# NEW YORK STATE DEPARTMENT OF EDUCATION OFFICE OF ADULT CAREER AND CONTINUNING SERVICES

Petitioner

DECISION OF IMPARTIAL <u>HEARING OFFICER</u>

Against

## OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

 Respondent

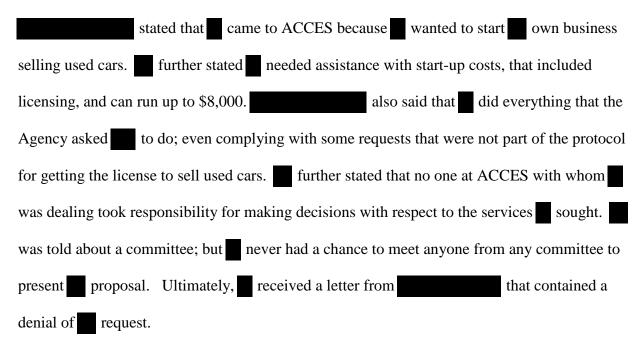
 Before:
 Impartial Hearing Officer

The undersigned was designated by the State Education Department/Office of Adult Career and Continuing Education Services-VR (hereinafter, "ACCES" or the "the Agency") to serve as Impartial Hearing Officer in the matter above.

After notice v	was given, a hearing	was opened on	2017 at the	District Office of
ACCES-VR,		New York,	. The hearing w	as scheduled to
begin at 10:00 a.m. ACCES was represented by District Office Ma			fice Manager,	
	the Petitioner	and Consumer/Petitio	ner, represented	
	an	te te	stified on behalf of th	e Agency.
testified in own behalf.				
Exhibits				
IHO 1	Notice of Hearing	( 2017)		
IHO 2	Due Process Reque	est /17)		
Agency A	Case Note /1	6		
Agency B	Case Note /1	6		
Agency C	Case Note /1	6		
Agency D	Case Note /16			
Agency E	Web Page with Bu	siness Plan		
Agency F	Email thread from			
Agency G	Letter to			
Agency H	Case Note /1			
Agency I	Case Note /1			
Agency J	Case Note /1	7		

#### **Issue**

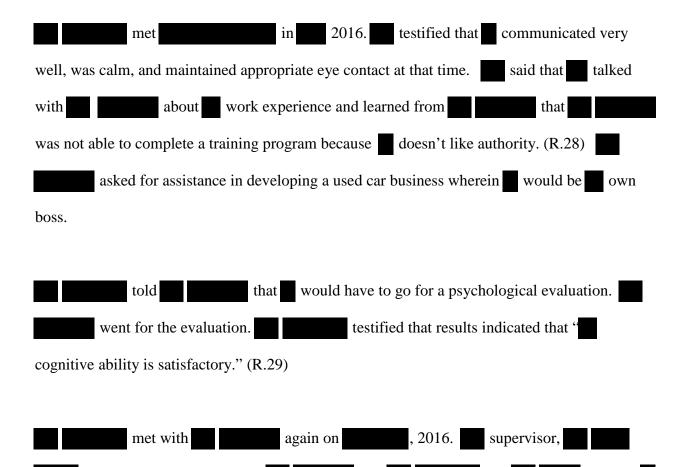
#### **Opening Statements**



that there is little doubt that The Agency stated, through its representative, is good at selling cars; that presents very well: and, that is quite a salesman. added, however, that the Agency could not proceed based on the information and documentation that they had. further stated that was sent to a consultant who felt that did not have command of the "business part" of the used car business. concluded saying that the consultant did not have information needed to make a recommendation; that the Agency requires submission detailed information to ascertain whether has an acceptable business plan before sponsorship can be approved; and finally, that might not have the facility for a business plan.

#### **Testimony**

testified that has been working for ACCES for two years and eight months. has been a rehabilitation counselor for 15 years. Nine of those years were spent working in a substance abuse program at Samaritan Village. Two subsequent years were spent at Interfaith Medical Center- where was a vocational rehabilitation counselor working with individuals with mental health disorders. holds a Master's Degree in Vocational Rehabilitation Counseling; a license in mental health counseling; and, certification as an Alcohol and Substance Abuse Counselor.



