

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

CVE Appeal of :

LACHIN Architects, apc,

Appellant

SBA No. CVE-133-A

Decided: August 16, 2019

APPEARANCES

Michael G. Lachin, President, LACHIN Architects, apc, New Orleans, Louisiana

Thomas J. McGrath, Director, Center for Verification and Evaluation, U.S. Department of Veterans Affairs, Washington, D.C.

DECISION

I. Introduction and Jurisdiction

On July 12, 2019, LACHIN Architects, apc (Appellant) appealed the cancellation of its inclusion as a verified Service-Disabled Veteran-Owned Small Business (SDVOSB) in the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) Vendor Information Pages (VIP) database. Appellant requests that the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) reverse the cancellation. For the reasons discussed *infra*, the appeal is denied.

OHA adjudicates CVE appeals pursuant to 38 U.S.C. § 8127(f)(8)(A) and 13 C.F.R. part 134 subpart K.¹ Appellant timely filed the appeal within ten business days of receiving the cancellation letter. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

¹ The regulations at 13 C.F.R. part 134 subpart K became effective October 1, 2018. 83 Fed. Reg. 13,626 (Mar. 30, 2018).

II. Background

A. Facts

On January 31, 2013, CVE verified Appellant, then operating under another name, as an SDVOSB and included it in the VIP database. (Case File (CF), Exh. 1.) On March 31, 2015, CVE re-verified Appellant. (CF, Exh. 2.) On April 27, 2017, CVE again re-verified Appellant. (CF, Exh. 3.) The re-verification letter cautioned that “[w]hile CVE has confirmed that [Appellant is] in compliance with the regulation, [Appellant] must inform CVE of any changes or other circumstances that would adversely affect its eligibility.” (*Id.*)

At the time of its most recent re-verification, Appellant was wholly-owned by Mr. Michael G. Lachin, a service-disabled veteran. (CF, Exh. 22.) In January 2018, Michael Lachin sold 20% of Appellant to his nephew, Mr. David M. Lachin, Jr. (*Id.*) Appellant's stock certificates, dated October 1, 2017, state that Michael Lachin owns 80 shares of Appellant, and David Lachin, Jr. owns 20 shares. (CF, Exh. 7.) Appellant's December 18, 2018 Annual Meeting minutes reflect that David Lachin, Jr. was promoted to Partner, and that he serves as Appellant's Secretary and is a member of its Board of Directors. (CF, Exh. 10.)

On May 7, 2019, a CVE examiner visited Appellant's offices. (CF, Exhs. 2.2 and 23.) After the site visit, the examiner created a document request for Appellant on the CVE system. (CF, Exh. 5.) There he requested Appellant's Federal tax returns for 2016, 2017, and 2018; employee W-2s for 2018; year-to-date payroll summary for 2019; Michael Lachin's personal tax return for 2018; recent licenses; pages from recent contracts; bank signature card; recent checks; and Appellant's stock certificates/stock ledger, and minutes of its most recent meeting. (*Id.*) Appellant uploaded the requested documents to CVE on May 9, 2019. (CF, Exhs. 7-21.)

Also on May 9, 2019, Appellant submitted to CVE a Letter of Explanation regarding the ownership change that had occurred 16 months earlier. (CF, Exh. 22.) Appellant stated:

[Appellant], a [SDVOSB] failed to notify [VA] of a change in ownership as required by [CVE].

In October of 2017, David M. Lachin Jr. negotiated a 20% purchase of shares in [Appellant]. The transaction was perfected, and ownership formalized in January of 2018. Following a site visit to the office of [Appellant], the firm was made aware of this oversight. [Appellant] regrets this oversight and hopes to rectify any disturbances in the firm's good standing as a certified SDVOSB.

(*Id.*)

B. Notice of Proposed Cancellation

On May 31, 2019, CVE issued a Notice of Proposed Cancellation (NOPC) to Appellant. (CF, Exh. 26.) The NOPC set out examples of “good cause” for removing a concern from the VIP database. These include “[f]ailure by the concern to provide an updated VA Form 0877

within 30 days of any change in ownership” and “[f]ailure by the concern to disclose to CVE the extent to which non-veteran persons or firms participate in the management of the participant.” (*Id.* at 2.)

