



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: May 31, 2018

CBCA 5588

MAGWOOD SERVICES, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Heyward R. Manigault, President of Magwood Services, Inc., Campbell Hall, NY, appearing for Appellant.

Meaghan Q. LeClerc, Office of Regional Counsel, General Services Administration, Boston, MA, counsel for Respondent.

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

**CHADWICK**, Board Judge.

Magwood Services, Inc. (Magwood) timely appealed in December 2016 from a notice issued by a General Services Administration (GSA) contracting officer terminating Magwood's construction contract for default due to failure to make progress. *See Magwood Services, Inc. v. General Services Administration*, CBCA 5869, 17-1 BCA ¶ 36,875, at 179,749 (describing the procedural histories of this appeal and CBCA 5869). In April 2018, GSA filed and served a motion for summary relief under Board Rule 8(g) (48 CFR 6101.8(g) (2017)). Magwood did not respond (or seek more time to respond) in the thirty days allotted by the Board. That deadline passed on May 21, 2018.

Magwood has litigated before the Board for several years, represented both by counsel and by its president. *See, e.g., Magwood Services, Inc. v. Department of Transportation*, CBCA 3630, 14-1 BCA ¶ 35,605; *Magwood Services, Inc. v. General Services Administration*, CBCA 2654, 2012 WL 4120512 (Sept. 11, 2012). Although Magwood is currently represented by a non-attorney, Magwood should be familiar with our rules and presumably understands our procedural orders. We will therefore proceed to act on GSA's motion without resoliciting a response from Magwood.

The undisputed facts set forth with citations to record evidence in GSA's motion support the agency's position that Magwood defaulted on the contract by failing to provide adequate assurances of timely performance. *See Douglas P. Fleming, LLC v. Department of Veterans Affairs*, CBCA 3655, et al., 16-1 BCA ¶ 36,509, at 177,878-79 (citing, inter alia, *Danzig v. AEC Corp.*, 224 F.3d 1333, 1337 (Fed. Cir. 2000)).

To summarize briefly, the contract required Magwood to replace cork flooring at the Land Port of Entry in Calais, Maine. The completion date was September 23, 2016. The GSA contracting officer advised Magwood in writing on September 1, 2016, that the flooring Magwood had installed so far was unacceptable. Magwood did not respond. The contracting officer issued a show cause letter on September 9, warning Magwood that its failure to make progress was endangering timely completion of the contract. Magwood's only responses to this letter were requests for time extensions on September 14 and 19. Magwood did not explain to GSA how it proposed to correct its work to date. A GSA inspection report issued on September 20 documented at least eleven deficiencies in Magwood's work. On September 22, the contracting officer emailed Magwood a notice of termination for default, stating, among other things, that "the Government is not convinced that Magwood Services, Inc. will complete this contract by the September 23, 2016, completion date."

We may sustain a default termination on any grounds supported by the record. *E.g., Empire Energy Management Systems, Inc. v. Roche*, 362 F.3d 1343, 1357 (Fed. Cir. 2004). Absent any factual disputes or other defenses raised by Magwood, we conclude, "based on uncontested material facts" and "as a matter of law," Rule 8(g)(1), that GSA was entitled to treat Magwood's "failure . . . to give adequate assurances of performance in response to a validly issued cure notice . . . as repudiation of the contract," warranting termination for default. *Douglas P. Fleming, LLC*, 16-1 BCA at 177,879. Alternatively, the undisputed facts presented by GSA compel the conclusion that GSA properly terminated the contract based on "a reasonable belief that there was no reasonable likelihood of timely completion" as of the termination date, which was the day before the contractual completion date. *McDonnell Douglas Corp. v. United States*, 323 F.3d 1006, 1017 (Fed. Cir. 2003). We therefore grant GSA's motion and summarily sustain the termination for default.

Decision

The appeal is **DENIED**.

*Kyle Chadwick*  
KYLE CHADWICK  
Board Judge

We concur:

*Catherine B. Hyatt*  
CATHERINE B. HYATT  
Board Judge

*Jerome M. Drummond*  
JEROME M. DRUMMOND  
Board Judge