



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 12, 2010

CBCA 1783-FEMA

In the Matter of CITY OF WESTWEGO

James L. Buter, Westwego, LA, appearing for Applicant.

Mark S. Riley, Deputy Director, and William J. Patrigo, Appeals Specialist, Governor's Office of Homeland Security and Emergency Preparedness, Baton Rouge, LA, appearing for Grantee.

Linda M. Davis and Kim A. Hazel, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, Washington, DC, counsel for Federal Emergency Management Agency.

Before the Arbitration Panel consisting of Board Judges **STERN**, **BORWICK**, and **POLLACK**.

STERN, Board Judge.

The City of Westwego, Louisiana (applicant), has requested arbitration of the denial by the Federal Emergency Management Agency (FEMA) of applicant's request for payment for the replacement of applicant's municipal building that was damaged by hurricane Katrina in the year 2005. This Board has jurisdiction over this matter under the American Recovery and Reinvestment Act of 2009 (ARRA), Pub L. No. 111-5, § 601, 123 Stat. 115, 164-66 (2009).

FEMA, in its response to applicant's request for arbitration, submits that the panel must limit its review to the evidence that was presented to FEMA and that we must affirm FEMA's decision unless we find that the determination was arbitrary and capricious. We disagree.

The same issue has been considered by another arbitration panel on the Civilian Board of Contract Appeals (CBCA), appointed pursuant to the ARRA. *Bay St. Louis-Waveland School District*, CBCA 1739-FEMA (Dec. 8, 2009). That panel concluded that under the ARRA,

The panel of CBCA Board Judge arbitrators should not be expected to defer to the decision making of lower level FEMA officials. Instead, the CBCA panel should provide a fresh and comprehensive look at all the facts and circumstances surrounding the case. In short, the arbitration decision serves as the final administrative action. The arbitration panel will consider the reasoning of FEMA officials, but a determination of any official or individual is not presumptively binding or automatically awarded deference. The panel decides each matter *de novo* as it views the facts and the law.

Slip op. at 7. This panel hereby adopts the rationale of *Bay St. Louis*. A copy of the decision by the panel in that matter is attached. We will consider all evidence in the record created for this arbitration proceeding and will review that evidence *de novo*.

JAMES L. STERN
Board Judge

ANTHONY S. BORWICK
Board Judge

HOWARD A. POLLACK
Board Judge