

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
 )  
Weststar, Inc. ) ASBCA Nos. 52837, 53171  
 )  
Under Contract No. N68711-96-C-5048 )

APPEARANCES FOR THE APPELLANT: Richard S. Busch, Esq.  
Kenneth S. Humphrey, Esq.  
Tanya S. Haney, Esq.  
Busch & Berger  
Calabasas, CA

Clinton D. Hubbard, Esq.  
San Diego, CA

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.  
Navy Chief Trial Attorney  
John S. McMunn, Esq.  
Senior Trial Attorney  
Engineering Field Activity West  
Daly City, CA

OPINION BY ADMINISTRATIVE JUDGE DELMAN  
ON MOTION FOR RECONSIDERATION

We have before us a motion that seeks reconsideration of our decision dismissing these appeals for lack of jurisdiction. We dismissed the appeals because the record indicated that appellant was a defunct enterprise with a revoked corporate license, and no other entity was shown to have privity of contract with the Government for purposes of establishing standing before this Board. *Weststar, Inc.*, ASBCA Nos. 52837, 53171, 03-1 BCA ¶ 32,248.

In the subject motion, counsel from the law firm of Busch & Berger, who were identified as representing appellant's surety but who were also identified as authorized to represent appellant's interests (app. resp., 8/18/03, Jordan decl. ¶ 9), provided evidence that appellant's corporate license was not revoked but rather was suspended for failure to file tax returns and to pay corporate franchise taxes, and that appellant had commenced steps under California law to revive its corporate status through the issuance of a certificate of

revivor (mot. at 3-6). The government has not disputed this evidence, and we so find.<sup>1</sup> Per order dated 3 October 2003, the Board granted appellant until 1 December 2003 to obtain and to file a certificate of revivor with the Board.

On 28 November 2003, appellant filed a certified certificate of revivor from the Franchise Tax Board, State of California, effective 21 November 2003 under the corporate name “Weststar Revivor, Inc.” Appellant was required by law to change its name from “Weststar, Inc.” since that name had been taken by another enterprise during appellant’s suspension. In pertinent part the certificate of revivor provides: “This corporation has been relieved of suspension or forfeiture and is now in good standing with the Franchise Tax Board.” A certificate of revivor is *prima facie* evidence of the reinstatement of a corporation under California law, and is “without prejudice to any action, defense or right which has accrued by reason of the original suspension . . .” CALIFORNIA REVENUE AND TAX CODE § 23305a.

We believe that the factual and legal predicates upon which we dismissed the appeals for lack of jurisdiction do not presently exist. As a reinstated corporation, there is no longer anything to impede appellant from continuing to prosecute its appeals. We believe it fair and just to exercise our discretion to reinstate the appeals under these circumstances.

We have carefully considered the government’s opposition to reinstatement. The Navy contends that the revived corporation – Weststar Revivor, Inc. – did not sign or perform the contract with the Navy and thus may not prosecute these appeals. We are persuaded that for all intents and purposes, Weststar Revivor, Inc. is the same corporation that signed and performed the subject contract; the name change was a mere ministerial act required by California law. The government also contends that the contracting officer has not received formal notice of appellant’s name change, nor has the name change been approved by the CO. However, we are not persuaded that this has any bearing on our jurisdiction.

Finally, the government argues that it is too late for the Board to consider the certificate of revivor. We do not agree. Counsel was authorized to act in the interests of appellant and filed a timely motion for reconsideration. Moreover, it is well settled that the

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<sup>1</sup> In view of this new evidence, we delete finding 10 in our earlier decision and any and all references thereto, and replace it with the following:

10. While the appeals were pending before the Board, the State of California suspended appellant’s corporate license for failure to file tax returns and to pay associated taxes. The parties do not dispute, and we find that as a suspended corporation under California law, appellant does not have the present capacity to prosecute legal actions.

Board has the inherent authority to vacate or correct its decisions even after the expiration of the period for the filing of a motion for reconsideration upon grounds similar to those available under Rule 60(b) of the Federal Rules of Civil Procedure. *See Laka Tool and Stamping Co., Inc.*, ASBCA No. 21338, 84-2 BCA ¶ 17,326 at 86,327-28 (and cases cited), *aff'd*, 7 Cl. Ct. 213 (1984). We believe that the certificate of revivor may be viewed as “newly discovered evidence” for these purposes.

Based upon the foregoing, appellant’s motion is granted and ASBCA Nos. 52837 and 53171 are hereby reinstated and consolidated. The captioned appellant in these appeals shall be “Weststar Revivor, Inc. (formerly Weststar, Inc.).”

Dated: 7 January 2004

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JACK DELMAN  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

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EUNICE W. THOMAS  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA Nos. 52837, 53171, Appeals of Weststar, Inc., rendered in conformance with the Board's Charter.

Dated:

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EDWARD S. ADAMKEWICZ  
Recorder, Armed Services  
Board of Contract Appeals