



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR FAILURE TO PROSECUTE: April 6, 2017

CBCA 1462

BRITTASHAN ENTERPRISES CORPORATION,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Kevin M. Cox of Carmardo Law Firm, P.C., Auburn, NY, counsel for Appellant.

Thomas D. Dinackus, Office of the Legal Adviser, Buildings and Acquisitions, Department of State, Rosslyn, VA, counsel for Respondent.

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

ZISCHKAU, Board Judge.

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

During the past twelve months, appellant's counsel has been unable to obtain cooperation from the corporate representative of Brittashan Enterprises Corporation, despite diligent efforts by counsel. The original corporate representative, at the time the appeal was filed, is deceased. In a number of status conference orders, the Board warned appellant that if Brittashan's successor corporate representative continued to fail to respond to appellant's counsel, the Board would have to issue a show cause order as to why the appeal should not

be dismissed for failure to prosecute. Appellant's counsel delivered copies of the Board's orders to Brittashan's corporate representative.

On November 22, 2016, the Board held a status conference with counsel for the parties. Appellant's counsel reported that despite his repeated efforts over a lengthy period of time, he had been unable to find any corporate representative of Brittashan who was willing to prosecute the appeal. On that same day, the Board issued an order to show cause why this appeal should not be dismissed for the failure of appellant to prosecute. The Board provided appellant until January 25, 2017, to respond to the order to show cause, and the order stated that if appellant did not provide an adequate response to the show cause order, the Board would dismiss the appeal with prejudice. On or about December 9, 2016, the corporate representative of Brittashan was served with the Board's show cause order of November 22, 2016. Brittashan's corporate representative has never responded to the Board's show cause order.

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; *Medtek, Inc. v. Department of Veteran Affairs*, CBCA 1544, 09-2 BCA ¶ 34,285; see *Kadin Corp. v. United States*, 782 F.2d 175, 176 (Fed. Cir. 1986). This is such a situation. Brittashan's corporate representative has repeatedly refused to prosecute the appeal.

Decision

Accordingly, the appeal is **DISMISSED FOR FAILURE TO PROSECUTE**.

JONATHAN D. ZISCHKAU
Board Judge

We concur:

JEROME M. DRUMMOND
Board Judge

KYLE CHADWICK
Board Judge