

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

IN THE MATTER OF:

C.J. Hearne Construction Co.,

Petitioner

SBA No. BDP-449

Decided: November 2, 2012

**RULING AND ORDER ON MOTION TO DISMISS FOR LACK OF JURISDICTION, OR IN  
THE ALTERNATIVE, FOR SUMMARY DECISION**

Currently before the Court is the Small Business Administration's ("SBA") *Motion to Dismiss for Lack of Jurisdiction, or in the Alternative, for Summary Decision*, dated August 23, 2012 ("Motion"). As the basis for the *Motion*, the SBA asserts that the Court does not have jurisdiction over the matter as the *Appeal Petition* filed by C.J. Hearne Construction Company ("Petitioner"), "does not allege any facts that, if taken as true, would warrant the reversal or modification of SBA's decision to terminate Petitioner from the 8(a) Program. . . ." Petitioner was afforded the opportunity to respond to the *Motion* but failed to do so.<sup>1</sup>

**APPLICABLE LAW**

**The 8(a) Program.** The 8(a) Business Development program ("8(a) program") was developed to assist eligible small disadvantaged business concerns competing in the American economy through business development 13 C.F.R. § 124.1. The SBA accepts eligible concerns into the 8(a) Business Development program ("8(a) program") for a period of nine years so long as the concern maintains its program eligibility. 13 C.F.R. § 124.2. However, the SBA may terminate the participation of a concern prior to the expiration of the program term for good cause. 13 C.F.R. § 124.303. Included in the definition of "good cause" is the "[f]ailure by the concern to pay or repay significant financial obligations owed to the Federal Government." 13 C.F.R. § 124.303(a)(11).

**Standard of Review.** The Court is authorized to review an SBA determination terminating a concern from the 8(a) program upon timely appeal by the concern. 13 C.F.R. § 134.218(a); 15 U.S.C. § 637(a)(9)(A). Jurisdiction in termination cases is limited to whether the SBA's determination was arbitrary, capricious, or contrary to law. 13 C.F.R. § 134.406(b);

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<sup>1</sup> Petitioner's failure to respond to the *Motion* constitutes Petitioner's consent to the *Motion* being granted. 13 C.F.R. § 134.211(c); *see also Matter of United Medical Supplies*, SBA No. BDP-402 (2011); *Matter of J. Millennium Enterprises, Inc.*, SBA No. BDP-270 (2010).

*Matter of Accent Services Company, Inc.*, SBA No. BDP-421 (2011). However, the Court must decline to accept jurisdiction over a matter if “[t]he appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination. . . .” 13 C.F.R. § 134.405(a)(1); *Matter of Science & Technology Solutions, Inc.*, SBA No. BDP-329 (2009).

### DISCUSSION

On May 24, 2012, the Small Business Administration (“SBA”) issued a Termination Letter terminating C.J. Hearne Construction Company (“Petitioner”) from the SBA’s 8(a) Business Development program (“8(a) program”). The SBA cited as a reason for Petitioner’s termination, “[f]ailure by the concern to pay or repay significant financial obligations owed to the Federal Government.”<sup>2</sup> The alleged financial obligation arose from an outstanding loan owed to the SBA with a principal balance of \$47,576.71.

On July 9, 2012, the Petitioner filed an *Appeal Petition*, which does not deny the existence of this debt to the SBA. Rather, Petitioner explains that “due to the downturn of the construction industry . . . Petitioner was unable to generate the revenue and have sufficient cash flow in the past several years to service the loan as planned.” Petitioner also cites its owner’s “personal medical emergency” and explains that “Petitioner would like to rectify the loan situation by offer [sic] a repayment plan. . . .”

Petitioner’s assertions, even if they are accepted as being true, fail to rebut the SBA’s claim that Petitioner owes an outstanding debt to the federal government. In fact, Petitioner’s offer to enter into a repayment plan only confirms the SBA’s claim that Petitioner has not yet repaid its substantial financial obligation which, by regulation, constitutes good cause for Petitioner’s termination from the 8(a) program. *See Matter of Brushworks Unlimited*, SBA No. BDP-138 (2000 (noting the petitioner’s argument that it has made diligent, good-faith efforts to satisfy its obligation to the federal government constitutes both a concession that the obligation remains unpaid, and an admission to the basis for the termination)).

Thus, the Court finds that it lacks jurisdiction over Petitioner’s appeal, because the *Appeal Petition* fails to allege facts that, if true, would warrant a reversal or modification of the SBA’s decision to terminate Petitioner from the 8(a) program. *See Matter of Dominican Services, Inc.*, SBA No. BDP-359 (2010), *reh’g denied*, SBA No. BDP-363 (2010), finding the petitioner’s appeal citing the “unprecedented collapse in the construction industry” and the petitioner’s owner’s “personal events related to a family member’s health” were insufficient as facts warranting the reversal of the SBA’s determination to terminate the petitioner from the 8(a)

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<sup>2</sup> The Termination Letter also cited “[a] pattern of failure to make required submissions or responses to SBA in a timely manner, including a failure to provide required financial statements, requested tax returns, reports, updated business plans, information requested by SBA’s Office of Inspector General, or other requested information or data within 30 days of the date of request.” However, the SBA has indicated that since the issuance of the Termination Letter, Petitioner has submitted the delinquent information requested by SBA in its 8(a) Annual Review. As such, the SBA proceeds with termination based solely on Petitioner’s alleged failure to repay its significant financial obligation to the Federal Government.

program); General Moving Company, Inc., SBA No. BDP-416 (2011) (finding the petitioner's unpaid federal taxes in the amount of \$36,997.47 to be a ““substantial” sum for the purposes of termination).

Accordingly, the SBA's *Motion to Dismiss for Lack of Jurisdiction, or, in the Alternative, for Summary Decision* is **GRANTED**. Petitioner's appeal is **DISMISSED**.

So **ORDERED**,  
J. JEREMIAH MAHONEY  
Chief Administrative Law Judge (Acting)

**Notice of Finality.** This decision on appeal constitutes a final agency decision that is binding on the parties. 13 C.F.R. § 134.409(a). However, within 20 days of its issuance, the court may reconsider the decision if there is a clear showing of an error of fact or law material to the decision. 13 C.F.R. § 134.409(c).