

**United States Small Business Administration
Office of Hearings and Appeals**

IN THE MATTER OF:

Pynergy, LLC,

Petitioner

SBA No. BDPE-525

Decided: July 23, 2014

ORDER GRANTING SBA'S MOTION TO DISMISS FOR LACK OF JURISDICTION

On April 28, 2014, Pynergy, LLC (“Petitioner”) appealed a determination of the U.S. Small Business Administration (“SBA”) in which the SBA denied Petitioner admission into the 8(a) Business Development program (“8(a) BD program”). *See* 13 C.F.R. parts 124 & 134.

On May 30, 2014, the SBA filed a *Motion to Dismiss for Lack of Jurisdiction* (“Motion”). In the *Motion*, the SBA noted that Petitioner was denied admission into the 8(a) BD Program “based on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control.”

In response, Petitioner claims the Court “has jurisdiction over this Appeal pursuant to 13 C.F.R. § 134.102(j)(1).” Petitioner adds that the *Motion* should also be denied “because the SBA has not met the requirement of 15 U.S.C. § 637(a)(9); 13 C.F.R. § 124.206(a). The SBA's own motion admits that it was unable to make a determination that the firm has the potential to successfully meet the business development objectives of the 8(a) BD program.”

An 8(a) BD program applicant may appeal to the Office of Hearings and Appeals (OHA) a denial of its application only if the denial is based solely upon a negative finding of social disadvantage, economic disadvantage, ownership or control.¹ 15 U.S.C. § 637(a)(9); 13 C.F.R. § 124.206(a). A denial decision based at least in part on the failure to meet any other eligibility criterion is not appealable to OHA and the Court must decline to accept jurisdiction. 13 C.F.R. § 124.206(a); 13 C.F.R. § 134.405(a)(1); *Platinum Business Services, LLC*, SBA No. BDPE-504 (Aug. 29, 2013); *Novel Wares, Inc.*, SBA No. BDP-454 (Nov. 21, 2012).

According to the Reconsideration Denial Letter, dated March 13, 2014, the SBA concluded Petitioner failed to provide sufficient documentation to overcome the SBA's

¹ Pursuant to an Interagency Agreement in effect beginning October 1, 2012, Administrative Law Judges of the U.S. Department of Housing and Urban Development are authorized to hear cases for the U.S. Small Business Administration Office of Hearings and Appeals.

determinations that (1) the firm's potential to successfully meet the business development objectives of the 8(a) BD program cannot be determined, and (2) the firm does not qualify as a small business per 13 C.F.R. § 121.² None of the bases for denial concern a finding of social disadvantage, economic disadvantage, ownership, or control. Accordingly, the Court must decline jurisdiction over the appeal.

Further. Petitioner's claims that (1) jurisdiction exists pursuant to 13 C.F.R. § 134.102(j)(1), and (2) the *Motion* should be denied because the SBA has not complied with 15 U.S.C. § 637(a)(9); 13 C.F.R. § 124.206(a) are without merit. Both 13 C.F.R. §§ 124.206(a) and 134.102(j)(1) unambiguously provide that only denials of program admission that are based solely on a negative finding of social disadvantage, economic disadvantage, ownership, or control may be appealed. And, while 15 U.S.C § 637(a)(9) requires the SBA to provide an opportunity for a hearing on the record, the statute specifically limits this requirement to denials of program admission based upon a negative determination of social and economic disadvantage, ownership, and control.

For the foregoing reasons, the Court finds that it is without jurisdiction to review the SBA's decision to deny Petitioner admission into the 8(a) BD program. Accordingly, it is hereby **ORDERED** that Petitioner's *Appeal Petition* is **DISMISSED**.

J. JEREMIAH MAHONEY
Administrative Law Judge

² An exhibit filed by Petitioner indicates that this issue was recently remanded by Administrative Judge Christopher Holleman for a new size determination, but regardless of the outcome of that remand, the matter will not [be] subject to review before this court.