

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

CVE Appeal of:

Advent Capital Inc., d/b/a Alpine Roofing,

Appellant,

SBA No. CVE-225-A

Decided: March 17, 2022

APPEARANCES

Randall W. Hammond, President, Advent Capital Inc. d/b/a Alpine Roofing, Denver, Colorado

John B. Perkins, Director, Center for Verification and Evaluation, U.S. Department of Veterans Affairs, Washington, D.C

DECISION¹

I. Introduction and Jurisdiction

On October 20, 2021, Advent Capital Inc. d/b/a Alpine Roofing (Appellant) appealed a decision of the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE), denying Appellant's application for verification as a Veteran-Owned Small Business (VOSB). CVE found that Appellant could not be verified due to numerous issues with Appellant's ownership and control. On appeal, Appellant maintains that CVE's denial decision was 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. Appellant timely filed the appeal within ten business days after receiving the denial notice on October 5, 2021. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

¹ This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. OHA received no requests for redactions, and therefore now issues the entire decision for public release.

II. Background

A. Appellant's Application for Verification

Appellant is a corporation based in the state of Colorado, and is primarily engaged in the business of commercial roofing and siding. (Case File (CF), Exhs. 17, 42, 87.) In June 2021, Appellant applied for verification as a VOSB and submitted documentation for CVE's review.

According to the documentation Appellant provided to CVE, Appellant conducts business under the trade name "Alpine Roofing." (CF, Exh. 87.) Appellant also owns a separate subsidiary, Alpine Roofing Ltd., with which Appellant shares a physical address. (CF, Exh. 21.) Appellant is the sole Member of Alpine Roofing Ltd., and has designated Messrs. Randall W. Hammond and Samuel N. DePizzol as Managers of Alpine Roofing Ltd. (*Id.*) Messrs. Hammond and DePizzol are both veterans. (CF, Exhs. 32 and 39.)

Appellant's stock ledger reflects that Appellant is majority (50.77%) owned by "Advent Capital Inc. 401(k) Plan f/b/o Randall Wade Hammond." (CF, Exh. 22.) An additional 48.78% interest is owned by "Advent Capital Inc. 401(k) Plan f/b/o Samuel N. DePizzol." (*Id.*) The remaining ownership interest in Appellant is held by Messrs. Hammond and DePizzol individually. (*Id.*) Specifically, Messrs. Hammond and DePizzol each individually own 225 shares of Appellant's stock, or approximately 0.2%. (*Id.*)

Mr. Hammond is Appellant's President, and Appellant's Bylaws state that "[t]he President shall be the chief executive officer of the Corporation." (CF, Exhs. 18, 20.) However, according to Appellant's profile in the System for Award Management (SAM), Mr. Peter O'Brien serves as Appellant's Chief Executive Officer. (CF, Exh. 42.) Appellant provided CVE various contracts between its subsidiary, Alpine Roofing Ltd., and other concerns, signed by Mr. O'Brien with the title "CEO." (CF, Exhs. 24, 25.)

Appellant informed CVE that Mr. DePizzol serves as Appellant's "Managing Principal," but that Mr. DePizzol also is employed by another firm, Newmark Knight Frank, as its Executive Managing Director. (CF, Exhs. 12, 76.) In response to CVE's request that Appellant provide "a complete schedule to include the times of the day and days of the week" for Messrs. Hammond and DePizzol, Appellant asserted that each devotes more than 40 hours per week to working for Appellant. (CF, Exhs. 83, 84.)

B. Post-Review Findings (PRF) Notice

On September 23, 2021, CVE issued Appellant a Post-Review Findings (PRF) Notice. (CF, Exh. 93.) CVE explained that it had identified twelve issues that "would most likely prevent [Appellant] from being verified" as a VOSB. (*Id.* at 1.) Appellant would have the opportunity to address these issues, or in the alternative, could choose to withdraw its application and re-apply at a later time. (*Id.* at 15-17.)

