

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

IN THE MATTER OF:

Dominican Services, Inc.,

Petitioner

SBA No. BDP-363

Decided: July 26, 2010

**ORDER DENYING PETITION FOR RECONSIDERATION**

**I. Background**

**A. Prior Proceedings**

On February 25, 2010, the U.S. Small Business Administration (SBA) terminated Dominican Services, Inc. (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.

On April 8, 2010, Petitioner appealed SBA's termination to the Office of Hearings and Appeals (OHA). Petitioner noted the “unprecedented collapse in the construction industry” and Petitioner's owner stated personal events related to a family member's health impacted his attentiveness to Petitioner.

On May 24, 2010, SBA moved to dismiss this appeal for lack of jurisdiction because the appeal petition did not allege facts that, if proven true, would warrant reversal of the SBA determination. 13 C.F.R. §§ 134.211, 134.405(a)(1).

On June 29, 2010, thirty-six days after SBA moved to dismiss the case for lack of jurisdiction, OHA granted SBA's motion to dismiss. OHA noted Petitioner had not responded to SBA's motion to dismiss and cited 13 C.F.R. § 134.211(c), which provides that if a non-moving party fails to file and serve a response to a motion within twenty days after the service of the motion, the non-moving party is deemed to have consented to the relief sought.

On July 1, 2010, Petitioner objected to SBA's motion to dismiss. Petitioner stated the Small Business Act was created to aid, counsel, and protect the interests of small business concerns. Petitioner argued SBA's decision to terminate Petitioner's participation in the 8(a) BD program is contrary to the law and OHA does have jurisdiction. Petitioner noted 13 C.F.R. § 124.303(a) indicates “SBA may terminate the participant” and argued “may” is permissive, not

mandated. Petitioner asserted, in the absence of a mandate to terminate, OHA has jurisdiction to find SBA's decision arbitrary.

### B. Petitioner's Petition for Reconsideration

On July 16, 2010, Petitioner filed a petition for reconsideration. Petitioner seeks reconsideration based on the fact that Petitioner's copy of SBA's motion to dismiss for lack of jurisdiction was defective because the motion was not signed, Petitioner states it was awaiting a signed copy when it elected to respond to the incomplete copy.

### C. SBA's Response

On July 20, 2010, SBA opposed Petitioner's petition for reconsideration, SBA argues SBA's counsel's failure to sign Petitioner's copy of SBA's motion to dismiss was not intended to be false or to defeat Federal Rule of Civil Procedure 11. SBA states Petitioner's copy of the motion was a true and accurate copy of the motion filed with OHA, except for the fact Petitioner's copy was unsigned. SBA asserts Petitioner's copy showed a date-stamp from OHA putting Petitioner on notice that the motion had been filed. SBA states Petitioner's objection to SBA's motion to dismiss does not mention confusion regarding SBA's unsigned motion to dismiss. Additionally, SBA's counsel notes that she and Petitioner have been in frequent contact throughout the litigation, including after SBA filed its motion to dismiss, and Petitioner did not raise concerns about awaiting a signed copy of the motion to dismiss.

## II. Discussion

### A. Jurisdiction and Standard of Review

A party requesting reconsideration of an OHA decision must serve the petition for reconsideration within twenty days after service of the written decision. 13 C.F.R. § 134.227(c). Petitioner filed the instant petition for reconsideration within twenty days of the service of the decision in *Matter of Dominican Services, Inc.*, SBA No. BDP-359 (2010). Accordingly, this matter is properly before OHA for decision.

SBA's regulations provide that OHA may grant a petition for reconsideration upon a “clear showing of an error of fact or law material to the decision.” 13 C.F.R. § 134.227(c). This is a rigorous standard, A petition for reconsideration must be based upon manifest error of law or mistake of fact and is not intended to give an additional opportunity for an unsuccessful party to argue its case before OHA, *Size Appeal of Env'tl. Prot. Certification Co., Inc.*, SBA No. SIZ-4935, at 2 (2008) (citing 13 C.F.R. § 134.227(c); *Bishop v. United States*, 26 Cl. Ct. 281, 286 (1992)).

### B. Analysis

Petitioner's petition for reconsideration does not demonstrate a “clear showing of an error of fact or law material to the decision,” 13 C.F.R. § 134.227(c).

In *Matter of Dominican Services, Inc.*, SBA No. BDP-359 (2010), SBA moved to dismiss

Petitioner's appeal for lack of jurisdiction because the appeal petition did not allege facts that, if proven true, would warrant reversal of the SBA determination. 13 C.F.R. §§ 134.211, 134.405(a)(1). The rules of procedure governing OHA cases state that if a non-moving party fails to file and serve a response to a motion within twenty days after the service of the motion, the non-moving party is deemed to have consented to the relief sought. 13 C.F.R. § 134.211(c). Petitioner did not respond within twenty days and OHA granted SBA's motion to dismiss,

Petitioner's petition for reconsideration is based on the fact Petitioner's copy of SBA's motion to dismiss was unsigned.

Federal Rule of Civil Procedure 11(a) states:

Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

SBA's counsel properly filed a signed motion to dismiss with OHA. The pleading served on Petitioner without any signature is a technical defect and not a substantial violation of Rule 11. The law is clear that a pleading shall not be stricken unless the pleader fails to sign it promptly after being alerted to the defect. *Edwards v. Groner*, 116 F.R.D. 578, 579-80, (D. Virgin Islands 1987)(citations omitted). Petitioner was the only one in a position to notify OHA or SBA to SBA's counsel's failure to sign Petitioner's copy of SBA's motion to dismiss. Petitioner did not alert OHA or SBA's counsel to the error within the twenty-day deadline for filing a response or in Petitioner's untimely objection to SBA's motion.

Petitioner's receipt of an unsigned copy of SBA's motion to dismiss does not establish a basis to grant Petitioner's petition for reconsideration. OHA was unaware of Petitioner's receipt of an unsigned copy of SBA's motion when OHA issued *Matter of Dominican Services, Inc.*, SBA No. BDP-359 (2010), and Petitioner's receipt of an unsigned copy of SBA's motion does not demonstrate a “clear showing of an error of fact or law material to the decision.” 13 C.F.R. § 134.227(c).

### III. Conclusion

Petitioner does not allege any clear error or mistake in OHA's decision. Rather, Petitioner identifies a technical defect which could have been remedied if Petitioner had brought it to the attention of OHA or SBA when Petitioner's appeal was pending. Petitioner's petition for reconsideration does not meet the high burden established in 13 C.F.R. § 134.227(c) and is DENIED.

BRENDA P. MURRAY  
Administrative Law Judge