

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

2008-5104

HARPER/NIELSEN-DILLINGHAM BUILDERS, INC.,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of Federal Claims in 05-CV-269,  
Judge Nancy B. Firestone.

ON MOTION

Before GAJARSA, FRIEDMAN, and LINN, Circuit Judges.

LINN, Circuit Judge.

## ORDER

Harper/Nielsen-Dillingham Builders, Inc. moves for reconsideration of the court's order dismissing its appeal for failure to file a brief. The United States opposes.

Harper previously obtained extensions of time, until January 5, 2009, to file its brief. Having received no brief, the court dismissed Harper's appeal on January 29, 2009 for failure to file a brief. On February 6, 2009, 31 days after the brief due date, the court received a brief from Harper. Harper did not file a motion for reconsideration of the court's dismissal order until April 14, 2009, or 44 days after the dismissal order. Any motion for reconsideration was due within 14 days of the dismissal order. Fed. Cir. R. 45(a) (motion for reconsideration of clerk order dismissing appeal for failure to prosecute is due within 14 days of issuance of dismissal order).

In any event, "[i]t is well settled that a person is bound by the consequences of his representative's conduct, which includes both his acts and omissions." Rowe v. Merit Sys. Prot. Bd., 802 F.2d 434, 437 (Fed. Cir. 1986). See also Link v. Wabash Railroad Company, 370 U.S. 626, 633-635 (1962); Huston v. Ladner, 973 F.2d 1564, 1567 (Fed. Cir. 1992). The court has put counsel on notice that it will dismiss an appeal for failure to prosecute. Julien v. Zeringue, 864 F.2d 1572 (Fed. Cir. 1989) (failure to file a brief can be the basis for dismissal of a case). See also Fed. Cir. R. 45 (the court may dismiss an appeal for failure to follow the rules); Fed. Cir. R. 31(d) (the clerk is authorized to dismiss a case for failure to file the opening brief). Harper has not shown that the appeal should be reinstated.

Accordingly,

IT IS ORDERED THAT:

The motion is denied.

FOR THE COURT

**MAY -4 2009**

\_\_\_\_\_  
Date

cc: Richard W. Miller, Esq.  
Anna B. Eley, Esq.

s20

\_\_\_\_\_  
/s/ Jan Horbaly

Jan Horbaly  
Clerk

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

MAY -4 2009

JAN HORBALY  
CLERK