

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -)
Soukos Robots Demil USA, Inc.) ASBCA No. 63468
Under Contract No. W911SR-19-C-0023)

APPEARANCE FOR THE APPELLANT: Mr. Sam Petronakis
President

APPEARANCES FOR THE GOVERNMENT: Dana J. Chase, Esq.
Army Chief Trial Attorney
CPT Paula F. Barr, JA
MAJ Joshua A. Reyes, JA
Trial Attorneys

OPINION BY ADMINISTRATIVE JUDGE TAYLOR
ON GOVERNMENT’S MOTION TO DISMISS FOR FAILURE TO PROSECUTE

On June 17, 2024, the United States Army (Army or government) moved to dismiss this appeal pursuant to Board Rule 17 for failure to prosecute. We grant the government’s motion since appellant failed to respond to the motion and the Board’s subsequent show cause order.

STATEMENT OF FACTS

By letter dated November 29, 2022, Soukos Robots Demil USA, Inc. (SRDUSA) appealed the government’s termination for default. The parties agreed upon a schedule for the appeal. Pursuant to that schedule, the Army served its first request for production of documents and interrogatories on SRDUSA (gov’t mot., ex. 2). On July 14, 2023, SRDUSA’s counsel withdrew from the appeal. SRDUSA notified the Board that its in-house counsel would now be its representative. SRDUSA’s in-house counsel provided a response to the Army’s discovery requests and indicated SRDUSA would produce the requested documents on a rolling production schedule (gov’t mot., ex. 5). On August 29, 2023, SRDUSA’s in-house counsel also withdrew from the appeal. Mr. Sam Petronakis, SRDUSA’s president, informed the Board that he now represented appellant in the appeal.

On December 19, 2023, Mr. Petronakis informed the Army that he needed three more months to gather the requested documents (gov’t mot., ex. 9). On March 22, 2024, the Army filed a motion to compel the production of documents since SRDUSA had not provided any documents in response to its document production request (gov’t

mot. at 3). Following a conference call with the parties, the Board, in an order dated April 12, 2024, directed appellant to respond to the government's document production requests within 60 days from the date of that order. On several occasions following the Board's order, the Army attempted to contact SRDUSA regarding the outstanding discovery but received no response (gov't mot., ex. 10).

On June 17, 2024, the government filed a motion to dismiss the appeal for failure to prosecute since appellant had failed to provide any documents in response to the Board's order. On June 26, 2024, the Board ordered SRDUSA to respond to the government's motion to dismiss within 30 days from the date of the order. SRDUSA did not respond to that order. On August 14, 2024, the Board issued a show cause order directing appellant to respond within 21 days from the date of the order as to why the appeal should not be dismissed with prejudice for failure to prosecute. The order informed SRDUSA that the Board would dismiss the appeal with prejudice if SRDUSA failed to respond to the Board's order by September 5, 2024. SRDUSA has not responded to the Board's show cause order.

DECISION

Board Rule 17 provides:

Whenever the record discloses the failure of either party to file documents required by these Rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed with prejudice for failure prosecute. . . . If good cause is not shown, the Board may take appropriate action.

To date, appellant has not responded to the government's document production request, the government's motion to compel, or the Board's April 12, 2024, and June 26, 2024, Orders. Moreover, appellant failed to respond to the Board's August 14, 2024, Show Cause Order. We conclude that appellant's lack of communication reflects an intention not to continue the prosecution of this appeal. *See Andrews Contracting Services, LLC*, ASBCA No. 61512, 19-1 BCA ¶ 37,241 at 181,280 (Board dismissed the appeal for failure to prosecute when appellant failed to respond to the government's discovery and numerous Board Orders).

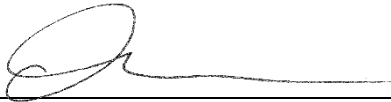
Accordingly, we grant the government's motion and dismiss this appeal with prejudice.

Dated: October 17, 2024



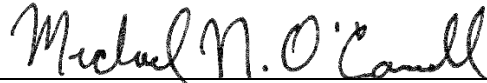
ARTHUR M. TAYLOR
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



OWEN C. WILSON
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

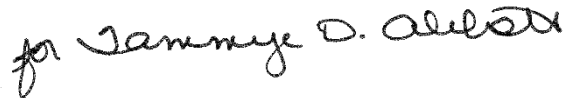
I concur



MICHAEL N. O'CONNELL
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 No. 63468, Appeal of Soukos Robots Demil USA, Inc., rendered in conformance with the Board's Charter.

Dated: October 17, 2024



PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals