



**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

Departmental Office of Civil Rights
1200 New Jersey Avenue, S.E., W76-401
Washington, DC 20590

September 11, 2020

Docket No. 20-0086

Ms. Amy Johnson
Ambar Foods, LLC
11602 N. 50th Ave.
Glendale, AZ 85304

Dear Ms. Johnson:

This is in response to your appeal of the denial by the City of Phoenix (the city) of the DBE/ACDBE application of Ambar Foods, LLC (AF). The city denied the application on the bases of ownership and control. We are focusing on issue of control.

In addressing this issue, the city said that both you and your husband and co-owner Adam Johnson received equal compensation according to tax documents. Corporate documents showed that you and your husband can sign checks and purchase equipment for the company, and you both are listed as organizers and managers of the firm. According to the application and on-site interview, the city said, you and your husband share complementary duties in the operation of the firm.¹ You make major decisions about the business together, such as hiring staff. The on-site interview report said that you and he work 6-10 hours per day in the business. The city noted that you both signed the lease agreement for AF's place of business.

From this information, the city determined that AF is a family-run firm, controlled jointly by you and your husband, as distinct from a business that you, as the disadvantaged owner, control on your own.

In your appeal, you concede that corporate and tax documents list you and your husband as managing members and that you have been unable to change the paperwork. You agree that you and your husband depend on each other to operate a family business, which you explain is necessary since you have small children that you both participate in caring for. You assert, however, that you are the indispensable participant in the business and you now work 45-55 hours a week with the firm while Mr. Johnson works 15 hours a week.

We acknowledge that you have a very significant role in operating AF. Nevertheless, the multiple roles with the company that you and your husband share provide substantial evidence to

¹ Section 4 of the application lists both owners are participating in all the listed functions.

support the city's conclusion. When a certifier cannot determine that disadvantaged owners – as distinct from the family as a whole – control a firm, then the disadvantaged owners have failed to carry their burden of proof concerning control, even though they do participate significantly in the firm's activities.² For this reason, we must affirm the denial.

This decision is administratively final.

Sincerely,

Samuel F. Brooks
DBE Team Lead
Disadvantaged Business Enterprise Division

cc: Brenda E. Dominguez

² 49 CFR 26.71(k)(2).