branka. Whether she performs field services or not, is not the key question. To answer otherwise would be absurd. Further, the fact that Marin Grgas is Branka's husband is not material to what Branka actually does on behalf of Solar.

That Branka is also fundamentally involved with Local 12, which union is affiliated with insulation contractors also cannot be disputed. An Agreement of Working Conditions

Mr. Roger Hsu – Manager
The Port Authority of New York & New Jersey
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executed by Solar and in particular by Branka, is annexed as exhibit "G". That she is also responsible for completing and compiling all required paperwork items involving public agency work cannot be disputed. That Branka is also responsible for the operational financial practicality of Solar is clear. In short, she is responsible for every facet of Solar's activities. The one thing that Branka does not do is install insulation, which is reserved for the insulation workers including her husband. It would be an insult for anyone to question her veracity and the indispensable work that she performs for Solar.

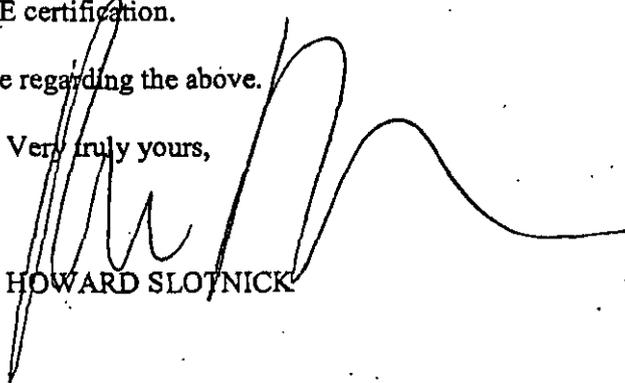
If this appeal Board were to review the guidelines for certification it will determine without question and without doubt that Branka meets all of the elements required for WBE certification. That her father-in-law, Andelko Grgas, the original owner of Solar is also aware of Branka's talents, is evidenced by the fact that Branka was extended a Power of Attorney approximately six years ago to handle his financial affairs. That Power-of-Attorney is still in force today, a copy of which is annexed hereto as exhibit "H".

Upon receipt of this letter and the review of the same, it is respectfully requested that if the Board requires any additional documentation verifying Branka's credentials and her stature as the sole owner and operating force of Solar, then these documents will be submitted forthwith or in any event will be provided at the anticipated appeal hearing, which hopefully will occur in expeditious fashion. In fact, the failure to provide appropriate certification, at this time is detrimental to Solar, which is not what is contemplated by this affirmative action plan.

Lastly and it merits repetition, if the Board deems it necessary to have any expert chosen by it to question Branka, then with all due respect we would anxiously welcome this opportunity. The affirmative action program is intended to benefit, in part, women operated businesses. Here, a drastic mistake occurred when Solar and Branka were denied such right of certification. The initial processor simply did not act with required diligence when the subject application was rejected. A simple interview would have shown the invaluable nature that Branka possesses with respect to Solar's operations. Accordingly, it is respectfully requested that upon appropriate review Solar be granted the subject WBE certification.

Thank you for your anticipated assistance regarding the above.

Very truly yours,



HOWARD SLOTNICK

HS: fpa

Enclosures



THE PORT AUTHORITY OF NY & NJ

May 12, 2011

Ms. Branka Grgas
Solar Insulation Co., Inc.
56-32 56th Street
Maspeth, NY 11378

**SUBJECT: PORT AUTHORITY OF NEW YORK AND NEW JERSEY MBE/WBE
CERTIFICATION APPLICATION HEARING - SOLAR INSULATION CO., INC.**

Dear Ms. Grgas:

After a careful review of your certification application, and all supporting documents, as well as your testimony at the April 13, 2011 hearing, I have determined that Solar Insulation Co., Inc. is eligible for certification under the Port Authority's Guidelines for Certification of Minority Business Enterprise and Women-owned Business Enterprises (MBE/WBE). I have directed the Office of Business Diversity and Civil Rights to forward the formal certificate and letter to you.

