

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

IN THE MATTER OF:

NSN, LLC

Petitioner

SBA No. BDP-338

Decided: January 14, 2010

**ORDER GRANTING MOTION FOR SUMMARY DECISION<sup>1</sup>**

On September 4, 2009, the U.S. Small Business Administration (SBA) terminated NSN, LLC (Petitioner) from the 8(a) Business Development (BD) program because Petitioner: failed to maintain its eligibility for 8(a) BD program participation; failed to make required submissions to SBA in a timely manner; and materially breached the terms of its participation agreement.

Petitioner appealed the termination on October 13, 2009. Petitioner's owner concedes he forgot to file Petitioner's 2008 annual documents with SBA. Petitioner's owner explains he did not receive SBA's warning letters or notice of intent to terminate until September 22, 2009 because his office building has multiple tenants and the receptionist refused mail addressed to Petitioner that required a signature. Petitioner's owner asserts he only discovered SBA's correspondence when he was searching for other mail. Petitioner requests reinstatement upon the filing of the delinquent forms and documents.

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) BD program is supported in the record, reasonable, and not arbitrary, capricious, or contrary to law.

**I. SBA's Motion to Dismiss or for Summary Decision**

On November 25, 2009, the SBA moved to dismiss for lack of jurisdiction or, in the alternative, for summary decision.

SBA argues Petitioner's appeal does not state any facts that refute SBA's grounds for termination and fails to assert any evidence that SBA's determination was arbitrary, capricious, or contrary to law. SBA asserts Petitioner admits that it is delinquent in submitting its annual

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<sup>1</sup> 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.

review documentation and that Petitioner explicitly states that the “appeal is not based on any deficiency on the part of the SBA.” SBA Motion, at 7 (quoting Appeal Petition).

Moreover, SBA argues Petitioner’s appeal is based on Petitioner’s building receptionist’s mishandling of Petitioner’s mail. SBA states this is not a dispute of material fact in the SBA’s decision to terminate Petitioner from the 8(a) BD program. SBA presents signed certified mail receipts demonstrating SBA’s correspondence was successfully delivered to Petitioner’s current business and SBA cites *Matter of FSH Enterprises d/b/a Enviroscape Constructors*, SBA No. BDP-289 (2008) (citing *Jones v. Flowers*, 547 U.S. 220, 238 (2006)), to support its contention that Petitioner bears the responsibility of ensuring staff properly deliver the mail once the mail arrives at the business.

SBA argues the appeal should be dismissed or that SBA is entitled to judgment as a matter of law. SBA asserts it acted reasonably in determining it had good cause to terminate Petitioner from the 8(a) BD program based on Petitioner’s failure to submit required documentation.

Petitioner did not respond to SBA’s motion to dismiss or for summary decision.

## 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) BD program for good cause. 13 C.F.R. § 124.303(a). Good cause includes: a failure to maintain eligibility for 8(a) BD program participation, 13 C.F.R. § 124.303(a)(2); a pattern of failure to make required submissions to SBA in a timely manner, 13 C.F.R. § 124.303(a)(7); and materially breaching the terms of the participation agreement, 13 C.F.R. § 124.303(a)(19).

The SBA has an affirmative responsibility to enforce the regulations governing the 8(a) BD program. These regulations are designed to ensure that only eligible business concerns are admitted into and remain in the 8(a) BD program. This ensures that public funds are administered as intended by the Small Business Act, that is, only small businesses owned, controlled, and managed by socially and economically disadvantaged individuals receive the benefits of the 8(a) BD program. This requires the SBA to rigorously and reasonably enforce 8(a) BD program requirements. Failure to do so would be a breach of the public trust.

Recipients of the benefits of the 8(a) BD program bear responsibility for timely complying with the SBA’s regulations. This is necessary so the SBA can carry out its responsibility to protect the public’s interest.

The record evidences SBA provided multiple informal and formal opportunities for Petitioner to satisfy its submission requirements. Yet Petitioner failed to timely respond to these requests.

Petitioner blames its failure to file SBA's required documents on forgetfulness and an inept building receptionist. However, regardless of whether a receptionist misplaced SBA correspondence, and I note that four different individuals signed the certified mail receipts for the four letters sent by SBA, Petitioner is still responsible for meeting 8(a) BD program requirements.

The SBA could not determine whether Petitioner remained eligible for the 8(a) BD program because of Petitioner's failure to respond to the SBA's requests. In order for an 8(a) BD program participant to remain in the 8(a) BD program, it must continue to meet all 8(a) eligibility requirements, 13 C.F.R. § 124.112(a), and annually submit certain documents to the SBA, 13 C.F.R. §§ 124.112(b), 124.403. The repeated failures to respond in this case amount to a pattern of failure to make required submissions or responses to the SBA in a timely manner, which is a ground for termination. 13 C.F.R. § 124.303(a)(7).

Petitioner's assertion that its failure to file SBA's required documents was the result of forgetfulness and a building receptionist's mishandling of mail does not raise a defense to the grounds for termination. Accordingly, no genuine issue of material fact exists because Petitioner acknowledges it failed to file required documents. 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).

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BRENDA P. MURRAY  
Administrative Law Judge