

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

IN THE MATTER OF:

Floyd D. Townsend & Associates

Petitioner

SBA No. BDP-339

Decided: January 27, 2010

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

On September 3, 2009, the U.S. Small Business Administration (SBA) terminated Floyd D. Townsend & Associates (Petitioner) from the 8(a) Business Development (BD) program because Petitioner: failed to maintain its eligibility for 8(a) BD program participation and failed to make required submissions to SBA in a timely manner.

Petitioner appealed the termination on November 5, 2009. Petitioner states that this was the first year documentation was required to be submitted electronically. Petitioner indicates it was unable to timely submit required documents due to system malfunctions. Petitioner also asserts it did not receive SBA's notice of intent to terminate. Petitioner explains SBA's notice of intent to terminate was misaddressed because Petitioner moved to a larger suite in 2006. Petitioner also attributes mail not being received on the inconsistent mail system at the office building where it is located. Based on these facts, Petitioner argues SBA's determination to terminate is arbitrary, capricious, and contrary to law and that SBA has not demonstrated adequate evidence exists that protection of the government interest requires suspension. Petitioner requests reinstatement in the 8(a) BD program.

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

I conclude 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 January 4, 2010, SBA moved to dismiss for lack of jurisdiction or, in the alternative, for summary decision.

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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.

SBA argues Petitioner's appeal does not state any facts that refute SBA's grounds for termination and SBA is entitled to a decision in its favor as a matter of law. SBA Motion, at 1. SBA asserts Petitioner concedes that it failed to submit its annual review documentation in a timely manner. *Id.* at 4-5, 8. SBA argues Petitioner's appeal is based on allegations of technical difficulties, misaddressed mail, and mishandling of Petitioner's mail by Petitioner's office building. *Id.* at 4-8. SBA states these are not genuine issues of material fact in the SBA's decision to terminate Petitioner from the 8(a) BD program. *Id.* at 7-9.

SBA states Petitioner blames technical difficulties for its failure to timely file but Petitioner provides no proof that it attempted to file using another method, such as mailing a hard copy. *Id.* at 4. Additionally, SBA asserts Petitioner did not contact SBA to address any technical difficulties until after Petitioner's submissions were due. *Id.*

SBA also refutes Petitioner's allegations of misaddressed and mishandled mail. *Id.* at 5-6, 8. SBA argues Petitioner did not take the proper steps to provide SBA with notice of a new suite address. *Id.* at 6. SBA demonstrates Petitioner did receive SBA's correspondence. *Id.* at 4-6, Ex. B, Ex. C, Ex. G. SBA presents signed certified mail receipts for two letters, dated March 20, 2009 and May 13, 2009, which reminded Petitioner to submit its 2008 annual review information and warned Petitioner that failure to submit the information by the due date is cause for termination. *Id.* at 2, 4-5, Ex. B, Ex. C. SBA also presents a signed certified mail receipt for the termination letter, dated September 3, 2009. *Id.* at 3-5, Ex. G. SBA demonstrates that the March 20, 2009 and May 13, 2009 letters and the termination letter, which Petitioner received, used the same address as the notice of intent to terminate, dated July 15, 2009. *Id.* at 5-6, Ex. B, Ex. C, Ex. G. Additionally, SBA cites *Matter of FSH Enterprises d/b/a Enviroscope 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. *Id.* at 6.

Moreover, SBA argues Petitioner fails to assert any evidence that Petitioner's termination was arbitrary, capricious, or contrary to law and Petitioner's lack of awareness of SBA's notice of intent to terminate does not impact SBA's determination. *Id.* at 7-9. SBA asserts the appeal should be dismissed or that SBA is entitled to judgment as a matter of law. *Id.* at 3-9. SBA states 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. *Id.* at 9.

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), and a pattern of failure to make required submissions to SBA in a timely manner, 13 C.F.R. § 124.303(a)(7).

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 notified Petitioner of the need to submit annual update information and warned Petitioner that failure to submit its annual update information by the due date is cause for termination. The record demonstrates SBA even extended the deadline for Petitioner's submissions. Despite the deadline extension, Petitioner failed to timely satisfy its 8(a) BD program submission requirements.

Petitioner cites technical difficulties and failure to receive SBA's notice of intent to terminate. However, Petitioner provides no evidence that it attempted to resolve the technical difficulties prior to the due date for its submissions and SBA's notice of intent to terminate was issued after Petitioner failed to submit its 8(a) BD program annual review information. As a participant in the 8(a) BD program Petitioner is responsible for meeting 8(a) BD program requirements and, here, Petitioner did not comply with those requirements.

Due to Petitioner's failure to respond to SBA's requests for annual update information, SBA could not determine whether Petitioner remained eligible for the 8(a) BD program. 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) BD program 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 technical difficulties and lack of notice of SBA's intent to terminate 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