Please note, under the Port Authority's MBE/WBE Certification Guidelines, the Port Authority should be notified within 30 days of any change in the company's name, business location and/or ownership/control. In order for the Port Authority to maintain a high degree of integrity in its MBE/WBE program, it is essential that that you follow these guidelines and notify the Port Authority's Office of Business Diversity and Civil Rights if/when there is a material change in your company.

Sincerely,

Thomas F. Clyne
Hearing Officer
Program Manager, Port Planning
Capital Programs Division
Port Commerce Department

cc: The Port Authority of NY/NJ

Weicong Mao
Lash Green
Roger Hsu
Joan Bennett, Esq.

Solar Insulation Co., Inc.
Howard Slotnick

THE PORT AUTHORITY OF NY & NJ

July 20, 2011

Mrs. Erin Lynam
President

Atlantic Reinforcing Concrete CO.
14 Burt Drive, Unit G
Deer Park, NY 11729

Dear Mrs. Lynam:

Thank you for submitting the Certification Application to the Port Authority of New York and New Jersey (The Port Authority) for consideration as a Woman-owned Business Enterprise (WBE). After careful review of the application and supporting documentation, you submitted on May 25, 2011, this office does not deem the applicant, Atlantic Reinforcing Concrete Co. eligible for certification as a WBE for Port Authority contracts and opportunities.

Based on the eligibility standards of The Port Authority of NY & NJ's MWBE Certification Guidelines (Guidelines), the fundamental basis for this decision is twofold: 1) the ownership of the company does not seem "real, substantial and continuing." It appears the company's ownership is a pro forma structure for the purpose of qualifying for certification as a WBE. 2) The documented owners of the company do not seem to have the appropriate technical knowledge/expertise to make, on their own, major decisions on matters of management, policy and operations for the company.

1) The company appears to be a pro forma structure to qualify for WBE Certification

Given the information we were provided in the application and supporting documents, we believe your ownership in the company does not go beyond pro forma, and that your ability to make major decisions, particularly on (technical) matters of management and operation, pales in comparison to that of Mr. Thomas Lynam, the non-minority former owner who founded the company. Although, Mr. Lynam transferred (gifted) his ownership in the company to you without receiving any consideration, he is still significantly involved in the company's operation as probably its most important employee. The reason for this assertion is that among all former and current owners/employees of the firm, Mr. Lynam appears to have the most appropriate set of skills and knowledge to lead the operation of a rebar installation company such as Atlantic Reinforcing Concrete.

In our Guidelines, Subsection 3 of Section IV: Requirements for MBE/WBE Certification states: "...elements of ownership must be clear and apparent for a firm to be considered eligible as an MBE or WBE." Subsection 3 (a) elaborates further as follows:

The ownership and control by minorities or women shall be real, substantial and continuing, and shall go beyond pro forma ownership of the firm as reflected in its ownership documents. The minority or woman owners shall enjoy the customary incidents of ownership, and shall share in

THE PORT AUTHORITY OF NY & NJ

the risks and profits commensurate with their ownership interest, as demonstrated by an examination of the substance rather than form of arrangements."

When we apply the above standard to test the validity of your ownership of Atlantic Reinforcing Concrete, we find your majority ownership in the company seems structured more in form than substance. Hence, given this observation, the following are some issues we believe challenge the claim that your ownership of the company is more in substance and real than in form to qualify for WBE certification.

In addition to not providing any consideration to Mr. Lynam for his shares he transferred to you, close examination of the owners' resumes compared to the one submitted for Mr. Lynam reveal the following: From 1994 to 2006, you, Ms. Erin T. Lynam, functioned in various administrative capacities. Your employment positions ranged from receptionist to production assistant, none of which was for a construction or construction type company. From 2005 to present, Ms. Andrea Lynam has been employed as a teacher. There is nothing in her training nor work experience, until her involvement with Atlantic Reinforcing in 2006, that suggest she has had training, work experience, or otherwise in the installation of rebar for the strengthening of concrete for bridges, tunnels and foundations. Conversely, when we examine Mr. Lynam's resume, not only has he functioned as a laborer in various construction capacities, particularly in installing iron in a manner similar to what Atlantic Reinforcing Concrete does, he has functioned in a leadership capacity as a foreman on construction projects, and has even been formally trained in Metal Lathers and Reinforcing iron workers apprentice program.

