

**BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS**

In the Appeal of Engels &)
Engels Security Services LLC)
)
) Docket No. MSBCA 2627
)
)
)
Under DGS BPO No. 001B7900553)

APPEARANCE FOR APPELLANT: None

APPEARANCE FOR RESPONDENT: Turhan Robinson
 Assistant Attorney General
 Baltimore, Maryland

DECISION BY BOARD MEMBER DEMBROW

The instant appeal is dismissed for failure to file a Complaint.

Findings of Fact

1. By correspondence dated September 5, 2008, appellant Engles & Engles Security Services, L.L.C. noted its appeal before the Maryland State Board of Contract Appeals (Board) from a certain decision of the Department of General Services (DGS) concerning its blanket purchase order (BPO) No. 001B7900553, a guard service contract.
2. The decision from which the instant appeal was taken was set forth in certain correspondence dated August 26, 2008 directed to Mr. Francis M. Engles, Chief Executive Officer of Engles & Engles Security Services, L.L.C., in which DGS noted certain deficiencies on the part of appellant with respect to timely payment of its employees, and the requests

by DGS for Engles & Engles Security Services, L.L.C. to take immediate corrective action and submit certain information to DGS, which DGS asserts was not submitted as requested, as a result of which DGS, pursuant to COMAR (Code of Maryland Regulations) 21.07.01.11B(1)(b) terminated the subject contract effective August 26, 2008.

3. By correspondence from the Board dated September 16, 2008, appellant was notified that it had thirty (30) days from the date of its appeal to file a Complaint before the Board.
4. Following the noting of its appeal on September 12, 2008 appellant failed to file a Complaint.
5. By correspondence dated December 22, 2008, counsel for DGS requested that the instant appeal be dismissed with prejudice, to which appellant to date has filed no opposition or other objection, nor has appellant at any time noted a Complaint before the Board.

Decision

COMAR 21.10.05.06C provides that this "Board may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted." In this instance the Board has contemplated the option of first entering an Order to Show Cause why the instant appeal should not be dismissed with prejudice, but because it appears that appellant has already knowingly and intentionally abandoned its appeal by failing to retain counsel or to file a Complaint or to respond to the State's request for the entry of a dismissal with prejudice, nor even to contest the allegations of DGS concerning appellant's failure to pay its employees in timely fashion or provide to DGS the information it requested, the Board does not expect that further notification to appellant concerning its duty to prosecute its appeal would be met with a sufficient response to

justify preservation of appellant's rights, and very likely would be met with no response at all. Appellant has failed to prosecute this appeal. No complaint is before the Board and at this juncture no timely complaint may be put before the Board. Therefore the Board deems that this appeal should be and hereby is dismissed with prejudice.

Wherefore it is Ordered this _____ day of February, 2009 that the above-captioned appeal is dismissed with prejudice.

Dated:

Dana Dembrow
Board Member

I Concur:

Michael Burns
Chairman

Michael J. Collins
Board Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 **Time for Filing Action.**

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 2627, appeal of Engels & Engels Security Services LLC under DGS BPO No. 001B7900553.

Dated:

Michael L. Carnahan
Deputy Clerk