

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
MOQA - AQYOL JV LTD. ) ASBCA No. 57963  
 )  
Under Contract No. W5J9JE-10-C-0031 )

APPEARANCE FOR THE APPELLANT: Mr. Kevin Cato  
Vice President of Contracts

APPEARANCES FOR THE GOVERNMENT: Thomas H. Gourlay, Jr., Esq.  
Engineer Chief Trial Attorney  
Daniel B. McConnell, Esq.  
James A. Wallace, Esq.  
Engineer Trial Attorneys  
U.S. Army Engineer District, Middle East  
Winchester, VA

OPINION BY ADMINISTRATIVE JUDGE DELMAN ON GOVERNMENT'S  
MOTION TO DISQUALIFY APPELLANT'S REPRESENTATIVE

The U.S. Army Corps of Engineers (government) moves the Board to disqualify Mr. Kevin Cato, Vice President of Contracts,<sup>1</sup> from appearing on behalf of appellant in this appeal on the ground that he has violated 18 U.S.C § 207(a).<sup>2</sup> Appellant opposes the motion.

The government alleges that Mr. Cato's appearance on behalf of appellant in this appeal violates this criminal statute because he was previously the government's designated alternate contracting officer's representative (ACOR) on the subject contract, and thereby participated "personally and substantially" on the contract. The government

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<sup>1</sup> Mr. Cato signed the notice of appeal as "VP of Contracts," and has signed various pieces of correspondence to the Board in similar fashion. The government's motion acknowledges that Mr. Cato is currently working for MOQA as "Vice President of Contracting" (gov't mot. at 2).

<sup>2</sup> In summary, 18 U.S.C. § 207(a)(1) provides that any officer or employee of the executive branch of the United States, who after termination of employment knowingly makes, with the intent to influence, any communication or appearance before any officer or employee of any agency or court on behalf of any other person in connection with a particular matter in which the United States is a party, in which the person participated personally and substantially and which involved a specific party, shall be punished in accordance with section 216 of this title.

also contends that Mr. Cato's representation constitutes a conflict of interest and is prejudicial to the government because as ACOR "there is a substantial likelihood that [he] had access to privileged information..." (gov't mot. at 3).<sup>3</sup> Mr. Cato does not deny that he was the ACOR for a limited time, but contends there was no action on the contract while he was ACOR (app. resp. at 1). He also contends he was advised by a government ethics attorney that the period of abstention for purposes of the law was only one year with which he complied (*id.*).

### DECISION

The government would have us disqualify Mr. Cato from appearing before this Board as appellant's representative, but to do so we would have to find and conclude that Mr. Cato committed a crime under 18 U.S.C. § 207(a). Mr. Cato however disputes that he violated the law. As we understand it, Mr. Cato contends he was not "personally and substantially" involved in this contract for purposes of the statute.

The government does not cite to any authority—statutory or otherwise—that provides this Board with the jurisdiction to make findings and conclusions on such contested criminal matters, nor are we aware of any such authority. We note that 18 U.S.C. § 216(c) provides for the Attorney General of the United States to seek a federal court order to bar a person from engaging in the conduct proscribed by the subject statute. The government has not presented us with such an order here.

The government's motion is denied.

Dated: 9 April 2013



JACK DELMAN  
Administrative Judge  
Armed Services Board  
of Contract Appeals

(Signatures continued)

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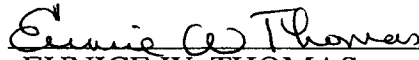
<sup>3</sup> With respect to these contentions, the government does not cite to any additional legal grounds—statutory, regulatory or otherwise—to support disqualification. We presume, for purposes of this motion, that these contentions relate to the claimed violation of 18 U.S.C. § 207(a).

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. 57963, Appeal of MOQA - AQYOL JV LTD., rendered in conformance with the Board's Charter.

Dated:

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