Given the depth and breadth of Mr. Lynam's background in the specific work Atlantic Reinforcing Concrete does, and given that he founded the company and then gifted his shares to you without receiving any consideration in return, we are inclined to believe the primary purpose of this transfer of shares was to afford you majority ownership of the company so that it could qualify as a woman-owned business. It seems reasonable to draw such an inference when there is no evidence in the application and other documentation that proves the contrary. In fact, Mr. Lynam is still a fulltime staff member of the company and by all accounts appears to be its most important employee. He oversees the most critical part of the company's operation (i.e., the actual installation of rebar) and is its highest paid employee.

2) *The current owners do not seem to have the appropriate technical skills & experience to run the company*

We are not convinced that the current women owners have the appropriate technical knowledge and experience to "exercise real control over the critical aspects of the business." For example, we consider a "critical aspect" of the company's operation to be the installation of rebar. Based on the information presented throughout your application and supporting documents, there is nothing that suggest that neither of the current owners would have the ability to go in the field, for example, and function as a foreman and direct the company's laborers in the installation of rebar on a bridge.

THE PORT AUTHORITY OF NY & NJ

On the other hand, Mr. Lynam appears to have the ability to lead a team of workers on such a project. The information provided in the application and supporting documents show he is the most qualified and keenly involved in this part of the company's operation. In addition, since Mr. Lynam is neither a minority nor a woman, then his level of involvement in this critical aspect of the company's operation undermines the eligibility of the firm for certification. This contention is supported by our Guidelines, which suggest a firm's ineligibility for certification seems likely when, "shareholders, members, managerial employees or others associated with the firm who are not women appear to be disproportionately responsible for the operation of the firm."

Furthermore, the Guidelines suggest, evidence of ineligibility for certification also includes when "family members, whether related by blood or through marriage, who are not women play major roles in the operation of the business or appear to be the primary possessors of the expertise necessary to operate the firm. This statement in our guidelines appears to apply to Atlantic Reinforcing Concrete since, as discussed in the preceding paragraphs; Mr. Lynam is a non-minority man who is related to you and Andrea Lynam. Additionally, Mr. Lynam appears to be the "primary possessor of the expertise" in the area of work the company does, which affords him the ability to play a major role in the most critical part of its operation.

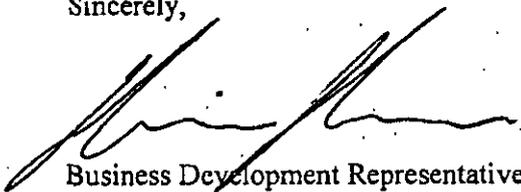
Therefore, based on all of the aforementioned, we do not believe Atlantic Reinforcing Concrete meets our Guidelines' eligibility criteria for certification as WBE.

Should you wish to appeal this decision, you must submit a written request for an appeal hearing within thirty days of the date of this letter. If an appeal hearing is not requested before **August 20, 2011**, this decision shall be deemed final. Your appeal of this letter must contain information rebutting our determination and you must provide any supporting documentation relevant to the rebuttal. Your appeal-hearing request should be sent to Roger Hsu, Manager, Certification. The Port Authority of NY & NJ, Office of Business Diversity and Civil Rights, 233 Park Avenue South, 4th Floor, New York, NY 10003.

Counsel at its discretion may represent **Atlantic Reinforcing Concrete Co.** should you choose to be represented by counsel, please indicate such in the request for an appeal hearing.

A firm that has been denied certification, as a Woman-owned Business Enterprise cannot reapply for certification until two years from the date of this notice. Therefore, **Atlantic Reinforcing Concrete Co.** will be ineligible for certification until **May 25, 2013**.

