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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2050-21**

**IN THE MATTER OF STONE  
INDUSTRIES, INC. APPEAL OF  
WOMAN-OWNED BUSINESS  
ENTERPRISE INELIGIBILITY  
DETERMINATION.**

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Submitted February 6, 2023 – Decided February 13, 2023

Before Judges Haas and Mitterhoff.

On appeal from the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services.

Schenck, Price, Smith & King, LLP, attorneys for appellant Stone Industries, Inc. (Jason J. Waldstein, of counsel; Christa P. McLeod, of counsel and on the briefs).

Matthew J. Platkin, Attorney General, attorney for respondent Department of the Treasury, Division of Revenue and Enterprise Services (Melissa H. Raksa, Assistant Attorney General, of counsel; James J. Robinson, Jr., Deputy Attorney General, on the brief).

PER CURIAM

Appellant Stone Industries, Inc. (Stone) appeals from the January 25, 2022 final decision of the Division of Revenue and Enterprise Services (Division) denying Stone's application for certification as a "women's business" under N.J.S.A. 52:27H-21.17 to -21.24, and the governing regulations, N.J.A.C. 17:46-1.1 to -1.12. We affirm.

By way of background, the Division is responsible for certifying "to public agencies the eligibility of a business to bid on contracts as a . . . 'women's business' under any program conducted by the public agency for which such certification is so required." N.J.S.A. 52:27H-21.19. The Division also maintains a database listing all certified women's businesses. N.J.A.C. 17:46-1.5(a). Once the Division places a business in the database, "that business shall be eligible for all appropriate State programs and initiatives that are designed to ensure equal opportunity for . . . women's businesses to participate in State purchasing and procurement processes." N.J.A.C. 17:46-1.5(b).

N.J.S.A. 52:27H-21.18(i) defines the term

"Women's<sup>[1]</sup> business" [as] a business which is:

(1) A sole proprietorship owned and controlled by a woman; or

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<sup>1</sup> N.J.S.A. 52:27H-21.18(h) states that "'[w]oman' or 'women' means a female or females, regardless of race."

(2) A partnership or joint venture owned and controlled by women in which at least 51% of the ownership is held by women and the management and daily business operations of which are controlled by one or more women who own it; or

(3) A corporation or other entity whose management and daily business operations are controlled by one or more women who own it, and which is at least 51% owned by women, or if stock is issued, at least 51% of the stock is owned by one or more women.

Thus, a corporation seeking certification as a women's business must demonstrate that: (1) the "management and daily business operations are controlled by one or more women who own it," and (2) it "is at least 51% owned by women, or, if stock is issued, at least 51% of the stock is owned by one or more women." N.J.S.A. 52:27H-21.18(i)(3).

Turning to the present case, Stone is a corporation that applied to the Division for certification as a women's business.<sup>2</sup> In its application, Stone alleged that 56% of the company was owned by two women, Janet R. Braen and Samantha L. Braen. However, Stone submitted business tax returns for a company called Braen Commercial Holdings Corporation (BCHC), together with letters from the accountants for Stone and BCHC. The letters stated "that

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<sup>2</sup> The Division received Stone's application on June 16, 2021.

Stone is a wholly owned qualified subchapter S subsidiary of BCHC, and included the reorganization statement filed as part of BCHC's 2002 tax return."

Because Stone was "100% owned, controlled, and operated by another entity [BCHC][,]" the Division concluded that Stone's "majority owner is not a woman" or women as required by N.J.S.A. 52:27H-21.18(i)(3). Therefore, the Division denied Stone's application for certification as a women's business.

Stone asked for an administrative review, and the Division's chief hearing officer again reviewed Stone's submissions as the Division Director's designee. See N.J.A.C. 17:46-1.8(d) and (f). In its January 25, 2022 final decision, the Division confirmed that Stone did not qualify as a women's business because it was owned by a corporation, rather than by women. This appeal followed.

On appeal, Stone argues that the Division's "decision was arbitrary, capricious, and unreasonable and should be reversed." It also contends that the Division's decision "runs contrary to" the legislative intent underlying the statutes governing the certification of women's businesses. We disagree.

Our review of an agency's decision is limited. In re Stallworth, 208 N.J. 182, 194 (2011). "In order to reverse an agency's judgment, [we] must find the agency's decision to be 'arbitrary, capricious, or unreasonable, or [ ] not supported by substantial credible evidence in the record as a whole.'" Ibid.

(second alteration in original) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). In determining whether agency action is arbitrary, capricious, or unreasonable, our role is restricted to three inquiries:

(1) whether the agency action violates the enabling act's express or implied legislative policies; (2) whether there is substantial evidence in the record to support the findings upon which the agency based application of legislative policies; and (3) whether, in applying the legislative policies to the facts, the agency clearly erred by reaching a conclusion that could not reasonably have been made upon a showing of the relevant factors.

[W.T. v. Div. Med. Assistance & Health Servs., 391 N.J. Super. 25, 35-36 (App. Div. 2007) (quoting Pub. Serv. Elec. & Gas Co. v. N.J. Dep't of Env'tl. Prot., 101 N.J. 95, 103 (1985)).]

