



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO EXTEND TIME TO FILE AND
MOTION FOR RECONSIDERATION DENIED: June 10, 2010

CBCA 821, 1891

CCJN & COMPANY, ARCHITECTS & PLANNERS, P.C.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

William C. Codd of the Codd Law Firm, Cohoes, NY, counsel for Appellant.

Heather R. Cameron and Leonard E. Lucas III, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS**, **STERN**, and **HYATT**.

SOMERS, Board Judge.

Pending before the Board is what will be construed as CCNJ & Company, Architects & Planners, P.C.'s (appellant or CCJN) motion to extend the time to file a motion for reconsideration, as well as appellant's motion for reconsideration. Respondent opposes the first motion on the grounds that it is untimely filed. After considering appellant's motions and respondent's opposition thereto, we deny both motions.

Background

By decision dated April 21, 2010, the Board dismissed the above-captioned appeals for failure to prosecute. The Board distributed the decision by facsimile to counsel of record on that same date.

On April 29, 2010, the Board received a letter from an attorney who had represented appellant before the Board, Alice K. Berke of the Law Offices of Alice K. Berke, P.C.¹ The letter, dated April 20, 2010, indicated that William C. Codd, another attorney who had appeared before the Board on appellant's behalf, was no longer with the firm. Ms. Berke advised the Board that she and Mark O'Higgins, another attorney with her firm, would continue to represent appellant.

On May 5, 2010, Charles C. Jon Nwakalo, the president of CCJN, contacted the Board by telephone and requested a copy of the Board's April 20, 2010, decision. Mr. Nwakalo advised the Board that contrary to Ms. Berke's statements in her letter, Mr. Codd would continue to represent CCJN before the Board. Mr. Nwakalo indicated that he had signed a change of counsel consent form, which authorized Mr. Codd to continue to represent CCJN, but he did not provide any documentation reflecting such change to the Board.

Apparently, counsel for respondent received a letter on May 5, 2010, from Mr. Codd. Mr. Codd informed respondent's counsel that Mr. Codd would continue to represent appellant. Although Mr. Codd directed the letter to the Board's attention, he did not include the Board's address on the letter. The facsimile number listed on the letter was not the Board's facsimile number. The Board never received this letter from Mr. Codd.

On May 25, 2010, Mr. Codd sent by facsimile a letter to the Board, stating:

I just last week was able to retrieve the file from Ms. Berke's office on behalf of my client.

As you know then my ability to formulate an honest and appropriate timely Motion to Reopen and Reconsider your decision was compromised.

If I could have a brief extension until the end of the first week in June or June 7, 2009, to submit my motion, I think this would be most fair to my client.

¹ The letter indicates that it had been submitted via facsimile to (202) 501-1944. The Board's facsimile number is (202) 606-0019. Accordingly, the Board did not receive the letter by facsimile, although it did receive a hard copy of the letter on April 29, 2010. Parties are given notice of the Board's facsimile number in Rule 1(f) of the Rules of the Civilian Board of Contract Appeals, 48 CFR 6101.1(f) (2009).

Respondent's Opposition to Motion to Extend Time to File Motion for Reconsideration, Exhibit 4.

By order dated May 27, 2010, the Board asked respondent to submit any response to the motion no later than June 11, 2010. The Board received respondent's opposition on June 4, 2010. On June 10, 2010, the Board received what is identified as appellant's motion to reopen. We will construe this subsequent filing as appellant's motion for reconsideration.

Discussion

_____ Pursuant to Board Rule 26(c), "a motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed within 30 calendar days after the date the moving party receives the decision or order." Except in extraordinary situations, the thirty-day time period in which to file a motion for reconsideration has been strictly construed by the boards of contract appeals. *See, e.g., Herman B. Taylor Construction Co. v. General Services Administration*, GSBICA 12961-R, 00-2 BCA ¶ 30,935; *Sabbia Corp.*, VABCA 5557, et al., 03-2 BCA ¶ 32,288; *Scott Timber Co.*, IBCA 3771-97, 99-1 BCA ¶ 30,184 (1998); *Givens Services*, DOT BCA 2907, 96-2 BCA ¶ 28,358; *Environmental Safety Consultants, Inc.*, ASBCA 54615, 07-2 BCA ¶ 33,613; *Vincent Ogonnaya Ofor*, PSBCA 3965, 99-1 BCA ¶ 30,317; *George Ledford Construction, Inc.*, ENG BCA 6218-R, 98-1 BCA ¶ 29,335 (1997).

In this instance, appellant's counsel seeks an extension of time to file a motion for reconsideration. The Board provided its decision by facsimile to counsel of record on April 21, 2010. Accordingly, any motion for reconsideration should have been filed by appellant no later than May 21, 2010. Appellant filed its submission on May 25, 2010, four days late. Appellant filed its motion for reconsideration on June 10, 2010, without waiting for the Board to resolve appellant's pending motion for an extension of time.

Appellant has presented no evidence as to why it could not comply with the thirty-day time period set forth in Rule 26. The only explanations offered by appellant are counsel's difficulties in retrieving the case files from his former law firm as well as medical issues which affected appellant's counsel's ability to prosecute this appeal. Neither of these explanations provide a sufficient basis to grant an exception to the general rule. Therefore, we deny the motion as untimely filed. *See Performance Construction, Inc.*, ASBCA 53575, 06-2 BCA ¶ 33,372, at 165,439 (while acknowledging the "personal circumstances" of appellant that may have caused delays in filing a request for reconsideration, "appellant's attorney did not himself contact the Board within [the thirty-day] time period to request an extension of time"); *Management Advisory Services, Inc.*, ASBCA 22759, 79-2

BCA ¶ 13,915, at 68,305 (board found no legal basis for extending the time for the filing of a motion for reconsideration).

Decision

_____ Appellant's motion for an extension of time to file a motion for reconsideration and appellant's motion for reconsideration are **DENIED**.

JERI KAYLENE SOMERS
Board Judge

We concur:

JAMES L. STERN
Board Judge

CATHERINE B. HYATT
Board Judge