

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Missouri Department of Social Services) ASBCA No. 58944
)
Under Contract No. W911S7-09-D-0029)

APPEARANCE FOR THE APPELLANT: Keith L. Baker, Esq.
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McLean, VA

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.
Army Chief Trial Attorney
MAJ Travis P. Sommer, JA
CPT Harry M. Parent III, JA
CPT Tyler L. Davidson, JA
Trial Attorneys

ORDER OF DISMISSAL

On 15 November 2016, the Board sustained ASBCA No. 59191, and remanded the appeal to the parties for the negotiation of quantum. *Missouri Department of Social Services*, ASBCA No. 59191, 16-1 BCA ¶ 36,563 at 178,091, 178,094. ASBCA No. 59191 had been consolidated with this appeal, ASBCA No. 58944, but we severed the two appeals prior to deciding ASBCA No. 59191. *Id.* at 178,091. On 9 March 2015, at the beginning of the hearing of ASBCA Nos. 58944 and 59191, appellant stated, through counsel, that “[a]fter careful consideration,” it had decided “not to maintain [ASBCA No.] 58944 as a separate appeal,” and was “not going to pursue as a separate matter; [ASBCA No.] 58944” (tr. 1/17-18). Appellant agreed with the Board that appellant “just wish[ed] to have the operative facts underlying [ASBCA No. 58944] considered along with the facts in [ASBCA No.] 59191 in terms of the total amount of recovery that [appellant was] claiming” (tr. 1/18).

On 12 December 2016, the Board ordered appellant to show cause why, in view of the foregoing, ASBCA No. 58944 “should not be deemed withdrawn or dismissed (with or without prejudice).” On 9 February 2017, appellant responded, saying that it “believes that this issue will soon become moot,” because it “has proposed to the [the government] a global settlement that will resolve all issues raised in Appeal No. 58944, as part of the settlement of the quantum phase of Appeal No. 59191.” We find that response inadequate to demonstrate that appellant did not, on 9 March 2015, withdraw ASBCA No. 58944. We find that appellant withdrew ASBCA No. 58944 on 9 March 2015.

The appeal is withdrawn and dismissed from the Board's docket, with prejudice.

Dated: 14 June 2017


TIMOTHY P. MCILMAIL
Administrative Judge
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Order of Dismissal of the Armed Services Board of Contract Appeals in ASBCA No. 58944, Appeal of Missouri Department of Social Services, rendered in conformance with the Board's Charter.

Dated:

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