

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Jurass Company ) ASBCA No. 51527  
 )  
Under Contract No. SPO600-98-D-1000 )

APPEARANCE FOR THE APPELLANT: Ms. Natalia Krantz  
Director

APPEARANCE FOR THE GOVERNMENT: Louise E. Hansen, Esq.  
Assistant Counsel  
Defense Energy Support Center (DLA)  
Fort Belvoir, VA

OPINION BY ADMINISTRATIVE JUDGE GRUGGEL

By decision dated 5 May 2004, the Board reinstated this appeal. Slip op. dtd. 5 May 2004. Familiarity with said decision is presumed. By timely motion, the government asks that we reconsider our 5 May 2004 reinstatement decision and “either dismiss the appeal with prejudice, or re-issue the decision in a manner that does not rely on a willingness to consider ADR as evidence of a meritorious defense.” (Gov’t mot. at 4)

The bases of the government’s motion are twofold: (1) the existence of “excusable neglect,” as explicated in the case of *Walter Louis Chemicals*, ASBCA No. 51580, 03-2 BCA ¶ 32,374, is not present herein because, according to the government, “both during the appeal and after its dismissal [under Board Rule 30], appellant did nothing to actively pursue its claim” (gov’t mot. at 3, 4); and, (2) reliance on “the government’s willingness to enter into settlement discussions or ADR” is an improper basis “to satisfy the existence of a meritorious defense [since it] directly contravenes existing statutory and regulatory policies” (gov’t mot. at 3, 2).

Our findings numbered 6-10 and 12-15 in our 5 May 2004 decision herein, *supra*, clearly refute the government’s contention that appellant “did nothing to actively pursue its claim” prior to the dismissal thereof without prejudice. In any case, the government’s consent to the Rule 30 dismissal of this appeal precludes any reliance now on “the lack of meaningful progress” prior to that dismissal without prejudice. *See Jurass Company*, *supra* at 2-4, 8. Our findings therein numbered 17-19 describe appellant’s actions and the problems encountered by appellant during the period from 13 November 2000 – 27 November 2003. *Id.* at 4-6. We do not regard appellant’s activities during this latter period as amounting to doing “nothing to actively pursue its claim.” In fact, we are not aware of any requirement under Board Rule 30 that appellant “actively pursue its claim”

during the three-year dismissal without prejudice period. The first base of the government's reconsideration motion is thus without merit.

With respect to the second base of the government's reconsideration motion, we agree with the government that "while a qualified willingness to enter into settlement discussions or ADR [may be] quite reasonable, it was not a concession that the appellant has a meritorious appeal" and "is not receivable as an admission of the validity or invalidity of the claim." (Gov't br. at 3, 2) Nothing in our 5 May 2004 decision was intended to either state or imply otherwise. Accordingly, the second sentence in the third full paragraph on page 8 of our 5 May 2004 decision is revised as follows:

The parties' contemporaneous and apparent good-faith disagreement regarding the conformance of appellant's proposed fuel with the applicable specification requirements (findings 2-5) amounts to the "hint of a suggestion" of the possible existence of a meritorious defense.

We also revise, *sua sponte*, the last line of finding 16 at page 4 of our 5 May 2004 decision to read "27 November 2000" *vice* "27 November 2003."

The government's motion for reconsideration of our 5 May 2004 decision herein is thus granted. For the reasons stated herein, our 5 May 2004 decision, as revised herein, is affirmed.

Dated: 14 July 2004

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J. STUART GRUGGEL, JR.  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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MARK N. STEMLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

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EUNICE W. THOMAS  
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. 51527, Appeal of Jurass Company, rendered in conformance with the Board's Charter.

Dated:

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