

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
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Alphatech Systems, Inc.) ASBCA Nos. 52510 52511 52831
)
Under Contract No. DAAA09-98-C-0034)

APPEARANCE FOR THE APPELLANT: James S. DelSordo, Esq.
Williams Mullen Clark & Dobbins
McLean, VA

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA
Chief Trial Attorney
MAJ David Newsome, Jr., JA
Trial Attorney

OPINION BY JUDGE DICUS ON RESPONDENT'S MOTION TO DISMISS
AND THE BOARD'S ORDERS ON FURTHER PROCEEDINGS

By order dated 30 March 2000, the Board informed the parties that the Board had been advised that appellant had filed a petition in bankruptcy, and further notified the parties that it appeared that the provisions of the automatic stay, 11 U.S.C. § 362, were applicable. Thus, it appeared that the proceedings in the then two appeals (ASBCA No. 52510 – appeal of a termination for default, and ASBCA No. 52511 – appeal of demand for return of progress payments) would have to be stayed since both represented Government claims. In addition to asking for further information, both parties were directed to advise the Board how they wished to proceed in view of the bankruptcy petition.

Based upon the parties' responses, the proceedings were stayed by order dated 23 May 2000. That order allowed both parties 60 days in which to petition the bankruptcy court to either lift the stay or indicate that the stay was not applicable to the subject proceedings. Neither party informed the Board that it had petitioned the bankruptcy court.

By order dated 27 July 2000, in response to appellant's complaint that the Government had not petitioned the bankruptcy court, we granted a further 60 days in which to petition the bankruptcy court to either lift the stay or indicate that the stay was not applicable to our proceedings. We specifically noted that our orders did not mandate that the Government take the initiative in petitioning the bankruptcy court. Again, neither party informed the Board that it had petitioned the court.

In the interim, on 16 June 2000, appellant filed a notice of appeal of the denial of a request for equitable adjustment and the “deemed denial” of appellant’s termination settlement proposal. That matter was docketed as ASBCA No. 52831. On 10 July 2000, the Government filed a motion to dismiss this latest appeal. The parties then exchanged briefs and replies. The gravamen of the Government’s motion is that, under similar circumstances, we have previously held that the adjudication of the denial of a termination for convenience proposal appealed to the Board is premature and subject to dismissal without prejudice pending resolution of the propriety of the underlying default termination. *Poly Design Inc.*, ASBCA No. 50862, 98-1 BCA ¶ 29,458. Appellant opposed the motion primarily on the basis that, while we have dismissed appeals of termination settlement proposals, its claim and appeal also include a request for equitable adjustment, and we can and should retain the appeal to resolve that dispute. We have the right and responsibility to manage our docket. *See Metadure Corp. v. United States*, 6 Cl. Ct. 61 (1984) (contract appeals board’s authority to manage docket is the same as that of federal courts).

Where an appellant’s claim raises a discrete controversy and is not dependent upon a termination for default being set aside, we have declined to dismiss an appeal as premature. *Peter Gross GmbH & Co. KG*, ASBCA No. 50326, 98-1 BCA ¶ 29,489. Such is not the present case. Appellant’s claim for an equitable adjustment consists of a single paragraph referring the reader back to its termination settlement proposal (R4, tab 93 at 20). The allegations supporting its request for an equitable adjustment, as set out in its complaint, are repeated verbatim in its allegations concerning its termination proposal. *Cf.* app. complaint ¶¶ 81-82 *with* 86-87. Thus, recovery of its request for an equitable adjustment is dependent upon appellant prevailing in its appeal of the default termination. A decision on the equitable adjustment claim would involve the default issues and could be construed as an improper circumvention of the automatic stay.

As an additional ground for not dismissing ASBCA No. 52831, appellant urges that unless we retain jurisdiction over the termination claim, the Government might assert that interest pursuant to the Contract Disputes Act (CDA), 41 U.S.C. § 611, cannot accrue on that claim. However, our action here in dismissing the appeals is not a jurisdictional decision but an action taken pursuant to Rule 30 because we cannot proceed for reasons beyond our control. Neither jurisdiction nor the commencement date for CDA interest is at issue.

SUMMARY

The Board is unable to proceed with disposition of the appeals docketed as ASBCA Nos. 52510 and 52511 due to circumstances beyond the control of the Board. Because the issues in ASBCA No. 52831 are inextricably intertwined with the

termination issues, we deem it inappropriate to proceed. Moreover, the interests of judicial economy are better served by declining to do so at this time. Accordingly, the three appeals are hereby dismissed, pursuant to Rule 30. The parties should note that, unless either party or the Board moves to reinstate the appeals within three years beginning from the date of this order, the dismissals shall be deemed to be with prejudice.

Dated: 30 October 2000

CARROLL C. DICUS, JR.
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur

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

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. 52510, 52511, and 52831, Appeals of Alphatech Systems, Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services

Board of Contract Appeals