CVE proceeded to discuss each of the twelve issues in detail. First, pursuant to 13 C.F.R. § 125.13(g), a VOSB "must obtain and keep current any and all required permits, licenses, and

charters, required to operate the business.” (*Id.* at 2.) Appellant is engaged in the roofing industry, and submitted to CVE a “D-Roof Covering/Waterproofing License” issued by the City and County of Denver. (*Id.*) This license, however, was issued in the name of Appellant's subsidiary, Alpine Roofing Ltd., not to Appellant itself. (*Id.*) Furthermore, an associated supervisor certificate appeared to have expired on April 30, 2020. (*Id.*)

Second, CVE highlighted that a VOSB must be at least 51% unconditionally and directly owned by one or more veterans. (*Id.* at 4, citing 13 C.F.R. § 125.12.) Here, the two veterans upon whom Appellant's application for verification is based, Messrs. Hammond and DePizzol, each hold ownership interests in Appellant of only approximately 0.2%. (*Id.* at 3.) The vast majority of Appellant's stock is not owned by any individual, but rather is owned by Appellant's 401(k) plan via a trust. (*Id.*) Ownership by a trust may, in certain circumstances, be treated as the functional equivalent of ownership by a veteran, but only if the trust is revocable; all the grantors are veterans; all the trustees are veterans; and all the current beneficiaries are veterans. (*Id.*, citing 13 C.F.R. § 125.12(a).) Appellant's 401(k) plan does not meet these requirements because the beneficiaries (*i.e.*, the participating employees) are not all veterans. (*Id.* at 4.) In addition, the grantor, Appellant, is not a veteran. (*Id.* at 3-4.)

Third, CVE observed that, pursuant to 13 C.F.R. § 125.12(g)(1), one or more veterans must be entitled to receive at least 51 percent of the annual distribution of profits paid to the owners of the VOSB. (*Id.* at 4-5.) Here, Messrs. Hammond and DePizzol together own only 0.4% of Appellant's stock. (*Id.* at 4.) As a result, Messrs. Hammond and DePizzol are not entitled to receive at least 51% of Appellant's net profits. (*Id.* at 4-5.)

Fourth, Messrs. Hammond and DePizzol, the two veterans upon whom Appellant's application for verification is based, both have other employment beyond working for Appellant. As a result, under 13 C.F.R. § 125.13(k), a rebuttable presumption arises that they do not control Appellant. (*Id.* at 5-6.) Mr. DePizzol works for Newmark Knight Frank, which is not a VOSB, “from 7:00am to 10:00pm, Monday through Thursday.” (*Id.* at 5.) Mr. Hammond works for Appellant's subsidiary, Alpine Roofing Ltd., “from 7:00am to 4:00pm, Monday through Friday.” (*Id.*) Although Appellant represented that Messrs. Hammond and DePizzol each work for Appellant more than 40 hours a week, Appellant “did not provide the days of the week and the hours of the day that these hours are worked,” as CVE requested. (*Id.* at 7.) Consequently, the outside employment schedules of both Mr. DePizzol and Mr. Hammond appear to conflict with “the normal working hours of firms in the [roofing] industry [which] are 9:00am to 5:00pm, Monday through Friday.” (*Id.* at 5.)

Fifth, applicable regulations require that one or more veterans must conduct “the day-to-day management and administration of the business operations” of a VOSB. (*Id.* at 9, quoting 13 C.F.R. § 125.13(a).) Some of the documentation Appellant provided to CVE reflects that Mr. O'Brien, who is not a veteran, serves as Appellant's CEO, with “authority to independently conduct the daily business operations.” (*Id.* at 7-8.) Furthermore, as part of its application, Appellant provided CVE banking and contractual information for its subsidiary, Alpine Roofing Ltd., rather than for Appellant itself. (*Id.* at 8.) As a result, CVE could not ascertain whether Messrs. Hammond and DePizzol control such aspects of Appellant's business.