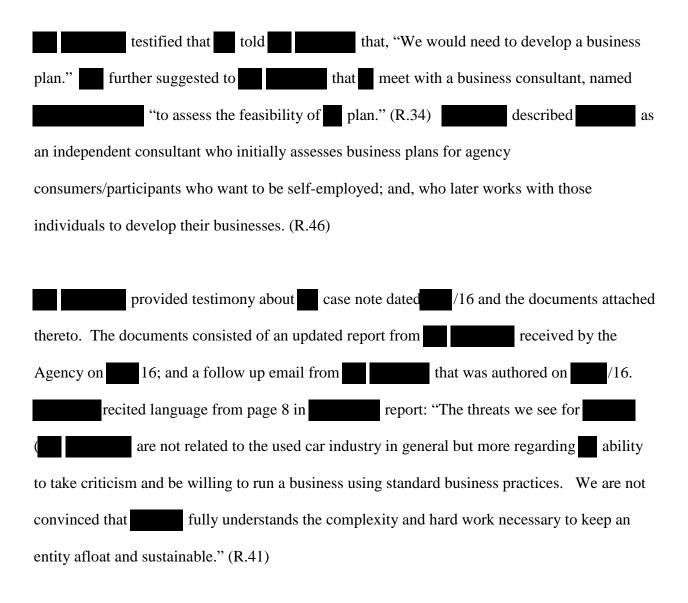
told

participated in the meeting.

