

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

SIZE APPEAL OF:

SB Technologies, LLC,

Appellant,

Appealed From

Size Determination No. 2-2011-104

SBA NO. SIZ-5298

Decided: November 8, 2011

ORDER DISMISSING APPEAL

I. Background

This appeal arises from a Small Business Administration (SBA) size determination issued to SB Technologies, LLC (Appellant) in conjunction with Appellant's application for 8(a) Business Development certification. Upon review of Appellant's application, SBA's Division of Program Certification and Eligibility (DPCE) requested a formal size determination to examine potential affiliation between Appellant and DB Consulting Group (DBC).

On September 12, 2011, SBA's Office of Government Contracting—Area II (Area Office) issued Size Determination No. 2-2011-104 finding Appellant to be affiliated with DBC on three grounds. First, the Area Office determined that Appellant derives 100% of its revenues from DBC and therefore is affiliated with DBC through economic dependence. Size Determination at 2-3. Second, the Area Office found that Appellant and DBC share an identity of interest under 13 C.F.R. § 121.103(f), and are affiliated, because the owners of Appellant and DBC are husband and wife. *Id.* at 3. Third, the Area Office found that Appellant and DBC are affiliated under the “newly organized concern rule,” 13 C.F.R. § 121.103(g). The Area Office noted that Appellant was formed in June 2009, that Appellant's owner previously served as an officer of DBC, that the two firms operate in related industries, and that DBC is Appellant's only source of revenue. *Id.* at 3-4. The Area Office found that Appellant, by itself, would qualify as a small business under its primary North American Industry Classification System (NAICS) code, 541511, Custom Computer Programming Services. However, when Appellant's receipts are combined with those of DBC, Appellant is not a small business.

On September 27, 2011, Appellant faxed to the SBA Office of Hearings and Appeals (OHA) a one-page letter disagreeing with the size determination.¹ Appellant acknowledges that the owners of Appellant and DBC are married to one another, but insists that “[t]here is no (Law) statute in the Entire World that says two people can't be married and own separate businesses.” Appellant indicates that the owners of Appellant and DBC “do not own any part of each others’

¹ Appellant filed the letter within fifteen days of receiving the size determination, so the appeal is timely. 13 C.F.R. § 134.304(a).

business,” and that the two concerns “do not operate in the State or building.” Appellant requests that the size determination be reversed.

II. Discussion

Appellant has the burden of proving all elements of its appeal. Specifically, Appellant must demonstrate that the size determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314; *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 10-11 (2006). Furthermore, Appellant must submit an appeal petition containing “[a] full and specific statement as to why the size determination ... is alleged to be in error, together with argument supporting such allegations.” 13 C.F.R. § 134.305(a)(3). A defective appeal petition “may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of a respondent.” 13 C.F.R. § 134.305(e).

In this case, Appellant failed to provide a full and specific statement as to why it considers the size determination to be erroneous. Appellant's letter is one page in length, and addresses only the issue of whether Appellant is affiliated with DBC through a familial relationship. Appellant is silent on the two other grounds for affiliation discussed in the size determination, does not dispute any of the Area Office's factual findings, and cites no legal authority. With regard to the familial relationship, Appellant argues that the fact that the owners of Appellant and DBC are married to each other should not be grounds to find an identity of interest. It appears, therefore, that Appellant disagrees with the regulation itself. This is not a proper basis for appeal, as it is well-settled that OHA “has no authority to determine the validity of the size regulations and can entertain no challenge to them.” *Size Appeal of Condor Reliability Servs., Inc.*, SBA No. SIZ-5116, at 6 (2010).

Accordingly, Appellant has not set forth a valid claim that the size determination is clearly erroneous. Appellant's argument with regard to affiliation through familial relationships is beyond OHA's jurisdiction. Even assuming that Appellant somehow prevailed on this point, however, the size determination contained two other independent grounds for affiliation which Appellant has not challenged. Thus, Appellant cannot demonstrate, and has not properly alleged, that the size determination is clearly erroneous. *Size Appeal of Archimeleon, PLLC*, SBA No. SIZ-5076 (2009) (“There is no allegation that the Area Office committed any error at all, let alone a clear error. Consequently, Appellant fails to state a valid claim.”); *Size Appeal of ALROD Enterprises, Inc.*, SBA No. SIZ-4704 (2005) (“[B]ecause Appellant neither disputes any fact cited in the size determination, nor claims the Area Office made any legal error in its analysis, the appeal fails to state a claim that can be addressed. Thus, the appeal must be dismissed.”).

III. Conclusion

Appellant's appeal does not allege that the Area Office's size determination was based on clear error. Accordingly, this appeal is DISMISSED. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge