

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

VSBC Appeal of:

JBELL LLC,

Appellant

SBA No. VSBC-362-A

Decided: June 11, 2024

APPEARANCE

Marcus Q. Bell, Member-Manager, JBELL LLC, Rosenberg, Texas

DECISION

I. Introduction and Jurisdiction

On April 16, 2024, JBELL LLC (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 it could not ascertain whether Appellant is 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 denied.

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 April 15, 2024. 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 limited liability company established in the state of Texas. (Case File (CF), Exh. 32.) On February 26, 2024, Appellant applied for certification as an SDVOSB, and submitted various supporting documents to SBA. According to his VA Form 0877, dated February 22, 2024, Mr. Marcus Q. Bell, a service-disabled veteran, owns 51% of Appellant. (CF, Exh. 35.) His wife, Mrs. Cathy Elaine Simpson-Bell, owns the remaining 49%. (*Id.*) Mrs. Simpson-Bell is neither a veteran nor a service-disabled veteran. (*Id.*)

The Case File contains multiple versions of Appellant's Operating Agreement. (CF, Exhs. 26, 28, 29, and 33.) A version of the Operating Agreement dated February 20, 2024 indicated

that both Mr. Bell and Mrs. Simpson-Bell are “Members” of Appellant. (CF, Exh. 33, at 2, 13-14.) The Agreement further stipulated that Appellant is managed by a Board of Managers. (*Id.* at 5-8.) With regard to amendments, the Agreement stated:

This Agreement may be amended only by written consent of the Board [of Managers] and the Members. Upon obtaining the approval of any such amendment, . . . the Company shall cause a Certificate of Amendment or Amended and Restated Certificate to be prepared, executed, and filed in accordance with Texas law.

(*Id.* at 13.) The February 20, 2024 version of the Operating Agreement was signed by Mr. Bell and Mrs. Simpson-Bell in their capacities as Appellant's Members. (*Id.*)

Appellant also submitted a more recent version of its Operating Agreement, dated April 2, 2024, again signed by both Mr. Bell and Mrs. Simpson-Bell. (CF, Exh. 26, at 5.) The April 2, 2024 version of the Operating Agreement contains the following provisions pertinent to this appeal:

This Limited Liability Company Agreement (the “Agreement”) of JBELL, LLC, (the “Company”), is executed and agreed to, for good and valuable consideration, by the undersigned (individually, the “Member”).

...

3. Member.

(a) Members. The sole Member of the Company is the undersigned Marcus Bell.

(b) Member's Initial Contribution. The Member shall make an initial contribution to the company in the amount of \$255.00.

...

(f) Ownership Change. The Member may change the ownership of the Company in part or entirely by adding additional Members or selling the company to new ownership.

(g) Operational Decisions. All operational decisions shall be made by the Member without meeting, proxy voting, or prior notice.

(*Id.*, at 1-2.)

As part of its application, Appellant submitted an unsigned and undated letter, stating:

Per our [] conversation on Monday 01 April 2024. The ownership and day-to-day operating decisions are as follows:

Marcus Q. Bell (VET) 51% (MEMBER-MANAGER) has all the control of day-to-day operation and decisions. Cathy Simpson-Bell is 49% (MEMBER).

(CF, Exh. 27 (emphasis in original).)

B. Denial

On April 15, 2024, SBA, acting through the Director of the Office of Government Contracting (D/GC), denied Appellant's application for SDVOSB certification. The D/GC found that Appellant's application was marred by “contradictory” information. (CF, Exh. 23 at 2.)

More specifically, in its application, Appellant represented that Mrs. Simpson-Bell, who is not a service-disabled veteran, is 49% owner and a Member of Appellant. (*Id.*) Although the most recent version of Appellant's Operating Agreement, dated April 2, 2024, indicates that Mr. Bell alone manages Appellant and is Appellant's “sole Member,” Appellant offered no explanation or documentation to corroborate these claims. (*Id.*) Insofar as Mrs. Simpson-Bell is still a Member of Appellant, the April 2, 2024 version of the Operating Agreement appears to give all Members equal control over Appellant's decision-making. (*Id.*) Consequently, the D/GC could not determine that Appellant is fully controlled by Mr. Bell. (*Id.* at 1-2, citing 13 C.F.R. § 128.203(b), (d), and (f).) Furthermore, given that Appellant submitted conflicting information about its ownership structure, the D/GC could not “conclude that at least 51% of each class of member interest is unconditionally owned by the Qualifying Veteran,” Mr. Bell. (*Id.* at 2, citing 13 C.F.R. § 128.202(a) and (g).)

C. Appeal

On April 16, 2024, Appellant appealed the D/GC's decision to OHA. Appellant asserts that Mr. Bell, a service-disabled veteran, owns 51% of Appellant, whereas Mrs. Simpson-Bell owns only 49%. (Appeal at 1.) Furthermore, Mr. Bell is Appellant's “Member-Manager” and Mrs. Simpson-Bell is a Member. (*Id.*) As a result, Mr. Bell controls all of Appellant's decision-making. (*Id.* at 2.) Accompanying the appeal, Appellant offers a new version of its Operating Agreement, dated April 2, 2024, purporting to show that Mr. Bell is Appellant's “Member-Manager,” and that “[a]ll operational decisions shall be made by the Member Manager.” (Revised Agreement at 2.) Appellant makes no attempt to argue why good cause exists to introduce new evidence for the first time on appeal.

III. Discussion

A. Standard of Review

When a concern seeks certification as a VOSB or SDVOSB, SBA regulations provide that:

An Applicant's eligibility will be based on the totality of circumstances, including facts set forth in the application, supporting documentation, any information received in response to any SBA request for clarification, any independent research

conducted by SBA, and any changed circumstances. The Applicant bears the burden of proof to demonstrate its eligibility as a VOSB or SDVOSB.

13 C.F.R. § 128.302(d). Furthermore, “[i]f a concern submits inconsistent information that results in SBA's inability to determine the concern's compliance with any of the VOSB or SDVOSB eligibility requirements, SBA will decline the concern's application.” *Id.* § 128.302(d)(1).

On appeal to OHA, Appellant has the burden of proving, by a preponderance of the evidence, that the denial decision is based upon clear error of fact or law. *Id.* § 134.1111. In conducting its review, OHA cannot consider evidence beyond the Case File unless good cause is shown. *Id.* § 134.1110.

B. Analysis

I find no merit to this appeal. Given the record before him, the D/GC reasonably concluded that Appellant submitted contradictory information which cast doubt upon whether Mr. Bell fully controls Appellant's decision-making. More specifically, in the course of its application, Appellant repeatedly represented that Mrs. Simpson-Bell, who is not a service-disabled veteran, is 49% owner and a Member of Appellant. Sections II.A and II.B, *supra*.

Appellant further indicated that Appellant is managed by a “Board of Managers.” *Id.* Subsequently, Appellant submitted a new version of its Operating Agreement, dated April 2, 2024, purporting to show that Appellant is managed by its Members and that Mr. Bell is Appellant's “sole Member.” *Id.* Appellant provided no explanation or documentation to corroborate these purported changes. *Id.* As a result, denial of Appellant's application was proper. SBA regulations are clear that “[i]f a concern submits inconsistent information that results in SBA's inability to determine the concern's compliance with any of the VOSB or SDVOSB eligibility requirements, SBA will decline the concern's application.” 13 C.F.R. § 128.302(d)(1); *see also VSBC Appeal of One Veteran LLC*, SBA No. VSBC-289-A (2023) (D/GC appropriately denied application for certification when applicant submitted contradictory information on material issues); *VSBC Appeal of Wigs Plus, L.L.C.*, SBA No. VSBC-278-A (2023).

On appeal, Appellant does not argue that the D/GC erred in denying Appellant's application based on the conflicting information Appellant provided. Section II.C, *supra*. Nor does Appellant dispute that the April 2, 2024 version of its Operating Agreement, which Appellant submitted to the D/GC, was deficient. *Id.* Instead, Appellant contends that it has again amended its Operating Agreement in an effort to address the D/GC's concerns. *Id.* This latest revision to Appellant's Operating Agreement, though, was not presented to the D/GC and is not in the Case File, and thus is new evidence on appeal. Sections II.A and II.C, *supra*. In an SDVOSB appeal proceeding, OHA cannot consider evidence beyond the Case File unless good cause is shown. 13 C.F.R. § 134.1110. Appellant does not attempt to explain why the new version of the Operating Agreement was not, or could not have been, submitted to the D/GC during the application process. Section II.C, *supra*. Accordingly, the new version of the Operating Agreement is not properly before OHA on appeal. *VSBC Appeal of Felix L. Lee Elec.*,

LLC, SBA No. VSBC-357-A (2024); *VSBC Appeal of Divinely Elegant Vines LLC*, SBA No. VSBC-317-A (2023).

IV. Conclusion

Appellant has not established that the D/GC erred in denying Appellant's application for SDVOSB certification. The appeal therefore is DENIED. This is the final decision of the U.S. Small Business Administration. 15 U.S.C. § 657f(f)(6)(A); 13 C.F.R. § 134.1112(d).

KENNETH M. HYDE
Administrative Judge