

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
TranLogistics LLC ) ASBCA No. 61436  
)  
Under Contract No. M27100-17-P-6012 )

APPEARANCES FOR THE APPELLANT: Eric Whytsell, Esq.  
Ross Watzman, Esq.  
Jackson Kelly PLLC  
Denver, CO

APPEARANCES FOR THE GOVERNMENT: Craig D. Jensen, Esq.  
Navy Chief Trial Attorney  
Maj John E. Buis, USMC  
Associate Counsel  
Eastern Area Counsel Office  
Camp Lejeune, NC

OPINION BY ADMINISTRATIVE JUDGE THRASHER ON THE  
GOVERNMENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION  
AND APPELLANT'S MOTION TO WITHDRAW APPEAL

*Background*

On 27 November 2017, the Board received correspondence from TranLogistics LLC (TranLogistics or appellant), indicating a desire to appeal on the referenced contract. The appeal was docketed the same day.

On 11 December 2017, the Board received the government's motion to dismiss the appeal for lack of jurisdiction, alleging the appeal was premature. According to the government, appellant's claim for \$13,853.00 was emailed 26 October 2017, received by the contracting officer (CO) on 9 November 2017, and a decision would be forthcoming within the 60-day timeframe established by FAR 33.211(c)(1)\* (gov't mot. at 1, 2).

Appellant responded to the government's motion on 16 March 2018, acknowledging that it had prematurely contacted the Board in November, before the CO had issued the 8 January 2018 final decision (app. resp. at 1, 2). Therefore, conceded appellant, the Board

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\* The CO subsequently issued a final decision, dated 8 January 2018, and appellant appealed the decision to the Board. That appeal, ASBCA No. 61574, was docketed 3 April 2018.

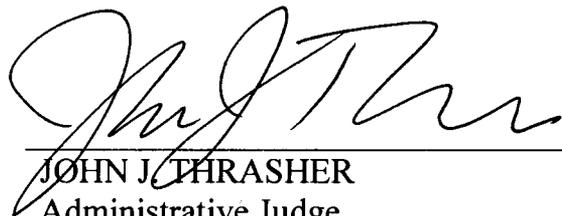
does not have jurisdiction over the matter (app. resp. at 3). Appellant stated it had proposed to the government that the parties enter into a joint stipulation for voluntary dismissal without prejudice. The government declined to do so. (App resp. at 2) Appellant moved to withdraw the appeal without prejudice (app. resp. at 1, 3). The Board has received no further correspondence from the government.

*Discussion*

We do not have a rule governing when an appellant may withdraw an appeal and, as described in *TTF, L.L.C.*, ASBCA No. 58494, 13 BCA ¶ 35,343 at 173,463, citing *Thorington Electrical and Construction Co.*, ASBCA No. 56895 *et al.*, 10-2 BCA ¶ 34,511 at 170,177 n.3, we look for guidance to the Federal Rules of Civil Procedure. FED. R. CIV. P. 41 provides in pertinent part that a “plaintiff may dismiss an action without a court order by filing...a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” In *TTF, L.L.C.*, the government had filed a motion to dismiss the appeal for lack of jurisdiction, while appellant had filed a motion to withdraw. The Board, citing *Dick Pacific/GHEMM JV*, ASBCA Nos. 55562, 55563, 07-1 BCA ¶ 33,469 at 165,920, noted that dismissal pursuant to the government’s motion to dismiss for lack of jurisdiction would result in a dismissal without prejudice, the same result from a grant of appellant’s motion. We allowed appellant to withdraw its appeal without prejudice. *TTF, L.L.C.*, 13 BCA ¶ 35,343 at 173,464. Subsequently, we described this result as a “reasonable, common sense approach” in reaching the same conclusion in a similar case. *UCI Services Group, Inc.* ASBCA No. 60792, 17-1 BCA ¶ 36,745 at 179,105. We see no reason to reach a different conclusion here.

Appellant’s motion to withdraw the appeal is granted and the appeal is dismissed without prejudice. In light of our allowance of appellant’s motion to withdraw the appeal, the government’s motion to dismiss for lack of jurisdiction is denied as moot.

Dated: 30 April 2018



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JOHN J. THRASHER  
Administrative Judge  
Chairman  
Armed Services Board  
of Contract Appeals

(Signatures continued)

I concur



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RICHARD SHACKLEFORD  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

I concur



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CRAIG S. CLARKE  
Administrative Judge  
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. 61436, Appeal of TranLogistics LLC, rendered in conformance with the Board's Charter.

Dated:

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JEFFREY D. GARDIN  
Recorder, Armed Services  
Board of Contract Appeals