

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
)  
Grahams Construction Inc. ) ASBCA No. 61927  
)  
Under Contract No. W912DY-11-D-0040 )

APPEARANCE FOR THE APPELLANT: Daniel G. Rosenberg, Esq.  
James McHugh Construction Co.  
Chicago, IL

APPEARANCE FOR THE GOVERNMENT: Michael P. Goodman, Esq.  
Engineer Chief Trial Attorney

ORDER OF DISMISSAL

On December 28, 2018, the Board received a letter dated December 27, 2018, on James McHugh Construction Co. (McHugh) letterhead, purporting to be a notice of appeal from a contracting officer's final decision dated November 1, 2018, which asserted a government claim against Grahams Construction Inc. (Grahams). The letter was signed by Daniel G. Rosenberg, Esq., a McHugh Senior Vice President and General Counsel, and indicated that he was signing "for James McHugh Construction Co." In the letter, Mr. Rosenberg stated that McHugh was filing the appeal "on behalf of [Grahams] with Grahams' and [U.S. Army Corps of Engineers'] express written permission as detailed further herein." The Board docketed this matter as ASBCA No. 61927.

By Order dated January 8, 2019, the Board directed Grahams to affirm, no later than January 23, 2019, that it wishes to pursue this appeal and that it is represented by Mr. Rosenberg or, if it does not wish to be represented by Mr. Rosenberg, to have a representative meeting the requirements of Board Rule 15(a) file a written notice of appearance. The Order also directed McHugh, if Grahams failed to comply with the Order, to demonstrate that it has standing to pursue this appeal on behalf of Grahams or otherwise show cause why the appeal should not be dismissed for lack of jurisdiction by February 20, 2019. The Board sent the Order to Mr. Rosenberg at McHugh and to Grahams at the address for Grahams set forth in the final decision attached to McHugh's letter dated December 27, 2018.

In an email dated January 8, 2019, sent to the Engineer Chief Trial Attorney and copied to the Board, Mr. Rosenberg stated, in relevant part:

I am not legal counsel to Grahams Construction. I have never acted as such counsel and cannot agree to do so now or in the

future regardless of Grahams Construction's desire or lack thereof.... I do believe McHugh has standing to act for Grahams for a variety of reasons and will address those reasons if it proves necessary to do so.

The Board received no response from Grahams or McHugh to its January 8 Order, nor to two subsequent Orders. Without a representative meeting the requirements of Board Rule 15(a), the Board is unable to proceed. The appeal is dismissed.

Dated: April 8, 2019



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

I concur



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RICHARD SHACKLEFORD  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

I concur



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ALEXANDER YOUNGER  
Administrative Judge  
Acting Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Order of Dismissal of the Armed Services Board of Contract Appeals in ASBCA No. 61927, Appeal of Grahams Construction Inc., rendered in conformance with the Board's Charter.

Dated:

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