Sixth, CVE could not determine whether a veteran holds Appellant's highest officer position, as required by 13 C.F.R. § 125.13(b). (*Id.* at 9.) Although Mr. Hammond, who is a veteran, is Appellant's President, Appellant provided other documentation indicating that Mr. O'Brien, who is not a veteran, is Appellant's CEO. (*Id.*)

Seventh, CVE could not determine whether Messrs. Hammond and DePizzol fully control the decision-making of Appellant's shareholders and board of directors. (*Id.* at 9-10.) Messrs. Hammond and DePizzol currently are Appellant's only two directors, but each of them holds a miniscule ownership interest in Appellant. (*Id.*) The vast majority of Appellant's stock is owned by Appellant's 401(k) plan through a trust. (*Id.* at 10.) Therefore, "absent additional documentation," CVE could not conclude that Messrs. Hammond and DePizzol are able to fully control the decision-making of Appellant's shareholders and board of directors. (*Id.*)

Eighth, CVE observed that 13 C.F.R. § 125.13(i)(2) creates a rebuttable presumption that veterans do not control a concern if one or more non-veterans receive compensation that exceeds the compensation paid to the concern's highest-ranking officer. (*Id.* at 10-11.) Appellant informed CVE that it had made "a strategic decision" to pay Messrs. Hammond and DePizzol salaries "way below market" value. (*Id.* at 10.) However, because Appellant only submitted payroll documentation for its subsidiary, Alpine Roofing Ltd., but not for Appellant itself, CVE could not determine whether one or more non-veterans are actually more highly compensated. (*Id.* at 10-11.)

Ninth, Appellant and its subsidiary, Alpine Roofing Ltd., are structured as separate companies, yet appear to share a physical address and a website, and are in the same line of business. (*Id.* at 11.) Further, Appellant provided CVE banking, contract, payroll, licensing, and lease information, all in the name of Alpine Roofing Ltd., rather than in Appellant's own name. (*Id.* at 11-12.) CVE concluded that Appellant and Alpine Roofing Ltd. "appear to be operating as one entity." (*Id.* at 12.) Alpine Roofing Ltd. is not a VOSB, so Appellant appears to be co-located with a non-VOSB in the same line of business, thereby creating a rebuttable presumption that non-veterans control Appellant. (*Id.*, citing 13 C.F.R. § 125.13(i)(3).)

Tenth, Appellant shares employees and other resources with its subsidiary, Alpine Roofing Ltd. (*Id.* at 12-13.) CVE reiterated that Alpine Roofing Ltd. is structured as a separate company from Appellant, and that Alpine Roofing Ltd. is not a VOSB. (*Id.*) Therefore, under 13 C.F.R. § 125.13(i)(4), there is a rebuttable presumption that non-veterans control Appellant. (*Id.* at 13.)

Eleventh, Appellant is engaged in the roofing business, and submitted to CVE a "D-Roof Covering/Waterproofing License" issued by the City and County of Denver. (*Id.*) This license, however, was issued in the name of Appellant's subsidiary, Alpine Roofing Ltd., not to Appellant itself. (*Id.* at 13-14.) Alpine Roofing Ltd. is not a VOSB. (*Id.* at 14.) Appellant thus appears to be dependent upon a non-VOSB for a critical license, creating a rebuttable presumption that non-veterans control Appellant. (*Id.*, citing 13 C.F.R. § 125.13(i)(6).)

Twelfth and finally, CVE again noted that Appellant did not show that Messrs. Hammond and DePizzol, the two veterans upon whom Appellant's application for verification is

based, actually work for Appellant during normal business hours. (*Id.* at 14-15.) Further, according to documentation Appellant provided to CVE, Mr. O'Brien, who is not a veteran, is Appellant's CEO. (*Id.* at 15.) Mr. O'Brien, as CEO, "has authority to independently conduct [Appellant's] daily business operations," and Appellant "appears to depend on Mr. O'Brien (non-Veteran) to conduct [] business during the hours of operation when [Messrs. Hammond and DePizzol] are absent." (*Id.*) Under 13 C.F.R. § 125.13(i)(7), there is a rebuttable presumption that Mr. O'Brien controls Appellant, because "it is not clear whether [Appellant] would be able to operate as a viable independent business entity without the support provided by Mr. Patrick O'Brien (non-Veteran)." (*Id.*)

C. Response to PRF Notice

On September 26, 2021, Appellant responded to the PRF Notice. (CF, Exh. 100.) Appellant faulted CVE for its "lack of cooperation," and urged members of Congress to "investigate the universal rejection of [VOSB] designation for businesses with our corporate structure." (*Id.* at 1.)

Appellant first explained that, on January 1, 2019, Messrs. Hammond and DePizzol acquired a predecessor business entity known as Alpine Roofing Co. Inc. (*Id.* at 2.) In an effort to comply with IRS requirements, Messrs. Hammond and DePizzol established Appellant as "a holding company." (*Id.*) They also formed two limited liability companies (LLCs): Alpine Roofing Ltd., which functions as Appellant's "operating company," and Advent Real Estate Holdings, LLC, which "holds the real estate associated with our business." (*Id.* at 2, 11.)

Appellant asserted that the "core issue" underlying several of the concerns raised in the PRF Notice "relates to the definition of ownership of the company based upon the structure we put into place." (*Id.* at 3.) In particular, CVE improperly focused on the fact that the bulk of Appellant's stock is owned by its 401(k) plan through a trust, and that not all beneficiaries (*i.e.*, participating employees) are veterans. According to Appellant, "[t]his is correct but the point [CVE] is missing is that [participating employees] are ONLY beneficiaries of their individual and respective separate accounts within the 401(k) Plan." (*Id.*) Therefore, Appellant continued, "[t]o claim every participant in the Plan has a beneficial interest in any other Participant account is akin to stating that every Chase Bank customer has a beneficial interest in the checking account my wife and I maintain there. It's simply incorrect." (*Id.* at 4.) Appellant acknowledged that "Advent Capital Inc. is the Grantor" of the trust. (*Id.* at 6.)

Appellant proceeded to address the issues raised in the PRF Notice. Appellant stated that "the D-Roof Covering/Waterproofing License referenced is active and valid and meets the requirements of a roofing company to conduct business." (*Id.* at 5.) Appellant offered "a copy of our current and active [supervisor] certificate." (*Id.*)

With regard to the issue of ownership by Appellant's 401(k) plan, Appellant maintained that the regulation referenced by CVE, 13 C.F.R. § 125.12, "DOES NOT APPLY. 13 CFR § 125.12(a) addresses, and applies only, to Service Disable[d Veteran-Owned Small] Businesses and NOT Veteran Owned Business applications." (*Id.* at 6 (emphasis Appellant's).) Appellant reiterated its view that "[t]o assume every Participant has a beneficial interest in every other

individual's separate account held within the 401(k) Plan is absolutely incorrect.” (*Id.* at 7.) In addition, Appellant argued, Appellant need not provide a detailed response to the question of whether Messrs. Hammond and DePizzol are entitled to receive at least 51% of Appellant's net profits, because Appellant “addressed this issue in the above section on ownership.” (*Id.* at 8.)

Appellant contended that CVE was “extraordinarily arrogant” in applying the presumption at 13 C.F.R. § 125.13(k) that Messrs. Hammond and DePizzol do not control Appellant due to their outside employment. (*Id.* at 8.) CVE “should spend less time presuming and more time conducting actual research and asking questions.” (*Id.* at 9.) Appellant acknowledged, however, that Mr. DePizzol is employed as “an Executive Managing Director with Newmark Knight Frank.” (*Id.* at 1.)

With regard to the role of Mr. O'Brien in Appellant's business affairs, Appellant claimed that Mr. Hammond “serve[s] as CEO of [Appellant],” whereas Mr. O'Brien is “CEO of the operating company, Alpine Roofing Ltd.” (*Id.* at 11.) Messrs. Hammond and DePizzol delegate certain responsibilities to Mr. O'Brien, but they “absolutely run the company and make all strategic decisions with [Mr. O'Brien's] input as well as the input of many others.” (*Id.* at 12.)

Appellant maintained that CVE incorrectly concluded that one or more non-veteran employees may be more highly compensated than Messrs. Hammond and DePizzol. “Here is the fact—when all owner compensation is tallied across Advent Capital, Alpine Roofing and Advent Real Estate holdings, [Messrs. Hammond and DePizzol] are the highest paid individuals associated with the company.” (*Id.* at 14.) Furthermore, the PRF Notice “fails to account for the bonus payments we made to ourselves last year in the amount of \$100,000 each.” (*Id.*)

CVE also was unreasonably concerned that Appellant submitted banking, contract, payroll, licensing, and lease information in the name of its non-VOSB subsidiary, Alpine Roofing Ltd. Appellant highlighted that “[w]e are [A]dvent Capital dba Alpine Roofing. Companies use trade names all the time.” (*Id.* at 11.)

Appellant disputed CVE's concern that Messrs. Hammond and DePizzol lack sufficient ownership interests to control decisions by the shareholders. In Appellant's view, this concern is “outlandish” and “ridiculous,” as Messrs. Hammond and DePizzol are “the only two shareholders.” (*Id.* at 13.)

With regard to CVE's findings that Appellant relies on the assistance and resources of its non-VOSB subsidiary, Alpine Roofing Ltd., Appellant contended that the regulation referenced by CVE, 13 C.F.R. § 125.13(i), “ONLY applies to SDVO[S]B as it addresses control of a company applying for SDVO[S]B status while being run or controlled by a non-service-disabled veteran. On this basis, this reference and the entire point is invalid and impertinent to this situation.” (*Id.* at 17 (emphasis Appellant's).) Appellant allowed, however, that Appellant and Alpine Roofing Ltd. do operate as one single entity. “That is entirely correct because we are Advent Capital dba Alpine Roofing.” (*Id.* at 15.)

Lastly, Appellant denied that it is unduly reliant upon its CEO, Mr. O'Brien. Appellant stated:

Any individual with business experience understands the importance of the role of a CEO. [Mr. O'Brien] is our CEO, what's to explain? Additionally, a \$10 million business relies on MANY people to be "viable." We are all inter-dependent and rely on each other when this is required. That's the way businesses works and how teams function. We are a dynamic business and nobody punches a time clock. Our 38 team member employees are where they need to be, when they need to be there and rely on each other to accomplish the mission. (*Id.* at 19 (emphasis Appellant's).)

D. CVE's Denial Decision

On October 5, 2021, CVE denied Appellant's application for verification as an VOSB. (CF, Exh. 115.) CVE found that, although Messrs. Hammond and DePizzol are veterans, CVE could not conclude that they own, and fully control, Appellant, as required by 38 C.F.R. part 74 and 13 C.F.R. part 125.

With regard to the issue of Appellant's ownership by its 401(k) plan through a trust, CVE rejected Appellant's claim that the employee participants in the plan are beneficiaries only of their own personal accounts, but not of the trust. In CVE's view:

A beneficiary is somebody that receives a benefit or advantage from something. In this case, the "something" is the Plan, which establishes the individual accounts referred by [Appellant]. The accounts are a derivative of the 401(k) Plan and not *vice versa*. Therefore, the employees are the beneficiaries of the 401(k) Plan.

(*Id.* at 4.) Because some of the beneficiaries (*i.e.*, participating employees) are not veterans, Appellant's ownership structure does not meet the requirements of 13 C.F.R. § 125.12(a). "To reiterate, because the grantor and all current beneficiaries of the 401(k) Plan do not have Veteran status, ownership by the 401(k) Plan is not the functional equivalent of ownership by the Veterans." (*Id.*)

CVE next found that Appellant failed to demonstrate that Messrs. Hammond and DePizzol are entitled to receive at least 51% of Appellant's net profits. Appellant maintained that it had "addressed this issue in the above section on ownership," but the information Appellant provided to CVE reflects that Messrs. Hammond and DePizzol together own just 0.4% of Appellant's stock. (*Id.* at 5.) "Since the Veteran owners own only 0.4% of the stock, collectively, Mr. Hammond and Mr. [DePizzol] are entitled to 0.4% of [Appellant's] annual profit distribution, collectively." (*Id.* at 6.)

CVE found that Appellant did not demonstrate that Messrs. Hammond and DePizzol manage Appellant on a daily basis, or that they work for Appellant during hours customary for firms in Appellant's industry. Appellant vaguely asserted that Messrs. Hammond and DePizzol each devote more than 40 hours to working for Appellant, but "no supporting documentation was

provided to assist this office in concluding that a Veteran controls the management and daily business operations of the applicant.” (*Id.* at 10.) Appellant also acknowledged that Mr. DePizzol has other full-time employment. (*Id.* at 6-8.)

