

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Cardinal Maintenance Service, Inc.) ASBCA No. 56885
)
Under Contract No. N62474-97-D-2478)

APPEARANCE FOR THE APPELLANT: Kevin M. Cox, Esq.
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Auburn, NY

APPEARANCES FOR THE GOVERNMENT: Ronald J. Borro, Esq.
Navy Chief Trial Attorney
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Associate Counsel
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Washington, DC

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

Cardinal Maintenance Service, Inc. (appellant) moves for reconsideration of our decision that granted the government's motion to dismiss this appeal, in part, for lack of jurisdiction on the grounds that appellant's claim for wrongful government inspection during option years 1 and 2 was time barred under the Contract Disputes Act (CDA), 41 U.S.C. § 605(a), recodified 41 U.S.C. § 7103(a)(4)(A). *Cardinal Maintenance Service, Inc.*, ASBCA No. 56885, 11-1 BCA ¶ 34,616.¹ The government filed in opposition to reconsideration. Familiarity with our decision is presumed.

Appellant contends that the Board erred in determining when appellant's claim of wrongful inspection accrued, arguing that "all events" that fix the alleged liability, FAR 33.201, did not occur until the date of the government's last inspection under the contract, 28 August 2003. This argument is not persuasive. Appellant was not only aware of all events fixing the alleged liability much earlier than 28 August 2003, but actually communicated this awareness in writing to the government. As we stated, appellant's letter to the government dated 6 August 2002 asserted a pattern of

¹ After appellant filed its motion for reconsideration, it filed an appeal to the U.S. Court of Appeals for the Federal Circuit, *Cardinal Maintenance v. Navy*, No. 2011-1272 (Fed. Cir. Mar. 29, 2011). We have jurisdiction however to decide appellant's motion. *Bruce E. Zoeller*, ASBCA No. 56578, slip op. 23 Mar. 2011; *Nucleus Corp.*, ASBCA No. 39612, 94-2 BCA ¶ 26,862.

government wrongful inspection action to date that harmed appellant, and it warned of legal action against the government. Appellant fails to show what “additional events” were necessary to fix the alleged liability for these claimed costs. That the government’s alleged wrongful conduct may have continued on the day after this letter was written and through the end of Option 2 does not bely the fact that appellant’s wrongful inspection claim accrued no later than the date on which it was communicated to the government. We have reviewed the cases cited by appellant to support its position, but they are factually distinguishable and do not compel a different conclusion.

We affirm our decision dismissing the appeal, in part, for lack of jurisdiction.

Dated: 8 April 2011



JACK DELMAN
Administrative Judge
Armed Services Board
of Contract Appeals

I concur



MARK N. STEMLER
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. 56885, Appeal of Cardinal Maintenance Service, Inc., rendered in conformance with the Board's Charter.

Dated:

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