

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
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Free & Ben, Inc. ) ASBCA No. 56788  
 )  
Under Contract No. W91GY0-07-C-0056 )

APPEARANCE FOR THE APPELLANT: Mr. Ben Emosivbe  
President

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.  
Army Chief Trial Attorney  
Robert T. Wu, Esq.  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE TING

This appeal relates to Free & Ben, Inc.'s (F&B) \$787,760.00 certified claim submitted to the government on 27 July 2007. The claim included costs related to (1) settlement with subcontractor, (2) general and administrative expenses, and (3) other settlement expenses F&B contends it incurred when the government terminated the underlying contract, Contract No. W91GY0-07-C-0056 (Contract 0056), for cause. The contracting officer (CO) never issued a decision on the \$787,760.00 claim. We docketed the appeal as ASBCA No. 56788 pursuant to 41 U.S.C. § 605(c)(2) (now re-codified as 41 U.S.C. § 7103(f)(5)). Proceedings in ASBCA No. 56788 were stayed pending resolution of ASBCA No. 56129. *See Free & Ben, Inc.*, ASBCA No. 56129, 09-1 BCA ¶ 34,127 at 168,741.

On 22 March 2011, the Board upheld the CO's decision terminating Contract 0056 for cause and denied the appeal in ASBCA No. 56129. *Free & Ben, Inc.*, ASBCA No. 56129, 11-1 BCA ¶ 34,719. F&B moved for reconsideration, which was denied on 9 March 2012. *Free & Ben, Inc.*, ASBCA No. 56129, 12-1 BCA ¶ 34,966. U.S. Postal Service Registered Mail, Return Receipt, shows F&B received the 9 March 2012 decision on 21 March 2012.

By Order dated 27 March 2012, the Board directed F&B to show cause why the Board should not dismiss ASBCA No. 56788 with prejudice since the appeal's validity "depends upon prevailing on the merits in ASBCA No. 56129." F&B's 16 April 2012 motion<sup>1</sup> asked us to stay proceeding "pending an expedited appeal," or in the alternative,

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<sup>1</sup> F&B's motion was actually dated 16 March 2012. We believe the correct date should be 16 April 2012.

for a "365-day-stay." By Order dated 29 May 2012, we stayed proceedings in ASBCA No. 56788 pending notification that F&B has appealed ASBCA No. 56129.

Under the Contract Disputes Act, an appeal to the United States Court of Appeals for the Federal Circuit must be taken within 120 days from the date the contractor receives a copy of the decision. 41 U.S.C. § 7107(a)(1). The 120-day appeal period expired on 19 July 2012. We have no indication that F&B has appealed ASBCA No. 56129. Under the circumstances, the Board's decision on ASBCA No. 56129 has become final. 41 U.S.C. § 7107(a)(1).

On 24 September 2012, the Board sent F&B a second Order to Show Cause on why ASBCA No. 56788 should not be dismissed with prejudice in light of its failure to appeal. This show cause order was sent by U.S. Postal Service Registered Mail, Return Receipt to F&B's business address in Brussels, Belgium, where all previous correspondence, orders and decisions were sent. The 24 September 2012 show cause order was returned unclaimed.

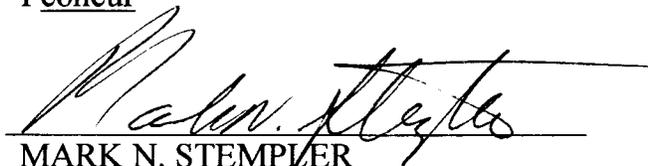
Because F&B has not timely appealed the Board's decision in ASBCA No. 56129, and ASBCA No. 56788's validity depended on prevailing on the merits in ASBCA No. 56129, ASBCA No. 56788 is dismissed with prejudice.

Dated: 16 November 2012



PETER D. TING  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur



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

I concur



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 No. 56788, Appeal of Free & Ben, Inc., rendered in conformance with the Board's Charter.

Dated:

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CATHERINE A. STANTON  
Recorder, Armed Services  
Board of Contract Appeals