CVE found that Appellant did not show that a veteran holds Appellant's highest officer position. In response to the PFR Notice, Appellant contended that Mr. Hammond is CEO of Appellant, whereas Mr. O'Brien is CEO of Appellant's non-VOSB subsidiary, Alpine Roofing Ltd. Appellant's SAM profile, though, “still shows [Mr.] O'Brien (non-Veteran) as the CEO of [Appellant].” (*Id.* at 12.) Consequently, “because of the inconsistency in the documentation, CVE cannot reasonably conclude that Mr. Hammond (Veteran) alone continues to hold the highest officer position, President/CEO.” (*Id.*)

CVE also found that Appellant did not show that Messrs. Hammond and DePizzol hold sufficient ownership interests to control decisions of Appellant's shareholders. In response to the PRF Notice, Appellant falsely claimed that Messrs. Hammond and DePizzol are Appellant's only shareholders. In actuality, these two individuals “directly own only 0.4%, collectively, of the issued stock.” (*Id.* at 13.) The remaining “99.6% of the issued stock is non-Veteran ownership,” specifically by Appellant's 401(k) plan through a trust. (*Id.*)

CVE found that it could not determine whether one or more non-veterans are more highly compensated than Messrs. Hammond and DePizzol. Appellant claimed that, when compensation received from Appellant and its subsidiaries is combined, Messrs. Hammond and DePizzol are the highest-compensated individuals, but Appellant failed to offer supporting evidence for this assertion. Moreover, CVE “is not able to tally the compensation received by the Veterans from any other company other than the applicant, unless it is demonstrated that the compensation is directly related to the applicant.” (*Id.* at 14.)

Lastly, CVE found that, as explained in the PRF Notice, Appellant's relationships with its non-VOSB subsidiary, Alpine Roofing Ltd., and with its non-veteran CEO, Mr. O'Brien, create legal presumptions that Messrs. Hammond and DePizzol do not control Appellant. (*Id.* at 15-20.) Appellant did not rebut these presumptions, and indeed failed even to respond to several of the findings identified in the PRF Notice. (*Id.*) Further, Appellant incorrectly suggested that “Alpine Roofing” is merely a trade name for Appellant itself. CVE stated:

Alpine Roofing LTD (non-Veteran) is a domestic limited liability company formed on November 15, 2018. The applicant (Advent Capital dba Alpine Roofing) and its subsidiary, Alpine Roofing LTD (non-Veteran), are two (2) distinct entities.

(*Id.* at 16.)

E. Appeal

On October 20, 2021, Appellant appealed the denial decision to OHA. The appeal consists of a copy of Appellant's September 26, 2021 response to the PRF Notice, and a three-page document which Appellant describes as a “summary” of that response. In its summary, Appellant asserts:

There is a clear fact pattern regarding the ownership of [Appellant] and Alpine Roofing by [Mr.] Hammond and [Mr.] DePizzol. We invested \$1 million in the acquisition, we are listed on all acquisition documents, we have guaranteed the SBA loan and we are responsible for paying the taxes. Additionally, we guide the day-to-day efforts and make all strategi[c] decisions with input from our employees. It is a complex business and to not do so would be to not exercise good business sense. What more clear evidence of “ownership” is required?

(Summary at 2.)

F. CVE's Response

On November 9, 2021, CVE responded to the appeal. CVE states that, upon review of the appeal, “CVE is electing not to file a separate response to the appeal but is relying upon the Determination Letter issued on October 5, 2021.” (Response at 1.)

