

WHAT HAPPENS TO APPELLANTS WHO FAIL TO COMPLY WITH BOARD ORDERS?

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When a Board of Contract Appeals (or a Court) issues an order, it expects that order to be obeyed. The following case is an example of what happened at the Armed Services Board of Contract Appeals when a contractor failed to obey the Board's orders. *Soukos Robots Demil USA, Inc.*, ASBCA No. 63468, Oct. 17, 2024.

Here is the timeline of Soukos's appeal:

Nov. 29, 2022	Soukos appealed the government's termination for default of its contract. The parties agreed on a schedule for the appeal, and pursuant to that, the Army served its first request for documents and interrogatories
June 14, 2023	Soukos's counsel withdraw from the appeal and Soukos notified the Board that its in-house counsel would now be its representative. Soukos's inhouse counsel agreed to produce the documents on a rolling schedule
August 29, 2033	Soukos's inhouse counsel withdrew from the appeal, and Soukos's President informed the Board that he now represented the appellant in this appeal.
Dec. 19, 2023	The Soukos President informed the Army that he needed three more months to gather the requested documents
March 22, 2024	Government filed a motion to compel production of documents since none had been provided in response to the document request.
April 12, 2024	After a conference call with the parties, the Board directed appellant to respond to the government's document requests within 60 days
June 17, 2024	The government filed a motion to dismiss the appeal for failure to prosecute since no documents had been provided in response to the Board's order
June 26, 2024	The Board ordered Soukos to respond to the government motion to dismiss within 30 days of the order. Soukos did not respond to that order.
August 14, 2024	The Board issued a show cause order directing appellant to respond within 21 days of the order as to why the appeal should not be dismissed with prejudice for failure to prosecute, and also appeal stated that the Board would dismiss with prejudice if Soukos failed to respond by September 5, 2024
Oct. 17, 2024	Since appellant, by this date had failed to respond to the government's document production request, the government's motion to compel or the Board's April 12, 2024 and June 26, 2024 orders as well as the August 14, 2024 order, the Board dismissed the appeal for failure to prosecute .

The Board noted in its decision that Board Rule 17 provides that:

Whenever the record discloses the failure of either party to file documents required by these Rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed with prejudice for failure to prosecute... If good cause is not shown, the Board may take appropriate action.

Takeaway: The Board was giving appellant extreme latitude to comply with Board Rules and Board orders, but the failures by the appellant obviously frustrated both the government and the Board. Eventually, the Board applied the strongest sanction to the failure to comply with Board orders.

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