

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

SIZE APPEAL OF:

In and Out Valet Co.

Appellant

Appealed from
Size Determination No. 3-2008-31

SBA No. SIZ-4949

Decided: April 30, 2008

APPEARANCES

James T. Tramonte, President, In and Out Valet Co., North Braddock, Pennsylvania, for Appellant.

DECISION

PENDER, Administrative Judge:

I. Introduction and Jurisdiction

This appeal arises from a March 14, 2008 size determination (Case No. 3-2008-31) (size determination) issued by the U.S. Small Business Administration (SBA), Office of Government Contracting, Area Office III (Area Office) finding Everything Parking, Inc. dba Park, Inc. (Everything Parking) to be small for the \$6.5 million annual receipts size standard.

In and Out Valet Co. (Appellant) received the size determination on March 14, 2008, and appealed the size determination to the Office Hearings and Appeals (OHA) on March 18, 2008. OHA decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

II. Issues

Is the Area Office's determination that Everything Parking is a small concern under the \$6.5 million annual receipts size standard based upon a clear error of fact or law? *See* 13 C.F.R. §§ 121.1008(d), 134.314.

III. Background

A. Facts

1. On January 4, 2008, the Department of Veterans Affairs, Augusta Medical Center (DVA), issued Solicitation No. VA-247-06-RP-0124 (RFQ). The DVA sought to purchase services for valet parking for the medical center for the base year and four option years. The Contracting Officer (CO) set the procurement aside for small business and designated North American Industry Classification System (NAICS) code 812930, Parking Lots and Garages, which has a \$6.5 million annual receipts size standard.
2. On January 29, 2008, the CO informed the unsuccessful offerors, including Appellant, that Everything Parking was the successful offeror.
3. The CO received Appellant's protest of Everything Parking's size on February 9, 2008.
4. On February 12, 2008, the CO forwarded Appellant's protest to the Area Office. However, the CO failed to forward all of the protest documents Appellant provided to the CO.
5. Appellant's protest alleged Everything Parking is an affiliate of Parking Solutions, Inc., (Parking Solutions) in Columbus, Ohio, a concern Appellant alleges to be other than small. Appellant provided evidence that indicated the president of Parking Solutions is Mr. Aaron Shocket. Appellant alleges that Parking Solutions owns Parking Solutions of NC, Inc. (Parking Solutions of NC), in Charlotte, North Carolina, which is located at Everything Parking's address and maintains the same phone and facsimile numbers as Everything Parking.
6. On February 20, 2008, the Area Office dismissed Appellant's protest for lack of specificity. Appellant timely appealed the dismissal of its protest to OHA. Shortly after its appeal to OHA Appellant and the Area Office learned the protest file received by the Area Office was incomplete. Appellant dismissed its appeal with OHA on March 4, 2008, and the Area Office reopened its consideration of Appellant's protest, pursuant to 13 C.F.R. § 121.1009(h), because an administrative error had occurred when the CO did not provide the Area Office with the complete protest, including attachments.
7. On March 4, 2008, the Area Office informed Everything Parking of Appellant's protest. The Area Office explained the protest process and requested Everything Parking provide: (1) an SBA Form 355; (2) a statement responding to Appellant's protest allegations; (3) a copy of its charter and bylaws; (4) income statements for Everything Parking and its affiliates; and (5) complete financial statements and income tax returns for the three years preceding its affiliation.
8. Everything Parking complied with the Area Office's request for information. Everything Parking's reply established:

- a. Before August of 2004, Mr. Shocket, the president of Parking Solutions, owned 75% of Parking Solutions of NC's common stock and had the power to control Parking Solutions of NC;
- b. On August 1, 2004, Mr. Shocket sold his Parking Solutions of NC stock. Mr. Curtis Springer eventually obtained ownership of more than 50% of Parking Solutions of NC's common stock and thus gained the power to control Parking Solutions of NC.
- c. Parking Solutions of NC also gained the right to use the Parking Solutions name for three years to give it time to change its logos, marketing materials, and contracts to a new name;
- d. In August 2007, Parking Solutions of NC changed its name to Everything Parking;
- e. Mr. Springer, the majority owner of Everything Parking, owns 100% of Good Shepherd Village, Ltd. (Good Shepherd);
- f. When the income of Good Shepherd and Everything Parking are aggregated for 2005, 2006, and 2007, their income is less than \$6.5 million per year; and
- g. There is no connection between Everything Parking and Parking Solutions.

B. The Size Determination

The Area Office issued size determination No. 3-2008-31 on March 14, 2008. The Area Office determined Everything Parking was a small concern under NAICS code 812930.