The NOPC then described the findings of the May 7, 2019 site visit:

The VA Form 0877 signed by Michael Lachin on April 14, 2017 identifies him as the 100% owner of the concern; however, based upon review of the Schedule K-1 of the concern's 2018 Business Income Tax Return submitted during the verification examination, [Michael Lachin's] ownership interest has changed to 80% and as of January 2018, the remaining 20% ownership interest is held by David M. Lachin, Jr. This change in ownership was further confirmed by a letter submitted by [Appellant] on May 9, 2019 explaining that David Lachin purchased 20% of the concern in October 2017. CVE has no record of David M. Lachin, Jr.'s ownership of [Appellant] as the verification eligibility of the concern is based on the 100% ownership and control by Michael George Lachin.

(*Id.*) The NOPC continued:

Absent clarifying documentation identifying David M. Lachin, Jr.'s role in the business operations of the concern, including David Lachin's resume, CVE cannot determine whether the concern has maintained its verification eligibility pursuant to 38 CFR § 74.21(d)(2) or the extent to which David Lachin participates in the management of the concern pursuant to 38 CFR § 74.21(d)(4). Lastly, as the concern has not provided an updated VA Form 0877 that accurately reflects the current ownership interests held in the concern, CVE cannot reasonably conclude that the requirements of 38 CFR § 74.21(d)(7) have been satisfied.

(*Id.*)

The NOPC indicated that Appellant would have 30 days “to provide sufficient evidence to CVE refuting the information identified [in the NOPC] and explaining why the proposed ground(s) should not justify cancellation.” (*Id.*) Pursuant to CVE policy, though, CVE would “consider only amplifying information,” and “[c]hanges to business documents or updated submissions will not be accepted as part of the cancellation process.” (*Id.*)

C. Response to NOPC

On June 3, 2019, Appellant uploaded a VA Form 0877 dated May 31, 2019. (CF, Exh. 27.) This Form 0877 reflected Appellant's ownership as 80% Michael Lachin and 20% David Lachin, Jr. (*Id.*) David Lachin, Jr. is not a veteran or a service-disabled veteran. (*Id.*)

Appellant did not otherwise respond to the NOPC.

D. Notice of Verified Status Cancellation

On July 5, 2019, CVE issued a Notice of Verified Status Cancellation (NOVSC), formally cancelling Appellant's verification. (CF, Exh. 30.) The NOVSC summarized the findings of the NOPC, and stated that CVE did not consider Appellant's response adequate to justify overturning those findings. (*Id.* at 1.) Therefore, Appellant will no longer appear in the VIP database. (*Id.*)

In explaining why cancellation was warranted, the NOVSC noted that Appellant did not timely “inform CVE of David M. Lachin, Jr.'s ownership of the concern pursuant to 38 CFR § 74.21(d)(8).” (*Id.* at 2.) Furthermore:

In response to the NOPC, [Appellant] provided a VA Form 0877 confirming the 80% Veteran ownership held by Michael Lachin and the 20% ownership in the concern held by the non-Veteran David M. Lachin, Jr. The concern neither provided the resume of David M. Lachin, Jr. as requested nor any clarifying documentation to identify David M. Lachin, Jr.'s role in the business operations of the concern. Therefore, as the verification eligibility of [Appellant] is based on the 100% ownership and control by Michael George Lachin, CVE cannot determine whether the concern has maintained its verification eligibility as required by 38 CFR § 74.21(d)(2) or the extent to which the non-Veteran David Lachin participates in the management of the concern pursuant to 38 CFR § 74.21(d)(4).

(*Id.*)

E. Appeal

On July 12, 2019, Appellant appealed the cancellation to OHA. Appellant contends that CVE improperly based its decision on Appellant's “alleged failure to deliver a resume and description of roles and responsibilities for David M. Lachin Jr.” (Appeal at 1.)

Appellant summarizes the respective roles of Michael Lachin and David Lachin, Jr.:

As President of Lachin Architects, Michael Lachin maintains full control of all business management and executive decisions through his full-time presence in the office and daily oversight of all activities. . . . David Lachin maintains the role of project architect, along with several other professional architects in the office, providing design, production, and construction administration on a wide range of projects. The firm continues to be actively and continuously managed by its controlling member (80% ownership), President and Senior Architect, Michael Lachin.

