



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR FAILURE TO PROSECUTE: February 26, 2016

CBCA 5050

ELITE QUALITY SERVICES, LLC,

Appellant,

v.

DEPARTMENT OF COMMERCE,

Respondent.

Bobby Higginbotham, Jr., Owner of Elite Quality Services, LLC, Orlando, FL, appearing for Appellant.

Erin Frazee Masini and Lauren Didiuk, Office of General Counsel, Department of Commerce, Washington, DC, counsel for Respondent.

Before Board Judges **DRUMMOND**, **ZISCHKAU**, and **SULLIVAN**.

**DRUMMOND**, Board Judge.

By order dated December 1, 2015, the Board acknowledged receipt of respondent's motion to dismiss for failure to state a claim and for lack of subject matter jurisdiction, and ordered appellant to respond to said motion by Monday, January 4, 2016. Appellant failed to do so.

On January 14, 2016, the Board convened a telephonic conference with the parties to discuss, inter alia, appellant's failure to respond to the Board's order dated December 1, 2015. During the conference, appellant agreed to respond to respondent's motion by January 29, 2016. That same day, January 14, 2016, the Board issued an order directing appellant to respond to respondent's motion by January 29, 2016. Appellant failed to respond to the January 14, 2016, order. Subsequently, by order dated February

1, 2016, the Board issued a show cause order, ordering appellant to either respond to respondent's motion or show cause by February 11, 2016, why this appeal should not be dismissed for failure to prosecute. Appellant failed to respond to the Board's show cause order.

Board Rule 33(c), Sanctions, provides:

When a party or its representative or attorney . . . fails to comply with any direction or order issued by the Board . . . the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions may include:

....

(6) Dismissing the case.

48 CFR 6101.33(c) (2015).

This rule makes clear that the Board has authority to dismiss a case for failure to prosecute. As this Board has held, this authority is reserved for situations "where parties have repeatedly failed to comply with the tribunal's orders." *Medtek, Inc. v. Department of Veteran Affairs*, CBCA 1544, 09-2 BCA ¶ 34,285; see *Kadin Corp. v. United States*, 782 F.2d 175, 176 (Fed. Cir. 1986). This is such a situation.

#### Decision

Accordingly, this appeal is **DISMISSED FOR FAILURE TO PROSECUTE**.

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JEROME M. DRUMMOND  
Board Judge

We concur:

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JONATHAN D. ZISCHKAU  
Board Judge

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MARIAN E. SULLIVAN  
Board Judge