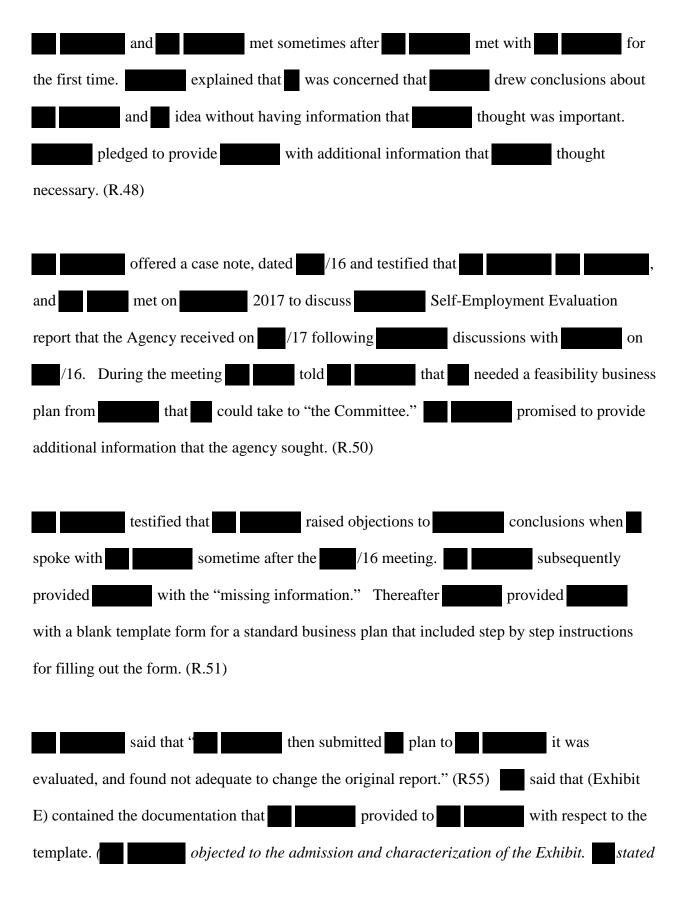
that that

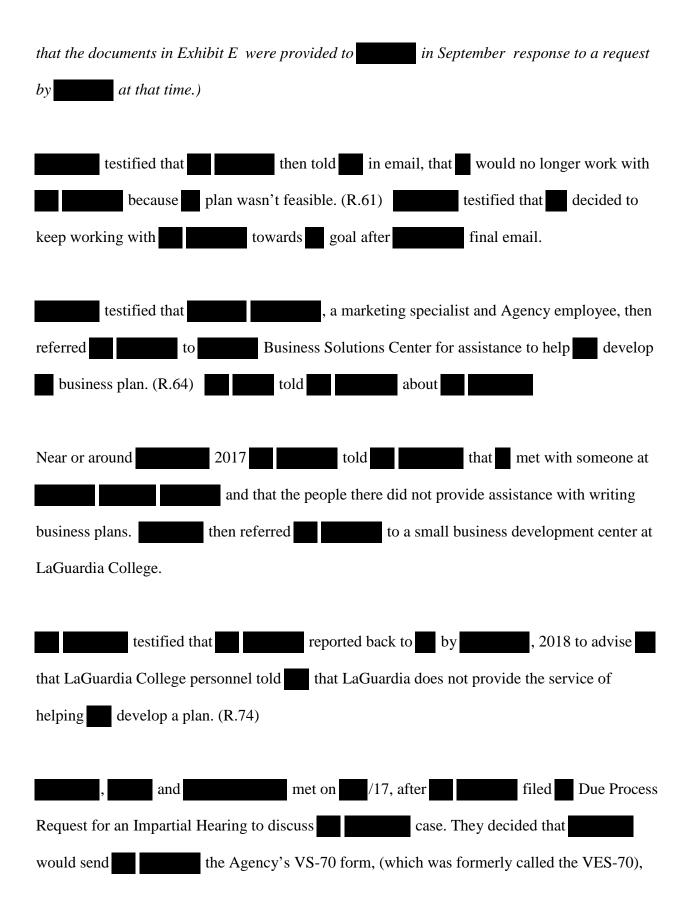
and

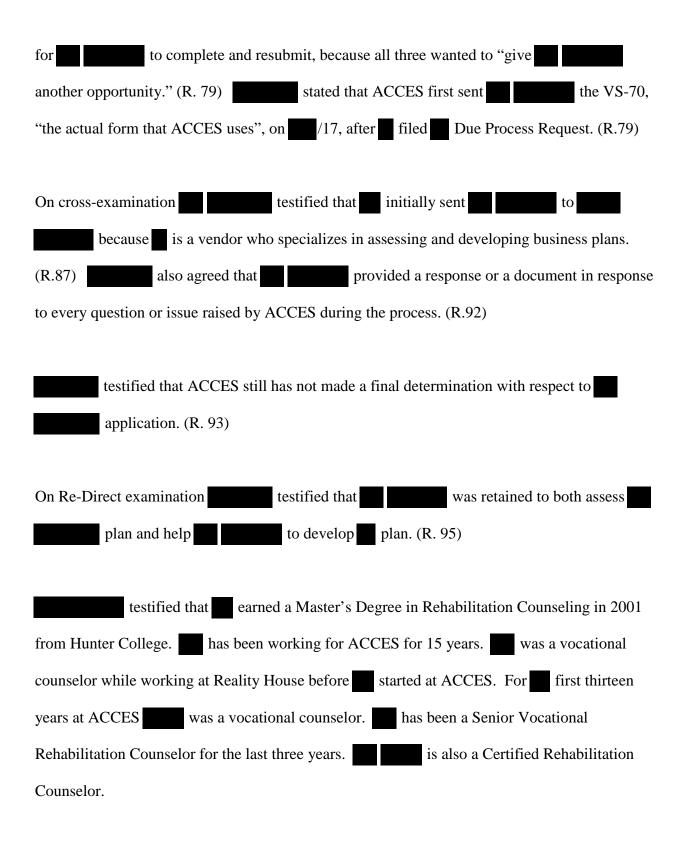
was already buying and selling used cars from out of state; and wanted to get a license so that could "transport the cars legally." (R. 31)

