

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

IN THE MATTER OF:

Women's Venture Fund

Petitioner

SBA No. WBC-102

Decided: February 5, 2009

APPEARANCES

Amy J. Metzger, Esq., Dewey & LeBouef LLP, New York, New York, for Petitioner.

Kevin R. Harber, Esq., Office of General Counsel, Small Business Administration, Washington, D.C., for the Agency.

FINAL DECISION

ARKOW, Administrative Law Judge:

On November 12, 2008, Petitioner Women's Venture Fund (Petitioner), appealed Respondent Small Business Administration's (SBA) suspension of Women's Business Center (WBC) awards to Petitioner.

On January 12, 2009, the SBA filed its answer and the appeal file. The SBA explained the reasons for finding Petitioner was neither programmatically nor financially viable. The SBA also argued that suspension was necessary to protect taxpayer funds until an audit was completed and the SBA "was able to make a more holistic and long term determination as to how it should proceed with regard to Petitioner's WBC awards."

On January 22, 2009, I ordered the SBA to file and serve a status report indicating whether (1) the SBA had suspended the relevant WBC awards to Petitioner, and (2) the SBA had completed its examination report or when it anticipated the report would be completed. If the SBA had suspended Petitioner's WBC awards, I further ordered the SBA to show cause why Petitioner's suspension should not be lifted given that the Office of Hearings and Appeals (OHA) had not yet issued its final agency decision.

The order explained that Appendix B to Petitioner's Cooperative Agreement states that "[t]he period of suspension will begin on the date of the final Agency decision affirming the intent to suspend the Cooperative Agreement and will last no longer than 6 months."

Appendix B also states that “OHA’s decision on the merits is the final agency decision and not subject to any further review or appeal within the Administration.”

On January 29, 2009, the SBA filed a status report stating Petitioner’s two WBC awards had been suspended as of the date of the SBA’s September 26, 2008 Notice of Suspension. In addition, the SBA stated it has completed its financial examination report but has refrained from taking any action on that report while the current proceeding is pending before OHA.

The SBA did not respond to the order to show cause why Petitioner’s suspension should not be lifted. Nor did the SBA posit an explanation why it was not responding. Instead, SBA counsel stated that “[t]his concludes the [SBA’s] response to the Judge’s Order to Show Cause of January 22, 2009.”

On February 3, 2009, I then ordered the SBA to explain why it did not respond to the Order to Show Cause and state whether its suspension of Petitioner complied with its Cooperative Agreement with Petitioner given that OHA had not issued a final agency decision. On February 4, 2009, the SBA responded that it had already briefed this issue and “did not understand that the Judge truly desired for the Agency to again address the merits of its decision to suspend the two Cooperative Agreements with Petitioner.” The SBA then reiterated its answer to the appeal.

The SBA did not, however, address the provision in Appendix B that the period of suspension will begin on the date of the final agency decision and that OHA’s decision is the final agency decision. The SBA states Petitioner’s suspension began on September 26, 2008. Because there has been no final agency decision, Petitioner’s suspension was imposed contrary to the terms of Appendix B.

Thus, because OHA has not issued a final agency decision, Petitioner should not have been suspended.

Accordingly, the SBA’s suspension of WBC awards to Petitioner is LIFTED. This is the final decision of the Small Business Administration. *See* Appendix B, § 3(d) (“OHA’s decision on the merits is the final agency decision and not subject to any further review or appeal within the Administration.”).

RICHARD S. ARKOW
Administrative Law Judge