

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

VSBC Appeal of:

Kai Makani Consulting, LLC,

Appellant

SBA No. VSBC-403-A

Decided: October 10, 2024

APPEARANCE

Christopher Espiritu, Secretary, Kai Makani Consulting, LLC, Virginia Beach, Virginia

DECISION

I. Introduction and Jurisdiction

On September 4, 2024, Kai Makani Consulting, 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 Appellant did not demonstrate that it is fully controlled by one or more service-disabled veterans. On appeal, Appellant maintains that SBA failed to consider its Vice President's role and ownership. For the reasons discussed *infra*, the appeal is denied.

The Office of Hearings and Appeals (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 August 26, 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 Commonwealth of Virginia. (Case File (CF), Exh. 19.) In July 2024, Appellant applied for certification as an SDVOSB, and submitted various supporting documents to SBA. Mr. Damian Blossey, a service-disabled veteran, is Appellant's President and owns 30% of Appellant. (CF, Exhs. 21, 29, and 65.) Mr. Dale Hiroshi Shigekane, a service-disabled veteran, is Appellant's Vice President and owns 30% of Appellant. (CF, Exhs. 21, 31, and 60.) Mr. Christopher Espiritu, Appellant's Secretary, owns 30% of Appellant. (CF, Exhs. 21 and 50.) Mr. Espiritu is neither a veteran nor a

service-disabled veteran. (CF, Exh. 50.) Mr. Raymond Reyes, Appellant's Treasurer, owns the remaining 10% of Appellant. (CF, Exhs. 21 and 55.) Mr. Reyes is neither a veteran nor a service-disabled veteran. (CF, Exh. 55.)

Appellant submitted a copy of its Operating Agreement, dated June 13, 2023. (CF, Exh. 20.) The Operating Agreement reflects that Messrs. Shigekane, Blossy, Espiritu, and Reyes are Appellant's four Members. (*Id.* at 2-3.) According to Article V of the Operating Agreement, the Members may elect or one or more Managers, who “may, but shall not be required to, be selected from among the Members.” (*Id.* at 6.) However, under Article IV of the Operating Agreement, “[t]he powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Members, and the Members shall be entitled to make all decisions and take all actions for the Company”. (*Id.* at 3.) The Operating Agreement specifies that several types of decisions require the unanimous agreement of all the Members:

4.04 Actions Requiring Unanimous Consent. Notwithstanding Section 4.03 hereof or any other provision of this [Operating] Agreement, the unanimous consent of the Members shall be necessary and sufficient in order for any of the following actions to be taken from time to time on behalf of the Company:

- (a) Fixing or modifying the salary paid to any Member or fixing or paying any bonus or other compensation to any Member.
- (b) Declaring or setting the payment date or form of payment of any distributions pursuant to Section 6.5 hereof.
- (c) Electing or removing any Manager or Managers of the Company.
- (d) Confessing a judgment against the Company in excess of \$10,000.
- (e) Endorsing any note in excess of \$10,000, or acting as an accommodation party or otherwise becoming a surety or guarantor for any other person in an amount exceeding \$10,000.
- (f) Obtaining any loans or borrowings in excess of \$25,000 or requiring the personal guarantee of any Member or Members.
- (g) Making any loan or advance on behalf of the Company to any other party in excess of \$10,000.
- (h) Amending the Articles [and]
- (i) Any other matter that, under the express terms of this Operating Agreement, requires the unanimous consent of the Members.

(*Id.* at 4-5.) Additionally, “[n]o amendment or modification of this Operating Agreement shall be effective except upon the unanimous written consent of the Members.” (*Id.* at 13.)

### B. Denial

On August 15, 2024, SBA requested that Appellant produce additional information in support of its application. (CF, Exh. 38.) SBA explained that Appellant's Operating Agreement appears deficient, because it is silent regarding officer positions and whether any Managers have been appointed. (*Id.*) Moreover, the Operating Agreement contains numerous provisions requiring the consent of all of Appellant's Members. (*Id.*) Two of Appellant's four Members are not service-disabled veterans, so SBA could not conclude that service-disabled veterans fully control all of Appellant's decision-making. (*Id.*) SBA instructed that Appellant “provide a **newly signed and dated** Amended and Restated Operating Agreement, which addresses the issues identified above, giving [one or more service-disabled veterans] control of all of [Appellant's] decision-making,” by August 22, 2024. (*Id.* (emphasis in original).)

Appellant did not respond to SBA's request. On August 26, 2024, SBA, acting through the Director of the Office of Government Contracting (D/GC), denied Appellant's application for SDVOSB certification. (CF, Exh. 18.) The D/GC found that the documentation Appellant provided did not demonstrate that Appellant is fully controlled by one or more service-disabled veterans. (*Id.*)

The D/GC reiterated that Appellant's Operating Agreement dated June 13, 2023 was silent regarding officer positions and whether any Managers had been appointed. (*Id.* at 1.) Additionally, although Appellant asserted that Mr. Blossey is either its CEO or its President, neither position is defined in Appellant's Operating Agreement. (*Id.*) The D/GC further found that Appellant's Operating Agreement contains numerous provisions requiring unanimous agreement of Appellant's Members, including situations beyond the “extraordinary circumstances” permitted by 13 C.F.R. § 128.203(j). (*Id.* at 1-2.) As a result, the D/GC could not conclude that a service-disabled veteran holds Appellant's highest officer position, or that service-disabled veterans have the ability to overcome supermajority voting requirements. (*Id.* at 1.)

### C. Appeal

On September 4, 2024, Appellant filed the instant appeal. Appellant highlights that two service-disabled veterans — Messrs. Blossey and Shigekane — together own 60% of Appellant, and serve as “CEO & President” and “Vice President,” respectively. (Appeal at 1.) In Appellant's view, since two service-disabled veterans collectively own more than 50% of the company, and are its highest officers, they can control Appellant. (*Id.* at 1-2.) Furthermore, insofar as the D/GC confined his analysis only to Mr. Blossey, Appellant urges that “[Mr.] Shigekane's role as Vice President and 30% ownership of [Appellant]” also should have been examined. (*Id.* at 1.) Appellant does not address the portion of the D/GC's decision finding Appellant's Operating Agreement deficient due to the unanimity voting requirements, but expresses a willingness to “update” its Operating Agreement, if OHA determines that the Operating Agreement “lacks the specificity required”. (*Id.* at 2.)

### III. Discussion

#### A. Standard of Review

When a concern seeks certification as an 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). SBA may, “in its sole discretion,” request clarification and/or additional documentation at any time during the eligibility determination process. *Id.* § 128.302(b) and (c).

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. 13 C.F.R. § 134.1111.

#### B. Analysis

I find no merit to this appeal. The record reflects that, upon review of Appellant's application, the D/GC found Appellant's Operating Agreement deficient. Sections II.A and II.B, *supra*. In particular, the Operating Agreement contains numerous provisions requiring the unanimous agreement of all of Appellant's Members, including for matters beyond the “extraordinary circumstances” permitted by 13 C.F.R. § 128.203(j). *Id.* Two of Appellant's Members, Messrs. Espiritu and Reyes, are not service-disabled veterans, so the D/GC could not conclude that Appellant's decision-making is fully controlled by service-disabled veterans. *Id.* Furthermore, Appellant's Operating Agreement plainly does not comply with 13 C.F.R. § 128.203(f), under which one or more service-disabled veterans “must meet all supermajority voting requirements regarding the management and daily business operations of the concern,” in order for that concern to qualify as an SDVOSB. Prior to issuing his denial decision, the D/GC notified Appellant of these concerns and requested that Appellant address the matter, but Appellant did not respond. Section II.B, *supra*. Notably, Appellant failed to actually amend its Operating Agreement; did not commit to any date certain by which such amendments would be implemented; and offered no specific language explaining how Appellant would amend the Operating Agreement. *Id.*

On appeal, Appellant does not attempt to challenge the D/GC's findings regarding the unanimity provisions in the Operating Agreement. Sections II.B and II.C, *supra*. This omission is fatal to the appeal, since the defective Operating Agreement was a principal reason why Appellant's application for certification was denied. *E.g., VSBC Appeal of Facekay LLC*, SBA No. VSBC-388-A (2024) (rejecting appeal when an appellant did not contest one of two major findings in the D/GC's determination). It is worth noting that Appellant's Operating Agreement also provides that no amendment or modification of the Operating Agreement “shall be effective except upon the unanimous written consent of the Members.” Section II.A, *supra*. In prior

decisions, OHA has held that the inability of one or more service-disabled veterans to unilaterally amend an operating agreement may, by itself, be grounds to deny certification. *VSBC Appeal of Snowfensive, LLC*, SBA No. VSBC-368-A (2024). As such, the D/GC here properly denied Appellant's application.

In its appeal, Appellant appears to argue that, because both Messrs. Blossey and Shigekane are service-disabled veterans, the D/GC should have considered them collectively in determining whether service-disabled veterans own and control Appellant. Section II.C, *supra*. Appellant, though, offers no reason to believe that the D/GC did not, in fact, do so. *Id.* Moreover, the D/GC denied Appellant's application due to unanimity provisions in Appellant's Operating Agreement, and because Appellant did not establish that a service-disabled veteran holds Appellant's highest officer position. Section II.B, *supra*. Appellant does not explain why more detailed analysis of Mr. Shigekane's role might have altered these findings. Accordingly, Appellant has not advanced any valid reason to disturb the D/GC's decision.

#### IV. Conclusion

Appellant has not shown that the D/GC committed any error of fact or law in denying Appellant's application for certification. The appeal therefore is DENIED. This is the final agency action 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