(*Id.*) Regarding the May 7, 2019 site visit, Appellant maintains that Michael Lachin spent several hours with the examiner, who “was thoroughly briefed on roles and responsibilities of [Appellant's] personnel yet did not indicate that resumes would be required to support these roles and responsibilities.” (*Id.*) Further, the ensuing document request did not ask for David Lachin,

Jr.'s resume or for a description of his role within the firm. (*Id.* at 2.) Had the resume been requested by the examiner or by CVE, it “was readily available at the time of the site visit and could have been provided immediately.” (*Id.*)

Appellant asserts that a document request issued on May 31, 2019 (the day the NOPC was issued), asked only for the updated Form 0877, and again did not request David Lachin, Jr.'s resume. (*Id.*) Appellant's subsequent communications with CVE “confirmed that Form 0877 had been received and no other documentation required.” (*Id.*) Appellant therefore reasonably “assume[d] that the matter of roles and responsibilities among members of the firm was so clear as to have not raised concern.” (*Id.*)

Appellant contends that cancellation of its verification for the missing resume and/or description of roles was improper. (*Id.*) Appellant requests that its cancellation be reversed and that it be allowed to submit the materials at this time. (*Id.*)

Attached to the appeal petition are the resumes of Michael Lachin and David Lachin, Jr., and printouts of the CVE document requests along with lists of the uploaded documents. The two resumes are new evidence in this appeal. The other documents contain some new material.

F. Additional Filings

On July 26, 2019, Appellant moved to extend the close of record and sought leave to file a reply. On July 29, 2019, the date of the close of record, CVE submitted the Case File to OHA and served a copy of the Case File index to Appellant. On July 30, 2019, Appellant renewed its request to file a reply, contending that Appellant “had not seen [the NOPC] prior to July 29, 2019.” (Motion at 1.)

On August 7, 2019, CVE filed a Consolidated Response opposing Appellant's motions. CVE observes that, except for a small amount of privileged material, Appellant already is in possession of all documents in the Case File. (Consolidated Response at 2.) Further, CVE provided multiple notifications regarding issuance of the NOPC. In addition to two notification messages CVE sent Appellant via the portal, the NOPC is a determination letter linked to the right side of Appellant's dashboard on the portal once logged in. (*Id.*, citing CF, Exhs. 24-25.) Copies of the NOPC also were sent directly by e-mail to Michael Lachin and to another individual at Appellant. (*Id.*) The fact that Appellant uploaded a revised Form 0877 on June 3rd, just three days after the NOPC was issued, further suggests that Appellant received the NOPC. (*Id.* at 2-3.) As a result, CVE concludes, “the record clearly reflects that [Appellant] received the NOPC.” (*Id.* at 3.) CVE also maintains that it has no record that Appellant served a copy of the appeal or the accompanying exhibits upon CVE. (*Id.* at 2.)

On August 8, 2019, Appellant filed a one-page Reply to CVE's Consolidated Response, and attached a copy of its e-mail transmitting the appeal petition to CVE, a complete copy of the entire appeal with all attachments, and a copy of OHA's July 15, 2019 Notice and Order.

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, that the cancellation was based upon clear error of fact or law. 13 C.F.R. § 134.1111.

B. Analysis

As an initial matter, OHA first must determine whether CVE provided Appellant adequate notice of the cause(s) for which CVE intended to cancel Appellant's verification. VA regulations provide that "CVE may remove a participant from public listing in the VIP database for good cause upon formal notice to the participant in accordance with § 74.22." 38 C.F.R. § 74.21(d). Section 74.22 in turn requires that CVE issue a NOPC "set[ting] forth the specific facts and reasons for CVE's findings," and notifying the participant that it has "30 days from the date CVE sent the notice" to respond with an explanation "why the proposed ground(s) should not justify cancellation." 38 C.F.R. § 74.22(a).

