

<b>MAX CASTLE,</b>	)	<b>AGBCA No. 2003-144-R</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Max Castle, pro se	)	
509 SE 18 <sup>th</sup> Ave.	)	
Ontario, Oregon 97914	)	
	)	
<b>Representing the Government:</b>	)	
	)	
Arno Reifenberg, Esquire	)	
Office of the General Counsel	)	
U. S. Department of Agriculture	)	
1220 S.W. Third Avenue, Rm. 1734	)	
Portland, Oregon 97204	)	

**RULING OF THE BOARD OF CONTRACT APPEALS**

**June 3, 2003**

**BEFORE POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.<sup>1</sup>**

**Opinion by Administrative Judge POLLACK.**

This appeal arises under Lease No. 57-0219-0-0009, between Max Castle (Appellant) of Weiser, Idaho, and Farmers Home Administration, U. S. Department of Agriculture (USDA or Government) for office space occupied by three agencies of the Department in Weiser, Idaho. FHA terminated a 5-year lease awarded to Castle before the lease had expired. Castle submitted a claim, initially for \$87,259.45, which he described as the remodeling costs incurred in preparing and renovating the space in question. On April 14, 2000, the Board issued a decision in AGBCA No. 97-137-1, denying Castle's appeal. Max Castle, AGBCA No. 97-137-1, 00-1

---

<sup>1</sup> The panel on reconsideration includes Administrative Judge Westbrook, who was not on the original panel. She replaces Administrative Judge Houry, who has retired from the Government. Two judges support the replacement; they have previously addressed this matter in Rain & Hail Insurance Service, Inc., AGBCA No. 98-186-R, 99-1 BCA ¶ 30,307 (for the purpose of resolving a motion for reconsideration, this Board replaced a judge who had served on the original panel but no longer was with the Board). For the reasons stated in Cleereman Forest Products, AGBCA No. 2002-106-R, 02-1 BCA ¶ 31,829, Administrative Judge Vergilio would not replace the now-retired original panel member to resolve this motion.

BCA ¶ 30,871. An issue before the Board involved whether the Government, more specifically the Contracting Officer (CO), knew of actions of the County director for ASCS<sup>2</sup> (a USDA entity), Mr. Ray Lann. Castle contended that Mr. Lann had approached his contractor during remodeling work and spoke to that contractor regarding the contractor contracting to construct another building for the Government in lieu of the Castle building. Among its determinations, the Board found that while there was evidence that Mr. Lann did indicate during remodeling that he wanted another building, those statements were not linked to the CO and her testimony established that she was unaware of the desire of the customer for another building and did not enter into the lease with any intention not to honor it. Appellant was represented by counsel in that appeal.

On December 16, 2002, the Board received a letter from Mr. Castle, acting without counsel, in which Mr. Castle requested that the Board reconsider the decision it had made. Mr. Castle explained that at the time his attorney had inadvertently left New York without Castle's original work documentation to prove questions that "were subject of inquiry at the hearing." Mr. Castle then noted that upon receiving the records on June 16, 2001, from his counsel, he was able to establish when Mr. Lann first approached Mr. Castle's contractor regarding having that contractor build a new building, so that the Government could vacate the Castle building in issue. Mr. Castle stated that the burden, plus \$30,032.47 needed to finish the remodel, fell upon his shoulders and left him and his wife with financial hardship.

Since the letter specifically asked for reconsideration, the Board docketed the matter as AGBCA No. 2003-144-R. Rather than issuing a standard docketing letter, however, the Board wrote to Castle and the Government, and advised Appellant of the Board rules as to reconsideration. Specifically, a motion for reconsideration must be filed within 30 days from the date of receipt of a copy of the decision by the Board. The Board advised Appellant that it appeared that Appellant's motion was untimely. The Board noted, however, that it recognized that Appellant was representing himself without counsel and therefore the Board was not at that time taking the position that it was impossible that a counsel for Appellant could find some basis for the Board taking jurisdiction. The Board encouraged Government counsel to discuss the matter with Appellant and noted the Board would not require further filings until that was done. Government counsel did confer with Appellant and by letter of January 17, 2003, Government counsel advised the Board that Mr. Castle believed that he had not been well represented and would like his views to be heard.

The Board received no specific response from Appellant. Accordingly, the Board wrote to the parties on March 3, 2003. The Board noted that based upon the letter from Government counsel, it appeared that Appellant wished to proceed. The Board then repeated the rule relating to reconsideration and stated, "It appears from the record, from the Board rules and from legal precedent, that a motion for reconsideration in this appeal is untimely. The matter appears ripe for dismissal on the basis of untimeliness." The Board continued that it would not dismiss the motion for reconsideration without giving Appellant a final opportunity to establish on what basis the Board could reconsider the appeal and reopen the record. The Board gave Appellant 20 days from receipt to provide any further argument and or basis as to why the Board could assume

---

<sup>2</sup> In 1994, USDA was reorganized. In this Ruling, the USDA designations reflect their use at the time the lease was entered into.

jurisdiction over what appeared to be an untimely filing. The Government was to have 15 days to respond. The Board stated that it would then consider the matter and render a decision as to whether the Appellant could be subject to reconsideration.

Appellant made no filing in response to the Board's March 3, 2003, letter.

### **DISCUSSION**

Board Rule 29 provides that in order to be timely, a motion for reconsideration must be filed within 30 days of receipt of the Board's decision. That was not done here. The Board recognizes that Appellant believes the Board should reconsider. However, the rule and statute, 41 U.S.C. § 607 (2000), are set so as to put finality to matters before the Board. Appellant has exhausted his remedies at the Board.

### **RULING**

The Motion for Reconsideration is untimely and thus denied.

---

**HOWARD A. POLLACK**  
Administrative Judge

**Concurring:**

---

**JOSEPH A. VERGILIO**  
Administrative Judge

---

**ANNE W. WESTBROOK**  
Administrative Judge

**Issued at Washington, D.C.**  
**June 3, 2003**