

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Stephen Kangeter Builders, Inc.) ASBCA No. 53940
)
Under Contract No. NAFBA1-00-C-0073)

APPEARANCE FOR THE APPELLANT: Mr. Stephen Kangeter
President

APPEARANCES FOR THE GOVERNMENT: COL Karl M. Ellcessor, III, JA
Chief Trial Attorney
CPT Peter G. Hartman, JA
Trial Attorney

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

In *Stephen Kangeter Builders, Inc.*, ASBCA No. 53940, 3 December 2004, we denied appellant's motion to reinstate the above-captioned appeal, which we had previously dismissed with prejudice at appellant's request. The voluntary dismissal motion had come within eight days of a scheduled hearing. *Slip op.* at 1-2. In addressing appellant's request, we obtained from appellant's counsel a statement from which we determined that appellant's actions in requesting dismissal were deliberate and voluntary. *Slip op.* at 5. Before reaching our conclusion, we afforded appellant ample opportunity to explain how the voluntary dismissal had come to pass. Appellant, although vaguely alluding to a miscommunication or misunderstanding between appellant and counsel, simply declined to provide us with specific information as to any miscommunication or misunderstanding. Appellant has now requested reconsideration in a 29 December 2004 letter, asserting that appellant "feels he has [substantial] evidence to prove he never requested a dismissal of his appeal" and that our decision should be reversed. We have treated the request as a motion for reconsideration. The government opposes appellant's motion.

Mr. Kangeter's letter consists of two short paragraphs with no specific information. He does not tell us what the "[substantial] evidence" that he never requested dismissal is, and there are no attachments to the letter. Moreover, we asked him to provide such information in October 2004 and he failed to respond. We think a letter stating we should set aside our earlier decision because of the bare assertion that a party has evidence not identified or defined is an inadequate basis to grant reinstatement. A dismissal with prejudice is generally a bar to further action by the parties as it is a

complete adjudication of the issues presented. *Five Star Building Services*, ASBCA No. 50588, 98-1 BCA ¶ 29,372. As such, this Board cannot lightly set aside a voluntary dismissal with prejudice. Accordingly, we deny the request for reinstatement and affirm our 3 December 2004 decision.

Dated: 2 February 2005

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

MONROE E. FREEMAN, JR.
Administrative Judge
Acting 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. 53940, Appeal of Stephen Kangeter Builders, Inc., rendered in conformance with the Board's Charter.

Dated:

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