Thus, the burden of showing the agency acted in an arbitrary, capricious, or unreasonable manner rests on the party opposing the administrative action. E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 349 (App. Div. 2010) (citing In re Arenas, 385 N.J. Super. 440, 443-44 (App. Div. 2006)). It is not the function of the reviewing court to substitute its independent judgment on the facts for that of an administrative agency. In re Grossman, 127 N.J. Super. 13, 23 (App. Div. 1974).

We must also "defer to an agency's technical expertise, its superior knowledge of its subject matter area, and its fact-finding role," and therefore

are "obliged to accept all factual findings that are supported by sufficient credible evidence." Futterman v. Bd. of Review, Dept. of Labor, 421 N.J. Super. 281, 287 (App. Div. 2011) (quoting Messick v. Bd. of Review, 420 N.J. Super. 321, 325 (App. Div. 2011)). Although we are not bound by an agency's interpretation of law, we accord a degree of deference when the agency interprets a statute or a regulation that falls "within its implementing and enforcing responsibility. . . ." Wnuck v. N.J. Div. of Motor Vehicles, 337 N.J. Super. 52, 56 (App. Div. 2001). Our authority to intervene is limited to "those rare circumstances in which an agency action is clearly inconsistent with [the agency's] statutory mission or with other State policy." Futterman, 421 N.J. Super. at 287 (alteration in original) (internal quotation marks omitted).

Furthermore, "[i]t is settled that '[a]n administrative agency's interpretation of statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference.'" E.S., 412 N.J. Super. at 355 (second alteration in original) (quoting Wnuck, 337 N.J. Super. at 56). "Nevertheless, 'we are not bound by the agency's legal opinions.'" A.B. v. Div. of Med. Assistance & Health Servs., 407 N.J. Super. 330, 340 (App. Div. 2009) (quoting Levine v. State Dep't of Transp., 338 N.J. Super. 28, 32 (App. Div.

2001)). "Statutory and regulatory construction is a purely legal issue subject to de novo review." Ibid. (citation omitted).

Applying these principles, we discern no basis for disturbing the Division's determination that Stone was not a women's business within the intendment of the statutory or regulatory scheme. We therefore affirm substantially for the reasons set forth in the Division's thorough written decision and add the following brief comments.

As the Division found, a "women's business" under N.J.S.A. 52:27H-21.18(i) must be controlled and owned by women. Stone, however, is owned and controlled by a corporation. As the Division stated in its final decision:

A review of the record of this matter reveals that BCHC owns 100% of the outstanding shares of [Stone] as of December 20, 2002. While [the Division noted] that there are individual and trust beneficiary owners of BCHC, including Janet and Samantha Braen, BCHC itself is a corporation. For purposes of . . . [c]ertification, there are no laws in New Jersey that allow for a corporate "person" to be given status of "one or more women" as is required by the statutory definition of "women's business." Thus, a business that is 100% owned by another business, as is the case here, cannot be considered a "women's business[,"] as the term is defined in N.J.S.A. 52:27H-21.18(i).

Accordingly, we are satisfied that the Division's decision is not arbitrary, capricious, or unreasonable.

Stone argues that the Division certified it as a women's business in 2003 and again in 2008, and that the Division should be bound by those determinations into the future. We disagree. The record does not clearly indicate what information was available to the Division at the time of those determinations. In its January 25, 2022 decision, the Division explained:

The fact that Stone received prior . . . [c]ertifications following its reorganization into a wholly owned subsidiary of BCHC does not bind the State to grant certification again, especially when doing so would be contrary to the requirements of the applicable law. Stone is not "in fact, in the control of . . . women" because it is in the control of BCHC. Put another way, Stone is a business that is "controlled by persons other than . . . women" (i.e. the corporate "person[,]") BCHC.

Moreover, after 2008, Stone did not reapply for certification until 2021, when its current application was denied. During the interim period, the Division approved BCHC for certification as a women's business in 2010, 2013, 2016, and 2018. Under these circumstances, Stone's equitable estoppel argument is unavailing. "Equitable estoppel is 'rarely invoked against a governmental entity[,]'" Middletown Twp. Policemen's Benevolent Ass'n Local No. 124 v. Twp. of Middletown, 162 N.J. 361, 367 (2000) (quoting Wood v. Borough of Wildwood Crest, 319 N.J. Super. 650, 656 (App. Div. 1999)), particularly when estoppel would interfere with "essential governmental functions." Vogt v.



Borough of Belmar, 14 N.J. 195, 205 (1954). The doctrine of equitable estoppel requires proof of

a misrepresentation or concealment of material facts known to the party allegedly estopped and unknown to the party claiming estoppel, done with the intention or expectation that it will be acted upon by the other party and on which the other party does in fact rely in such a manner as to change his [or her] position for the worse  
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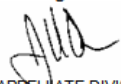
[Carlsen v. Masters, Mates & Pilots Pension Plan Tr., 80 N.J. 334, 339 (1979).]

The reliance must be "reasonable and justifiable" and the burden of proof is on the party asserting the estoppel. Foley Mach. Co. v. Amland Contractors, Inc., 209 N.J. Super. 70, 75-76 (App. Div. 1986).

Stone cannot meet these requirements. As discussed above, N.J.S.A. 52:27H-21.18(i)(3) clearly states that a "women's business" must be owned and controlled by women in order to be certified. Stone is owned by a corporation, BCHC. While BCHC might qualify for certification on its own based on its ownership structure, Stone plainly does not.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.



CLERK OF THE APPELLATE DIVISION