

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of Racer Machinery International

ASBCA No. 64165 (Feb. 27, 2026) · No. ASBCA No. 64165 · Decided February 27, 2026

SUMMARY

The Armed Services Board of Contract Appeals dismissed Racer Machinery International as the appellant because it was a subcontractor without privity of contract with the government. The Board substituted the Canadian Commercial Corporation, the prime contractor, as appellant and held that its appeal was not time-barred because the government’s misleading notice of appeal rights prevented the 90-day limitations period from being triggered.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Armed Services Board of Contract Appeals                                                                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Mark A. Melnick; Owen C. Wilson; J. Reid Prouty                                                                                                                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | Armed Services Board of Contract Appeals                                                                                                                                                                                                                                                                                                                                                                                        |
| DECIDED               | February 27, 2026                                                                                                                                                                                                                                                                                                                                                                                                               |
| DOCKET                | ASBCA No. 64165                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Racer Machinery International appealed a contracting officer's termination for default and sought conversion to a termination for convenience. The government moved to dismiss for lack of jurisdiction because Racer was a subcontractor lacking privity with the government. During briefing, the Canadian Commercial Corporation, the prime contractor, filed a letter and complaint seeking to adopt and pursue the appeal. |
| STANDARD OF REVIEW    | Jurisdictional requirements and the timeliness of an appeal under the Contract Disputes Act were reviewed as matters of law.                                                                                                                                                                                                                                                                                                    |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                                                                                                                                                                                                                       |
| PARTIES               | Racer Machinery International, Canadian Commercial Corporation v. United States                                                                                                                                                                                                                                                                                                                                                 |

TOPICS

- government contracts
- contract disputes act
- appellate jurisdiction
- administrative law
- appellate procedure

## PRACTICE AREAS

government contracts

contract disputes act

administrative law

appellate procedure

## QUESTIONS PRESENTED

1. Whether a subcontractor lacking privity of contract with the government may appeal a contracting officer's decision to the Armed Services Board of Contract Appeals.
2. Whether the prime contractor's appeal was untimely when the contracting officer's decision provided misleading appeal-rights information and the prime contractor demonstrated detrimental reliance on that notice.
3. Whether the Canadian Commercial Corporation should be substituted as the appellant after filing its own letter and complaint.

## HOLDINGS

1. A subcontractor that is not in privity of contract with the government is not a contractor entitled to appeal under the Contract Disputes Act and therefore lacks jurisdiction to bring the appeal in its own name.
2. The 90-day limitations period was not triggered because the contracting officer's decision misleadingly addressed both CCC and Racer as defaulting parties and directed an ambiguous appeal instruction to "you," and CCC demonstrated detrimental reliance on that defective notice.
3. CCC was properly substituted as appellant because it filed its own notice of appeal and complaint, and it was the contractor entitled to invoke the Board's jurisdiction.

## KEY QUOTATIONS

*"Only CCC was in privity of contract with the government under the prime contract, with Racer only serving as a subcontractor to CCC." (at 2)*

*"A contracting officer's final decision that does not give the contractor adequate notice of its appeal rights is defective and therefore does not trigger the running of the limitations period." (at 3)*

*"Accordingly, we hold the 90-day limitation period for CCC to appeal was never triggered." (at 4)*

## FACTUAL BACKGROUND

The Defense Logistics Agency awarded a firm-fixed-price contract to the Canadian Commercial Corporation for a machining center, with the contract requiring CCC to subcontract all work to Racer Machinery International. The contracting officer sent show-cause and termination-for-default letters to both entities, repeatedly suggesting that Racer had failed to perform and instructing the recipients that "you" could appeal within 90 days. Racer appealed, while CCC later asserted that the government's communications caused it to believe Racer could pursue the appeal and that CCC itself was not required to file within the 90-day period.

## PROCEDURAL HISTORY

The Defense Logistics Agency awarded the prime contract to the Canadian Commercial Corporation, which subcontracted all work to Racer Machinery International. After the contracting officer terminated the contract for default, Racer filed a notice of appeal within 90 days of the termination decision. The Board dismissed Racer as an improper appellant, deemed CCC's July 10, 2025, letter to be its own notice of appeal, substituted CCC as appellant, and held that the defective appeal-rights notice prevented the 90-day limitations period from beginning because CCC detrimentally relied on the notice.

#### DISPOSITION

other

#### REMAND INSTRUCTIONS

Racer Machinery International is dismissed as appellant for lack of jurisdiction. The Canadian Commercial Corporation is substituted as appellant, and the Recorder's Office is directed to substitute CCC for Racer in the appeal caption.

#### CASES CITED

- Canadian Commercial Corp., ASBCA No. 47888, 97-2 BCA ¶ 29,133 at 144,945
- Winter v. FloorPro, Inc., 570 F.3d 1367, 1370-73 (Fed. Cir. 2009)
- Cosmic Constr. Co. v. United States, 697 F.2d 1389 (Fed. Cir. 1982)
- Decker & Co. v. West, 76 F.3d 1573, 1579-80 (Fed. Cir. 1996)
- Pathman Constr. Co. v. United States, 817 F.2d 1573, 1578 (Fed. Cir. 1987)
- Mansoor Int'l Dev. Servs., ASBCA No. 58423, 14-1 BCA ¶ 35,742 at 174,926-27
- Fla., Dep't of Ins. v. United States, 81 F.3d 1093, 1098 (Fed. Cir. 1996)