



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED WITH PREJUDICE: June 25, 2019

CBCA 6428

BOHNER PAINTING LLP,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Lori M. Bohner, Owner of Bohner Painting LLP, Humansville, MO, appearing for Appellant.

Paul Sax, Office of the Regional Solicitor, Department of the Interior, Lakewood, CO, counsel for Respondent.

Before Board Judges **DRUMMOND**, **SHERIDAN**, and **O'ROURKE**.

DRUMMOND, Board Judge.

This appeal arises out of a contract between Bohner Painting, LLP (Bohner) and the Department of the Interior, National Parks Service (Interior), for painting services in Hope, Arkansas.

On May 16, 2019, the Board received a motion from Interior requesting dismissal of this appeal with prejudice, along with an executed settlement agreement and release of claims (agreement) stating the appeal had been settled and that Bohner has been paid the full settlement amount in exchange for expressly releasing Interior from all claims and agreeing to execute closeout and modification documents consistent with the settlement agreement.

Interior represents that the appeal is now moot, but Bohner refuses to execute a joint motion for dismissal with prejudice and instead insists on new conditions that are beyond the scope of this appeal and inconsistent with the signed agreement.

By order dated May 17, 2019, the Board directed Bohner to file a statement advising the Board whether or not it objected to dismissal of the appeal with prejudice. Bohner responded that it opposes dismissal with prejudice due to concerns about possible future governmental interference with its bids and work. Bohner did not dispute that it has been paid the full settlement amount and that it expressly released Interior from further liability.

Interior, in a motion filed on June 10, 2019, repeated its request that the Board dismiss this appeal with prejudice, asserting that Bohner's objection is without merit, baseless, and beyond the scope of this appeal. Interior argues that because Bohner executed a settlement agreement and provided Interior with a release, there is nothing for the Board to decide in this appeal and therefore dismissal with prejudice is appropriate. Bohner has not responded to Interior's June 10, 2019, motion.

It is well settled that

where the appellant joins in a settlement of the matter in dispute, "the case has become moot as a result of the voluntary act of the [appellant]." *Aqua Marine Supply v. AIM Machining, Inc.*, 247 F.3d 1216, 1220 (Fed. Cir. 2001). While there may be some room for disagreement about whether and when dismissal of a case before the Board that becomes moot should be with prejudice or without prejudice, *see Sylvan B. Orr v. Department of Agriculture*, CBCA 5299, [16-1 BCA ¶ 36,522, at 177,931-32], it is clear that, when mootness results from a bilateral settlement through which "the claims are permanently withdrawn, 'a dismissal with prejudice is indicated.'" *Smith International, Inc. v. Hughes Tool Co.*, 839 F.2d 663, 664 (Fed. Cir. 1988) (quoting *Deakins v. Monaghan*, 484 U.S. 193, 200 (1988)).

Ralph Muhammad v. Department of Justice, CBCA 5188, 16-1 BCA ¶ 36,541, at 178,020.

Given that Bohner has executed a bilateral settlement agreement and release, there is nothing left for us to decide. Because the mootness here arises out a bilateral settlement between the parties, we dismiss this appeal with prejudice.

Decision

For the foregoing reasons, this appeal is **DISMISSED WITH PREJUDICE**.

Jerome M. Drummond

JEROME M. DRUMMOND

Board Judge

We concur:

Patricia J. Sheridan

PATRICIA J. SHERIDAN

Board Judge

Kathleen J. O'Rourke

KATHLEEN J. O'ROURKE

Board Judge