

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

SIZE APPEAL OF:

Archimeleon, PLLC

Appellant

Appealed from
Size Determination No. 3-2009-65

SBA No. SIZ-5076

Decided: October 7, 2009

ORDER DISMISSING APPEAL

I. Background

On August 4, 2009, the Deputy Director of the HUBZone program requested an official size determination of Archimeleon, PLLC (Appellant). Appellant's HUBZone application indicates that Appellant's primary North American Industry Classification System (NAICS) code is 541310, Architectural Services, with a corresponding size standard of \$4.5 million in annual receipts. Appellant's HUBZone application also reports that Appellant is affiliated with J.G. Coram Company, Inc. (Coram). Because Coram's annual receipts, approximately \$14 million, exceed the size standard for Appellant's primary NAICS code, the Deputy Director determined it was necessary to formally determine whether Appellant is affiliated with Coram.

On August 27, 2009, the Small Business Administration (SBA) Office of Government Contracting—Area III (Area Office) issued Size Determination No. 3-2009-65 (Size Determination) finding Appellant to be affiliated with Coram based on the doctrine of negative control (13 C.F.R. § 121.103(a)(3)), the identity of interest rule (13 C.F.R. § 121.103(f)), the newly formed concern rule (13 C.F.R. § 121.103(g)), and the totality of the circumstances (13 C.F.R. § 121.103(a)(5)). Therefore, Appellant is not eligible for the HUBZone program.

On September 21, 2009, Appellant filed its appeal of the Size Determination with the SBA Office of Hearings and Appeals (OHA). Appellant emphasizes that its sales this year total less than \$60,000 and that receivables for the year are approximately \$15,000. Appellant concludes that “[i]t is extremely difficult to understand how a company that has room to grow . . . with one architect and one shared administrative employee can not be classified as ‘small.’”

II. Discussion

Appellant filed the instant appeal within thirty days of receiving the Area Office's dismissal, so the appeal is timely. 13 C.F.R. § 134.304(a)(2). OHA reviews a size determination

issued by an SBA area office to determine whether it is “based on clear error of fact or law.” 13 C.F.R. § 134.314; *see also Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 10-11 (2009). Furthermore, it is Appellant’s burden to prove, by a preponderance of the evidence, that the Area Office committed an error. 13 C.F.R. § 134.314. Thus, the Administrative Judge may only overturn a size determination if Appellant establishes the Area Office made a patent error based on the record before it.

Pursuant to 13 C.F.R. § 134.305(a)(3), Appellant must submit an appeal containing “[a] full and specific statement as to why the size determination . . . is alleged to be in error, together with argument supporting such allegations.” Further, 13 C.F.R. § 134.305(e) provides: “An appeal petition which does not contain all of the information required in paragraph (a) of this section may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of a respondent.”

The instant appeal fails to provide a full and specific statement as to why the size determination is alleged to be in error. The appeal is one page long, and it contains only Appellant’s statement that it is small. However, Appellant was found other than small based upon its affiliation with Coram, an other than small firm. Appellant fails to address the finding of affiliation, nor does appellant dispute any of the Area Office’s factual findings. There is no allegation that the Area Office committed any error at all, let alone a clear error. Consequently, Appellant fails to state a valid claim. *See, e.g., Size Appeal of ALROD Enterprises, Inc.*, SBA No. SIZ-4704 (2005) (“[B]ecause Appellant neither disputes any fact cited in the size determination, nor claims the Area Office made any legal error in its analysis, the appeal fails to state a claim that can be addressed. Thus, the appeal must be dismissed.”).

The purpose of an appeal is not to reargue one’s case to OHA. Rather, the purpose of an appeal is to correct a specific error on the part of an area office. *See* 13 C.F.R. § 134.314. Because Appellant’s appeal petition lacks the specificity required by SBA regulations, I will dismiss it.

III. Conclusion

Appellant’s appeal does not allege that the Area Office’s Size Determination was based on clear error. Accordingly, this appeal is DISMISSED.

This is the final decision of the U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(b).

CHRISTOPHER HOLLEMAN
Administrative Judge