ARMED SERVICES BOARD GIVES WIDE LATITUDE TO PRO SE LITIGANTS

In a recent appeal of an Army Corps of Engineers (the "Corps") termination for default, the Armed Services Board ("ASBCA" or "Board") denied the Corps' motion to dismiss the appeal for failure to state a claim upon which relief can be granted or, in the alternative, for a more definite statement. *Colony Construction,* ASBCA No. 63630, Nov. 23, 2023. The ASBCA denied both motions because Colony clearly stated a claim—to vacate appellant's termination for default. Furthermore, the Board found that Colony's submissions to the Board were sufficient to proceed past the pleading stage. The Board also had some excellent words on *pro se* litigants.

Colony was awarded a contract to upgrade a campground electrical system. After several preconstruction exchanges and no work being done in the field, the Corps issued a cure notice and a show cause notice. Because it considered Colony's responses insufficient to these notices, the Corps terminated the contract for default. Proceeding *pro se* (for itself and without benefit of a lawyer), Colony challenged the termination and questioned specific aspects of the termination decision.

In analyzing the Corps' request, the Board found that Colony's claim was a "vintage claim upon which relief can be granted." The Board also noted:

> Our rules are prefaced upon informal, expeditious and inexpensive resolution of disputes and Rule 15 [of the Board] allows appellants to proceed without counsel. Here Colony is proceeding *pro se*, its submissions are informal and some have been untimely. But we do not penalize contractor-appellants who are inexperienced in Board litigation or unfamiliar with forms of pleading and other submissions [citation omitted].
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> Looking at the sum of Colony's submissions and drawing reasonable inferences in Colony's favor, we readily discern Colony's claim which it succinctly states as follows. "Colony Construction claims that the Corps has wrongly terminated contract W912WJ-22P-0131 for 'default' and not 'convenience." We pray that the Board will change the designation accordingly. Colony is asking for no monetary damages.

The Board rejected the Corps' request for a more definite complaint as "unconvincing," noting that the Corps bears the initial burden to justify its default termination and had already provided an explanation in the termination notice and final Contracting Officer's decision.

The Board held that considering the record and Colony's submissions, the issues before the Board were sufficiently defined, stating "[T]his appeal is a garden-variety default termination challenge by a pro-se contractor appellant." The Board denied both motions submitted by the Corps.

Takeaway. *Pro se* litigants will not be penalized by the Board, which will examine all of their submissions (even some that are untimely). Litigants may proceed on their own at the Board (particularly in relatively non-complex matters) without fear that the Board will end their case because they have made informal submissions that that may not comply with every Board rule. If the Board can understand the issue (but the government seeks to dismiss the case), the Board will allow such a litigant to proceed.

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