

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

VSBC Appeal of: Facekay LLC,

Appellant

SBA No. VSBC-388-A

Decided: September 3, 2024

APPEARANCE

Dr. Verdieu St Fleur, Chief Executive Officer, Facekay LLC, Wilmington, California

DECISION

I. Introduction and Jurisdiction

On July 11, 2024, Facekay LLC (Appellant) appealed a decision of the U.S. Small Business Administration (SBA), denying Appellant's application for certification as a Veteran-Owned Small Business (VOSB). SBA found that Appellant is not fully controlled by one or more 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 VOSB 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 July 10, 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 (LLC) established in the state of California in March 2024. (Case File (CF), Exh. 31.) In May 2024, Appellant applied for certification as a VOSB, and submitted various supporting documents to SBA. Appellant is 51% owned by Mr. Lesly Decossa, a veteran. (CF, Exhs. 27, 37, and 67.) Dr. Verdieu St Fleur owns the remaining 49%. (CF, Exh. 27.) Dr. St Fleur is not a veteran.

Appellant provided a copy of its Operating Agreement, dated June 9, 2024. (CF, Exh. 27.) The Operating Agreement reflects that Mr. Decossa and Dr. St Fleur are Appellant's two members. (*Id.* at 1, 3.) According to the Operating Agreement, "one or more Qualifying

Veterans” must serve as Appellant's managing member. (*Id.* at 2.) However, “[a]ny member may bind the LLC in all matters in the ordinary course of LLC business.” (*Id.*) The Operating Agreement contains the following provision pertinent to this appeal:

Amendment of this Agreement. This agreement may not be amended except in writing signed by all the members. Any amendments must ensure that veteran members continue to unconditionally and directly own at least 51% of the concern and control all decisions

(*Id.* at 3.)

Appellant submitted minutes of a meeting held on March 15, 2024. (CF, Exh. 29.) The minutes indicate that Dr. St Fleur is Appellant's Chief Financial Officer (CFO) and Mr. Decossa is Chief Operating Officer (COO). (*Id.* at 2-3.) Elsewhere in its application, Appellant represented that Dr. St Fleur is Appellant's Chief Executive Officer (CEO), and reiterated that Mr. Decossa is COO. (CF, Exhs. 53 and 58.)

B. Denial

On July 10, 2024, SBA, acting through the Director of the Office of Government Contracting (D/GC), denied Appellant's application for VOSB certification.¹ (CF, Exh. 23.) The D/GC found that Mr. Decossa lacks sufficient control over Appellant. (*Id.* at 1.)

The D/GC observed that § 15 of Appellant's Operating Agreement states that “[t] his agreement may not be amended except in writing signed by all the members.” (*Id.*) As a result, Mr. Decossa does not fully control Appellant since he cannot unilaterally amend the Operating Agreement without Dr. St Fleur's approval. (*Id.*)

Furthermore, during the application process, Appellant identified a non-veteran, Dr. St Fleur, as its CEO; Appellant stated that Mr. Decossa is its COO. (*Id.*) Therefore, the D/GC determined, Appellant's highest officer position is not held by a veteran, in contravention of 13 C.F.R. § 128.203(b). (*Id.*)

C. Appeal

On July 11, 2024, Appellant appealed the D/GC's decision to OHA. Appellant maintains that, during a meeting held on June 15, 2024, “we decided to appoint [Mr.] Decossa as President and [Dr.] St. Fleur as CEO.” (Appeal at 1.) As a result, Appellant contends, Mr. Decossa now holds the highest officer position in the company. (*Id.*)

¹ The denial letter mistakenly indicates that Appellant sought certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB). Appellant, though, did not claim that Mr. Decossa has a service-connected disability. (CF, Exhs. 37, 67.) This error by the D/GC is harmless, because SBA applies essentially the same control requirements to applicants seeking either VOSB or SDVOSB certification. *See* 13 C.F.R. § 128.203.

Accompanying its appeal, Appellant offers minutes of the June 15, 2024 meeting. The minutes identify Dr. St Fleur as Appellant's "President & Chief Financial Officer" and Mr. Decossa as "President." (Meeting Minutes at 2.) The minutes make no mention of Mr. Decossa being newly "appointed" as Appellant's highest officer. (*Id.* at 1-6.)

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.

B. Analysis

I find no merit to this appeal. The record reflects that the D/GC denied Appellant's application for two principal reasons, yet Appellant does not challenge one of those two reasons. More specifically, Appellant does not dispute the D/GC's determination that Appellant's Operating Agreement is deficient. Sections II.B and II.C, *supra*. The Operating Agreement provides that the document "may not be amended except in writing signed by all the members," and one of Appellant's members, Dr. St Fleur, is not a veteran. Sections II.A and II.B, *supra*. Appellant therefore is not fully controlled by one or more veterans, as required by 13 C.F.R. § 128.203(f), because Mr. Decossa, Appellant's veteran majority owner, cannot unilaterally amend the Operating Agreement. *Id.* In prior decisions, OHA has recognized that a qualifying veteran's inability to unilaterally amend an operating agreement may, by itself, be grounds to deny certification. *See, e.g., VSBC Appeal of Snowfensive, LLC*, SBA No. VSBC-368-A (2024). As such, the D/GC here did not err in denying Appellant's application.

The above alone warrants denial of this appeal. However, the D/GC also reasonably rejected Appellant's application because Appellant did not establish that Mr. Decossa holds Appellant's highest officer position. Sections II.A and II.B, *supra*. On appeal, Appellant asserts that Mr. Decossa was newly appointed Appellant's highest officer during a June 2024 meeting. Section II.C, *supra*. The minutes of this meeting, however, are not in the Case File, and OHA

generally is precluded from considering new evidence beyond the Case File unless good cause is shown. *See* 13 C.F.R. § 134.1110. Appellant does not attempt to explain why good cause exists to introduce new evidence for the first time on appeal. Section II.C, *supra*. Accordingly, the minutes of the June 2024 meeting are not properly before OHA.

Even if OHA were to consider the meeting minutes, though, the record is at best unclear as to whether Mr. Decossa now holds Appellant's highest officer position. Contrary to Appellant's contentions, the June 2024 meeting minutes do not state that Mr. Decossa was newly appointed Appellant's highest officer. Section II.C, *supra*. Instead, the minutes identify both Mr. Decossa and Dr. St Fleur as Appellant's "President." *Id.* Appellant thus has not persuasively shown that Mr. Decossa is, in fact, Appellant's highest officer. Given that Appellant ultimately was responsible for proving its eligibility as a VOSB, the D/GC properly denied Appellant's application. 13 C.F.R. § 128.302(d); *VSBC Appeal of Wigs Plus L.L.C.*, SBA No. VSBC-278-A (2023).

IV. Conclusion

Appellant has not established that the D/GC committed any error in denying Appellant's application for 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