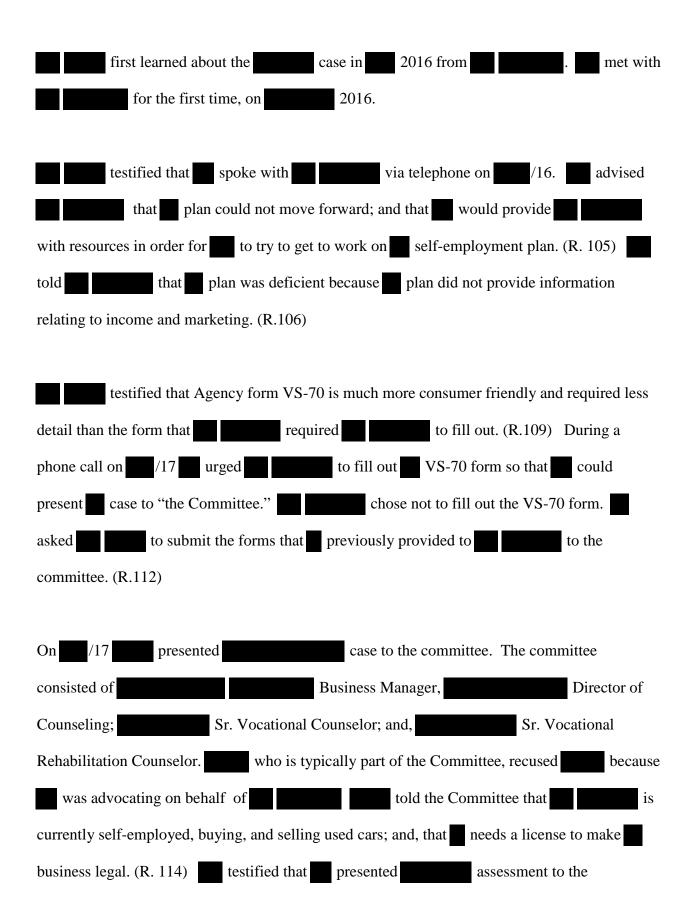


recited additional comments from **a construction** report: "**a construction** understands the used car dealership industry, how it works, and what **a** wants to accomplish very well." **a** referenced other comments in the report that note **a construction** other strengths – that include knowledge of requirements to become a second hand car dealer in great detail. (R.43)









committee. The committee did not approve the plan. Notice of their determination was memorized in a letter dated 2017. (R.117) further testified that 2017. (R.117) to get a plan approved for after the Committee's decision. asked to send a VR-70 form to 2017 on 2017. (2017.

has a Master's Degree in Rehabilitation Counseling from Hofstra University. is a Certified Rehabilitation Counselor and is a licensed Mental Health Counselor. has been working in the field for over 40 years. has been with ACCES for more than 25 years. is currently the manager of the district office.

stated that during tenure has handled cases for individuals who sought sponsorship for self-employment. While the goal of self-employment is not frequent, getting a plan approved is very involved. stated that an individual seeking sponsorship for a plan of self -employment must have both the skills necessary to do a job and acumen to run a business. further stated that Agency policies and procedures limit the discretion of Agency counselors when an individual seeks a plan of self-employment. (R.124)

