



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITHOUT PREJUDICE: March 9, 2017

CBCA 4794

JOHN LEWINGER, AS RECEIVER OF 2412 INTERNATIONAL AVENUE SE,
ALBUQUERQUE, NEW MEXICO,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

John Lewinger, Albuquerque, NM, Appellant.

David G. Fagan, Office of General Counsel, Department of Veterans Affairs,
Portland, OR, counsel for Respondent.

Before Board Judges **GOODMAN**, **LESTER**, and **CHADWICK**.

CHADWICK, Board Judge.

This appeal was filed in June 2015. In June 2016, the Board denied, without prejudice to renewal after development of the record, the respondent's motion to dismiss the appeal for lack of jurisdiction. *Lewinger v. Department of Veterans Affairs*, CBCA 4794, 16-1 BCA ¶ 36,413. In September 2016, we reformed the caption, with the parties' agreement, to identify the appellant as the court-appointed receiver "of" a commercial building in Albuquerque, New Mexico, rather than "for" a third party, as he had been identified in the notice of appeal. In January 2017, after a stay, and before the parties had proposed a discovery schedule, the appellant's former attorney moved to withdraw, stating that the appellant had stopped giving him instructions. We granted that motion in an order issued on January 23, 2017. No one has since entered an appearance on the appellant's behalf.

On February 27, 2017, the appellant advised the Board by email that he “has no funds to retain coun[se]l,” and that he considers this matter “conclude[d].” We stated in an order issued and emailed to the parties on February 28, 2017, that we construed the appellant’s email message as a motion to dismiss the appeal, and that we would do so if neither party objected within one week. Neither party objected.

We did receive an informal objection from an entity that is not before us. A managing director of Corban Capital Partners contacted the presiding judge’s assistant by telephone and email, asking that the appeal be stayed further or, alternatively, that a dismissal be without prejudice. We infer from its name that Corban Capital Partners is affiliated with the plaintiff in *Corban ABQ V LLC v. Albuquerque Facility, LLC*, No. D-202-CV-2012-09824 (N.M. 2d Dist.), the state litigation in which the court appointed the appellant the receiver of the building in Albuquerque. *See Lewinger*, 16-1 BCA at 177,543. While one or more Corban entities may have a financial interest in this appeal, “[i]t bears repeating that the appellant is the receiver alone.” *Id.* at 177,547; *see id.* at 177,549 n.4 (“[T]he receiver, not Corban [ABQ V LLC], is the appellant[.]”). The appellant, an individual who is not an attorney, may represent only himself or an entity of which he is an officer or partner. Board Rule 5(a)(1) (48 CFR 6101.5(a)(1) (2015)). The appellant is a real estate broker who pursued the claim as an individual appointee of the state court. *See Lewinger*, 16-1 BCA at 177,543-44. He does not represent Corban Capital Partners in this appeal, nor does that entity, or any of its officers, represent or speak for him.

Nonetheless, given that “our jurisdiction is in doubt,” *Lewinger*, 16-1 BCA at 177,548, we agree with non-party Corban Capital Partners that we should not dismiss the appeal with prejudice.

Decision

The appeal is **DISMISSED WITHOUT PREJUDICE**.

KYLE CHADWICK
Board Judge

We concur:

ALLAN H. GOODMAN
Board Judge

HAROLD D. LESTER, JR.
Board Judge