

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
SplashNote Systems, Inc.) ASBCA No. 57403
)
Under Contract No. FA8650-04-C-1615)

APPEARANCE FOR THE APPELLANT: Mr. Scott Tse
President & CEO

APPEARANCES FOR THE GOVERNMENT: E. Michael Chiapas, Esq.
DCMA Chief Trial Attorney
Carol L. Matsunaga, Esq.
Senior Trial Attorney
Defense Contract Management
Agency
Carson, CA

OPINION BY ADMINISTRATIVE JUDGE GRANT
ON APPELLANT'S MOTION FOR RECONSIDERATION

SplashNote Systems, Inc. (SplashNote) moves for reconsideration of the Board's decision of 29 November 2011 under Rule 12.3 denying its appeal. *SplashNote Systems, Inc.*, ASBCA No. 57403, 12-1 BCA ¶ 34,899. SplashNote contests the Board's decision as to the unallowability of \$59,417 in deferred independent research and development (IR&D) costs, and \$34,168 claimed as a bonus. The government has opposed the motion. Familiarity with our decision is presumed.

The general standards we apply to motions for reconsideration are whether the motion is based on newly discovered evidence, mistakes in the findings of fact, or errors of law. Reconsideration is not a chance for a party to re-argue its position, nor is it granted without compelling reason. *Robinson Quality Constructors*, ASBCA No. 55784, 09-2 BCA ¶ 34,171 at 168,911; *Zulco International, Inc.*, ASBCA No. 55441, 08-1 BCA ¶ 33,799 at 167,319.

Concerning the Board's decision disallowing deferred IR&D, SplashNote first re-argues the issue of linkage with advance agreements, a point already considered and rejected by the Board in its original decision. That one party may have greater control over contract documents is irrelevant in this regard. Second, SplashNote argues that the Board made an error in Finding of Fact No. 6 in finding that DCAA did not audit SplashNote's incurred cost submission for 2004. There is no factual error; the government's document itself states that no audit was conducted. As to estoppel, SplashNote admits that its decisions in incurring, negotiating, and charging the

questioned costs were unaffected by the June 2007 report concerning the FY 2004 costs. Rather, SplashNote argues that, if it had known the government would have effectively disallowed the 2004 costs, it would have accepted the finding, resubmitted the final rate proposals for both FY 2004 and FY 2005 with the questioned rates removed, and then tried to recoup some of the difference in additional business under the contract in a "complicated, but doable, budget exercise." (App. mot. at 3) These speculations were not presented earlier to the Board, and in any case do not support a conclusion of affirmative government misconduct required to show estoppel.

Concerning the Board's decision disallowing the \$34,168 bonus, SplashNote argues the Board should not follow the decision of *Lulejian and Associates, Inc.*, ASBCA No. 20094, 76-1 BCA ¶ 11,880, because that decision involved a situation where the individual got both a larger bonus and a larger salary while also relinquishing some of his duties. However, the factors set out in that case provide an appropriate legal framework for our analysis, which was augmented by the other facts contributing to the conclusion that the bonus was a distribution of profit. As to the issue of bonus size in comparison with those of the part-time employees, SplashNote raised this point in its original briefing, and the "new evidence" SplashNote presents (app. mot., attach. Y) duplicates that already found in the original record (R4, tab 23). Consequently, SplashNote has not provided a basis for the Board to reconsider its original finding that the bonus of \$34,168, representing 71% of bonus money, was unallowable.

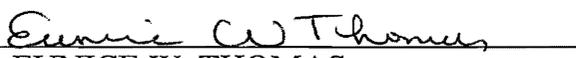
CONCLUSION

Appellant's motion for reconsideration is denied.

Dated: 6 April 2012


ELIZABETH M. GRANT
Administrative Judge
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. 57403, Appeal of SplashNote Systems, Inc., rendered in conformance with the Board's Charter.

Dated:

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