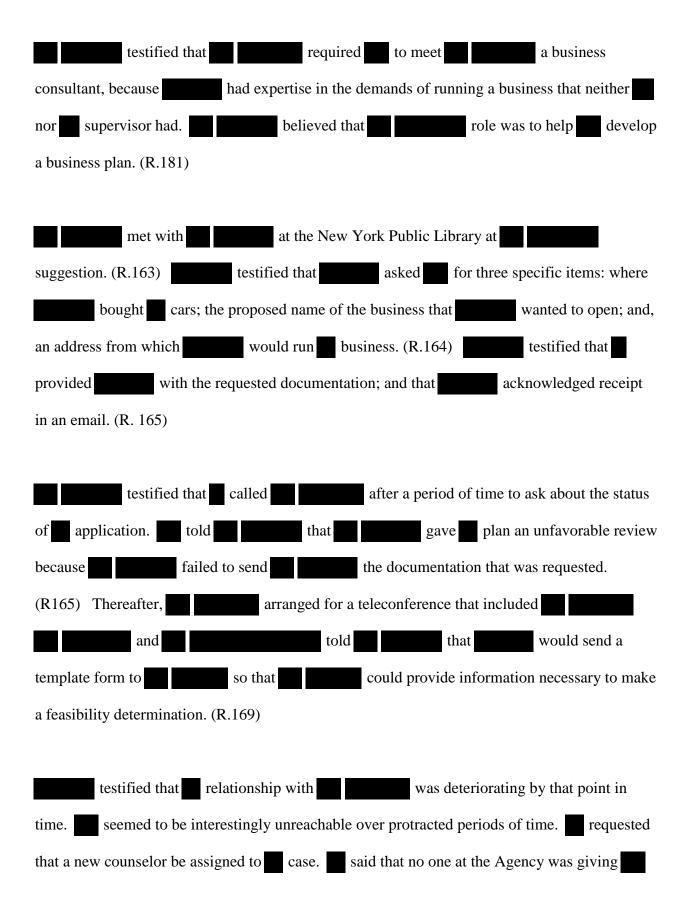
testified that a major concern for the Agency was whether in the had the experience and know-how to handle the administrative functions of the business. (R.125) Specifically, the Committee needed to see projections regarding expenditures and income.
(R.126) said that the Committee did not have sufficient information to approve self-employment goal. (R.129) testified that the Committee had neither

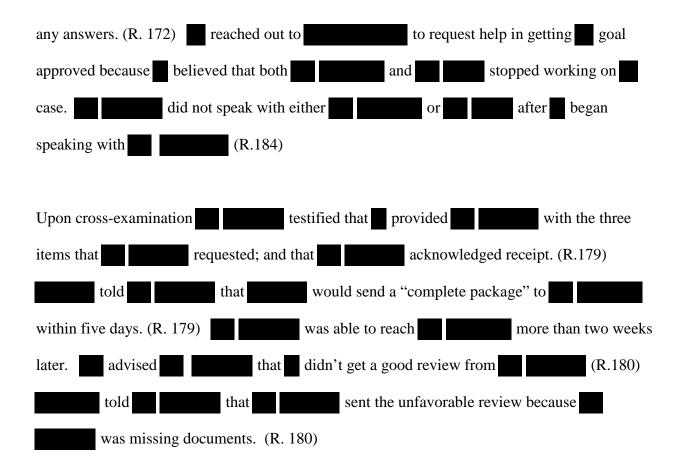
form, nor the Agency's form, when the Committee met. (R.132) The only document that the Committee received for consideration was Agency Exhibit E. further stated that the Committee met without adequate information because self-employment plan. (R140)

get information it deemed necessary by sending **a VES**-70 form, **a VES**-70 form, **b d** did not send back the completed form. (R.143)

When asked about the role that **and the played** in the self-employment process **and that and the self-employment** process **and that and the self-employment** plans after the assessment phase. (R.202) Had **and the self-employment** process **and th** 

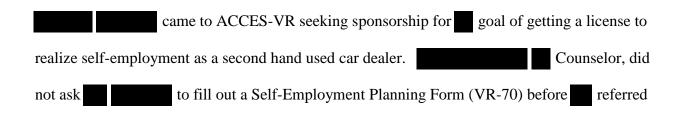
testified that has been in the used car business, without being licensed or insured, for many years. said that used about half of s800 monthly check to buy a car after used automotive repair skills to assess whether the car was worth fixing. If the car was worth fixing would buy it, make some repairs, and sell it for \$1,000 or more. (R.150) found that efforts were often frustrated because had no place to park the car overnight. started driving cars from auctions for a car buyer to avoid the risks of getting tickets or having the cars bought booted overnight. said came to ACCES for help getting a license to buy and sell used cars. (R.159)



