THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: June 10, 2013

Sanctions Board Decision No. 58

Decision of the World Bank Group Sanctions Board denying a request for reconsideration of Sanctions Board Decision No. 54 (2012) (the "Original Decision"), as filed by the respondent entity in Sanctions Case No. 174 ("Respondent").

I. INTRODUCTION

1. The Sanctions Board met in a plenary session on December 5, 2012, at the World Bank's headquarters in Washington, D.C., to review a request for reconsideration filed by Respondent with regard to Sanctions Board Decision No. 54 (2012), by which the Sanctions Board debarred Respondent for one year for fraudulent practices in Sanctions Case No. 174. The Sanctions Board was represented by L. Yves Fortier (Chair), Marielle Cohen-Branche, Patricia Diaz Dennis, Catherine O'Regan, Denis Robitaille, and Randi Ryterman.

2. The Sanctions Board deliberated and reached its decision on the request for reconsideration based on the written record, which included:

i. the request for reconsideration submitted by Respondent to the Secretary to the Sanctions Board on October 17, 2012 (the "Request for Reconsideration" or "Request");

ii. comments on the Request for Reconsideration submitted by the World Bank Group's Integrity Vice Presidency ("INT") to the Secretary to the Sanctions Board on November 30, 2012 ("INT's Comments"); and

iii. the written record previously considered by the Sanctions Board in the original proceedings in Sanctions Case No. 174 and the Original Decision.

II. APPLICABLE STANDARDS OF REVIEW

3. The statutory and procedural framework that governed the original proceedings in Sanctions Case No. 174, and likewise governs the present Request for Reconsideration, includes the Sanctions Board Statute as revised September 15, 2010 (the "Statute"), and the Sanctions Procedures as adopted January 1, 2011 (the "Sanctions Procedures").

4. Both the Statute and the Sanctions Procedures speak to the finality of Sanctions Board decisions. Article XIV of the Statute provides that the Sanctions Board's decisions "shall be final and without appeal." Section 8.03(a) of the Sanctions Procedures states that each Sanctions Board decision "shall be final and shall take effect immediately." Neither the Statute nor the Sanctions Procedures address whether the Sanctions Board itself may elect to reopen or reconsider its own decisions. They contain no provisions expressly permitting or prohibiting such reconsideration.

5. In the absence of directly controlling provisions for reconsideration, it is necessary to look to Article XI of the Statute. Article XI reads in full: "In all matters not addressed in this Statute, the Code of Conduct or the Sanctions Procedures or any formal guidelines issued by the Bank in respect of sanctions proceedings, the Sanctions Board shall follow the instructions of the Sanctions Board Chair for the operation of the Sanctions Board." Article IV further provides, "In the event of a dispute as to whether the Sanctions Board has competence over a particular matter, the Sanctions Board shall decide whether it has the authority to handle such matter under this Statute." Finally, Article VII(2) provides, "A plenary session may be convened by the Sanctions Board Chair . . . when it is necessary to deal with . . . a question of [the Sanctions Board's] competence under Article IV, or any other matter warranting consideration by the full Sanctions Board."

6. Consistent with the above statutory provisions, the Sanctions Board Chair convened a plenary session in an earlier case to determine the Sanctions Board's competence to review requests for reconsideration, and the applicable standards for any such review. As then reflected in Sanctions Board Decision No. 43 (2011), the Sanctions Board observed that the specific preclusion of appeal under the Statute and Sanctions Procedures does not necessarily prevent the Sanctions Board's own reconsideration of its decisions.[1] No statutory or procedural framework can be expected to anticipate and comprehensively address all conceivable scenarios or issues that may arise.[2] To the contrary, as the Statute recognizes, lacunae are inevitable; and the Sanctions Board may assert authority, consistent with Article XI of the Statute and the instructions of the Sanctions Board Chair, to fill procedural gaps.[3]

7. As also set forth in Sanctions Board Decision No. 43, the Sanctions Board has emphasized the principle of finality as a fundamental aspect of any judicial or quasi-judicial process, including international administrative tribunal proceedings.[4] Finality is essential to provide certainty to the parties and others with an interest in the proceedings, prevent re-litigation of claims already adjudicated, conserve judicial resources, and encourage respect for adjudicated outcomes (res judicata).[5] As reflected in the repeated clause that Sanctions Board decisions "shall be final" in both Article XIV of the Statute and Section 8.03(a) of the Sanctions Procedures, the principle of finality explicitly applies to proceedings before the Sanctions Board.[6]

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[1] Sanctions Board Decision No. 43 (2011) at para. 11.

[2] Id. at para. 12.

[3] Id.

[4] Id. at para. 14.

[5] Id.

[6] Id.

8. At the same time, as the Sanctions Board has recognized, fundamental principles of fairness dictate that finality must on occasion yield in narrowly defined and exceptional circumstances.[7] In the absence of guidance on how to define such exceptional circumstances under the Statute and Procedures, the Bank's legislative history, or the Sanctions Board's previous jurisprudence, the Sanctions Board looked to general principles of law, as demonstrated by leading international and national practice, to inform its analysis as set out in Sanctions Board Decision No. 43.[8] Considering such general principles and practice, the Sanctions Board concluded that a final decision may be reconsidered only in exceptional circumstances such as the discovery of newly available and potentially decisive facts, fraud or other misconduct in the original proceedings, or a clerical mistake in the issuance of the original decision.[9] Mere attempts to re-argue or re-litigate a case, or respondents' failure to timely or effectively present previously available facts or related evidence to the Sanctions Board, either on the advice of legal counsel or for other reasons, do not warrant reconsideration.[10]

III. THE PARTIES' PRINCIPAL CONTENTIONS

9. Respondent asks the Sanctions Board to reconsider and decrease the one-year debarment imposed in the Original Decision. The Request for Reconsideration principally asserts that:

i. Respondent's business, which depends on Bank-financed projects, had "virtually come to a halt" since Respondent's temporary suspension began, and, "in all probability," Respondent will not survive further ineligibility through the debarment's conclusion on October 15, 2013.

ii. Respondent has expressed deep regret for its carelessness and has cooperated fully with INT.

iii. Respondent had already suffered ineligibility to participate in Bank-financed projects since its temporary suspension began on June 30, 2011 – more than a year before its final debarment period began pursuant to the Original Decision as issued October 16, 2012 – and has therefore effectively served its one-year debarment period already.

10. In INT's Comments, INT asserts that Respondent's Request "should be denied without further analysis," as it fails to advance acceptable bases for reconsideration of a Sanctions Board decision. Should the Sanctions Board evaluate the merits of the Request for Reconsideration, however, INT submits that the Sanctions Board should not modify the sanction imposed in the Original Decision, because:

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[7] Id. at para. 15.

[8] Id. at paras. 15-24.

[9] Id. at paras. 25-27.

[10] Id. at paras. 26-27.

i. Any financial loss Respondent may assert from its ineligibility is not a cognizable mitigating factor, but rather the natural consequence of suspension and debarment as envisioned under the Bank's sanctions system. Moreover, Respondent has not demonstrated actual business impact from its debarment, which did not extend to cross-debarment with other multilateral development banks.

ii. In the Original Decision, the Sanctions Board already considered and gave mitigating credit for Respondent's acceptance of responsibility and cooperation with INT, as well as for Respondent's period of temporary suspension.

IV. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

11. The Sanctions Board does not find exceptional circumstances warranting reconsideration of the Original Decision. The Request for Reconsideration does not show any newly available and potentially decisive fact, fraud or other misconduct in the original proceedings, or clerical mistake in the issuance of the Original Decision.

12. First, as INT states, financial impacts may be considered the natural consequences of suspension and debarment under the Bank's sanctions system. Respondent does not show how losses ensuing from its ineligibility period, however difficult for its business, qualify as exceptional circumstances warranting reconsideration of the original sanction.

13. Second, as expressly stated in the Original Decision, and in accordance with Sections 9.02(e) and 9.02(h) of the Sanctions Procedures, the Sanctions Board determined the appropriate sanction in the original proceedings with due consideration and mitigating credit for Respondent's cooperation with INT's investigation, as the record showed Respondent met repeatedly with INT and provided substantial relevant information; Respondent's admission and acceptance of responsibility for the misconduct; and the period of temporary suspension served by Respondent since June 30, 2011.[11]

14. Finally, as the Original Decision states, Respondent's period of debarment began on the date of issuance of the Original Decision.[12] Although Respondent asserts it has effectively served its one-year debarment through its earlier period of temporary suspension, Respondent cannot substitute its prior temporary suspension, which is a provisional measure, for its final published debarment.

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[11] Sanctions Board Decision No. 54 (2012) at paras. 39-41.

[12] Id. at para. 45.

15. Considering the applicable standards of review and the record presented, the Sanctions Board hereby denies the Request for Reconsideration.

L. Yves Fortier (Chair)

On behalf of the
World Bank Group Sanctions Board

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Marielle Cohen-Branche
Patricia Diaz Dennis
Catherine O'Regan
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