



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR FAILURE TO PROSECUTE: April 26, 2017

CBCA 5522

JDM, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Michael Dutcher, President of JDM, LLC, Medinah, IL, appearing for Appellant.

Neil S. Deol, Office of General Counsel, Department of Veterans Affairs, Decatur, GA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **GOODMAN**, and **SULLIVAN**.

DANIELS, Board Judge.

On October 21, 2016, JDM, LLC – then represented by counsel – filed an appeal of a Department of Veterans Affairs contracting officer’s decision terminating for default a contract for construction work at the Clement J. Zablocki Veterans Affairs Medical Center in Milwaukee, Wisconsin.

Proceedings were suspended while the parties attempted to settle the case. During this time, the Board granted several requests from appellant for extensions of time in which to file its complaint. However, on January 25, 2017, we directed appellant to file the complaint on or before March 24.

On March 23, counsel moved to withdraw their appearance as attorneys of record for appellant. In the motion, they stated:

2. Movants seek to withdraw as counsel for JDM, with JDM's agreement.
3. Michael Dutcher, President of JDM, shall assume responsibility for representing JDM. Mr. Dutcher's contact information is as follows:

The Board granted the motion on March 24, entering the appearance of Mr. Dutcher as appellant's representative in the appeal. In so doing, we reminded the parties that the complaint was due on that date.

On April 6, we issued another order, noting that Mr. Dutcher had neither filed a complaint, nor acknowledged receipt of the March 24 order, nor responded to a March 27 electronic mail message from the presiding judge's assistant reminding him that the complaint was overdue. We ordered appellant to show cause, on or before April 20, why the appeal should not be dismissed for failure to prosecute. In the order, we stated that the filing of the complaint would suffice as a response. Copies of the April 6 order were sent by certified mail to Mr. Dutcher's street address and by electronic mail to his e-mail address.

A read receipt shows that on the morning of April 7, Mr. Dutcher received the show cause order which was sent to him electronically. Appellant has not responded to that order, however.

Discussion

Under Board Rule 33(c) (48 CFR 6101.33(c) (2016)), the Board has the authority to dismiss a case for failure to prosecute where a party has repeatedly failed to comply with the Board's orders. *Elite Quality Services, LLC v. Department of Commerce*, CBCA 5050, 16-1 BCA ¶ 36,269; *CCJN & Co. v. General Services Administration*, CBCA 821 et al., 10-1 BCA ¶ 34,420; *Medtek, Inc. v. Department of Veterans Affairs*, CBCA 1544, 09-2 BCA ¶ 34,285. Here, appellant's president has not fulfilled his commitment, as conveyed to us by his former counsel, that he would assume responsibility for representing his firm in this appeal. He has not acknowledged receipt of Board orders – even the one we know he received. He has not – despite repeated reminders – filed a complaint or answered the show cause order in any other way.

Decision

Accordingly, we **DISMISS** the appeal **FOR FAILURE TO PROSECUTE**.

STEPHEN M. DANIELS
Board Judge

We concur:

ALLAN H. GOODMAN
Board Judge

MARIAN E. SULLIVAN
Board Judge