Sincerely,



Business Development Representative
Office of Business Diversity and Civil Rights

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August 9, 2011

Mr. Roger Hsu
Manager, Certification
The Port Authority of NY & NJ
Office of Business Diversity and Civil Rights
233 Park Avenue South
4th Floor
New York, New York 10003

Received

AUG 16 2011

Received
Office of Business & Job Opportunity

AUG 16 2011

Certification Coordinator
Office of Business & Job Opportunity

Re: Atlantic Reinforcing Concrete Company, Inc.
Appeal - WBE Certification Denial

Dear Mr. Hsu:

I have been retained by the above-captioned WBE Applicant and hereby submit this appeal, and request for a hearing, on its behalf. On July 20, 2011, the Port Authority of New York and New Jersey (PANYNJ) denied the application of Atlantic Reinforcing Concrete Company, Inc. (Atlantic), for certification as a Women-Owned Business Enterprise. This correspondence constitutes an appeal of that determination, and a request for an appeal hearing. PANYNJ undoubtedly did not consider all the facts in the record, viewed as a whole, when rendering its decision with respect to this matter. The appeal is based on the Authority's incorrect reading of the applicable Guidelines, incorrect interpretation of the facts of this matter and/or an incorrect application of the Guidelines to the facts of the instant matter, all of which, based on the entire administrative record, were unsupported by substantial evidence, were inconsistent with the substantive and procedural provisions of the statutory and regulatory guidelines and requirements, and were arbitrary and capricious. The decision therefore resulted in fundamental unfairness to the Applicant and substantially prejudiced the opportunity of the Applicant to present its case. This appeal is timely as it is being filed no later than thirty (30) days after the rendering of the PANYNJ determination of July 20, 2011.

Atlantic Reinforcing Concrete Company, Inc. is a Woman-Owned Business Enterprise, certified as such by New York State Empire State Development on March 17, 2010. At the time of that approval, the company was owned fifty one percent (51%) by Erin and Andrea Lynam and forty nine percent (49%) by Thomas and Roger Lynam. In order to properly reflect the ownership and control of the company, and in compliance with the advice and instruction of their accountant, shares from Thomas and Roger Lynam were transferred to Erin and Andrea Lynam on May 1, 2010. As a result of that transfer, Erin and Andrea each own fifty percent (50%) of Atlantic, represented by one hundred (100) shares each.

Atlantic is in the business of bending rebar for use in concrete applications such as foundations, walls and columns. In New York State, the *actual* work required to be performed in bending rebar *must* be performed by the Local #46 Metallic Lathers Union and Reinforcing Ironworkers of New York and Vicinity of the International Association of the Bridge, Structural, Ornamental and Reinforcing Iron Workers.¹ The owners of *any* company performing these types of services are prohibited from engaging in the actual work, which must be performed by Union Lathers, Journeymen, Apprentices and Foreman. While the field work is being performed by Union employees, as mandated, the actual ownership and daily business operations of Atlantic are controlled by the minority owners, Erin and Andrea.

The voluminous record that was submitted by Applicant to PANYNJ clearly sets forth the management structure of Atlantic, and demonstrates that ownership, management and control of Atlantic on a daily basis is performed *exclusively* by Erin and Andrea Lynam. That ownership and control was shown to be real, substantial and continuing. The record likewise details the Union contractual requirements, which dictate that the work that Atlantic is engaged in, bending rebar, *must* be performed *solely* by the company's employees, as hired through the local Union. PANYNJ was aware of these factors, but ignored, or incorrectly applied, their significance when making its determination. As will be seen below, several of the Authority's conclusions were patently incorrect: Mr. Thomas Lynam is not a "former owner who founded the company", he does not have "the most appropriate set of skills and knowledge to *lead the operation of a rebar installation company* (emphasis added)", and it is not true that "the primary purpose of this transfer of shares was to afford you majority ownership in the company", since the minority women *already had* majority ownership in the company. As will also be seen below, PANYNJ has misinterpreted the significance of their correct analysis that Mr. Lynam is Atlantic's "most important *employee* (emphasis added), that "he has functioned as a laborer in various construction capacities", "is still a full time staff member".

Although the two (2) points made by PANYNJ in its determination are closely inter-related, this appeal request will follow the heading structure set forth in the denial correspondence issued by PANYNJ. The information and arguments contained in each of the enumerated responses is equally applicable to the other.

