

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

VSBC Appeal of:

Divinely Elegant Vines LLC,

Appellant

SBA No. VSBC-317-A

Decided: November 17, 2023

**ORDER DISMISSING APPEAL**<sup>1</sup>

On November 7, 2023, Divinely Elegant Vines LLC (Appellant) appealed the denial of its application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB) to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). Although the appeal petition was deficient in multiple respects, Appellant's deadline for filing a proper appeal had not yet expired. As a result, OHA ordered that Appellant would have until November 13, 2023 to submit a new appeal petition.

OHA explained that the appeal was insufficient for two principal reasons. First, the appeal did not clearly state what error(s), if any, Appellant alleged the Director of SBA's Office of Government Contracting (D/GC) to have committed, as is necessary for a valid appeal under 13 C.F.R. §§ 134.1105(a)(2) and 134.1111. (OHA's Order at 1.) Indeed, Appellant conceded that, due to Appellant's own "mistake," Appellant had overlooked a provision in its Operating Agreement requiring unanimous written agreement among all of Appellant's members. (Original Appeal at 1.) Second, the appeal appeared to be based largely, if not entirely, on new evidence, which OHA generally cannot consider. (OHA's Order at 1, citing 13 C.F.R. § 134.1110.) Specifically, Appellant attached to its appeal a new version of its Operating Agreement, purporting to cure the problematic provision identified by the D/GC.

In response to OHA's Order, Appellant submitted an amended appeal petition. In the amended appeal, Appellant highlights that it is 51% owned by Mr. Michael Waldo, a service-disabled veteran. (Amended Appeal at 1.) Appellant argues that the D/GC need not have been troubled by the unanimity provision in Appellant's Operating Agreement, because that provision would prevent Appellant's minority owner from accomplishing action without Mr. Waldo's consent. (*Id.*) Appellant observes that, under the provision, the minority owner's proposals could be implemented only with Mr. Waldo's express agreement. (*Id.*) Appellant adds that "[i]f this is not sufficient, [Appellant] would ask permission to please be allowed to submit a clearer and more defined [Operating] [A]greement as new evidence." (*Id.*)

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<sup>1</sup> This appeal is decided under the Small Business Act of 1958, 15 U.S.C. §§ 631 *et seq.*, and 13 C.F.R. parts 128 and 134 subpart K.

The instant appeal, even as revised, remains deficient and must be dismissed. Like Appellant's original appeal petition, the amended appeal does not clearly identify any error in the D/GC's decision. While it may be true that the unanimity provision would restrict Appellant's minority owner from accomplishing actions over Mr. Waldo's objection, the provision likewise prevents Mr. Waldo from unilaterally exerting such control. As the D/GC observed in his decision, applicable regulations require that, to qualify as an SDVOSB, one or more service-disabled veterans must have "control over all decisions" of the concern, including "the unilateral power and authority to make decisions," except for certain decisions pertaining to extraordinary events such as bankruptcy. 13 C.F.R. § 128.203(d) and (j). Here, Appellant apparently does not dispute that, under the terms of its Operating Agreement, Mr. Waldo lacks unilateral power to control all of Appellant's decisions. Appellant thus has not alleged any material error in the D/GC's decision. Furthermore, in an SDVOSB appeal proceeding, OHA cannot consider new evidence for the first time on appeal, unless good cause is shown. 13 C.F.R. § 134.1110. Insofar as the instant appeal relies upon a new version of Appellant's Operating Agreement, Appellant has not attempted to explain why the new version of the Operating Agreement was not, or could not have been, provided to the D/GC during the application process.

Under OHA's rule of procedure, a deficient appeal may be summarily dismissed. 13 C.F.R. § 134.1105(d). Such is the case here, as Appellant has not alleged any error on the part of the D/GC, and it does not appear that Appellant disputes the D/GC's key finding or analysis. *CVE Appeal of Watanabe Enterprises, LLC*, SBA No. CVE-218-A, at 2 (2022), *recons. denied*, SBA No. CVE-224-A (2022) (PFR); *CVE Appeal of Rock Int'l Env'tl. Corp.*, SBA No. CVE-168-A, at 1 (2020) (dismissing appeal that merely "request[ed] that OHA allow Appellant to remain verified but has not articulated any valid basis for OHA to disturb [the cancellation] decision"); *CVE Appeal of Arctic Tundra Supply and Servs. LLC*, SBA No. CVE-130-A (2019); *CVE Appeal of Secure2ware, Inc.*, SBA No. CVE-111-A, at 2 (2019).

For the above reasons, the appeal is DISMISSED. This is the final decision of the U.S. Small Business Administration. 13 C.F.R. § 134.1112(d).

KENNETH M. HYDE  
Administrative Judge