

SANTEE DOCK BUILDERS,)	AGBCA No. 97-106-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
Thomas Whetsell, President)	
Santee Dock Builders)	
115 Lake Marion Lane)	
Vance, South Carolina 29163)	
)	
Representing the Government:)	
)	
Judith E. McKenzie-Abraham)	
Office of the General Counsel)	
U. S. Department of Agriculture)	
1718 Peachtree Road, Suite 576)	
Atlanta, Georgia 30309-2409)	

DECISION OF THE BOARD OF CONTRACT APPEALS

January 10, 2000

Before HOURY, POLLACK, and VERGILIO, Administrative Judges

Opinion for the Board by Administrative Judge POLLACK.

This appeal arises out of a default termination of Contract No. 50-4310-6-237, between Santee Dock Builders (Santee or Appellant) and the Natural Resources Conservation Service (NRCS or Government) of the U. S. Department of Agriculture. The contract for \$41,686, called for Santee to perform various tasks at Mossy Creek, Houston County, Georgia, to remedy and repair natural resource damage caused by tropical storm Alberto in 1994. Santee was terminated for default on the project. It challenged that termination; however, the termination was upheld by the Board in Santee Dock Builders, AGBCA No. 96-161-1, 99-1 BCA ¶ 30,190, issued on December 17, 1998. The appeal in issue in this matter was filed well prior to the above-noted decision and dealt with the propriety of the assessment of reprourement costs due to the default.

FINDINGS OF FACT

1. By letter of October 16, 1996, Santee submitted its timely appeal from a Contracting Officer's (CO's) decision assessing reprourement costs in connection with the termination for default on Contract No. 50-4310-6-237. The appeal was docketed on November 25, 1996. The parties proceeded with pleadings and upon the filing of a Complaint and Answer, the Government filed a Motion to Stay Proceedings, noting that the parties wished to complete adjudication of the propriety of the termination for default prior to addressing reprourement costs. By letter of February 28, 1997, the Board granted the request.
2. The parties then proceeded with the appeal on the propriety of the default. A hearing was held and thereafter, on December 17, 1998, the Board issued its decision on the appeal, upholding the propriety of the default. The Board then waited until the appeal period ran on that decision before again initiating action as to the appeal involving reprourement costs.
3. By letter of May 19, 1999, the Board wrote to counsel for the parties and requested that the parties advise the Board of the status of the reprourement cost matter and whether Appellant intended to pursue that appeal. At that time, the Board learned that Government counsel had left the Department. The Government substituted counsel by letter of June 3, 1999.
4. Having not heard from the parties, the Board in a letter of July 26, 1999, notified the parties that it was lifting the stay and moving forward with the processing of the appeal. Accordingly, the Board directed the Government to file an Appeal File.
5. On August 12, 1999, the Board received a letter from Mr. Travis Trimble, counsel for Appellant. In that letter counsel requested that he be allowed to withdraw, citing financial differences with Appellant and due to the fact that correspondence from counsel to Appellant was going unanswered. By letter of August 18, 1999, the Board wrote to counsel for the Government and the president of Santee (with a copy to Mr. Trimble), advising both Appellant and the Government of Mr. Trimble's letter. In addition, the Board directed Santee to advise it and Government counsel whether Santee would secure substitute counsel or whether an official of Santee would represent the company. The Board pointed out that while AGBCA No. 96-161-1 established the propriety of the default by the Government, the remaining appeal went to the issue of reprourement charges.
6. Santee was directed to notify the Board as to the above matters and particularly whether it intended to proceed with challenging the reprourement costs. The Board stated that failure to respond would result in a show cause letter. On that same day, August 18, the Board wrote to Mr. Trimble and allowed his request for withdrawal. A copy of that letter was sent by the Board to the president of Santee.

7. On August 19, 1999, the Board received a Motion for Stay from the Government. In the letter, counsel for the Government represented that she had been unable to contact the Appellant and requested that the Government not have to move forward until such time as the Board could determine if Appellant intended to pursue the appeal. On August 24, 1999, the Board advised the Government that it could withhold action, pending the Board receiving the information it was requesting from the Appellant.

8. The Board did not hear from Appellant. Therefore, on November 10, 1999, the Board issued an Order to Show Cause and stated therein that if it did not receive a response, the Board would dismiss the appeal with prejudice from the docket for failure to prosecute. Appellant received the Order to Show Cause.

9. The Board has received no response to the Board's Order to Show Cause.

DISCUSSION

Appellant has failed to respond to the Board Order to Show Cause which specified that a failure to respond would result in a dismissal. Based on that failure to respond, we dismiss this appeal pursuant to Rule 31.

DECISION

The appeal is dismissed with prejudice for failure to prosecute.

HOWARD A. POLLACK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

**Issued at Washington, D. C.
January 10, 2000.**