On appeal, Appellant contends that it was unaware of the NOPC until July 29, 2019. Section II.F, *supra*. CVE counters, however, that CVE sent Appellant two notifications about the NOPC via the portal; placed a link to the NOPC on Appellant's dashboard; and transmitted the NOPC by e-mail directly to Michael Lachin and to another individual at Appellant. *Id.* Further, three days after the NOPC was issued, Appellant uploaded a revised Form 0877, which CVE had requested in conjunction with the NOPC. *Id.*

I agree with CVE that the record establishes that Appellant did receive the NOPC. As CVE observes, but for the document request CVE sent in connection with the NOPC, Appellant would have had no reason to prepare a revised Form 0877 dated May 31, 2019, or to have uploaded the document via the portal on June 3, 2019. *See* Section II.C, *supra*. An additional problem for Appellant is that Appellant acknowledges receiving the NOVSC — which made repeated references to the earlier NOPC — yet Appellant did not argue in its appeal petition that Appellant had not received or was unaware of the NOPC. Sections II.D and II.E, *supra*. I therefore conclude that CVE met the requirement to provide Appellant 30 days advance notice of the proposed grounds for cancellation, as required by 38 C.F.R. § 74.22(a).

Turning to the merits of the cancellation, CVE based its decision to cancel Appellant's verification on two grounds. First, Appellant did not promptly notify CVE of its change in ownership, as is required by 38 C.F.R. § 74.21(d)(7) and (8). *See* Sections II.B and II.D, *supra*. Second, Appellant did not provide sufficient information for CVE to determine the extent to which a non-veteran (*i.e.*, David Lachin, Jr.) participates in the management of Appellant, in contravention of 38 C.F.R. § 74.21(d)(4). *Id.*

On appeal, Appellant has not shown that either of these grounds is clearly erroneous. With regard to the first ground, documents in the Case File show that David Lachin, Jr. became 20% owner of Appellant in late 2017 (per Appellant's stock certificates) or in early 2018 (per Appellant's May 9, 2019 letter of explanation). Section II.A, *supra*. More than a year elapsed,

however, before Appellant informed CVE of the change of ownership on May 9, 2019, and Appellant then waited three additional weeks before uploading a revised Form 0877 on June 3, 2019. Sections II.A and II.C, *supra*. VA regulations make clear that good cause for cancellation exists if a participant “[fails] to provide an updated VA Form 0877 within 30 days of any change in ownership.” 38 C.F.R. § 74.21(d)(7). Here, Appellant does not dispute that Appellant failed to notify CVE of the change in ownership within 30 days, nor does Appellant present any arguments or evidence as to why this portion of CVE's decision is erroneous. On this record, then, I see no basis to conclude that CVE improperly removed Appellant from the VIP database.

As for the second ground for cancellation, Appellant highlights that neither the CVE examiner nor any subsequent document request specifically directed Appellant to submit the resume of David Lachin, Jr. Section II.E, *supra*. Appellant overlooks, though, that the NOPC did warn that, in order for CVE to assess whether Appellant is a proper SDVOSB, CVE required information about “David M. Lachin, Jr.'s role in the business operations of [Appellant], including David Lachin's resume.” Section II.B, *supra*. The NOPC cited to 38 C.F.R. § 74.21(d)(4), which provides that cancellation is appropriate when a participant “[fails] to disclose to CVE the extent to which non-veteran persons or firms participate in the management of the participant.” Appellant responded to the NOPC by uploading a revised Form 0877, but was silent as to the question of David Lachin, Jr.'s role in Appellant's management. Section II.C, *supra*. Accordingly, CVE could reasonably conclude that Appellant did not disclose sufficient information for CVE to evaluate David Lachin, Jr.'s role at Appellant, and whether his involvement as part-owner (and Partner) undermined Michael Lachin's control over the company.

Lastly, OHA cannot consider the new evidence accompanying the appeal. Pursuant to 13 C.F.R. § 134.1110, evidence beyond the Case File is admissible only if good cause is shown, and Appellant has not explained why good cause exists here to supplement the Case File. Section II.E, *supra*. Moreover, even if OHA were to consider the new documents, Appellant still could not demonstrate that CVE's decision to cancel Appellant's verification was erroneous. This is true because, at the time of the cancellation, Appellant still would not have promptly notified CVE of the change of ownership, and still would not have disclosed to CVE the information necessary to assess David Lachin, Jr.'s role at Appellant.

IV. Conclusion

For the above reasons, the appeal is DENIED. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127(f)(8)(A); 13 C.F.R. § 134.1112(d); 38 C.F.R. § 74.22(e).

KENNETH M. HYDE
Administrative Judge