



NEW YORK STATE SENATOR

Daphne Jordan

Senator Daphne Jordan stands up for local woman-led business treated unfairly by Empire State Development

SENATOR DAPHNE JORDAN September 8, 2020

| ISSUE: **MWBE COMPLIANCE, SMALL BUSINESS, GOVERNMENT REFORM**

Halfmoon, NY –Senator Daphne Jordan (R,C,I-Halfmoon) today called on Governor Cuomo and Empire State Development (ESD) to reexamine and correct the state’s recent denial of a Woman Business Enterprise (WBE) recertification for Hoosick Valley Contractors, a successful woman-led business. Senator Jordan urged these corrective measures in correspondence she sent to the Governor and ESD on September 1, 2020 (a copy of Senator Jordan’s correspondence is attached to this press release).

Senator Jordan began her advocacy after having been contacted by her constituent Stefanie Wiley, the owner, operator, majority shareholder, and president of Hoosick Valley Contractors, which has been in operation since 1978. Ms. Wiley conveyed that her business has been the subject of unfair, arbitrary, and discriminatory treatment from ESD which recently decertified the company’s status as a WBE. Prior to entering the State Senate, Jordan was herself the owner and operator of two successful small businesses that employed 14 individuals.

In 2014, Ms. Wiley purchased the business Hoosick Valley Contractors from her father upon his retirement, effectively becoming the business' president, majority shareholder, and owner, respectively. Later in 2014, after having acquired the business Ms. Wiley applied for, and successfully obtained, New York State Certification as a WBE in 2014. At that time, the WBE certification lasted for three years. Ms. Wiley subsequently filed for recertification in 2017. On July 29, 2020, ESD notified Ms. Wiley of its denial of her business' recertification as a WBE, offering the following erroneous reasons in its denial of WBE recertification for Hoosick Valley Contractors:

Ownership/Capital Contributions: ESD stated that the checks paid toward Ms. Wiley's ownership shares were not recognized because they were paid out of a joint checking account, an erroneous assumption by ESD that her husband somehow "controls" the account, which is not the case. In addition, this was not identified as an issue in 2014. If the issue had been raised by ESD prior to the denial, then the error of the assumption could have been directly addressed in that Ms. Wiley could have easily provided a renunciation by her husband as to any ownership interest deriving from such payments (such a renunciation is commonly used with regard to disadvantaged business entities under federal law); and

Operation: ESD erroneously stated that Ms. Wiley did not demonstrate “adequate managerial experience or technical competence to operate the business enterprise.” ESD’s correspondence particularly noted that Ms. Wiley possessed a degree in marketing, while her husband has a degree in construction management. This was an erroneous assumption by ESD that her husband must be running the business, which is assuredly not the case.

Ms. Wiley works with several family members such as her husband, sister, and cousin, but she has the ability to hire and fire all of them. Moreover, Ms. Wiley’s operation of the company since the acquisition of her majority interest – now 6 years – was arbitrarily not credited by ESD.

Senator Jordan noted in her correspondence to the Governor and ESD that “For ESD to discount and doubt Ms. Wiley’s proven abilities based on the sheer fact that her husband happens to work in the business is a disturbing example of a sexist attitude. Ms. Wiley learned this business from the ground up through her immersion during her entire professional career. While following a team approach, it goes without saying that, as the President, Majority Shareholder, and Owner, Ms. Wiley retains ultimate and final authority on ALL business decisions for Hoosick Valley Contractors, including personnel, administration, hiring and firing, daily management, and long-term planning.”

“Considering my proven track record in the industry over the past 20 years, I was completely shocked to receive a denial of recertification as a WBE. It is my understanding that this program is supposed to remedy discrimination against women and minorities. For ESD to doubt my abilities based on the sheer fact that my husband works in the business is an ironic example of the sexist attitudes that persist. I don’t understand how I could be certified and then 5 years later told that I am not competent enough to run the business. The loss of WBE certification will be a huge blow to my business,” said Stefanie Wiley, President, Hoosick Valley Contractors Inc.

The impressive recognized success of Ms. Wiley’s leadership of Hoosick Valley Contractors is undeniable, as her company was named one of the Albany Business Review’s “Fastest Growing Businesses” for 2019, a clear recognition by a respected third-party entity that her leadership is effective and ongoing.

