

DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

APPEAL OF:)
)
SUSAN BENTON)
2926 Upton Street, NW) CAB No. D-1227
Washington, DC 20008)
)
UNDER CONTRACT NO: N/A)

OPINION ON MOTION TO DISMISS

Filing ID 36816124

On November 30, 2010, the University of the District of Columbia (“UDC”), respondent, requested that the Board dismiss the claim of Susan Benton Consulting Services for want of prosecution. For the reasons set forth herein, the Board denies the motion to dismiss.

BACKGROUND

On October 29, 2003, Susan Benton filed a complaint with the CAB, alleging that she signed a contract with UDC to perform consulting services. She alleges that she entered into a written contract with Gerald Davis, then Director of UDC’s Science and Engineering Center, to perform consulting services. She alleges that she submitted four invoices to UDC for May, June, July, and August of 2002, for a total of \$23,915.30. On September 9, 2002, Dean Ben Latigo of the School of Engineering and Applied Sciences, advised Ms. Benton by e-mail that Mr. Davis was not authorized to obligate the University for consulting services with Ms. Benton. On July 30, 2003, Mr. Wossen Encubhare, UDC Chief Contracting Officer, denied Ms. Benton’s request for payment.

This Board held a conference call with the parties on December 6, 2005, with Mr. Irving Kator representing Ms. Benton and Ms. Robin Alexander representing UDC. At that time, the parties appeared to be conducting discovery. The Board requested that the parties reserve a date in May of 2006 for a hearing.

The hearing did not occur. On June 3, 2008, Mr. Kator died of a heart attack in Paris, France. He was 88 years old. In October of 2010, this Board ordered the appellant to show cause why this appeal should not be dismissed with prejudice for failure to prosecute. Mr. Michael J. Kator, Irving Kator’s son and law partner, entered his appearance and responded to the Board’s request for information. UDC filed a motion requesting dismissal of the claim for want of prosecution.

DISCUSSION

UDC asserts, correctly, that a significant time period has passed since the beginning of the alleged contract. UDC also asserts that several UDC employees who may have been involved with the alleged contract are no longer employed by the university. Neither party has

claimed that the opposing party has failed to participate in the discovery process. To date, this Board has not entered a formal discovery order. The Board reminds the parties that G&S Associates, CAB No. D-1136, June 17, 2002, involved a matter that was the subject of a hearing order. The appellant in G&S failed to file a formal complaint, and the Board eventually dismissed the appeal. In the present matter, the Board has not issued a formal discovery order. Additionally, Mr. Irving Kator's death provides at least some explanation for the present posture of this appeal.

Further, this Board notes that the appellant's October 29, 2010, Response To The Board's Order To Show Cause states that appellant has conducted discovery, completed a number of depositions, and requests a discovery schedule order and hearing date from the Board. Despite previous lapses, the appellant appears ready to move forward at this time. The Board will not allow further lapses in this case, and will move promptly to issue an updated scheduled order and hearing date herein.

Having said that, this Board also recognizes that appellant still has the burden of proof regarding the existence of a valid contract between the parties. Nonetheless, under the circumstances presented in this matter, this Board believes that appellant should have an opportunity to present its evidence. The Board hereby denies UDC's motion to dismiss. The Board will discuss further discovery matters, develop the framework for an updated scheduling order, and identify a hearing date with both parties at the next telephone conference call.

SO ORDERED.

DATED: April 1, 2011

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge

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