

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

VSBC Appeal of:

156 Genus LLC,

Appellant

SBA No. VSBC-394-A

Decided: September 20, 2024

ORDER DISMISSING APPEAL¹

On September 17, 2024, 156 Genus LLC (Appellant) filed the instant appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). The appeal purports to challenge a September 4, 2024 SBA decision, denying Appellant's application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB). In its appeal, Appellant asserts:

[The Director of SBA's Office of Government Contracting (D/GC)] has advised us to correct the definition of control in the operating agreement and we have updated the attached Operating Agreement accordingly. Please review the attached updated operating agreement where we have revised the document to give the veteran and owner, Kateri Riley unanimous control over 156 Genus LLC.

(Appeal at 1.) Accompanying the appeal, Appellant offers a new version of its Operating Agreement, dated September 12, 2024.

Upon review, the instant appeal is deficient and must be dismissed. Under OHA's rules of procedure, a valid SDVOSB appeal must explain why “the denial or decertification is in error”. 13 C.F.R. § 134.1105(a)(2). To prevail on such an appeal, the appellant must prove that the D/GC clearly erred in making the denial decision. *Id.* § 134.1111.

Here, the appeal does not allege any error on the part of the D/GC, nor does Appellant dispute the D/GC's key findings or analysis. More specifically, the D/GC denied Appellant's application due to unanimity provisions in Appellant's Operating Agreement. (Denial at 1-2.) In its appeal petition, though, Appellant does not claim that the D/GC erred in the above findings. Rather, Appellant offers a new version of its Operating Agreement purporting to address the D/GC's concerns. 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

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.

C.F.R. § 134.1110. Appellant here concedes that the newly amended Operating Agreement was not provided to the D/GC for review, and instead was 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 Operating Agreement — 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 Gnosis Concepts Inc.*, SBA No. VSBC-390-A, at 2 (2024) (quoting *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