

GENERAL ELEVATOR COMPANY,
INC.

CONTRACT NO. V646C-1014

VABCA-3835

VA MEDICAL CENTER
UNIVERSITY DRIVE
PITTSBURGH, PENNSYLVANIA

Bernadine T. Harrity, Esq., Attorney at Law, Pittsburgh, Pennsylvania, for the Appellant.

Kenneth B. MacKenzie, Esq., Trial Attorney; Office of General Counsel, Washington D.C., for the Department of Veterans Affairs; *Phillipa L. Anderson, Esq.*, Deputy Assistant General Counsel; and *William E. Thomas, Jr., Esq.*, Assistant General Counsel, of counsel.

**ORDER OF DISMISSAL
(Without Prejudice)**

1. By Order, dated November 19, 1993, the Board suspended proceedings in this appeal pending the Government's evaluation of and direction concerning problems with elevator floors. At the same time, the Board provided for the convening of a telephonic Prehearing Conference on January 5, 1994, for the purpose of either setting the schedule to process this appeal to disposition or dismissing the appeal without prejudice pursuant to Board Rule 30.
2. In the telephonic prehearing conference, attended by the Board and counsel for the parties, conducted on January 5, 1994, it was represented to the Board that Appellant had submitted a proposal to resolve the elevator floor problem discussed in the Board's November 19th Order and that Appellant had also filed a "claim" for the estimated cost of its proposal. The Government has not yet responded to either Appellant's proposal or its "claim."
3. After discussion between the Board and the parties, it was determined that further proceedings in this appeal at this time would be fruitless until the Government makes a final determination regarding the elevator floors. Any disposition of Appellant's claim for payment in this appeal would effectively be meaningless because of the Government's current position that it will continue withholding contract funds pursuant to the contract terms against the estimated costs of resolving the floor problem.
4. For the foregoing reasons, the Board has determined that it would be inappropriate to continue these proceedings. Accordingly, pursuant to Board Rule 30, the appeal of General Elevator Company, Inc. under Contract No. V646C-1014, VABCA No. 3835, is hereby **DISMISSED** without prejudice to the appeal's subsequent restoration to the Board's docket. Unless either party or the Board acts within three years of the date of this Order to reinstate this appeal, as provided in Rule 30, this dismissal shall be deemed to be with prejudice without further notice from the Board.

5. The Board expects the Government to make its final determination concerning the elevator floor problem as expeditiously as possible in order to permit Appellant to file an appeal, if necessary, concerning such final determination and to permit the reinstatement of this appeal for disposition.

IT IS SO ORDERED

DATE: January 6, 1994

RICHARD W. KREMPASKY
Administrative Judge