“To learn that ESD denied Ms. Wiley’s status in the WBE program because she does not have – in their words – ‘adequate managerial experience or technical competence to operate the business’ at this point during her accomplished career after such a successful growth curve runs contrary to the aforementioned accolade. It also is a shocking, disappointing, and, frankly, egregious example of sexism on the part of ESD,” Senator Jordan noted in her

correspondence.

ESD's website outlines criteria for the state's WBE program as follows: "Under Article 15-A of the Executive Law, a WBE is a business enterprise in which at least fifty-one percent (51%) is owned, operated, and controlled by citizens or permanent resident aliens who are women."

ESD's website goes on to note that "To qualify for New York State certification as a minority and/or women-owned business enterprise (MWBE), an applicant must successfully demonstrate the following through the production of relevant documentation: Ownership, Operation and Control: All firms seeking MBE, WBE or MWBE certification must be independently owned, operated and controlled by minority members and/or women. The ownership must be real, substantial and continuing, and the minority members and/or women must exercise the authority to independently control the day-to-day business decisions." As the owner, operator, majority shareholder, and president of Hoosick Valley Contractors, Senator Jordan's constituent Stefanie Wiley meets – and exceeds – each of ESD's criteria.

As further evidence of ESD's seemingly institutionalized bias directed at Ms. Wiley and Hoosick Valley Contractors, Senator Jordan cited clear and compelling statistics derived by a Freedom of Information Law (FOIL) response from ESD detailing five years of data concerning the State's WBE program. A rigorous, objective analysis of ESD's data (abstract attached with this press release) from September 1, 2014, to March 11, 2020, revealing the following troubling facts:

WBE applications (without considering application withdrawals) were denied at a rate of 19.6%;

WBE re-certifications were denied at a rate of 5.9%;

63% of denials are appealed, but the rate of overturn is just over 2%;

For Caucasian-owned WBEs, the denial rate was 17.9%, while for Minority-owned WBEs the denial rate was 9.3%; and

As to the "no race indicated" category, applicants are expected to be nonminority, as minority WBE applicants generally apply as an MBE as well. If that is the case, then the percentage of denials for Caucasian women goes to slightly over 20%.

Senator Jordan pointed to ESD's data showing a clear pattern and a troubling trend of WBEs in New York State, particularly non-minority WBEs, some of whom have been in business for decades, having difficulty regarding their initial applications and other aspects of their subsequent WBE recertification effort. As the referenced data comes directly from ESD and was compiled over nearly six years, pointing to this likely being more than mere coincidence.

“The disparity in WBE denials is an apparent policy of bias by ESD against certain businesses to deny them their rightful and proper WBE recertification. Such a policy is wrong, irresponsible, and needs to be corrected. Hoosick Valley Contractors works on many state contracts and the loss of their WBE certification would constitute a significant financial impact on the company,” Senator Jordan stated in her correspondence to the Governor and ESD.

While Ms. Wiley and Hoosick Valley Contractors plan to vigorously appeal ESD’s denial, doing so will necessitate their hiring an attorney and taking time, attention, and funding away from operating and growing their business.

“I respectfully request that ESD immediately reexamine – and reverse – the unfair, improper, and patently incorrect denial of WBE recertification for Hoosick Valley Contractors based on non-recertification issues and retroactively recertify this business. I also ask that ESD employ an outside, independent audit of its WBE program and review all recertification denials over the past several years (September 1, 2014, to March 11, 2020) to ensure that its certification and recertification decisions were based on evidence, in a gender-neutral manner and are not creating disparities or erecting artificial barriers to those that the program is specifically intended to assist,” Senator Jordan wrote.

Senator Jordan's correspondence also indicated that she will be introducing legislation to ensure that ESD's numerous mistakes in this matter were corrected.

"I will be introducing comprehensive legislation to ensure that ESD takes the appropriate corrective measures concerning WBE certification and recertification criteria. I also will urge my colleagues in the State Legislature to exercise the full extent of our oversight prerogative during our budget hearings next year. The unfair treatment of my constituent Stefanie Wiley, and her business Hoosick Valley Contractors, likely demands public exposure and a rigorous examination by the media, State Legislature, and State Comptroller as to the possible existence of systemic bias in ESD's policies regarding WBE certification and recertification," Senator Jordan concluded.

Editor's Note: Attached to this news release is a copy of Senator Jordan's correspondence from September 1, 2020, to Governor Cuomo and ESD. Also attached to this news release is an abstract of FOIL data highlighting a pattern of possible systemic bias by ESD against certain WBEs.

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