

<b>ROCKY MOUNTAIN LOG HOMES, INC.,</b>	)	<b>AGBCA No. 97-152-1</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
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**DECISION OF THE BOARD OF CONTRACT APPEALS**

**November 23, 1998**

**OPINION BY ADMINISTRATIVE JUDGE HOWARD POLLACK**

This appeal arose from Contract No. 07-041555, the North Coal Salvage Timber Sale, between the Flathead National Forest of the Forest Service (FS), U. S. Department of Agriculture, and Rocky Mountain Log Homes of Hamilton, Montana (Appellant). The contract was awarded to Appellant on May 25, 1994, and called for Appellant to cut and remove designated timber in the Glacier View Ranger District, Hungry Horse, Montana. The contract called for work to be completed by December 31, 1995.

Appellant proceeded with the work on the contract but did not complete harvesting the total volume by December 31, 1995. Thereafter, by letter of January 24, 1996, the FS notified Appellant that the sale had terminated incomplete and that in accordance with clause CT9.4 of the contract, the FS would assess damages. Appellant did not dispute that it had not cut and removed the full volume, however, Appellant asserted that most of the volume was blowdown timber and had lost its value due to checking and decay of sapwood. In addition, Appellant asserted that due to the FS failure to timely respond to Appellant's October 1995 request for a term adjustment, the FS had breached the contract and prevented Appellant from completing by the due date. Finally, Appellant raised

other defenses relating to the alleged failure of the FS to mitigate its damages. Appellant also challenged the FS appraisal procedures and data.

In determining its damages, the FS concluded that it had suffered damages of \$44,486.01 due to Appellant's failure to complete the timber contract. With cash on account, the FS calculated its net damages as \$17,049.60. The FS issued a Contracting Officer's decision dated February 11, 1997, wherein the FS claimed those damages.

Appellant timely appealed that decision by Notice of Appeal dated April 7, 1997. Due to various scheduling problems, pleadings were not completed until August 1997, and thereafter, other problems arose which caused scheduling of the hearing to be delayed into the fall of 1998. By letter dated February 19, 1998, the Board was advised that the parties preferred a hearing after October 1, 1998, and that the parties were scheduling depositions in the interim. The Board then indicated that a hearing would be so scheduled .

Then, by letter of June 19, 1998, the Board was advised that the parties had reached an agreement to settle. On July 14, 1998, the parties forwarded to the Board a signed Stipulation of Dismissal wherein the parties stipulated that the appeal had been completely settled, that no further adjudication in resolving the dispute was necessary, and that the matter should be dismissed with prejudice.

### **DECISION**

The appeal is dismissed with prejudice as settled.

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**HOWARD A. POLLACK**  
Administrative Judge

**Concurring:**

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**EDWARD HOURY**  
Administrative Judge

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**JOSEPH A. VERGILIO**  
Administrative Judge

**Issued at Washington, D. C.**  
**November 23, 1998**

