



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: July 6, 2011

CBCA 340-R, 341-R

NATIONAL HOUSING GROUP, INC.,

Appellant,

v.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Respondent.

Sean A. Roberts of The Roberts Law Firm, Houston, TX, counsel for Appellant.

Doris S. Finnerman, Perrin N. Wright, and Janette M. Hays, Office of General Counsel, Department of Housing and Urban Development, Washington, DC, counsel for Respondent.

Before Board Judges **HYATT**, **DRUMMOND**, and **KULLBERG**.

KULLBERG, Board Judge.

Appellant, National Housing Group (NHG), has moved for reconsideration of a decision of this Board, *National Housing Group, Inc. v. Department of Housing and Urban Development*, CBCA 340, 11-1 BCA ¶ 34,644. In that decision, the Board granted in part the appeal. For the reasons stated below, the Board denies NHG's motion.

NHG's motion for reconsideration stated the following in pertinent part:

COMES NOW, National Housing Group, Appellant in the above styled numbered cause filing this, its Request for New Hearing pursuant to Rule 26 and, the alternative, Notice of Appeal.

Appellant, National Housing Group, moves under Rule 26 for Reconsideration/Amendment/New Hearing on the Board's recent decision issued on January 6, 2011. Appellant seeks this relief because the Board's decision is in error.

Pursuant to Rule 28, National Housing Group seeks full board consideration of the case.

In the alternative, National Housing Group files this Notice of Appeal to the Federal Circuit.

WHEREFORE, PREMISES CONSIDERED, National Housing Group respectfully request a new hearing.

The Board directed NHG to state the grounds for its motion, but NHG did not respond to the Board's orders.¹ No further submissions from NHG were received.

NHG's motion seeks, in the alternative, reconsideration, a new hearing, or amendment of the Board's decision. This Board's rules set forth specific grounds upon which granting a motion for reconsideration of its decision is appropriate:

Reconsideration may be granted, a decision or order may be altered or amended, or a new hearing may be granted, for any of the reasons stated in Rule 27(a) and the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. Reconsideration or a new hearing may be granted on all or any of the issues. Arguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration, for altering or amending a decision, or for granting a new hearing.

¹ Orders dated February 17, 2011, and April 7, 2011, were sent to appellant. Having received no response from appellant, the Board's order dated May 9, 2011, closed the record.

Rule 26(a) (48 CFR 6101.26(a) (2010)). “If the Board concludes that the reasons asserted for its consideration of the motion are insufficient, it may deny the motion without considering the relief sought and the grounds asserted therefor.” Rule 26(b)(2).

NHG’s motion simply states that the Board’s decision was “in error,” and no further explanation of the grounds for its motion has been offered. In considering a party’s motion for reconsideration, the Board will look to the following factors set forth under its rules:

The Board’s Rule 26 explains that reconsideration may be granted for any of the following reasons: newly discovered evidence which could not have been earlier discovered, even through due diligence; justifiable or excusable mistake, inadvertence, surprise, or neglect; fraud, misrepresentation, or other misconduct of an adverse party; the decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application; the decision is void, whether for lack of jurisdiction or otherwise; or any other ground justifying reconsideration, including a reason established by the rules of common law or equity applicable as between private parties in the courts of the United States.

Oregon Woods, Inc. v. Department of the Interior, CBCA 1072-R, 09-1 BCA ¶ 34,063, at 168,431-32, *aff’d sub nom. Oregon Woods, Inc. v. Salazar*, 355 Fed.App’x 403 (Fed. Cir. 2009). The mere statement that NHG believes the Board’s decision to be in error is not a sufficient ground for reconsideration. NHG has neither alleged facts nor raised any legal argument in support of its motion so as to enable the Board to determine any basis for allowing the relief sought. The Board’s findings of fact and rulings of law have already been set forth in a fairly lengthy decision, and a reiteration of that decision is not required. Moreover, such a vague contention by NHG precludes any meaningful response to its motion by the Government. Having failed to cite any grounds for reconsideration as required by the Board’s rules, reconsideration of the Board’s decision is not warranted.

NHG’s motion for reconsideration also references CBCA 341, but that appeal was denied in a separate decision by this Board more than two years ago. The Board’s rules provide that “[i]n an appeal or petition, 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.” Rule 26(c). The Board denied CBCA 341 in its decision that was issued on January 6, 2009. *National Housing Group, Inc. v.*

Department of Housing and Urban Development, CBCA 340, et al., 09-1 BCA ¶ 34,043. The time for moving for reconsideration of CBCA 341, accordingly, was within thirty days after the Board issued its decision on January 6, 2009. That time has long since passed, and reconsideration of CBCA 341 is precluded under the Board's rules.

NHG also seeks review by the full membership of the Board. The Board's rules only allow for such review after the Board has ruled on a motion for reconsideration. Rule 28(a)(2). NHG's request for a full Board review is premature, and the Board takes no action on that request. *See Oregon Woods, Inc.*, 09-1 BCA at 168,432 n.1. Additionally, NHG's motion seeks, in the alternative, to appeal the Board's decision to the United States Court of Appeals for the Federal Circuit (CAFC). The Board's rules make no provision for transmitting an appeal on behalf of a party to the CAFC.

Decision

The motion for reconsideration is **DENIED**.

H. CHUCK KULLBERG
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

JEROME M. DRUMMOND
Board Judge