

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

IN THE MATTER OF:

Spectrum of Floors, LLC,

Petitioner

SBA No. BDPE-580

Decided: January 14, 2020

APPEARANCES

Donna M. DeBenedetto, President, Spectrum of Floors, LLC, Easton, Pennsylvania

Mitchell Sherman, Partner, B2B CFO Partners, LLC, Ottsville, Pennsylvania, for the
Petitioner

Lara H. Hudson, Esq., Office of General Counsel, U.S. Small Business Administration,
Washington, D.C.

DECISION

I. Introduction and Jurisdiction

On October 15, 2019, Spectrum of Floors, LLC (Petitioner) appealed a U.S. Small Business Administration (SBA) determination denying Petitioner entry into SBA's 8(a) Business Development (BD) program. SBA concluded that the adjusted net worth of Petitioner's majority owner exceeds \$250,000, and that she therefore does not qualify as economically disadvantaged. On appeal, Petitioner contends that SBA's denial was in error because SBA double-counted the value of a rental property in determining adjusted net worth. For the reasons discussed *infra*, the appeal is granted and the matter is remanded for further review.

SBA's Office of Hearings and Appeals (OHA) decides appeals of 8(a) BD eligibility determinations under 15 U.S.C. §§ 634(i) and 637(a)(9), and 13 C.F.R. parts 124 and 134. Petitioner filed its appeal within 45 calendar days of its receipt of SBA's determination, so the appeal is timely. 13 C.F.R. § 134.404. Accordingly, this matter is properly before OHA for decision.

II. Background

A. Procedural History

Petitioner initially applied for admission to the 8(a) BD program in August 2018, and, among other documents, submitted a completed SBA Form 413 for Ms. Donna M. DeBenedetto, Petitioner's President and majority owner. (Appeal, Attach. 4.) Petitioner subsequently provided an amended version of the SBA Form 413 in September 2018. (Appeal, Attach. 5; Administrative Record (AR), Exh. 10.) Both versions of the SBA Form 413 indicated that, in addition to her primary residence, Ms. DeBenedetto co-owned three rental properties, including a property located at 2049 Arndt Road, Forks Township, Pennsylvania (the Arndt Road property). Ms. DeBenedetto's original SBA Form 413 reported the combined fair market value of her interests in the three rental properties as \$782,500. (Appeal, Attach. 4, at 2-3.) Of this total, her interest in the Arndt Road property was valued at \$110,000, and her interests in the other two rental properties were \$462,500 and \$210,000, respectively. (*Id.*) On the revised SBA Form 413, Ms. DeBenedetto's interest in the Arndt Road property was reported as \$100,000, and her interests in the two other rental properties were \$462,500 and \$187,500 respectively, for a combined total of \$750,000. (Appeal, Attach. 5; Administrative Record (AR), Exh. 10.) Petitioner attached a property appraisal and internet search results in an effort to support the changes in valuation. (*Id.*)

On July 8, 2019, SBA denied Petitioner's application. (AR, Exh. 5.) SBA explained that, to be eligible for the 8(a) BD program, “a firm must be at least fifty-one percent unconditionally owned and controlled by an individual or individuals determined to be socially and economically disadvantaged.” (*Id.* at 1.) SBA regulations provide that “economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.” (*Id.*, citing 13 C.F.R. § 124.104.) More specifically, for initial entry into the 8(a) BD program, the net worth of the individual claiming disadvantage cannot exceed \$250,000, once certain exclusions are deducted. (*Id.* at 2.)

In the instant case, SBA found that Ms. DeBenedetto is not economically disadvantaged. (*Id.* at 1.) SBA reviewed the information provided by Petitioner in its application, and found that Ms. DeBenedetto had a personal net worth of \$617,293. (*Id.* at 2-3.) After subtracting allowed exclusions, her adjusted personal net worth was still \$317,783, exceeding the \$250,000 limit. (*Id.* at 3.) The denial letter included a table detailing SBA's calculations. (*Id.* at 2-3.) The table showed that, among her other assets, Ms. DeBenedetto held “Other Real Estate” valued at \$782,500. (*Id.* at 3.)