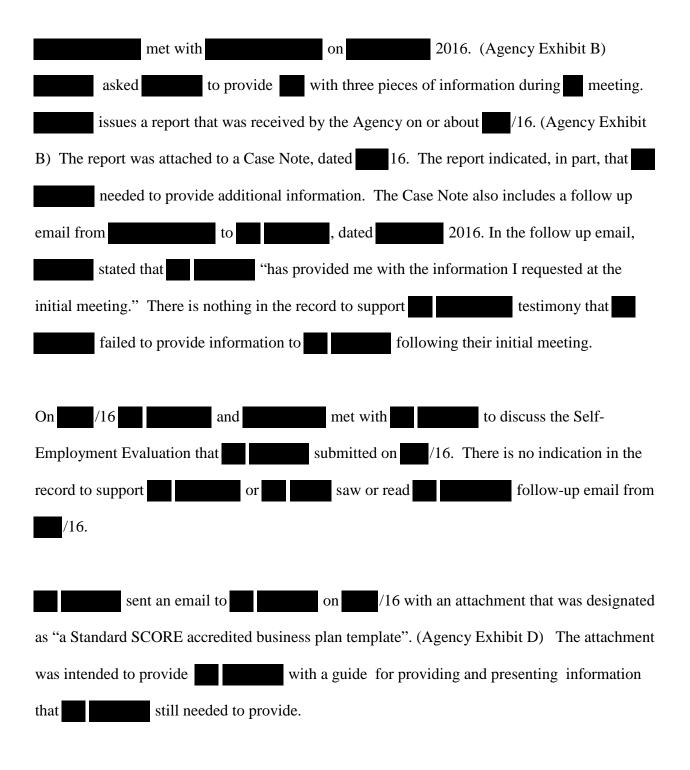


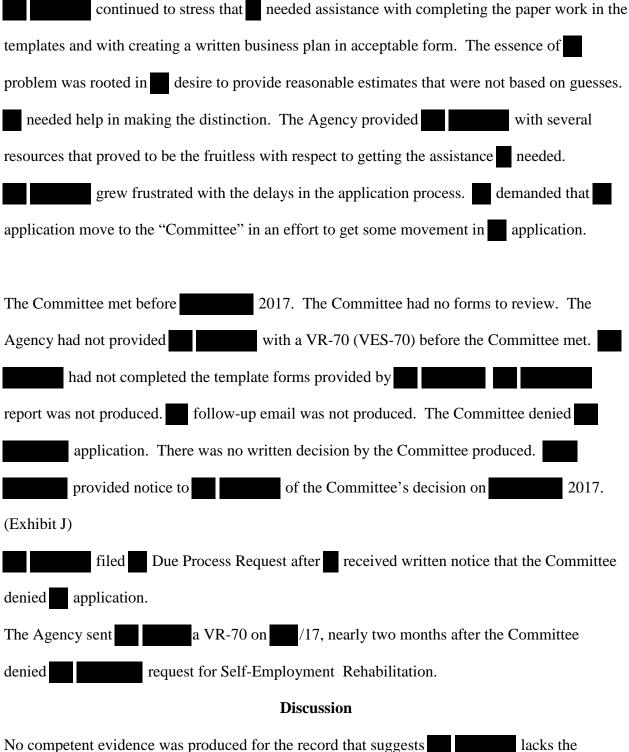
said that ultimately decided that the only way to get results was to push the process from the counselors to the Committee. Getting a Committee decision would at least result in getting something in writing. (R.201)

## **Findings of Fact**



to **a** Agency approved consultant, for an independent evaluation, to determine the feasibility of **a** goal.





