Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

MOTION FOR RECONSIDERATION DENIED: July 16, 2001

GSBCA 15488-C(15037-C)-REIN-R

ROI INVESTMENTS,

Applicant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

John Ammerman of ROI Investments, Marco Island, FL, appearing for Applicant.

Kevin J. Rice, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **NEILL**, and **HYATT**.

DANIELS, Board Judge.

The applicant in a case involving Equal Access to Justice Act costs, ROI Investments v. General Services Administration, GSBCA 15488-C(15037-C)-REIN, 01-1 BCA ¶ 31,352, moves for reconsideration of the Board's decision. We deny the motion.

Under the Board's Rules of Procedure, reconsideration may be granted "for any of the reasons stated in Rule 133(a)[1] and the reasons established by the rules of common law or

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[1]Rule 133(a) states these reasons: "(1) Newly discovered evidence which could not have been earlier discovered, even through due diligence; (2) Justifiable or excusable mistake, inadvertence, surprise, or neglect; (3) Fraud, misrepresentation, or other misconduct of an adverse party; (4) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application; (5) The decision is void, whether for lack of jurisdiction or otherwise; and (6) Any other ground justifying relief from the (continued...)

equity applicable as between private parties in the courts of the United States." Rule 132(a) (48 CFR 6101.32(a) (2000)). However, "[a]rguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration." Id. Reconsideration is also inappropriate for the purposes of making arguments more sophisticated, introducing issues which could have been raised earlier but were not, or introducing evidence which a party had in its possession but failed to present. Twigg Corp. v. General Services Administration, GSBCA 14639-R, 99-1 BCA ¶ 30,310, at 149,876; Universal Development Corp. v. General Services Administration, GSBCA 11252-R, 93-2 BCA ¶ 25,845.

The applicant, ROI Investments (ROI), does not identify which of the reasons stated in Rule 133(a) or applicable in the courts might be justification for its motion. The applicant asserts that the Board acted "contrary to Supreme Court directive," Letter from ROI to Board (Mar. 22, 2001), but did not say which directive we might have violated. ROI also says that the Board "errored [sic] in its application of EAJA standards," id., but it does so only by inappropriately rearguing points already made and introducing issues which could have been raised earlier but were not. There is no basis for granting the motion.

In the interest of ensuring that ROI understands our reasoning as to matters it raises now, however, we comment briefly on those matters.

The motion focuses on the portions of ROI's claim on which we found the Government's positions substantially justified, and also on our calculations regarding the percentage of the claim which stemmed from these conclusions. Six separate matters are addressed.

First, the applicant contends that the calculations are flawed in that they do not count as an issue on which ROI prevailed "the $32,596.70 in rent ROI recovered from its payment to Community National Bank," which matter "was caused by the misconduct of GSA [the respondent, General Services Administration]." Motion for Reconsideration at 4 (unnumbered). As we explained in the decision underlying the cost application, GSA paid all rent due under the contract between that agency and ROI, and the dispute between ROI and the bank -- which was resolved in state court, not here -- did not relate to rent. ROI Investments v. General Services Administration, GSBCA 14402, 99-1 BCA ¶ 30,353, at 150,115, reconsideration denied, 99-2 BCA ¶ 30,508, at 150,635, aff'd, ROI Investments v. Barram, No. 00-1095 (Fed. Cir. Oct. 12, 2000). There is no conceivable reason for counting this matter as one on which ROI prevailed before the Board, much less that the Government's position on the issue was not substantially justified.

Second, according to the applicant, we should have included, as a matter on which the Government's position was not substantially justified, the adjustment of rental payments due to increases in utility costs. ROI says that it had to prosecute its claim to secure this increase in payments. Motion for Reconsideration at 5. The contracting officer's decision clearly concludes that ROI was entitled to the payments, however, and ROI did not challenge that

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(...continued)
operation of the decision or order." 48 CFR 6101.33(a).

portion of the decision in its appeal to the Board. See Appeal File, GSBCA 14402, Exhibit 147 at 3.

The third issue as to which the applicant contends that the Government's position was not substantially justified concerns adjustments in the rental rate due to increases in taxes on the leased property. ROI claimed additional payments consequent to such increases during several years. We found that GSA's determination not to make these payments was substantially justified because it was consistent with existing, relevant case law. ROI, 01-1 BCA at 154,825-26. ROI maintains that the determination was not justified because the agency had at one time agreed to make the payments, and because it made similar payments under similar circumstances to the bank which purchased the property after ROI's mortgage holder had foreclosed on the mortgage. Motion for Reconsideration at 5-6. Even if ROI's assertions are true, this would not have any impact on our reason for finding GSA's position substantially justified. The law provided GSA good cause for not making the payments to ROI.

The fourth issue noted by the applicant is labeled "amortized costs." Motion for Reconsideration at 6. The argument here is confusing. It seems to be that because GSA had agreed to pay ROI for some build-out improvements through increased rental payments, and actually made such payments to the bank which succeeded ROI as owner of the property in question, the agency effectively conceded that those payments should have been made to ROI. This argument is not persuasive. In paying the successor owner, GSA simply fulfilled its contractual obligations. The agency had no responsibility to pay twice for the same improvements, so its decision to do so in part through a settlement agreement does not show that the Government's position on the matter was not substantially justified.

The fifth item addressed in the motion is GSA's payment through settlement for improvements for which a lump-sum payment was required by contract. Motion for Reconsideration at 7. On this matter, we also concluded that the Government's position was substantially justified. ROI did not produce, until oral discovery, any evidence as to the appropriate amount of payment. It was reasonable for GSA not to make payment until it had some indication of the amount in question.

The sixth and last item consists of a recalculation of the percentage of the claim on which the Government's position was not substantially justified. ROI suggests that the correct percentage is ninety-five percent. While the revised calculations are imaginative, there is no rational basis for making them.

Decision

The **MOTION FOR RECONSIDERATION** is **DENIED**.

STEPHEN M. DANIELS

Board Judge

We concur:

EDWIN B. NEILL
Board Judge

CATHERINE B. HYATT
Board Judge