ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --	)	
	)	
Bruce E. Zoeller	)	ASBCA No. 56578
	)	
Under Contract No. DACA41-1-99-532	)	

APPEARANCE FOR THE APPELLANT: Mr. Bruce E. Zoeller

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.
Engineer Chief Trial Attorney
William M. Edwards, Esq.
Engineer Trial Attorney
U.S. Army Engineer District,
Kansas City

OPINION BY ADMINISTRATIVE JUDGE DELMAN
ON APPELLANT'S MOTION FOR RECONSIDERATION

Mr. Bruce E. Zoeller (appellant) has filed a timely motion for reconsideration of our decision in which the Board granted the government's motion for partial summary judgment on the following issues: that the government's removal of the FW parcel from the lease in early 2003 was not wrongful; that appellant was not entitled to seed crop damages in the FW parcel for the unexercised five-year option period; that appellant was not entitled to the value of a root crop upon the revocation of the leased area, and that the Board did not have jurisdiction over appellant's claim for recovery under the Uniform Relocation and Real Property Acquisitions Policy Act. *Bruce E. Zoeller*, ASBCA No. 56578, 10-1 BCA ¶ 34,330. The government has filed in opposition to appellant's motion for reconsideration. Familiarity with the facts is presumed.

I. Whether Appellant Was Entitled to Damages for the Unexercised Option Period

Appellant contends that the Board erroneously interpreted the lease in concluding that appellant was not entitled to damages for the unexercised five-year option period. Appellant argues, *inter alia*, that the "Notice of Availability to lease Government Property" (NOA), when read in connection with the lease as amended by Supplement Agreement No. 1, granted appellant the right to an automatic extension of the lease term for the five-year option period for the FW parcel.

We do not believe that appellant has shown that our interpretation was erroneous. The NOA clearly states that the period of the lease is for a term of five years, and did not provide for a mandatory five-year renewal period for the FW parcel (app. supp. R4, tab 4

at 64). Lease paragraph 31, Option to Renew, as modified by Supplemental Agreement No. 1, did provide for an option to renew the subject FW parcel for an additional five-year term, but nothing in this paragraph indicates that the government was compelled to exercise this option or that appellant had a unilateral right to do so. Rather, paragraph 31 expressly provided that the option to renew was subject to a number of conditions: appellant's written request of its desire to renew the lease between six and three months prior to the expiration date of the lease; the government's assessment of appellant's performance under the original terms; appellant's willingness to pay the then fair market rental of the parcel; and the government's determination that the property was still available for continued agricultural use. (R4, tab 2 at 19, 38, 39) Clearly, these conditions showed that the exercise of the option was neither guaranteed by nor obligatory upon the government.

Moreover, the option provision did not abrogate paragraph 1 of the lease that allowed the government to revoke the lease "at will," or paragraph 11 of the lease that provided appellant with remedies in the event of such a revocation (R4, tab 2 at 10, 13). These provisions must be read together in a reasonable manner along with the option provision. Reasonably construed, they indicate that the option to renew–subject to its terms and conditions–was available only so long as the lease remained extant or unrevoked. In this case the government revoked the lease, as was its right to do. Once the lease was revoked there was no longer any option provision to exercise, and it rendered moot any assessment of the conditions precedent to option exercise.

Appellant also contends that the plural use of the term "crops," in paragraph 11 must mean that appellant's remedy encompassed multiple crops over multiple years, including the five-year option period. We do not agree. The term "crops," reasonably construed, refers to the native plants that appellant was entitled to plant in the FW#1 parcel for their seeds (R4, tab 2 at 28).

For reasons stated, appellant has not shown that the Board erred in holding that appellant was not entitled to damages for the unexercised five-year option period under the lease.

II. Whether Appellant Was Entitled to the Value of a Root Crop

Appellant also contends that the Board erred in concluding that appellant was not entitled to the value of a "root" crop under paragraph 11 of the lease. We have reviewed the acquisition regulations, statutes and arguments cited by appellant to support its position but are not persuaded that they bear any relevance to the interpretation of this lease, nor do they show that the Board's interpretation was incorrect.

III. Conclusion

We have duly considered appellant's contentions. We conclude that appellant has not shown any error in the Board's decision, and we affirm our decision.

Dated: 20 September 2010

JACK DELMAN
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

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

I concur

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. 56578, Appeal of Bruce E. Zoeller, rendered in conformance with the Board's Charter.

Dated:

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