1) *The company appears to be a pro forma structure to qualify for WBE Certification*

PANYNJ contends that "we believe your ownership in the company does not go beyond *pro forma*, and that your ability to make major decisions, particularly on (technical) matters of management and operation, pales in comparison to that of Mr. Thomas Lynam, the non-

¹ A copy of the Agreement between Atlantic and the Union is appended hereto as Exhibit "A".

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minority former owner who founded the company.” That allegation, along with PANYNJ’s further assertions pertaining to the experience of Mr. Lynam and the business activities of the minority owners are incorrect, conclusory and self-serving. In support of its erroneous conclusion, PANYNJ identifies *none* of the work it claims that Mr. Lynam provides to Atlantic Reinforcing that would make that entity ineligible for certification. PANYNJ likewise ignores the significant role of the women owners and identifies *none* of the work performed by Erin and Andrea Lynam in the course of their controlling the management and daily business activities of Atlantic and in actually exercising ownership, management and control of the company. In addition, the PANYNJ decision is completely devoid of any explanation of how its denial takes into account the extensive business activities undertaken by Erin and Andrea, as detailed in their application, and in the materials submitted with their application. Those activities include, but are but are not limited to:

ACTIVITY:

PERFORMED BY:

| | |
|---|--------------|
| Financial Decisions | Erin /Andrea |
| Estimating | Erin/Thomas |
| Preparing Bids | Erin |
| Negotiating Bonding | Andrea |
| Marketing & Sales | Andrea |
| Hiring & Firing | Erin/Andrea |
| Supervising Field Operations “per union contract” | Thomas |
| Purchasing Equipment/Supplies | Erin/Andrea |
| Managing and Signing Payroll | Erin |
| Negotiating Contracts | Erin |
| Signatures for Business Accounts | Erin/Andrea |

The listed activities, along with the other activities delineated in the application constitute the substance of the “principal business activities” that Atlantic engages in, as opposed to the “work performed” at Atlantic by Union employees. Those employees include managers and key employees that are hired by the minority Applicants, Erin and Andrea. The substance of the principal business activities undertaken by Applicants constitutes the “real, substantial and continuing ownership and control”, of the business, which is clearly and solely exercised by Erin and Andrea. Therefore, the application must be approved. Nowhere in its correspondence denying the certification is it alleged that the Applicants have not undertaken the tasks listed above, or that someone other than the minority Applicants has performed those tasks. PANYNJ cites no examples to support its contention that Erin and Andrea are not performing some of the activities listed above, or conversely, that someone other than Erin or Andrea are performing those activities. Unexplained, by PANYNJ, are the constraints of the Union contract, which require the Company to engage Union employees to perform the on-site duties of bending and

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erecting rebar. Even though the Union Agreement in question was supplied to PANYNJ; it is never even mentioned in the Denial letter. Likewise ignored is the status of Mr. Lynam as a Union laborer and foreman, and the Union work requirements that necessitate Union laborers for performing field work. Nor is there any recognition of the other foreman that are also employed, through the Union, to work for Atlantic. These glaring omissions evidence a careless analysis that must be fatal to the determination at hand.

The record demonstrates that Erin and Andrea Lynam undoubtedly have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's ownership, daily operations, management, and policymaking. That 'critical evaluation', which evidences real, substantial and continuing ownership and control by Erin and Andrea, includes the review of information provided by the Union employees that they have hired, including the foremen. Erin and Andrea have demonstrated the ability to intelligently and critically evaluate such information, and use this information to make independent decisions concerning the firm's daily operations, management, and policymaking, in the manner in which they have overseen the operations of Atlantic, and in the manner in which they have grown the business and realized remarkable profits. While PANYNJ has, on one hand, downplayed the roles of the minority Applicants, it has, on the other hand, failed to reference any single decision regarding the ownership, daily operations, management or policymaking of Atlantic that it claims was performed by Tom Lynam, or *anyone* other than Erin or Andrea.

When viewed comprehensively with respect to the language of the entire regulation it is apparent that PANYNJ has misinterpreted the regulation and has misapplied it to the circumstances of this application. On the basis of this analysis, it is clear that the PANYNJ determination is erroneous, unsupported by substantial evidence, inconsistent with substantive and procedural provisions and is arbitrary and capricious. The decision therefore resulted in fundamental unfairness to the appellant and substantially prejudiced the opportunity of the appellant to present its case. Therefore the determination must be overturned, since Erin and Andrea have competently proven that they are in complete control of the ownership, daily operations, management and policymaking of Atlantic.

2) *The current owners do not seem to have the appropriate technical skills & experience to run the company*

In most businesses, including the concrete reinforcing industry, the owners are not engaged in the actual work - swinging hammers to build a house, or wielding wrenches to fix pipes, or even directly assisting customers. Similarly, in government organizations, certain work is compelled by Union contract to be performed by employees in a particular title, and all other employees, as well as supervisory staff, are prohibited from performing the work in question. In

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the field of iron work, including work performed by Atlantic's employees, the Union staff are hired for in-field, on-site functions, while the day-to-day running of the business: the decision-making, the hiring and firing, the procuring of new contracts or sub-contracts, the financial determinations, the advertising, and myriad other "big picture"/management, ownership and operational determinations are made by the owners of the company, Erin and Andrea Lynam. Atlantic is no different in that regard than other businesses, including other concrete reinforcing businesses. Within the context of the Union contractual requirements, Erin and Andrea have fully complied with the PANYNJ Guidelines. Contrary to the assertions of the Authority, the installation of re-bar is not a "critical aspect" of the business operations of Atlantic. It is, of course, the principal *service* provided to its customers by Union laborers at the end of a process that includes the performance, by Erin and Andrea, of a number of "critical" ownership and management duties - without which there would be no installation of re-bar to perform.

The result that these women should have been granted WBE status, is unaffected by the fact that Tom Lynam has experience as a Union iron worker. Tom Lynam is a foreman, but is only one of five foremen that are regularly hired by Atlantic, *as obligated by Union rules*, to oversee jobs that Atlantic has been contracted to perform. Tom Lynam performs no different services for the company than any of the other four foremen, and performs none of the functions of ownership, management or control, which are exclusively performed by Erin and Andrea. In fact, PANYNJ nowhere alleges that Tom has in any way controlled the ownership, management or daily business operations of Atlantic. PANYNJ fails to note any single instance in which Tom exercised "ownership" or "control" over the Company or the management and daily business operations of Atlantic. The conclusory allegations contained in the PANYNJ decision constitute an insufficient basis on which to deny the application.

Additionally, the women formulated the idea for this company, incorporated it, financed it, have run it themselves, have been able to realize tremendous gains in profits and have grown the business incredibly over the past five years. In fact, the minority Applicants proved that they generated corporate profits of \$42,500 in 2006, \$848,000 in 2007, \$1,080,000 in 2008, \$2,260,000 in 2009 and \$3,260,000 in 2010. The submitted record demonstrates that this was accomplished through the efforts of Erin and Andrea: procuring new business, hiring the proper mix of workers from the Union and intelligently managing their resources. The record also demonstrates that Tom did not participate in, or contribute to, these accomplishments, although he had previously tried to run a "business" (before the minority owners, Erin and Andrea incorporated Atlantic), which consisted of leasing a rebar bending machine to other contractors. That effort produced no financial results, as he was unable to sufficiently lease the machine, or collect payments when the machine was actually rented. By itself the marked difference between the enormous profits produced by the minority Applicants, and the lack of income realized by Tom in his previous venture, proves that the business is owned, managed and operated by Erin and Andrea, and that the involvement of Tom is limited to his role as a Union employee. While there is no dispute that the Union activities and experience of Tom is essential to the final performance of the task of installing re-bar, there is no evidence that he has *any* skill

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that would enable him to successfully run a business such as Atlantic. Whatever evidence exists regarding that issue, is exactly to the contrary.

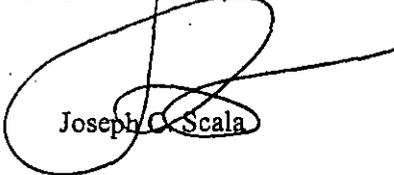
On the basis of the analysis presented above, it is clear that the PANYNJ determination is erroneous, unsupported by substantial evidence, inconsistent with substantive and procedural provisions and is arbitrary and capricious. The decision therefore resulted in fundamental unfairness to the appellant and substantially prejudiced the opportunity of the appellant to present its case. Therefore the determination must be overturned.