The Area Office based its determination on evidence in the Record establishing that Mr. Shocket conveyed all of his ownership interest in the concern that became Everything Parking. Instead, the Area Office found Mr. Springer owns more than 50% of Everything Parking's stock. The Area Office also noted Everything Parking had bought the right to use the Parking Solutions of NC name for three years, but has used Everything Parking to conduct business since August of 2007.

C. The Appeal

Appellant appealed the size determination on March 18, 2008. Appellant alleges the facts contained in the discussion portion of the size determination are not true. Appellant avers that Everything Parking and Parking Solutions are affiliated and explains Parking Solutions of NC is performing a contract in Salisbury, North Carolina. Since Parking Solutions is a "large business," Appellant alleges Everything Parking is "large" as well.

IV. Discussion

A. Timeliness

Appellant timely filed its appeal within 15 days after it received the size determination. 13 C.F.R. § 134.304(a)(1).

B. Standard of Review

The standard of review for this appeal is whether the Area Office based its size determination upon clear error of fact or law. 13 C.F.R. § 134.314. In evaluating whether there is a clear error of fact or law, OHA does not consider Appellant's size *de novo*. Rather, OHA reviews the record to determine whether the Area Office based its size determination upon a clear error of fact or law. See *Size Appeal of Taylor Consulting, Inc.*, SBA No. SIZ-4775 (2006), for a full discussion of the clear error standard of review. Consequently, I will disturb the Area Office's size determination only if I have a definite and firm conviction the Area Office made key findings of law or fact that are mistaken.

C. The Merits

Before August 1, 2004, Mr. Shocket, the president of Parking Solutions, owned 75% of Parking Solutions of NC (Fact 8.a). Therefore, Mr. Shocket had the power to control Parking Solutions of NC. 13 C.F.R. § 121.103(c)(1).

On or about August 1, 2004, Mr. Shocket sold his interest in Parking Solutions of NC to Mr. Brian Haupricht. The sale included the rights to use the name Parking Solutions of NC for three years. Mr. Haupricht then conveyed the shares sold to him by Mr. Shocket to Mr. Springer (Fact 8.b.). Hence, Mr. Springer gained the power to control Parking Solutions of NC in lieu of Mr. Shocket. 13 C.F.R. § 121.103(c)(1). Mr. Springer continued to use the Parking Solutions of NC name until August 2007. On August 1, 2007, Parking Solutions of NC legally changed its name to Everything Parking and began doing business as Park, Inc.

Ties between firms can establish affiliation where the firms have common ownership, common management, or common key employees. 13 C.F.R. § 121.103(c) and (e). A review of the record confirms Everything Parking and Parking Solutions do not have common ownership, officers, or directors.

In determining affiliation, SBA relies primarily upon the signed and certified statements made by a challenged firm in its SBA Form 355 and its response to the appeal, and not upon the unsupported statements made by an appellant in its protest or appeal. See 13 C.F.R. § 121.1009. Thus, the hearsay web information Appellant relies upon is not probative compared to the evidence Parking Solutions submitted with its SBA Form 355.

Even though Mr. Shocket once owned a controlling interest in the business which ultimately became Everything Parking, his former power to control Parking Solutions of NC does not create affiliation between the concerns he may have the power to control and

Everything Parking. Nor does the mere fact that Mr. Haupricht purchased the right to legally use the Parking Solutions name, logos, and marketing materials for three years establish affiliation. Consequently, the Area Office cannot aggregate the receipts of Everything Parking with concerns controlled by Mr. Shocket, for these concerns were not affiliated with Everything Parking before the date used for determining size.¹ 13 C.F.R. § 121.104(d)(4).

Mr. Springer, Everything Parking's owner, also has the power to control Good Shepherd (Fact 8.e.). Still, even when aggregating the average annual receipts of Good Shepherd with Everything Parking for tax years 2005, 2006, and 2007, the average annual receipts of both is well below the \$6.5 million annual receipts size standard (Fact 8.f.).

Everything Parking fully complied with the Area Office's March 4, 2008 request for information, including providing copies of documents that establish Facts 8.a - g. Moreover, I find Everything Parking's response to be credible and un rebutted by any evidence in the Record. Based upon Everything Parking's response and the Area Office's analysis of that response, I hold there is no error of any kind in the size determination.

V. Conclusion

The Record supports the size determination. There is no evidence that Everything Parking is affiliated with Mr. Shocket or Parking Solutions. Nor is there any evidence that concerns affiliated with Everything Parking would cause it to exceed the \$6.5 million size standard. Accordingly, the size determination is AFFIRMED and Appellant's appeal is DENIED.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(b).

THOMAS B. PENDER
Administrative Judge

¹ Offers were due on January 24, 2008. Pursuant to 13 C.F.R. § 121.404(a), January 24, 2008, is the date when SBA determined Everything Parking's size.