

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
Pinnacle Construction & Supply Company ) ASBCA No. 61173  
)  
Under Contract No. H92237-12-M-0160 )

APPEARANCE FOR THE APPELLANT: Mr. Ali Behroz Aziz  
President

APPEARANCES FOR THE GOVERNMENT: Jeffrey P. Hildebrant, Esq.  
Air Force Deputy Chief Trial Attorney  
Lt Col Kevin P. Stiens, USAF  
Trial Attorney

ORDER OF DISMISSAL FOR FAILURE TO PROSECUTE

On 19 May 2017, Pinnacle Construction & Supply Company (Pinnacle or appellant) filed a notice of appeal. On 30 June 2017, appellant filed its complaint pursuant to Board Rule 6(a) after being informed that its submission was overdue.

In August and September 2017, the Board held teleconferences to discuss the government's proposed protective order. The Board attempted unsuccessfully to reach appellant's *pro se* representative, Mr. Ali Behroz Aziz, prior to both calls.

Following the first teleconference, the Board issued a memorandum of teleconference, giving Mr. Aziz until 23 August 2017 to notify the Board of any objections to the proposed protective order and stating that we would convene a second conference call to discuss any objections. On 12 August 2017, Mr. Aziz responded via email, stating that he was "totally dissatisfied with the board decision and it's one sided and based on flimsy excuses." He further stated that he is "now ready for a telephone conference to take place at any date."

On 18 September 2017, the Board held a second teleconference to address the pending motion for protective order, but again was unable to reach Mr. Aziz. On 20 September 2017, we granted the government's motion for entry of a protective order, and on 22 September 2017, the government filed its Rule 4 file.

On 6 October 2017, the government filed a motion for summary judgment. Pursuant to Board Rule 7(d), appellant's response was due on 6 November 2017.

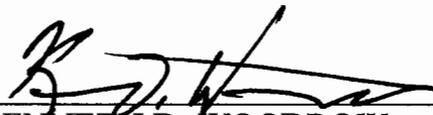
On 16 November 2017, the Board issued an order directing appellant to respond to the government's motion by no later than 6 December 2017. In our order, we warned that granting the government's motion would result in a denial of the appeal. We further stated that, if appellant did not respond by the 6 December 2017 deadline, we would rule upon the government's motion as submitted. Appellant did not respond.

On 13 March 2018, the government filed a motion for show cause order, asking the Board to issue an order to show cause why the appeal should not be dismissed for failure to prosecute.

On 14 March 2018, the Board issued an order to show cause why the appeal should not be dismissed. In our order, we gave Pinnacle until 13 April 2018 to either submit its brief responding to the government's motion for summary judgment or request an extension of time to submit its brief. We further stated that if we receive no response by 13 April 2018, "we may dismiss this appeal for failure to prosecute without providing any further notice to Pinnacle."

The 13 April 2018 deadline has come and gone with no response, whatsoever, from appellant. Thus, in accordance with Board Rule 17, this appeal is dismissed with prejudice for failure to prosecute.

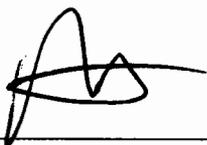
Dated: 9 May 2018



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KENNETH D. WOODROW  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur



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

I concur



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OWEN C. WILSON  
Administrative Judge  
Vice Chairman  
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. 61173, Appeal of Pinnacle Construction & Supply Company, rendered in conformance with the Board's Charter.

Dated:

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