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She's on verge of WBE certification after 5 years, \$40K in legal fees

Michael DeMasi

Dana Scherzi, CEO of an information technology company in upstate New York, won a court case Sept. 30 against the state after she was denied certification as a woman-owned business - a rejection many others have experienced in recent years .

But even with the unanimous ruling from a five-judge appeals panel, Scherzi isn't convinced she will ultimately get the certification she's been seeking since 2016 from the state Division of Minority and Woman Business Development.

"I don't trust them," Scherzi said. "There was no reason for it to get this far in the first place."

The state is reviewing the ruling by the Appellate Division's Third Department and has no comment at this time, according to a spokeswoman.

Scherzi and her husband spent nearly \$40,000 on legal fees fighting the state over the denial of the woman-owned business enterprise (WBE) certification, a designation that would help their business, Scherzi Systems LLC in Syracuse, compete for state government contracts.

"I'm a woman who's capable and runs a business," Scherzi said. "I need to fight this for the people who don't have the means. I could give back to the people who couldn't afford or take the time to do this themselves. My goal was to make the process better."

Her attorney, Jim Youngs of Hancock Estabrook in Syracuse, believes the state's only option is grant the certification, based on the court ruling. To his knowledge, it's the first time a court has overturned the rejection of a WBE application in New York.

"Dana deserves a lot of credit for standing up for herself and refusing to accept the division's unsupportable position that she isn't competent or experienced enough to run her business just because her husband happens to be a part owner of the company," Youngs wrote in an email.

The ruling should help other women business owners who have encountered similar problems getting certified or tried to appeal their denials, according to Youngs.

The Albany Business Review has previously reported 64 businesses were denied WBE recertification in 2020, compared to just one in 2014.

The state has said denials increased as interest in the program grew, but attorneys and business owners contend scrutiny of the applications has become onerous and overly complex.

"We are proud of our efforts to increase access, resources, and business opportunities for the MWBE community and our record as the state with the highest minority and women-owned business utilization rate in the country, with over 9,000 firms in the directory and over \$19 billion in awarded contracts since 2011, demonstrates this point," wrote Kristin DeVoe, upstate director of communications for Empire State Development, in an email.

Scherzi Systems LLC is among the businesses that were denied certification.

Dana Scherzi majored in astrophysics at Columbia University's Barnard College and graduated with a bachelor's degree in 2002. She worked for 12 years in the information technology department at AXA US, a large financial institution.

She then decided to join her husband, James, a freelance software developer. In 2011, he had started his own business in Syracuse using a laptop that Dana purchased.

Their plan was to grow the business well beyond what James earned in 2013.

Dana took a 51% stake in the company in January 2014 and became CEO. James owns 49% of the business.

She provides project management and consulting services, hires employees and pursues new contracts while he focuses solely on creating software.

Dana didn't pay her husband for her share in the business. Rather, her contribution came from her experience as a leader, project manager and information technology professional, according to court filings.

In May 2016, she sought certification as a woman-owned business enterprise (WBE).

"It seemed just like a given to me," Dana said. "Honestly, it didn't seem like it should be anything overly complicated or arduous. It would allow me to access a set-aside for services we were already providing. It seems like it should have been simple."

But, 18 months later, her application was denied.

She filed an appeal. An administrative law judge who heard the evidence recommended in July 2019 the state reverse its decision and certify Scherzi Systems as a WBE.

Then, in a move that Youngs, her attorney, called "extraordinary," the person who led the Division of Minority and Woman Business Development rejected the administrative law judge's recommendation.

Valerie White, who was executive director at the time, concluded Scherzi Systems "had failed to demonstrate that Ms. Scherzi contributed proportionally to the business to justify her majority stake," according to a brief written by the office of Attorney General Letitia James on behalf of the state.

White based her decision on the original WBE application, which indicated Dana contributed no money to the business.

The former executive director didn't take into account evidence submitted at the administrative hearing in which the Scherzis testified that the business expanded and tripled revenue annually from 2014 to 2017. There are now nine employees.

Youngs, in his brief on behalf of the Scherzis, argued the former executive director violated the state Administrative Procedure Act by not considering testimony at the hearing.

"By willfully ignoring the record before her, the director irrationally held that Ms. Scherzi had failed to demonstrate sufficient experience or expertise to justify her ownership position and substantiate her executive authority over the company and disregarded overwhelming evidence in the record to the contrary," Youngs wrote in the brief.

The Scherzis filed an Article 78 petition in state court to overturn White's decision. Since they were seeking judicial review of an administrative hearing, the case was transferred to the Appellate Division.

The five-judge panel ruled in favor of Scherzi Systems, in part because White didn't consider the testimony at the administrative hearing and therefore her decision "lacked an adequate factual basis."

Although Dana Scherzi is concerned she still may not get the certification, Youngs said the appellate judges sent the matter back to the state for a determination "not inconsistent" with the court's order.

"It is our position that the order therefore leaves the division no other alternative than finally acknowledge that it was wrong, and now certify the company," Youngs wrote in an email.

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