No competent evidence was produced for the record that suggests **and an and a set of a set of** 

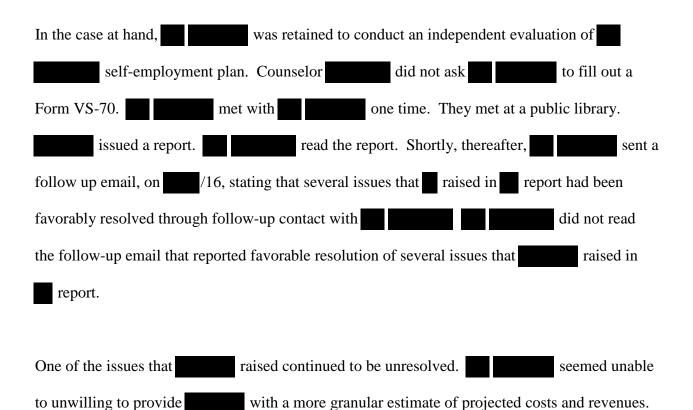
initial report, that are of little probative value and are beyond the scope of expertise, seem to have taken on lives of their own, sometimes out of context, in various Case Notes. It is troublesome that these comments continued to be repeated, to varying degrees, in new Case Notes, even though walked back the comments in follow-up email of 16. It is troublesome for two reasons: first, repeating comments from form initial report after walked them back in follow -up email suggests that the follow-up email was never read - even though it is attached to a Case Note; and secondly, for form could be unfairly stigmatized by the comments because they continue to be repeated in subsequent Case Notes.

1301.00 Self-Employment Policy designates the parameters of self-employment rehabilitation and the protocol for gaining approval of such plans. It establishes responsibilities that both the Agency and a Consumer/Participant, like **and a process** that must be followed.

At the outset 1301.00 Self-Employment Policy requires a counselor to acquire enough detail to get a comprehensive picture of the Consumer/Participant's business plan. This can be done by having the Consumer/Participant complete a Self-Employment Planning Form (VR-70) It can also be done by independent evaluation provided that the evaluation provides a complete description of the proposed business. It is incumbent on the Counselor to get the all questions that are more than mere guesses. The counselor must decide if the plan is feasible. The counselor can make a feasibility determination based on a review of the Self Employment Planning Form (VR-70) and constrained on a feasibility of the supervising Senior

Counselor; or, by enlisting the help from a District Office Self-Employment Team (the "Committee")

A Consumer/Participant also has the responsibilities under the Policy. The Consumer/Participant is required, in part, to complete the Self-Employment Planning Form (VR-70) or go through an independent evaluation. In essence, the applicant for Self-Employment rehabilitation has an obligation to provide accurate information that can be in the form of estimates but cannot be mere guesswork. Providing this level of detail helps the counselor to satisfy the counselor's obligation to acquire the requisite level of detail to provide a comprehensive picture of the proposed business plan.



had difficulty making a distinction between estimating and guessing; so chose

not to provide any additional information without first getting help from resources felt would be more qualified. The process came to a halt. **The process** and **the process**

heard the term "Committee" from Counselors and and and a set of the demanded the Committee hear application for self-employment rehabilitation after becoming frustrated with the peace of the feasibility process and perception that assigned counselor was not working optimally on application. There is nothing in the record that suggests any Agency employee encouraged or discouraged from enlisting the Committee to get a feasibility determination.

The "Committee" that met to discuss whether **Self-Employment** self-employment plan was feasible is designated in Agency policy as the Self-Employment Evaluation Team. (The term "Committee" will continue to be used herein because the parties have established it and the parties are familiar with it).

The Committee had little information on which they could base a feasibility determination when they me in 2017. There was no Form VR-70. The Committee was no provided with a consultant's assessment in the form of initial report or follow up email. The Committee did not receive a proposed business plan. The only documents that the Committee saw were some documents that **set and set of an and the set of a s**  On 2017 VRC sent sent a Self-Employment Planning Form (VR-70) with a request that return the completed document as soon as possible. (Exhibit G) One is hard pressed to understand why the form, which includes requests for information that the Committee could use to make its decision, was not given to before the Committee convened. Failure to provide with a Form (VS-70), a document on which the Committee could base an informed decision, deprived a fair chance of getting approval for Self-Employment request.

### **Decision**

The decision of the ACCES-VR Self Employment Committee is vacated. The Consumer/Participant may renew request for plan approval, without prejudice, after submits a completed Self-Employment Planning Form (VR-70)

Dated: , New York

Impartial Hearing Officer

An Original or Copies of this Decision were mailed to:

