

“YOU’RE OUT OF LUCK BUDDY” (NO EXTRA-CONTRACTUAL RELIEF)

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In a timber sale contract (where the government contractor cuts down timber and sells it, presumably at a profit), the Civilian Board of Contract Appeals (“CBCA”) concluded that there was “no contractual provision that would relieve appellant of its obligations to pay the damages assessed [by the agency].” Translation: “You’re Out of Luck, Buddy.” *Payne Enter. v. Dept of Agriculture*, CBCA 2899, March 19, 2013. It was a bit of a heartbreaker, as you will see from the court filings, below.

Payne was awarded the Sheriff West Timber Sale Contract by the Department of Agriculture in June 2001, and completed 92% of the contract, but couldn’t complete the remainder because of declining prices for the timber associated with the contract, overall economic decline, and a precipitous drop in housing starts and home remodeling, resulting in a downward spiral of demand for hardwood lumber. The contracting officer issued a decision in 2012 assessing the contractor \$283,709 for failure to complete the contract by the termination date. This was done in accordance with Payne’s contract clause labeled “Failure to Cut.”

Payne appealed the contracting officer’s decision and requested that the Board waive its contractual obligation to pay damages. Payne’s complaint said this:

The Appellant respectfully requests that the Board take into consideration the Appellant’s history of diligent performance under contracts and good faith in its dealings with the Government over a period of many years and recognize that the Appellant was the victim of economic forces beyond its control which prevented it from fully performing under the contract, despite its best efforts. The extraordinary economic forces that disrupted Appellant’s business have caused widespread and world-wide economic disruption. The Government of the United States of America, acting through its various agencies, has responded to the economic crisis in part by providing assistance to numerous other private business enterprises. Simply stated, the Appellant merely requests some consideration be given by the Board to exercise in its discretion in a manner that would take these matters into consideration

The contracting officer worked with Payne to attempt to alleviate the increasingly difficult financial situation that Payne found itself in because of falling timber prices.

The Board acknowledged all of this, and merely said that it found that the contractual provisions, as set forth in the contracting officer’s decision, entitled the Government to the damages assessed. “This Board does not have authority or discretion to relieve appellant from its contractual liability”. With that, the Board ordered summary judgment for the Government, and Payne got no relief.

TIPS: (1) Do not expect contracting officers to give a contractor relief from the terms of the contract—they simply are not authorized to do it.

(2) Similarly, do not expect a Board or a Court to give a contractor extra-contractual relief outside of the four corners of the contract (unless this involves extraordinary contractual actions under FAR Part 50—a highly unusual situation not relevant to this timber contract).

(3) If you take an appeal to the Boards of Contract Appeal or the Court of Federal Claims, base your claim and complaint on law, not on a plea for help because of hard economic times.