

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

VSBC Appeal of:

Perrilliat Enterprises, Inc.,

Appellant

SBA No. VSBC-282-A

Decided: May 15, 2023

APPEARANCE

Stewart B. Perrilliat, President, Perrilliat Enterprises, Inc., Oakland, California

DECISION

I. Introduction and Jurisdiction

On April 6, 2023, Perrilliat Enterprises, Inc. (Appellant) appealed a decision of the U.S. Small Business Administration (SBA), denying Appellant's application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB). SBA found that Appellant is not fully controlled by one or more service-disabled veterans. On appeal, Appellant maintains that the denial decision was erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse. For the reasons discussed *infra*, the appeal is granted, and the matter is remanded to SBA for further review.

OHA adjudicates SDVOSB status appeals pursuant to the Small Business Act of 1958, 15 U.S.C. §§ 631 *et seq.*, and 13 C.F.R. parts 128 and 134 subpart K. Appellant timely filed the appeal within 10 business days after receiving the denial notice on March 27, 2023. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Case File

Appellant is a “Construction and Renovation General Contractor,” established as a corporation in the state of Nevada, and headquartered in California. (Case File (CF), Exh. 26, at 1.) On March 8, 2023, Appellant applied for certification as an SDVOSB, and submitted various supporting documents to SBA. Appellant is 100% owned by Mr. Stewart B. Perrilliat, a service-disabled veteran. (CF, Exh. 30, at 2.) According to Appellant's Articles of Incorporation, filed with the state of Nevada on January 17, 2019, Appellant has two “Directors/Trustees”: Stewart Perrilliat and Michael Perrilliat. (CF, Exh. 26, at 1.) Stewart Perrilliat is also Appellant's “Incorporator” (*Id.*)

Appellant provided a copy of its Bylaws, dated November 2, 2021. (CF, Exh. 25.) The Bylaws contain the following provisions pertinent to this appeal:

Article 3 Directors

Section 1. Number

The corporation shall have 1 director and collectively they shall be known as the board of directors.

...

Section 3. Powers

[T]he activities and affairs of this corporation shall be conducted, and all corporate powers shall be exercised by or under the direction of the board of directors.

...

Section 11. Quorum for Meetings

A quorum shall consist of 1 member of the board of directors and 1 officer

...

Section 12. Majority Action as Board Action

Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board of directors[.]

...

Article 4

Officers

Section 1. Designation of Officers

The officers of the corporation shall be a president, a secretary, and a treasurer. The corporation may also have a chairperson of the board, one or more vice presidents, assistant secretaries, assistant treasurers, and other such officers with such titles as may be determined from time to time by the board of directors.

(*Id.* at 2, 4, 6.) The Bylaws are signed solely by Stewart Perrilliat in his capacity as “all the initial directors or incorporators of this corporation.” (*Id.* at 18.)

Appellant provided minutes of two “Board Meetings” held on February 28, 2019 and August 30, 2022, during which three individuals — Stewart Perrilliat, Jonnique Carter, and Robert Edward — were in attendance. (CF, Exhs. 23 and 29.) According to the minutes of the February 28, 2019 Board meeting, Appellant elected Stewart Perrilliat to serve as its President, Ms. Carter to serve as Treasurer, and Mr. Edward to serve as Secretary. (CF, Exh. 23, at 2.) The minutes further state that each officer “[a]dopted” their respective duties and have “[n]o term limits,” but “can be removed by the [B]oard for cause.” (*Id.* at 1.) The minutes indicate that Appellant has “[o]nly 1 [B]oard member”, although the identity of that Board member is not specified. (*Id.*)

According to the minutes of the August 30, 2022 Board meeting, Stewart Perrilliat “reported on the Board Retreat earlier this year.” (CF, Exh. 29, at 1.) During the retreat, which “[m]et at Jonnique and Stewart's home,” the Board “[b]rainstormed” on Appellant's mission and strategic objectives. (*Id.*)

B. Denial

On March 27, 2023, SBA, acting through the Director of the Office of Government Contracting (D/GC), denied Appellant's application for certification as an SDVOSB. (CF, Exh. 22.) The D/GC found that Appellant did not demonstrate that one or more service-disabled veterans fully control Appellant's Board, as is required under 13 C.F.R. § 128.203(e). (*Id.* at 1.) In particular, according to the minutes of the February 28, 2019 meeting, Appellant has three Directors: Stewart Perrilliat (a service-disabled veteran), Ms. Carter (a non-veteran), and Mr. Edward (a non-veteran). (*Id.*) These same individuals also are officers of Appellant. (*Id.*) Appellant's Bylaws indicate that one Director and one officer are needed to establish a quorum. (*Id.*) The Bylaws further provide that “[e]very act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board of directors.” (*Id.*, quoting Bylaws § 12.) Because Appellant has “three directors and three officers”, only one of whom is a service-disabled veteran, non-qualifying individuals could potentially convene a meeting without Stewart Perrilliat's participation. (*Id.*) Furthermore, as Appellant's Board is comprised of three Directors, non-qualifying individuals could outvote Stewart Perrilliat, or otherwise block action by Appellant's Board, thereby exerting negative control over Appellant. (*Id.* at 1-2, citing 13 C.F.R. § 128.102.)