On July 9, 2019, Petitioner requested reconsideration of the denial, and submitted an updated SBA Form 413 for Ms. DeBenedetto and other supporting information. (Appeal, Attach. 6; AR, Exh. 4.) Petitioner stated that the Arndt Road property was sold in November 2018, and provided various documents relating to the sale. (*Id.*) The updated SBA Form 413 no longer included the Arndt Road property, and indicated that Ms. DeBenedetto held interests in just two rental properties. (*Id.*) The value of her interests in the two rental properties was reported as

\$462,500 and \$187,500 respectively, for a combined total of \$650,000. Petitioner acknowledged that, although Ms. DeBenedetto no longer held an interest in the Arndt Road property, she co-owned a loan asset reflecting proceeds from that sale. Petitioner reported the value of Ms. DeBenedetto's interest in the loan asset as \$73,739. (*Id.*)

On September 24, 2019, SBA denied Petitioner's request for reconsideration. (AR, Exh. 1.) SBA recalculated Ms. DeBenedetto's adjusted net worth, after exclusions, as \$274,865. (*Id.* at 2.) As part of its calculations, SBA added a new “Accounts & Notes Receivable” asset of \$73,739, which SBA described as a loan asset arising from “the sale of the [Arndt Road] property”. (*Id.* at 2, 4.) For “Other Real Estate,” SBA continued to use a value of \$782,500, as it had in its prior calculations. (*Id.* at 2.) SBA stated that Petitioner had “presented no documentation to support [its] estimate of [Ms. DeBenedetto's] share of the combined market value of \$650,000 for these two [rental] properties or a written explanation of the revised [] number.” (*Id.* at 4.)

B. Appeal

On October 15, 2019, Petitioner filed the instant appeal. Petitioner argues that “[t]he key basis for [SBA's] error was the duplication of values from the sale of [Ms.] DeBenedetto's Arndt Road property.” (Appeal, Attach. 1, at 2.) Specifically, the Arndt Road property was sold on November 30, 2018, and Petitioner consequently removed the Arndt Road property “from the revised form 413 submitted [during] the reconsideration process.” (*Id.*, Attach. 3, at 1.) SBA added the proceeds from the sale of the Arndt Road property to Ms. DeBenedetto's assets, but continued to value Ms. DeBenedetto's interests in her rental properties at \$782,500, thus “caus[ing] a duplication of the value of the Arndt Road property”. (*Id.*)

C. SBA's Response

On December 16, 2019, SBA responded to the appeal. SBA maintains that its “decision to deny [Petitioner] entry into the 8(a) BD program based on Ms. DeBenedetto's failure to establish economic disadvantage was reasonable.” (Response at 2.) As a result, the appeal should be denied.

SBA disputes Petitioner's contention that SBA double-counted the Arndt Road property by including both the value of the property under “Other Real Estate” and the proceeds from the sale of the property under “Accounts & Notes Receivable.” (*Id.* at 8-9.) SBA observes that, according to the information Petitioner provided in the initial application, the combined value of Ms. DeBenedetto's interests in her rental properties was \$782,500. (*Id.* at 8.) On reconsideration, Petitioner represented that, following the sale of the Arndt Road property, the combined value of Ms. DeBenedetto's interests in her rental properties had decreased to \$650,000, but “Petitioner did not explain the variance and SBA could not corroborate the value used so [SBA] relied on the original information from [Petitioner].” (*Id.*) SBA adds that “[i]t is not known what portion of the \$782,500 was attributable to the Arndt [Road] property,” so adjustment to the \$782,500 total would have required SBA to engage in unfounded speculation. (*Id.* at 8-9.)

SBA argues that the sale of the Arndt Road property did not entirely dispose of the asset. (*Id.* at 9.) Rather, the asset essentially “was converted from real property to a cash loan.” (*Id.*) SBA could not have excluded the Arndt Road property altogether from the net worth calculation, because although the property “may have changed in composition, [] it is still an asset to be counted.” (*Id.*)

III. Discussion

A. Standard of Review

In an appeal of an 8(a) BD eligibility determination, OHA's task is to ascertain whether SBA reached a reasonable conclusion in light of the facts available in the administrative record. 13 C.F.R. § 134.406(b); *Matter of ORB Solutions, Inc.*, SBA No. BDPE-559, at 3 (2017). OHA may remand a matter for further review “where it is clearly apparent from the record that SBA made an erroneous factual finding (*e.g.*, SBA double counted an asset of an individual claiming disadvantaged status).” 13 C.F.R. § 134.406(e)(2).

B. Program Eligibility Requirements

To gain entry to the 8(a) BD program, a concern must be unconditionally owned and controlled by one or more socially and economically disadvantaged individuals. 13 C.F.R. § 124.101. A socially disadvantaged individual is someone who has been “subjected to racial or ethnic prejudice or cultural bias within American society.” 13 C.F.R. § 124.103(a). An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared with non-socially disadvantaged competitors in the same or similar line of business. 13 C.F.R. § 124.104(a).

In determining economic disadvantage, SBA considers the personal financial condition of the individual claiming disadvantaged status, including income, personal net worth, and the fair market value of all assets. 13 C.F.R. § 124.104(c). For initial 8(a) BD eligibility, an individual with a personal net worth exceeding \$250,000 is not considered economically disadvantaged. 13 C.F.R. § 124.104(c)(2). When calculating net worth, SBA excludes the ownership interest in the applicant company and equity in the individual's primary personal residence. *Id.* Funds invested in an official retirement account also are excluded from the net worth calculation, as is income from the applicant company that is reinvested in the company or used to pay the company's ordinary taxes. 13 C.F.R. § 124.104(c)(2)(ii)-(iii).

C. Analysis

Having reviewed the record and the arguments of the parties, I find that Petitioner has convincingly shown that SBA double-counted the value of Ms. DeBenedetto's interest in the Arndt Road property in determining her adjusted net worth. This error may have affected whether Ms. DeBenedetto's adjusted net worth exceeds the allowable \$250,000 threshold, and thus is material to the outcome of this case. Accordingly, it is appropriate to remand this matter for further review. 13 C.F.R. § 134.406(e)(2).

During the reconsideration process, Petitioner notified SBA that the Arndt Road property, one of three rental properties originally co-owned by Ms. DeBenedetto, had been sold on November 30, 2018. Section II.A, *supra*. SBA accepted that the Arndt Road property had been sold, adding a new “Accounts & Notes Receivable” asset of \$73,739, which SBA described as a loan asset arising from “the sale of the [Arndt Road] property.” *Id.* In addition, SBA seemingly acknowledged that, after the sale of the Arndt Road property, Ms. DeBenedetto held interests in just two rental properties. *Id.* Nevertheless, SBA continued to use the original \$782,500 value for Ms. DeBenedetto’s “Other Real Estate,” rejecting Petitioner’s assertion that the combined value of Ms. DeBenedetto’s interests in the two remaining rental properties was only \$650,000. *Id.* The record reflects that \$782,500 was the combined fair market value of Ms. DeBenedetto’s interests in all three of the rental properties she originally co-owned, including the Arndt Road property. *Id.* Thus, SBA apparently double-counted the value of the Arndt Road property, by adding the proceeds from the sale of the Arndt Road property to Ms. DeBenedetto’s assets, while continuing to value Ms. DeBenedetto’s interests in her rental properties at \$782,500.

In response to the appeal, SBA argues that no adjustment to the \$782,500 total could have been made because “[i]t is not known what portion of the \$782,500 was attributable to the Arndt [Road] property.” Section II.C, *supra*. Each of the SBA Form 413s submitted by Ms. DeBenedetto, though, did provide property-by-property information about the fair market value of Ms. DeBenedetto’s interests, and Petitioner also submitted some additional documentation to support the claimed amounts. Section II.A, *supra*. Given this record, SBA has not persuasively explained why no reasonable adjustment of the \$782,500 total would have been possible.

SBA also maintains that sale of the Arndt Road property did not fully dispose of the asset but instead merely converted the asset “from real property to a cash loan.” Section II.C, *supra*. While I agree that SBA correctly viewed the loan as an asset of Ms. DeBenedetto, the issue here is not whether the Arndt Road property should have been excluded altogether from SBA’s analysis, but whether this asset was, in effect, double-counted.

IV. Conclusion

For the above reasons, I conclude that SBA’s decision denying Petitioner admission to the 8(a) BD program appears to have been predicated on a material factual error. The appeal therefore is GRANTED and the matter is REMANDED to SBA for further review consistent with this decision. 13 C.F.R. § 134.406(e)(2).

KENNETH M. HYDE
Administrative Judge