



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR FAILURE TO PROSECUTE: September 16, 2008

CBCA 664

PACIFIC WILDFIRE, LLC,¹

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Tyler Robertson, Partner of Pacific Wildfire, LLC, Gig Harbor, WA, appearing for Appellant.

Elin M. Dugan, Office of the General Counsel, Department of Agriculture, Washington, DC, counsel for Respondent.

Before Board Judges SOMERS, McCANN, and DRUMMOND.

DRUMMOND, Board Judge.

ORDER

This appeal is before us on an order to show cause why it should not be dismissed with prejudice for failure to prosecute. For reasons set forth below, appellant has failed to show good cause and this appeal is dismissed.

¹ The Board's reference to "Pacific Wildfire, Inc." in this appeal was incorrect. The appellant's correct legal status is limited liability corporation, or "LLC." Accordingly, it is hereby ordered that the caption in this appeal shall be corrected to read "Pacific Wildfire, LLC."

On April 17, 2008, respondent filed a motion to dismiss, or in the alternative, to compel discovery (Government's motion). The Government moved to dismiss on the grounds that appellant had ignored the date for the completion of written discovery stated in the Board's order scheduling further proceedings dated July 24, 2007, and failed to respond to the Government's discovery requests.

By order dated April 18, 2008, the Board directed appellant to respond to the Government's motion to dismiss by May 8, 2008. Appellant failed to file a response as ordered. Subsequently, on May 13, 2008, the Board ordered appellant to, *inter alia*, respond to the Government's motion by June 2, 2008. When appellant failed to respond to the May 13, 2008, order, the Board issued an order to show cause on June 25, 2008. The June 25, 2008, order required appellant to show cause by July 10, 2008, as to why the appeal should not be dismissed for failure to prosecute, and for failure to respond to the Government's motion.

Appellant failed to meet the July 10, 2008, deadline. On July 11, 2008, the Board received via facsimile a letter from appellant. The letter was prepared by partner Eric Helpenstell, who represented that appellant was still seeking to retain new counsel, and therefore needed additional time to respond to the Government's discovery. Mr. Helpenstell stated further that a suit for dissolution of the partnership had been initiated in the United States District Court, Western District of Washington (district court)² and that he wanted to enter his appearance to represent appellant. Appellant did not request leave to file this response out of time.

Parties have a duty to comply with the orders of the Board or to request appropriate, timely relief from those orders with which they cannot comply. Appellant, as the moving party, has an obligation to pursue the prosecution of its appeal in a timely, responsible manner or to bear the risk of having its case dismissed. In this appeal, not only did appellant not file a response to the show cause order on time, it failed to respond to the Government's motion and to show good cause for its prior failures. Appellant's letter filed on July 11, 2008, although out of time, is not a response to the Government's motion, nor is it an adequate response to the order to show cause. While legal counsel may be desirable, it is not necessary for answering discovery or for otherwise prosecuting an appeal. The Board can

² The record contains no evidence that the district court appointed a receiver to represent appellant in this appeal.

find no basis to further extend these proceedings or to enter the appearance of Mr. Helpenstell, as no good cause exists for avoiding dismissal of this appeal. Accordingly, Mr. Helpenstell's request is denied.

This appeal is **DISMISSED FOR FAILURE TO PROSECUTE** pursuant to Rule 12 of the Board's Rules of Procedure.

JEROME M. DRUMMOND
Board Judge

We concur:

JERI KAYLENE SOMERS
Board Judge

R. ANTHONY McCANN
Board Judge