

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

SIZE APPEAL OF:

International Filter Manufacturing Corp.,

Appellant,

RE: Maradyne Corporation

Appealed From
Size Determination No. 04-2016-012

SBA No. SIZ-5711

Decided: February 2, 2016

APPEARANCES

Daniel J. Donohue, Esq., Polsinelli PC, Washington, D.C., for Appellant

W. Whitney Slaght, III, Chief Financial Officer, Maradyne Corporation, Cleveland, Ohio

DECISION

I. Introduction and Jurisdiction

On December 3, 2015, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area IV (Area Office) issued Size Determination No. 04-2016-012 finding that Maradyne Corporation (Maradyne) is a small business for the subject procurement. International Filter Manufacturing Corp. (Appellant), which had previously protested Maradyne's size, maintains that the size determination is clearly erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse or remand. For the reasons discussed *infra*, the appeal is denied, and the size determination is affirmed.

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. Appellant received the size determination on December 8, 2015 and filed the instant appeal within fifteen days thereafter, so the appeal is timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation and Protest

On May 22, 2015, the Defense Logistics Agency (DLA) issued Request for Proposals (RFP) No. SPE7LX-15-R-0073 for filters. The Contracting Officer (CO) set aside the

procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 336390, Other Motor Vehicle Parts Manufacturing, with a corresponding size standard of 750 employees.

On November 3, 2015, the CO announced that Maradyne was the apparent awardee. On November 4, 2015, Appellant, a disappointed offeror, protested Maradyne's size. Appellant alleged that Maradyne exceeds the size standard because Maradyne is owned by, and affiliated with, Dreison International, Inc. (Dreison) and its subsidiaries. (Protest at 2.) Appellant's protest referred to the Dreison and Maradyne websites to support this allegation, noting that Maradyne's website also identified several companies as "current acquisitions." (*Id.* at 3-4.)

The CO forwarded Appellant's size protest to the Area Office for a size determination. On November 19, 2015, Maradyne responded to the protest and provided its sworn SBA Form 355 and other documents. As part of its submissions, Maradyne provided the worldwide employee counts for itself and four acknowledged affiliates: Dreison; DCM Manufacturing, Inc. (DCM); Von Weise, LLC (Von Weise); and SuperTrapp Industries, Inc. (SuperTrapp). (SBA Form 355, Responses to Questions 10a, 10b, and 13c.) Responding to a subsequent inquiry from the Area Office, Maradyne confirmed that "the information [Maradyne] provided includes total worldwide employment for Maradyne and all affiliates (Dreison, etc.)." (Email from W. Slaght to D. Gordon (Nov. 24, 2015).)

B. Size Determination

On December 3, 2015, the Area Office issued Size Determination No. 04-2016-012, concluding that Maradyne is a small business.

The Area Office found that Dreison owns a majority interest in Maradyne, so the two concerns are affiliated under 13 C.F.R. § 121.103(c)(1). (Size Determination at 2.) Dreison also holds a majority interest in DCM, and Maradyne owns a majority interest in Von Weise, so Maradyne is affiliated with those entities as well. (*Id.*) Additionally, Maradyne acknowledged affiliation with SuperTrapp. Mr. T. John Berger, Jr. owns a majority interest in Dreison, but he does not own a controlling interest in any other concern, nor does he hold a key or executive position in another concern. Therefore, no additional entities are affiliated with Maradyne through Mr. Berger. (*Id.*)

The Area Office considered whether Maradyne might have other affiliates beyond Dreison, DCM, Von Weise, and SuperTrapp. The Area Office found that Appellant's protest "did not allege the existence of any additional affiliates and [the Area Office's] independent investigation did not disclose any affiliates other than those already named above." (*Id.* at 3.) Although the protest referred to the websites of Maradyne and Dreison, such sources do not necessarily contain current and accurate information, and cannot overcome the more detailed and sworn statements provided by Maradyne in response to the protest. (*Id.* at 2-3.) Further, "[t]o the extent that [Appellant] intends to suggest that the firms listed under 'Current Acquisitions' on the Maradyne website be considered, [the Area Office] has confirmed their inclusion in the employee figures provided by Maradyne." (*Id.* at 3 fn.2.)

The Area Office found that the combined employees of Maradyne, Dreison, DCM, Von Weise, and SuperTrapp do not exceed the size standard. Therefore, Maradyne is a small business for this procurement.

