



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO DISMISS DENIED: May 20, 2019

CBCA 6264, 6279, 6284

CARMAZZI GLOBAL SOLUTIONS, INC,

Appellant,

v.

SOCIAL SECURITY ADMINISTRATION,

Respondent.

Richard F. Busch II of Busch Law Firm, L.L.C., Littleton, CO, and Joseph A. Whitcomb of Whitcomb Selinsky McAuliffe PC, Denver, CO, counsel for Appellant.

Dorothy M. Guy, Tal Kedem, Alice M. Somers, and Brandon Dell'Aglio, Office of the General Counsel, Social Security Administration, Baltimore, MD, counsel for Respondent.

Before Board Judges **SOMERS** (Chair), **VERGILIO**, and **BEARDSLEY**.

VERGILIO, Board Judge.

The contractor, Carmazzi Global Solutions, Inc., disputes the termination for default of its contracts by the agency, the Social Security Administration, in these appeals. The contractor has filed a motion to dismiss for failure to state a claim upon which relief can be granted. The contractor recognizes that the contracts required the contractor to provide a verbatim hearing recorder at 100% of scheduled hearings and that it did not comply with that requirement. The agency terminated the contracts for cause, given the contractor's failure to satisfy the contract requirement. The contractor alleges that it is commercially impracticable to satisfy the standard of performance in the contracts and that the agency

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interfered with the contractor's ability to perform. A response from the agency is unnecessary. The Board denies the ill-founded motion.

The standard to resolve the motion to dismiss for failure to state a claim is well established, as is the notion that terms of a contract are to be enforced. *B.L. Harbert International, LLC v. General Services Administration*, CBCA 6300, 6301 (May 13, 2019). The agency has established its right to relief beyond the speculative level. The contractor acknowledges that it failed to satisfy the terms of the contracts. Such is sufficient to defeat the motion to dismiss for failure to state a claim upon which relief can be granted.

Once the agency has satisfied its threshold burden to support a termination for default, the burden shifts to the contractor to establish that its failure to comply with the terms and conditions of the contracts was excusable. The contractor references the volume of hearings and the actions of the agency, as it alleges that its inability to perform was excusable. The contractor's ability or inability to meet its burden to defeat the terminations for default is not resolved under the contractor's motion.

The Board **DENIES** the contractor's motion to dismiss for failure to state a claim upon which relief can be granted.

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

We concur:

Jerí Kaylene Somers
JERI KAYLENE SOMERS
Board Judge

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge