

FARMERS ELEVATOR COMPANY OF OUTLOOK,)	AGBCA No. 97-184-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Gordon Stoner, <u>pro se</u>)	
Secretary)	
Farmers Elevator Company of Outlook)	
P.O. Box 335)	
Outlook, Montana 57252)	
)	
Representing the Government:)	
)	
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Office of the General Counsel)	
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Washington, D.C. 20250-1400)	

DECISION OF THE BOARD OF CONTRACT APPEALS

December 15, 1997

OPINION BY ADMINISTRATIVE JUDGE MARILYNN M. EATON

This appeal arose under Uniform Grain and Rice Storage Agreement (UGRSA) No. A30-3-CCC-0527, between the Commodity Credit Corporation (CCC), a wholly-owned Government corporation within the U. S. Department of Agriculture (USDA), and Farmers Elevator Company of Outlook, Montana.

During an inspection on February 12, 1997, officials of USDA's Farm Service Agency (FSA), which inspects warehouses on behalf of the CCC, found nine violations of Appellant's UGRSA. These included deficiencies in inventory, accounting, and daily position reports. On March 4, 1997, Appellant was removed from CCC's List of Approved Warehouses due to "continued violations and failure to comply with terms and conditions" of the UGRSA. As a result, no additional CCC-owned or loan commodities, or commodities delivered to CCC for purchase under a price support program, could be stored or handled through the warehouse.

A second inspection was conducted on April 10, 1997, when inspectors found additional problems, including a fire hazard. According to Appellant, on both occasions all violations had been corrected on the day of inspection except one involving a scale, which was inspected and approved on April 22, 1997.

On May 8, 1997, however, FSA issued a Supplemental Removal stating that Appellant had failed to meet financial requirements for continued approval of its warehouse. (Appellant had not filed a financial statement that was due March 31, 1997; this was filed on July 21, 1997.) On May 16, 1997, the Contracting Officer (CO) proposed termination of the agreement, and on June 6, 1997, she issued a final decision doing so. In a timely appeal to the Board, Appellant sought reinstatement of the UGRSA, but no monetary damages.

On October 29, 1997, the Government filed a Motion for Summary Judgment. It argued that the termination was proper under terms of the UGRSA, which stated in pertinent part:

Either party may terminate this Agreement without cause with respect to any and all warehouses subject to this Agreement. Written notice of termination must be given to the other party at least 30 days prior to the date the termination is to be effective. Termination under this section will not give rise to any damages under this Agreement.

CCC may terminate this Agreement immediately if the warehouse operator has violated the terms of the Agreement.

The Government also argued that Appellant had failed to state a claim for which relief could be granted, since the Board can award only money damages. The Government pointed out that Appellant had not requested money damages, and that the UGRSA specifically states that termination will not give rise to any damages. Appellant's remedy, the Government concluded, was to apply for another UGRSA. The application would be granted, the Government stated, if Appellant complied with the Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed, 7 CFR § 1421.5551.

In an undated letter to Government counsel (copy received by the Board on December 10, 1997), Appellant stated:

The board of directors of Farmers Elevator Company of Outlook accepts the judgment. In addition the board asks that the complaint against the Commodity Credit Corporation be dropped.

DECISION

In view of Appellant's withdrawal of the appeal, the Board need not rule on the Government's Motion. AGBCA No. 97-184-1 is dismissed with prejudice.

MARILYNN M. EATON
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

HOWARD A. POLLACK
Administrative Judge

**Issued at Washington, D.C.,
December 15, 1997**