III. Discussion

A. Standard of Review

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

B. Analysis

In order to be verified as a Veteran-Owned Small Business (VOSB), an applicant must be at least 51% owned, and fully controlled, by one or more veterans. 38 C.F.R. § 74.2. The applicant bears the burden to establish its status as a VOSB. *Id.* § 74.11(d). Further, although CVE is an office within the U.S. Department of Veterans Affairs, CVE examines issues of VOSB ownership and control in accordance with SBA regulations set forth at 13 C.F.R. part 125. *Id.* §§ 74.3(a) and 74.4. In situations where SBA regulations pertain specifically to Service-Disabled Veteran-Owned Small Businesses (SDVOSBs), CVE applies the same eligibility criteria to firms seeking VOSB status. *Id.*

In the instant case, CVE reasonably determined that Appellant did not demonstrate that it is entitled to VOSB verification, due to numerous issues with Appellant's ownership and control. Beginning first with the question of ownership, the record reflects that the two veterans upon whom Appellant's application for verification was based, Messrs. Hammond and DePizzol, together own only 0.4% of Appellant's stock. Sections II.A and II.B, *supra*. The large majority (99.6%) of Appellant's stock is not owned by any individual, but rather by Appellant's 401(k) plan via a trust. *Id.* The applicable regulations permit that ownership by a trust may, in certain circumstances, be treated as the functional equivalent of ownership by a veteran, but only if the trust is revocable; all the grantors are veterans; all the trustees are veterans; and all the current beneficiaries are veterans. 13 C.F.R. § 125.12(a). These criteria simply are not met here, as the grantor (Appellant) is not a veteran, nor are all beneficiaries (the participating employees)

veterans. Sections II.A and II.B, *supra*. In response to the PRF Notice, Appellant maintained that participating employees “are ONLY beneficiaries of their individual and respective separate accounts within the 401(k) Plan.” Section II.C, *supra*. Appellant, though, did not offer any evidence or even argument beyond mere assertions in support of this claim, and as noted above, Appellant, as the applicant seeking verification, “bears the burden to establish its status as a VOSB.” 38 C.F.R. § 74.11(d). CVE thus did not err in rejecting Appellant's contentions. Further, Appellant conceded, in its response to the PRF Notice, that “Advent Capital Inc. is the Grantor” of the trust. Section II.C, *supra*. Accordingly, even if OHA were to agree that participating employees are not beneficiaries of the trust, Appellant still would not meet the requirements of 13 C.F.R. § 125.12(a), because the grantor (*i.e.*, Appellant itself) is not a veteran.

CVE also reasonably concluded that Appellant did not demonstrate that Messrs. Hammond and DePizzol fully control Appellant within the meaning of 13 C.F.R. § 125.13. Among other issues, Appellant designated a non-veteran, Mr. O'Brien, as its CEO; established a complex corporate structure whereby Appellant itself is a “holding company” and a non-VOSB subsidiary, Alpine Roofing Ltd., functions as the “operating company”; and informed CVE that Mr. DePizzol, one of the two veterans upon whom Appellant's application for verification was based, works for another firm “from 7:00am to 10:00pm, Monday through Thursday.” Sections II.A and II.C, *supra*. In the PRF Notice, and again in the denial decision, CVE explained why these issues are problematic, and give rise to legal presumptions that Appellant is dependent upon, or controlled by, non-veterans or its non-VOSB subsidiary. Sections II.B and II.D, *supra*. Appellant failed to offer meaningful rebuttal to many of the issues identified by CVE. Section II.C, *supra*. Although Appellant complained that CVE “should spend less time presuming and more time conducting actual research and asking questions,” CVE's findings were not mere assumptions but rather were based on legal presumptions set forth specifically in the text of 13 C.F.R. § 125.13. *Id.* Appellant also highlighted that it is common business practice for companies to use trade names, and that “Alpine Roofing” is a trade name utilized by Appellant. *Id.* While this is true, Appellant's subsidiary, Alpine Roofing Ltd., is not a trade name, but rather is a separate business entity from Appellant. Sections II.A and II.B, *supra*. CVE's findings, then, were not based on Appellant's use of a trade name. CVE instead took issue with Appellant's corporate structure and apparent reliance upon Alpine Roofing Ltd., which is not a VOSB.

IV. Conclusion

Appellant has not established that CVE committed error of fact or law in denying Appellant's application for verified status. The appeal therefore is DENIED. 13 C.F.R. § 134.1112(f). 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).

KENNETH M. HYDE
Administrative Judge