

**United States Small Business Administration
Office of Hearings and Appeals**

IN THE MATTER OF:

Puente One Construction Group, Inc.

Petitioner

SBA No. BDP-318

Decided: April 7, 2009

ORDER GRANTING MOTION FOR SUMMARY DECISION¹

On December 19, 2008, the Respondent U.S. Small Business Administration (SBA) terminated Puente One Construction Group, Inc. (Petitioner) from the 8(a) Business Development (BD) Program (8(a) Program or the Program) because Petitioner's owner, Mr. Marco Puente, had submitted false information on his application to the Program in violation of 13 C.F.R. § 124.303(a)(1). Specifically, Mr. Puente stated "no" in response to the question on his 8(a) application, "Have you ever been charged with and/or arrested for any criminal offense other than a minor motor vehicle violation?" Yet Mr. Puente admits that he "was going through a disturbing court case issue that involved [Mr. Puente] being arrested while on duty as a police officer" at the time of his application. *See* Petitioner's June 26, 2008 response to the SBA's intent to terminate letter.

Petitioner appealed the determination on February 18, 2009 arguing he answered "no" to the question because he believed the question referenced only felony arrests. Thus, because Mr. Puente made an honest mistake in filling out the application, Petitioner argues it should not be terminated from the Program.

Because there is no genuine issue of a material fact relevant to my decision, I may decide this case summarily.

I conclude the SBA's decision terminating Petitioner from the 8(a) Program is supported in the record, reasonable, and not arbitrary, capricious, or contrary to law.

I. Briefs and Arguments

A. SBA

On March 16, 2009, the SBA moved to dismiss or, in the alternative, for summary

¹ This appeal petition is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 124 and 134.

decision.

SBA asserts the application clearly asked whether the applicant had been arrested for any criminal offense other than a minor motor vehicle violation; thus SBA argues it is unreasonable for Mr. Puente to argue on appeal that he made an honest mistake because he thought the question only dealt with felony arrests. *See Matter of Clemens Brothers Construction*, SBA No. BDP-200 (2003).

Accordingly, as Petitioner has admitted that he filed false statements in his application, and termination for such false statements is authorized by 13 C.F.R. § 124.303(a)(1), the SBA argues the appeal should be dismissed or, in the alternative, that summary decision be awarded to SBA.

B. Petitioner

On April 3, 2009, Petitioner opposed the motion. Petitioner argues that because Mr. Puente made an honest mistake in reading the question to reference only felony arrests, and he was ultimately found not guilty, Petitioner should not be terminated.

II. Discussion

To prevail on a motion for summary decision, the SBA must establish both the absence of a genuine issue of any material fact and the SBA's entitlement to a decision in its favor as a matter of law. 13 C.F.R. §§ 134.212(a), 134.408(a). I find the SBA has met these requirements and is entitled to a decision in its favor as a matter of law.

SBA regulations permit the SBA to terminate a participant from the 8(a) Program for good cause. 13 C.F.R. § 124.303(a). Good cause includes submitting false information in the concern's 8(a) application, regardless of whether correct information would have caused the SBA to deny the concern admission to the Program and regardless of whether correct information was given to SBA in accompanying documents or by other means. 13 C.F.R. § 124.303(a)(1).

Mr. Puente stated "no" in response to the question on his 8(a) application, "Have you ever been charged with and/or arrested for any criminal offense other than a minor motor vehicle violation?" Moreover, the 8(a) application states, "It is important that [the question regarding whether the applicant had ever been charged with and/or arrested for any criminal offense] be answered truthfully and completely. An arrest or conviction record will not necessarily disqualify you; however, an untruthful answer will cause your application to be denied." While Mr. Puente admits that he had been arrested at the time of the application, and thus there is no dispute on this issue, he argues that he understood the question to reference only felony arrests. Thus, he made an honest mistake concerning the meaning of the question.

If Mr. Puente mistakenly and honestly believed the application question only requested an affirmative response if the arrest involved a felony AND his mistaken belief was reasonable, then Petitioner would not have violated 13 C.F.R. § 124.303(a)(1). To be reasonable, the

mistake must have been based on information, or lack thereof, which would indicate to a reasonable person that the question only pertained to felonies.

Here, there is nothing in the application question which would indicate to a reasonable person that the question only pertained to felony arrests. Instead, the question explicitly asks whether Petitioner had ever been arrested for any criminal offense, excluding only minor motor vehicle violations. Thus, Petitioner's assertion that Mr. Puente's response was the result of an honest misreading of the question is unreasonable and does not raise a defense to the grounds for termination. *See Matter of Clemens Brothers Construction*, SBA No. BDP-200 (2003) (holding Petitioner's mistaken reading of the 8(a) application as inquiring only about crimes involving the operation of the business to be unreasonable). Accordingly, no genuine issue of material fact exists because Petitioner acknowledges the false statement on his application and his mistaken reading of the application is not reasonable. Thus, the SBA is entitled to judgment in its favor as a matter of law.

III. Conclusion

Accordingly, the SBA's Motion for Summary Decision is GRANTED, and the appeal is DISMISSED.

Subject to 13 C.F.R. § 134.409(c), this is the final decision of the Small Business Administration. *See* 15 U.S.C. § 637(a)(9)(D); 13 C.F.R. § 134.409(a).

RICHARD S. ARKOW
Administrative Law Judge