In conclusion, the requirements for obtaining the designation of WBE, as stated in the Guidelines are clear. PANYNJ's interpretation of the impact of those Guidelines on the application before them was erroneous. The application must be granted as the Applicants have demonstrated that Atlantic is a Women-Owned Business Enterprise.

Thank you very much for your time and your cooperation with respect to this matter.

Very truly yours,

COUCH WHITE, LLP



Joseph C. Scala

JCS/glm
Enclosure

cc: Ms. Erin Lyman (via U.S. Mail w/encl.)
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THE PORT AUTHORITY OF NY & NJ

February 1, 2012

Erin Lynam
President
Atlantic Reinforcing Concrete Co.
14 Burt Drive, Unit G
Deer Park, NY 11729

Dear Mrs. Lynam:

At your request, the Office of Diversity and Civil Rights of The Port Authority of NY & NJ (Port Authority) afforded you a hearing to permit you to provide further information relevant to your application as a Woman-Owned Business Enterprise (WBE). The hearing was held on December 20, 2011 and you represented Atlantic Reinforcing Concrete Co. along with Andrea Lynam, Vice President. I was the Hearing Officer and other representatives of the Port Authority were also present.

After an extensive and careful review of the file, your presentation at the hearing and the materials you submitted subsequent to the hearing, it is my decision as Hearing Officer that the denial of WBE certification of Atlantic Reinforcing Concrete Co. should be sustained.

This decision is based upon the information reviewed and presented to the Port Authority, which indicates that a shareholder associated with the firm who is not a minority or woman is disproportionately responsible for making operational decisions and appears to have the most appropriate set of skills and knowledge to lead the operation of a rebar installation company such as Atlantic Reinforcing Concrete. Although you and Ms. Lynam now own the company, it was transferred without compensation by Thomas Lynam, a non-minority. Mr. Lynam is still significantly involved in the company's operation and appears to be the "primary possessor of the expertise" in the company's area of work, which affords him the ability to play a major role in the most critical part of its operation. This corporate arrangement is not consistent with the Port Authority's guidelines for MBE/WBE certification.

Planning and Regional Development Department
233 Park Avenue South, 11th Floor
New York, NY 10003
T: 212 435 7000



THE PORT AUTHORITY OF NY & NJ

Mrs. Erin Lynam

- 2

February 1, 2012

In accordance with our certification guidelines, this decision is administratively final. Please be advised Atlantic Reinforcing Concrete Co. may reapply for certification on or after February 1, 2014, two years from the date of this final decision.

Sincerely,

Janet D. Cox
General Manager
Ferry Transportation
Planning & Regional Development Department

cc: R. Darcy, Port Authority
L. Green, Port Authority
R. Hsu, Port Authority
W. Mao, Port Authority

THE PORT AUTHORITY OF NY & NJ

Daniel D. Duffy
FOI Administrator

February 9, 2012

Mr. Joseph Scala
Couch White, LLP
18 Division Street, Suite 301
Saratoga Springs, NY 12866

Re: Freedom of Information Reference No. 12765

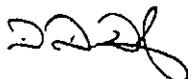
Dear Mr. Scala:

This is a response to your November 5, 2011 request, which has been processed under the Port Authority's Freedom of Information Policy (the "Policy," copy enclosed) for copies of all MWBE denials that were rendered in 2011, MWBE denial appeals filed against the Port Authority in 2011 and hearing decisions on MWBE appeals that were decided in 2011.

Material responsive to your request and available under the Policy, which consists of 24 pages, will be forwarded to your attention upon receipt of a photocopying fee of \$6 (25¢ per page). Payment should be made in cash, certified check, company check or money order payable to "The Port Authority of New York & New Jersey" and should be sent to my attention at 225 Park Avenue South, 17th Floor, New York, NY 10003.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Sincerely,



Daniel D. Duffy
FOI Administrator

Enclosure

225 Park Avenue South
New York, NY 10003
T: 212 435 3642 F: 212 435 7555