

CLIENT ALERT

Stop in the Name of Fraud?: After-the-Fact Fraud Allegation Does Not Divest ASBCA of Jurisdiction

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In *Mountain Movers/Ainsworth-Benning, LLC*, the Armed Services Board of Contract Appeals addressed whether the Board retains jurisdiction over an appeal of a contractor's claim when a contracting officer (CO) rescinds a final decision based upon a contractor's alleged fraud. During the appeal, the CO rescinded the final decision, asserting that the contractor had previously made misrepresentations related to the contract. The CO issued a new final decision stating that the contractor's alleged misrepresentation divested the CO of authority to decide the claim, and cited to FAR 33.210(b), which states that COs do not have the authority to settle, compromise, pay, or adjust any claim involving fraud. The Government then moved to dismiss the appeal for lack of jurisdiction, arguing that there was no longer an appealable final decision. The Board rejected the Government's argument, and held that it possessed jurisdiction over the prior final decision, which had decided the claim on the merits and was appealed before the CO's rescission. The Board also noted that the Contract Disputes Act may divest a CO of authority to resolve claims when the alleged fraud relates to the claim, but not when there is just a belief of possible fraud during contract performance. This decision is consistent with recent Board case law finding jurisdiction over appeals when there is an allegation that the contractor committed fraud during contract performance, and makes clear that the Government cannot divest the Board of jurisdiction simply by making allegations of performance fraud either *post hoc* or unrelated to the "claim."

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