C. Appeal

On April 6, 2023, Appellant appealed the D/GC's decision to OHA. Appellant maintains that the D/GC “misinterpreted” Appellant's governing documents. (Appeal at 2.)

Appellant asserts that the February 28, 2019 meeting minutes “never state” that Ms. Carter or Mr. Edward are Directors. (*Id.* at 2.) Rather, the minutes are clear that they are merely officers of Appellant. (*Id.*) In support, Appellant observes that the minutes “reiterate the fact that there is only [one] [B]oard member,” as is also provided in Appellant's Bylaws. (*Id.*) Furthermore, the minutes state that “[o]fficers can be removed [for] cause by the [B]oard,” thus implying that “officers are not necessarily [B]oard members.” (*Id.*) The D/GC erroneously assumed that all attendees at the February 28, 2019 meeting are Directors. (*Id.*)

Appellant highlights that its Bylaws stipulate that “there is one [B]oard member.” (*Id.* at 3.) Contrary to the D/GC's decision, then, a quorum could not be established without Stewart Perrilliat, nor could any Board action be taken without his approval. (*Id.*) The D/GC should have concluded that Stewart Perrilliat has “sole control” over Appellant. (*Id.*)

III. Discussion

A. Standard of Review

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

B. Analysis

I find it appropriate to remand this matter for further review. As Appellant correctly observes, the D/GC apparently interpreted the minutes of Appellant's February 28, 2019 meeting to mean that Appellant has three Directors. Section II.B, *supra*. This interpretation, however, was flawed, for three reasons.

First, as Appellant emphasizes in its appeal, a close reading of the meeting minutes indicates that, although three individuals were present during the meeting, these same three individuals are not necessarily all members of Appellant's Board. Indeed, the meeting minutes themselves state that Appellant's Board consists of only one Director. Section II.A, *supra*. The mere fact that three individuals attended the February 28, 2019 meeting, then, does not by itself establish that Appellant has three Directors.

Second, even assuming Appellant's Board did have three Directors as of February 28, 2019, this structure may have been superseded by Appellant's Bylaws, which are dated November 2, 2021. Section II.A, *supra*. According to the Bylaws, Appellant is governed by a Board of Directors comprised of one individual. *Id.* The Bylaws were signed solely by Stewart Perrilliat — Appellant's President, owner, and a service-disabled veteran — who represented himself as “all the initial directors or incorporators of this corporation.” *Id.* The Bylaws further state that one Director and one officer are needed to establish a quorum, and that approval by “a majority” of the Board members is necessary to make decisions. *Id.* Accordingly, if Stewart Perrilliat is Appellant's sole Director, it appears that he alone could establish a quorum and unilaterally control Appellant's Board.

Third, applicable regulations instruct that a service-disabled veteran is deemed to control a corporation's Board if he or she “owns 100% of all voting stock and is on the Board of Directors.” 13 C.F.R. § 128.203(e)(1)(i). In the instant case, Stewart Perrilliat, a service-disabled veteran, owns 100% of Appellant, and the D/GC appears to have concluded that Stewart Perrilliat is at least a member of Appellant's Board. Sections II.A and II.B, *supra*. Stewart Perrilliat thus may control Appellant's Board under § 128.203(e)(1)(i).

On the other hand, although Appellant has identified errors in the D/GC's decision, Appellant has not conclusively shown that it is an eligible SDVOSB. Additional review and clarification is thus appropriate. Notably, Appellant points to no specific evidence that Stewart Perrilliat is Appellant's sole Director. Section II.C, *supra*. While Appellant's Bylaws do state that Appellant's Board will be comprised of one Director, the identity of that one Director is unspecified. Section II.A, *supra*. Furthermore, other information in the record appears to contradict Appellant's claim that its Board consists of only one Director. The minutes of the August 30, 2022 Board meeting, for instance, refer to a "Board Retreat earlier this year," during which the Board "[b]rainstormed" on Appellant's mission and strategic objectives. *Id.* Appellant does not attempt to explain how these statements can be reconciled with its contention that its Board is comprised of only one Director.

IV. Conclusion

For the above reasons, the appeal is GRANTED, the D/GC's decision is VACATED, and the matter is REMANDED to the D/GC for further review.

KENNETH M. HYDE
Administrative Judge