



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: February 24, 2021

CBCA 6914

MUBASHIR ALI,

Appellant,

v.

AGENCY FOR GLOBAL MEDIA,

Respondent.

Theodore P. Watson and Jo Spence of Watson & Associates LLC, Aurora, CO, counsel for Appellant.

Maryellen Righi and James McLaren, Office of the General Counsel, Agency for Global Media, Washington, DC, counsel for Respondent.

Before Board Judges **SULLIVAN**, **LESTER**, and **CHADWICK**.

SULLIVAN, Board Judge.

Mubashir Ali (appellant) appealed the decision of the contracting officer for the Agency for Global Media (AGM) terminating his personal services contract for default. The contracting officer has withdrawn that default termination and replaced it with a termination for convenience. AGM moves to dismiss the appeal for lack of jurisdiction because the dispute is moot. Appellant opposes the motion, arguing that the matter has not been resolved so that the Board retains jurisdiction. Because there is no further relief we could provide, we grant the motion and dismiss the appeal.

Background

In August 2020, the AGM contracting officer issued a decision terminating appellant's personal services contract for default, asserting that he had violated agency policy and journalistic codes. Appellant timely appealed the decision to the Board. In December 2020, AGM requested that the Board stay proceedings until February to allow the parties to discuss how to resolve their dispute.

By letter dated February 5, 2021, the contracting officer advised appellant that the agency had decided to convert the default termination into a termination for convenience. The effective date for the termination for convenience was the date of the default termination. The contracting officer withdrew his decision asserting the termination for default. The contracting officer requested that appellant acknowledge receipt of the notice that the agency had converted the termination to one of convenience.

Discussion

The contracting officer has withdrawn the default termination that appellant appealed and replaced it with a termination for convenience. The withdrawal of the termination for default is irrevocable. *Avue Technologies Corp. v. Agency for Global Media*, CBCA 6752, et al., 20-1 BCA ¶ 37,639. Conversion of the default termination to a termination for convenience is the only relief that the Board could have granted in the appeal. *Universal Home Health & Industrial Supplies, Inc. v. Department of Veterans Affairs*, CBCA 4012, et al., 16-1 BCA ¶ 36,370. With this conversion, there is no remaining dispute that the Board has jurisdiction to address. *Avue Technologies; H.H. Christian Co.*, AGBCA 82-120-1, 83-1 BCA ¶ 16,335.

Appellant opposes the motion to dismiss because the contracting officer converted the termination unilaterally without appellant's agreement to the terms. The contracting officer does not need the contractor's permission to terminate a contract for convenience, but may do so through unilateral action. *Boarhog LLC v. United States*, 129 Fed. Cl. 130, 135 (2016). Because the default termination has been converted to one for convenience, appellant may submit a termination settlement proposal that can become the basis for a settlement between the contractor and the agency for any monies due and owing. 48 CFR 49.104(h) (2019) (Federal Acquisition Regulation (FAR) 49.104(h)). No such proposal has been presented to the agency. The Board cannot take jurisdiction over any such request for monies until after a settlement proposal has been presented and ripened into a claim that the contracting officer has decided, and a new appeal filed. 41 U.S.C. § 7104(a) (2018); *1-A Construction & Fire, LLP v. Department of Agriculture*, CBCA 2693, 15-1 BCA ¶ 35,913.

Appellant asserts that the dispute remains because in the termination for convenience the agency again alleged that appellant violated the agency's best practices guide. Yet, appellant has neither alleged that the original termination was issued with the type of bad faith that might preclude conversion of the termination into one for convenience, *see J.R. Mannes Government Services Corp. v. Department of Justice*, CBCA 5638, 17-1 BCA ¶ 36,911, nor submitted a monetary claim seeking damages for any bad faith breach. Absent such a claim, the Board lacks jurisdiction to address appellant's challenge to the agency's basis for the original termination.

Appellant also asserts that the contracting officer improperly sought appellant's agreement to the convenience termination. Rather than seeking appellant's agreement, the contracting officer simply requested that appellant acknowledge receipt of the notice, as required by regulation. FAR 49.601-1.

Finally, appellant requests that the Board grant a further extension of the current deadlines to allow the parties to continue to discuss the possibility of settlement and warns that the Board should not favor one party over another in settlement discussions. While the Board understands that appellant would like the appeal to remain pending while the parties continue to discuss resolution of this matter, the conversion of the default termination to one for convenience rendered this appeal moot, which eliminates the Board's jurisdiction to continue this appeal. *Avue Technologies*. "Once we are aware that we lack jurisdiction to entertain an appeal, we have 'no other recourse but to dispose of the case by dismiss[ing]' it based upon the jurisdictional defect." *Duke University v. Department of Health & Human Services*, CBCA 5992, 18-1 BCA ¶ 37,023 (quoting *Rex Systems Inc. v. United States*, No. 92-411C, 1993 WL 13726058, at *3 (Fed. Cl. Dec. 13, 1993), *appeal dismissed*, 41 F.3d 1517 (Fed. Cir. 1994) (table)). In response to a motion to dismiss for lack of jurisdiction, we lack authority to hold onto this appeal despite one party's desire to pursue settlement.

Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

We concur:

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

Kyle Chadwick
KYLE CHADWICK
Board Judge