

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
Al Barih for General Contracting Ltd.) ASBCA Nos. 57148, 57149, 57599
)
Under Contract No. W91GDW-07-D-2012)

APPEARANCE FOR THE APPELLANT: Mr. Naseer A. Abdul-Ameer
President/CEO

APPEARANCES FOR THE GOVERNMENT: Raymond M. Saunders, Esq.
Army Chief Trial Attorney
CPT Tyler L. Davidson, JA
Trial Attorney

ORDER OF DISMISSAL FOR FAILURE TO PROSECUTE

On 18 June 2014, the Board issued an Order To Show Cause why the above-captioned appeals should not be dismissed. We stated:

These consolidated appeals have been on the Board's docket for several years. Indeed, Al Barih's original appeal, ASBCA 57148, was docketed in March 2010. During this lengthy period, appellant has engaged a series of attorneys who later withdrew their representation. Al Barih's most recent representative withdrew on 22 October 2013. On 30 January 2014, the Board's Recorder forwarded a letter to the parties in which he stated that "we have not received notice as to whether or not new counsel has been retained." He stated further:

Since the withdrawal of counsel, several pretrial milestones have passed: expert reports were to be exchanged by 15 November 2013, all discovery including depositions was to be completed by 24 January 2014, and mediation, if agreeable was to be done by 28 January 2013. Other milestones will come due in February 2014. Trial is set to begin on 5 May 2014 for five days at the Board's offices in Falls Church, VA.

The Board's Recorder ordered the parties to file a joint status report on or before 7 February 2014. He also stated:

The report should include at a minimum, the progress made on the pretrial milestones and appellant should advise if it has new counsel or will appear pro se. If a joint report is not possible, the Board will accept separate reports from the parties.

On 31 January 2014, the Army's counsel forwarded a letter to appellant in which he recounted recent developments and sought Al Barih's co-operation in responding to the Board's order. On 7 February 2014, the due date for the joint status report, Al Barih acknowledged receipt of the Army's letter dated 31 January 2014. It stated: "[W]e would like [sic] inform you that we are in the meantime discussing with our previous council [sic] (legal representative) to continue again with this case in new agreement between our two firms and to prepare to the Board all the needed requirements mentioned in your above letter."

Appellant took no further action, and on 7 February 2014, the government's counsel forwarded "a status report without input from the appellant." He also discussed various pretrial milestones which he had attempted to complete but was unable to do so because of a lack of co-operation from the appellant. Appellant did not forward any submissions; nor did new counsel enter an appearance for Al Barih.

On 7 February 2014, the Army also filed a motion to compel discovery, noting that it had unsuccessfully attempted to schedule depositions as early as 23 October 2013.

Appellant did not respond to the government's motion. Accordingly, on 7 April 2014, the Board issued an order cancelling the hearing scheduled to commence on 5 May 2014. The Board also ordered appellant to respond to the Army's motion to compel on or before 7 May 2014. The Board stated: "Any failure to comply with this order

may result in dismissal of these appeals for failure to prosecute.”

On 5 May 2014, appellant forwarded a letter to the Board in which it requested a one-month extension in which to respond to the government’s motion to compel. It cited the alleged “severe financial strain on its ability to retain and keep counsel.” Through an order issued on 7 May 2014, the Board rejected appellant’s request and ordered it to respond to the Army’s motion on or before 21 May 2014. The Board also stated: “Any failure on appellant’s part to comply with this order may result in dismissal of these appeals for failure to prosecute.”

Appellant failed to comply with the Board’s order. Instead on 20 May 2014, it sought a further two-week extension. Noting that in our order of 7 May 2014, the Board had clearly stated that “no further enlargements will be granted,” the Army opposed appellant’s request for additional time to respond to the government’s motion to compel. It also cited appellant’s failure either to respond to the government’s discovery requests or to comply with several Board orders.

As of this date, no new appearance has been entered by counsel on Al Barih’s behalf. Nor has appellant responded to the Army’s motion to compel. Accordingly, appellant is ordered to show cause on or before 30 June 2014 as to why these appeals should not be dismissed with prejudice for failure to prosecute.

The Board received appellant’s response to our Show Cause Order on 30 June 2014. Al Barih did not include any responses to the Army’s long-standing discovery requests. Nor did it indicate that it had retained counsel. Instead, it stated that it was in financial distress; in addition, appellant wrote that it was “still exploring all possibilities for retaining counsel to represent us in connection with these appeals....” Al Barih’s response is unsatisfactory. Many contractors are represented *pro se* before this Board. They routinely respond to discovery requests and file briefing materials. Considering the extended period of time these appeals have been on the Board’s docket, Al Barih’s alleged financial condition does not excuse its failure to prosecute these appeals. *See Tele-Consultants, Inc.*, ASBCA No. 58129, slip op. (9 June 2014) (Rule 30 Dismissal).

CONCLUSION

Accordingly, these appeals are dismissed with prejudice under Board Rule 31 for failure to prosecute.

Dated: 7 July 2014



MICHAEL T. PAUL
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



PAUL WILLIAMS
Administrative Judge
Chairman
Armed Services Board
of Contract Appeals

I concur



MARK N. STEPLER
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. 57148, 57149, 57599, Appeals of Al Barih for General Contracting Ltd., rendered in conformance with the Board's Charter.

Dated:

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