

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

VSBC Appeal of:

Gnosis Concepts Inc.

Appellant

SBA No. VSBC-390-A

Decided: September 13, 2024

ORDER DISMISSING APPEAL¹

On August 28, 2024, Gnosis Concepts Inc. (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, Appellant's deadline for filing a proper appeal had not yet expired. As a result, OHA ordered that Appellant would have until September 11, 2024 to submit a new appeal petition. OHA explained that the existing appeal was insufficient for several reasons. First, the appeal did not clearly identify 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. (Order at 1.) The D/GC denied Appellant's application upon finding that Appellant's non-service-disabled veteran directors have the power to exert negative control over Appellant, since they could block a quorum of the board of directors. (*Id.*) In its appeal petition, though, Appellant did not claim that the D/GC erred in this finding. (*Id.*) Rather, Appellant offered minutes of an “emergency” meeting held on August 27, 2024, and a copy of amended bylaws adopted at that meeting, purporting to address the D/GC's concerns. (*Id.*)

In response to OHA's Order, Appellant submitted a new appeal petition. In the new appeal, Appellant reiterates its contention that the revised bylaws are sufficient to resolve the D/GC's concerns. (New Appeal at 1.) Accompanying the new appeal petition, Appellant again offers copies of the August 27, 2024 meeting minutes and the revised bylaws, noting that the amended bylaws “were drafted and ratified immediately following the denial decision.” (*Id.*)

The instant appeal, even as revised, remains deficient and must be dismissed. Like Appellant's original appeal petition, the new appeal does not clearly identify any error in the D/GC's decision. The D/GC found Appellant's bylaws to be problematic, and although Appellant subsequently revised its bylaws, Appellant does not dispute the D/GC's determination that the

¹ 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.

bylaws were noncompliant at the time of the D/GC's decision. Indeed, the fact that Appellant evidently saw the need to amend its bylaws on an “emergency” basis suggests that Appellant itself considered the D/GC's concerns well-founded. *CVE Appeal of ING Unmanned Aerial Sys. LLC*, SBA No. CVE-245-A, at 6 (2022).

Furthermore, in an SDVOSB appeal proceeding, OHA generally is precluded from considering new evidence for the first time on appeal, unless good cause is shown. 13 C.F.R. § 134.1110. Appellant here concedes that the newly-amended bylaws were never provided to the D/GC for review, and instead were created only after the D/GC rendered his decision.

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 does not dispute the D/GC's key finding or analysis. *VSBC Appeal of SSC Constr. Mgmt., LLC*, SBA No. VSBC-378-A (2024); *VSBC Appeal of Felix L. Lee Elec., LLC*, SBA No. VSBC-357-A (2024); *VSBC Appeal of Willpower Athletes, LLC*, SBA No. VSBC-330-A (2024); *VSBC Appeal of Divinely Elegant Vines LLC*, SBA No. VSBC-317-A (2023); *CVE Appeal of Watanabe Enters., LLC*, SBA No. CVE-218-A (2022), *recons. denied*, SBA No. CVE-224-A (2022) (PFR); *CVE Appeal of Rock Int'l Env't Corp.*, SBA No. CVE-168-A (2020). Insofar as the appeal is based on new evidence — *i.e.*, the amended version of Appellant's bylaws— Appellant has not shown that such evidence is properly before OHA, and in any event, it is well-settled law that “after the fact” corrections to governing documents “cannot serve as a basis for finding error” in the D/GC's decision. *VSBC Appeal of Chips Renovations LLC*, SBA No. VSBC-381-A, at 3 (2024).

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