

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

CVE Appeal of:

David Han d/b/a Coresivity,

Appellant

SBA No. CVE-140-A

Decided: October 29, 2019

APPEARANCES

David R. Han, Chief Executive Officer, David Han d/b/a Coresivity, Buena Park, California

DECISION

I. Introduction and Jurisdiction

On September 5, 2019, David Han d/b/a Coresivity (Appellant) appealed the decision of the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) cancelling Appellant's verification in VA's Vendor Information Pages (VIP) database of eligible Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). Appellant maintains that the cancellation is clearly erroneous and requests that the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) reverse. 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 filed the appeal within ten business days of receiving the cancellation notice, so the appeal is timely. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Change Request

On September 19, 2018, CVE initially verified Appellant as an SDVOSB and included it in the VIP database. (Case File (CF), Exh. 31.) At the time of its initial verification, Appellant

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).

was a sole proprietorship 100% owned by Mr. David R. Han, a service-disabled veteran. (CF, Exhs. 6, 11, and 26.)

On June 18, 2019, Appellant notified CVE of changes in Appellant's legal structure, ownership structure, and business name. Specifically, Appellant had been reorganized as an LLC and now would be known as "Coresivity LLC." (CF, Exh. 35.) In addition, Ms. Yoon K. Chung and Mr. Ryan T. Kim, who are not veterans, had acquired ownership interests in Appellant, and both also had become members of the LLC. (CF, Exhs. 35, 45, 46, and 55.) CVE requested additional information and documentation pertaining to these changes. On June 28, 2019, Appellant withdrew its change request from review. (CF, Exh. 57.)

B. Notice of Proposed Cancellation

On July 24, 2019, CVE issued a Notice of Proposed Cancellation (NOPC), informing Appellant that CVE proposed to cancel Appellant's verified status as an SDVOSB. (CF, Exh. 62.) The NOPC explained that, on June 18, 2019, Appellant notified CVE of changes in its legal structure, ownership structure, and business name. (*Id.* at 2.) To ascertain whether Appellant remained an eligible SDVOSB, CVE required the following information:

- A detailed letter of explanation identifying all changes that have occurred to [Appellant] after its most recent verification term commenced on September 19, 2018
- Current resumes identifying the roles and responsibilities for all apparent owners of [Appellant]: David Han, Yoon K. Chung, and Ryan T. Kim,
- Letter of explanation identifying the extent of the involvement of Yoon K. Chung and Ryan T. Kim in the management of [Appellant]
- Current signature card authenticated by financial institution identifying all authorized signatories on the business bank account
- All applicable technical licenses and certifications for [Appellant] (Example: Trade Certifications such as plumbers, electrical, contractors, engineer/architectural licenses; CDL; Truck Freight, etc. . .)—if this item is not applicable to [Appellant], please upload a signed and dated detailed letter of explanation which specifies the concern currently has no certifications and the applicable reasons[.]

(*Id.*) Because Appellant had not provided this information, CVE could not determine "whether [Appellant] has maintained verification eligibility pursuant to 38 C.F.R. § 74.21(d)(2) or whether [Mr. Han] has maintained ownership, management, and control of [Appellant] as required by 38 C.F.R. § 74.21(d)(3)." (*Id.* at 3.) Further, CVE lacked sufficient information to examine the extent to which non-veterans participate in the management of Appellant, or whether business relationships exist with non-veterans that might prevent Mr. Han from exercising independent business judgment without great economic risk. (*Id.*)

The NOPC also noted that Appellant apparently had not registered under its new name and structure in the System for Award Management (SAM). Therefore, Appellant is not compliant with 38 C.F.R. § 74.2(f). (*Id.*)

The NOPC allowed Appellant 30 days to respond with evidence that might cause CVE to retract the proposed cancellation. (*Id.* at 4.)

C. Response to the NOPC

In response to the NOPC, Appellant submitted a letter asserting that, although Appellant originally was structured as a sole proprietorship, Mr. Han changed Appellant's legal structure first to an LLC and later to a corporation. (CF, Exh. 63.) Following these changes, Mr. Han owns 51% of Appellant and “make[s] the majority of all decisions.” (*Id.*) Ms. Chung is Appellant's Chief Operations Officer and owns 39% of Appellant, whereas Mr. Kim owns 10% of Appellant and is “not involved in the day-to-day operations or management” of the company. (CF, Exh. 64.) Appellant submitted articles of incorporation for “Coresivity Inc.,” filed with the state of California on July 10, 2019. (CF, Exh. 66.) In addition, Appellant provided an updated resume for Mr. Han, and a resume for Ms. Chung. (CF, Exhs. 67 and 70.) Appellant did not submit a resume for Mr. Kim, and did not address the issue of Appellant's SAM registration.

D. Notice of Verified Status Cancellation

On September 5, 2019, CVE issued a Notice of Verified Status Cancellation (NOVSC) formally cancelling Appellant's status as a verified SDVOSB. (CF, Exh. 72.) CVE found that Appellant's response to the NOPC was “not adequate to justify overturning all of the findings listed in the NOPC.” (*Id.* at 1.)

The NOVSC explained that, according to Appellant's communications with CVE, Appellant has “new non-Veteran owners not contemplated at the time of [Appellant's] verification.” (*Id.* at 2.) CVE therefore had instructed Appellant to submit a resume for each new owner detailing the owner's roles and responsibilities. (*Id.*) Appellant provided a resume for Ms. Chung, but not for Mr. Kim. (*Id.* at 2-3.) As a result, CVE could not determine whether Appellant had maintained verification eligibility pursuant to 38 C.F.R. § 74.21(d)(2), or whether Mr. Han retained ownership, management, and control of Appellant as required by 38 C.F.R. § 74.21(d)(3). (*Id.* at 3.) Further, without Mr. Kim's resume, CVE could not determine whether business relationships exist with non-veterans that would prevent Mr. Han from exercising independent business judgment without great economic risk. (*Id.*, citing 13 C.F.R. § 125.13(i)(7).)

The NOVSC also noted that, in the NOPC, CVE had warned that Appellant did not appear to be registered in SAM, as is required by 38 C.F.R. § 74.2(f). After again consulting SAM, CVE found that SAM contains “neither a record for Coresivity, LLC nor Coresivity, Inc.” (*Id.* at 3.) CVE thus could not find Appellant compliant with 38 C.F.R. § 74.2(f). (*Id.*)

E. Appeal

On September 5, 2019, Appellant appealed the cancellation to OHA. Appellant acknowledges that it did not provide CVE the resume of Mr. Kim, but offers that resume as an attachment to its appeal. (Appeal at 1.) Appellant does not otherwise allege error in CVE's decision.

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

VA regulations make clear that CVE may remove a concern from the VIP database if the concern “[f]ail[s] to make required submissions or responses to CVE or its agents, including a failure to make available . . . information requested by CVE . . . within 30 days of the date of request.” 38 C.F.R. § 74.21(d)(5). In the instant case, CVE requested a current resume for each of Appellant's new owners, and specifically identified Mr. Kim as one of those new owners. Section II.B, *supra*. Appellant acknowledges that it did not produce a resume for Mr. Kim. Sections II.C and II.E, *supra*. Accordingly, I see no basis to conclude that CVE improperly removed Appellant from the VIP database. Appellant did not comply with CVE's request for information, in contravention of 38 C.F.R. § 74.21(d)(5). Further, as CVE explained in the NOPC and NOVSC, without a current resume for each new owner, CVE lacked sufficient information to assess whether Appellant remained an eligible SDVOSB. Sections II.B and II.D, *supra*. Appellant's failure to submit a resume for Mr. Kim therefore was not mere harmless error.

On appeal, Appellant seeks to introduce Mr. Kim's resume, but OHA cannot consider this document at this late stage. Pursuant to 13 C.F.R. § 134.1110, evidence beyond the Case File is admissible only if good cause is shown, and Appellant here has not explained why good cause exists to supplement the record. Section II.E, *supra*. Moreover, even if OHA were to accept Mr. Kim's resume, Appellant still could not demonstrate that CVE's decision to cancel Appellant's verification was erroneous, for two reasons. First, by Appellant's own admission, Appellant did not submit the resume to CVE at the time of the cancellation. Thus, CVE would not have erred in concluding that Appellant did not provide the information necessary to verify Appellant's eligibility. *CVE Appeal of RealSims, LLC*, SBA No. CVE-129-A, at 10-11 (2019). Second, Appellant overlooks that CVE did not base its decision to cancel Appellant's verification solely on the missing resume. Rather, CVE also found that Appellant is not registered in SAM, as is required under 38 C.F.R. § 74.2(f). Sections II.B and II.D, *supra*. Appellant does not address its SAM registration on appeal, and Mr. Kim's resume, even if admitted, would have no bearing on this issue.

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