C. Appeal

On December 22, 2015, Appellant filed the instant appeal with OHA. Appellant argues that Maradyne has more affiliates than those identified in the size determination. (Appeal at 2.) Specifically, the Area Office should have considered the following three companies affiliates of Maradyne: (1) Von Weise of Canada, Inc. (Von Weise Canada); (2) Von Weise Mexico; and (3) Molded Plastics, Inc. (Molded Plastics). (*Id.*) Appellant asserts that Von Weise Canada, Von Weise Mexico, and Molded Plastics together employ 416 individuals. When added to the 350 employees of Maradyne and its other affiliates, Maradyne exceeds the size standard. (*Id.* at 5-6.)

Appellant highlights that the Area Office found Maradyne affiliated with DCM, Von Weise, and Dreison. However, the Area Office did not consider that, according to a press release from December 2009, DCM acquired the assets of Von Weise Canada. (*Id.* at 4.) Further, the Area Office failed to account for Von Weise Mexico, which is referenced on Von Weise's website. (*Id.* at 5.) In addition, Molded Plastics is owned by Dreison, yet Molded Plastics is not mentioned in the size determination. (*Id.*) Attached to its appeal, Appellant offers several exhibits, including the December 2009 press release, a printout from the Von Weise website, and a corporate profile of Molded Products Company.

Appellant requests that OHA rule that Maradyne exceeds the size standard and is not a small business for the procurement at issue, or in the alternative, remand the matter to the Area Office for further consideration.

D. Maradyne's Response

On January 7, 2016, Maradyne responded to the appeal.

Maradyne explains that, in 2009, DCM purchased “selected assets” of Von Weise Canada after Von Weise Canada became insolvent. (Response at 1.) DCM did not acquire the entire business of Von Weise Canada, and at the time of the transaction, Von Weise Canada had only seven employees. DCM subsequently relocated the acquired assets to Mexico, and Maradyne disclosed the total number of DCM employees at all locations worldwide to the Area Office. (*Id.*) Maradyne adds that Von Weise does conduct operations in Mexico under the name TPC Motores de Mexico S. de R.L. de CV, but the employee count provided in Maradyne's SBA Form 355 included all Von Weise employees worldwide. (*Id.*) Lastly, DCM acquired the Molded Products Co. (Molded Products) — not Molded Plastics as stated in the appeal — in April 2008. Again, though, Maradyne already reported to the Area Office all DCM employees worldwide. (*Id.*)

Maradyne reiterates that Maradyne and its affiliates currently employ 380 individuals worldwide, and the average for the 12-month period in question is 364. Therefore, Maradyne is well under the size standard for this procurement.

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of the appeal. Specifically, Appellant must prove that the size determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb an area office's size determination only if, after reviewing the record, the administrative judge has a definite and firm conviction that the area office erred in making its key findings of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

B. Analysis

I find no merit to this appeal. The record shows that the Area Office considered Appellant's protest allegations, and determined that Maradyne is affiliated with Dreison, DCM, Von Weise, and SuperTrapp. Maradyne's sworn SBA Form 355 provided the employee counts for Maradyne and each of the affiliates, and the Area Office verified that these tallies included employees at all locations worldwide. Section II.A, *supra*. By regulation, an area office will base its decision largely on information “provided by the concern whose size status is at issue,” and will “give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions.” 13 C.F.R. § 121.1009(b) and (d). Accordingly, the Area Office properly relied upon the sworn statements in Maradyne's SBA Form 355 and the detailed supporting documentation submitted by Maradyne. Appellant has failed to show any valid reason to disturb the size determination.

The instant appeal is further undermined by the fact that the three additional alleged affiliates discussed in the appeal — Von Weise Canada; Von Weise Mexico; and Molded Plastics — were not mentioned in Appellant's protest. Section II.A, *supra*. Rather, Appellant raises these issues for the first time on appeal. It is settled law, however, that “[a]n area office has no obligation to investigate issues beyond those raised in the protest.” *Size Appeal of Wescott Electric Co.*, SBA No. SIZ-5691, at 5 (2015) (quoting *Size Appeal of Fuel Cell Energy, Inc.*, SBA No. SIZ-5330, at 5 (2012).) Given that Appellant's protest contained no allegations pertaining to Von Weise Canada, Von Weise Mexico, and Molded Plastics, Appellant has not demonstrated that the Area Office erred by not addressing them in the size determination.

IV. Conclusion

It is Appellant's burden to prove that the Area Office committed a clear error of fact or law, a burden Appellant has failed to meet. As a result, the appeal is DENIED and the size determination is AFFIRMED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge