

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

VSBC Appeal of:

Sprout Technologies, LLC,

Appellant

SBA No. VSBC-389-A

Decided: September 6, 2024

APPEARANCE

Dr. John Paul Laverde, CEO, Sprout Technologies, LLC, Surf City, North Carolina

DECISION

I. Introduction and Jurisdiction

On July 26, 2024, Sprout Technologies, 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, due to deficiencies in Appellant's Operating Agreement. On appeal, Appellant maintains that the denial decision was premature, 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 July 18, 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 North Carolina. (Case File (CF), Exh. 28.) In April 2024, Appellant applied for certification as an SDVOSB, and submitted various supporting documents to SBA. (CF, Exh. 31.) Appellant is 66.66% owned by Dr. John Paul Laverde, a service-disabled veteran. (CF, Exhs. 26 and 48.) Mr. Alex Nielsen, Appellant's Chief of Staff, owns the remaining 33.34% of Appellant. (CF, Exh. 43.) Mr. Nielsen is neither a veteran nor a service-disabled veteran. (CF, Exh. 26, at 2.) According to Appellant's Articles of Organization, filed with the state of North Carolina on October 4, 2023, Appellant is managed by its Managing Member and CEO, Dr. Laverde. (CF, Exh. 21.)

Appellant submitted a copy of its Operating Agreement, dated October 4, 2023. (CF, Exh. 28.) The Operating Agreement reflects that Dr. Laverde and Mr. Nielsen are Appellant's two Members. (*Id.* at 2.) According to Article V of the Operating Agreement, entitled "Management," management of Appellant generally is "vested in all of the Members who shall also serve as Managing Members of the Company." (*Id.* at 5.) Dr. Laverde is identified in the Operating Agreement as Appellant's sole Managing Member. (*Id.* at 2.) The Operating Agreement specifies, however, that certain types of decisions require the unanimous agreement of all the Members:

E. Notwithstanding the foregoing, the Managing Members may not make any of the following management decisions without obtaining the consent of all Members.

- 1) To acquire, sell, assign, or otherwise transfer any interest in any property;
- 2) To create any indebtedness for borrowed money whether or not secured;
- 3) To make, execute or deliver on behalf of the Company any assignment for the benefit of creditors or any guarantee, indemnity bond, or surety bond;
- 4) To obligate the Company or any Member as a surety, guarantor or accommodation party to any obligation;
- 5) To confess any judgment on behalf of the Company;
- 6) To do any act which makes it impossible to carry on the ordinary business of the Company;
- 7) To possess Company property, or assign his interest or rights in specific Company property for other than a Company purpose.

(*Id.* at 6-7.) Additionally, the Operating Agreement itself "cannot be changed or terminated orally or in any manner other than by a written agreement executed by all of the Members." (*Id.* at 13.)

#### B. Denial

On July 17, 2024, SBA requested that Appellant produce additional information in support of its application. (CF, Exh. 35.) SBA explained that Appellant's Operating Agreement appears deficient, because it requires the unanimous agreement of all Members for certain types of decisions. (*Id.*) Since one of Appellant's Members is not a service-disabled veteran, SBA could not conclude that service-disabled veterans fully control all of Appellant's decisions. (*Id.*) SBA instructed that Appellant "***provide a newly signed and dated amended Operating Agreement and a Letter of Explanation addressing the above control issues***" by July 24, 2024. (*Id.* (emphasis in original).)

Appellant responded to SBA's request on July 17, 2024 with a letter from Dr. Laverde. (CF, Exh. 19.) Appellant acknowledged that its existing Operating Agreement is deficient, and proposed to address SBA's concerns by “revis[ing] [the Operating Agreement] to clearly state that [Dr. Laverde] has unilateral decision-making authority over all matters, except those extraordinary circumstances explicitly listed in 13 CFR § 128.203(j),” and also by amending Article XIII, Section B of the Operating Agreement “to stipulate that any changes to the Operating Agreement can be made with the consent of [Dr. Laverde] alone.” (*Id.* at 2.) Appellant did not provide an amended Operating Agreement; did not offer any timetable by which amendments to the Operating Agreement would be implemented; and did not discuss any specific language it intended to utilize in an amended Operating Agreement.

On July 18, 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 noted that, on July 17, 2024, Appellant was notified of deficiencies in its Operating Agreement, and was given an opportunity to respond to SBA's concerns and to come forward with any recent amendments to the Operating Agreement. (CF, Exh. 18, at 1.) Appellant, though, failed to produce documentation sufficient to resolve these issues. (*Id.*) In particular, Appellant's Operating Agreement dated October 4, 2023 contains provisions requiring the unanimous agreement of Appellant's Members on matters that are not exempted by regulation. (*Id.*) In addition, Article XIII, Section B of the Operating Agreement requires the approval of all Members to amend the Operating Agreement. (*Id.* at 2.) The D/GC also observed that the Operating Agreement does not contain any “Further Assurance Clause” whereby Mr. Nielsen would agree to cooperate and assist in executing amendments sought by Dr. Laverde. (*Id.*) As a result, the D/GC could not conclude that Dr. Laverde fully controls all of Appellant's decisions, as required by 13 C.F.R. § 128.203(f).

### C. Appeal

On July 26, 2024, Appellant filed the instant appeal. Appellant highlights that, after receiving SBA's request for additional information, Appellant promptly responded the same day, expressing its intent to “immediately make the necessary changes” and submitting a Letter of Explanation that provided “context on requested information.” (Appeal at 1.) Nevertheless, Appellant's application for certification was denied shortly thereafter, and without consideration of Appellant's expressed intent to amend its Operating Agreement. In Appellant's view, “[e]xpecting any small business to make significant changes to their legal structure within 24 hours is both unreasonable and absurd.” (*Id.*, emphasis Appellant's.)

## 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

Appellant has not demonstrated any error of fact or law in the D/GC's decision. As a result, this appeal must be denied.

The record reflects that, upon review of Appellant's application, SBA found Appellant's Operating Agreement deficient. Section II.A, *supra*. In particular, the Operating Agreement requires the unanimous agreement of all of Appellant's Members for certain types of decisions, including matters beyond the “extraordinary circumstances” explicitly permitted by 13 C.F.R. § 128.203(j). *Id.* Since one of Appellant's Members, Mr. Nielsen, is not a service-disabled veteran, SBA could not conclude that Appellant's decision-making is fully controlled by service-disabled veterans. Sections II.A and II.B, *supra*. SBA requested that Appellant address the matter, and in response to SBA's concerns, Appellant acknowledged that its Operating Agreement is deficient and that revisions are necessary. Section II.B, *supra*. Appellant, though, 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 maintains that the D/GC acted prematurely in denying Appellant's application, and asserts that the D/GC should have waited until July 24, 2024 (*i.e.*, the deadline stated in SBA's request for additional information) before denying Appellant's application. Section II.C, *supra*. Although I agree with Appellant that the D/GC's denial was needlessly hasty, Appellant has not shown that the D/GC's failure to wait until July 24, 2024 was prejudicial to Appellant. Notably, even on appeal, Appellant does not contend that its Operating Agreement has now been revised. Section II.C, *supra*. Nor does Appellant argue that it would have produced an amended Operating Agreement before July 24, 2024, had its application not been denied. *Id.* Furthermore, Appellant does not dispute that its existing Operating Agreement is deficient, for the reasons specified in the D/GC's decision. *Id.* Accordingly, Appellant has shown no reason to believe that postponing the D/GC's decision until July 24, 2024 would have affected the outcome of this case. Any error by the D/GC in denying Appellant's application on July 18, 2024 was therefore harmless, since “rectifying the error would not have changed the result.” *Size Appeal of Lukos, LLC*, SBA No. SIZ-6047, at 17 (2020) (citing *Size Appeal of Melton Sales & Serv., Inc.*, SBA No. SIZ-5893, at 14 (2018)).

IV. Conclusion

Appellant has not established that the D/GC committed reversible 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