THE WORLD BANK GROUP
SANCTIONS BOARD

Date of issuance: September 29, 2015

Sanctions Board Decision No. 80

Decision of the World Bank Group Sanctions Board denying a request filed by the respondent entity and the individual respondent in Sanctions Cases No. 77 and No. 110 (respectively, the "Respondent Firm" and the "Respondent Owner," and collectively the "Respondents") for clemency from the sanctions imposed by Sanctions Board Decision No. 41 (2010) (the "Original Decision") or for reconsideration of the Original Decision.

I. INTRODUCTION

1. The Sanctions Board has reviewed a request for clemency or reconsideration filed by the Respondents with regard to Sanctions Board Decision No. 41 (2010). In the Original Decision, the Sanctions Board debarred the Respondents for a fixed period of twelve years for corrupt and fraudulent practices in Sanctions Cases No. 77 and No. 110. For deliberations on this request, the Sanctions Board was composed of L. Yves Fortier (Chair), Hassane Cissé, Alison Micheli, Ellen Gracie Northfleet, Catherine O'Regan, Denis Robitaille, and J. James Spinner.

2. Having deliberated by virtual means in January-February 2015, the Sanctions Board reached its decision on the Respondents' request based on the written record, which included:

i. the request for clemency or reconsideration submitted by the Respondents to the Secretary to the Sanctions Board on May 16, 2014 (the "Request");

ii. comments on the Request submitted by the World Bank Group's Integrity Vice Presidency ("INT") to the Secretary to the Sanctions Board on June 19, 2014 ("INT's Comments");

iii. the Respondents' additional submission to the Secretary to the Sanctions Board, filed on June 25, 2014 (the "Counter Response");

iv. comments on the Counter Response submitted by INT to the Secretary to the Sanctions Board on August 6, 2014 ("INT's Additional Comments");

v. the written record previously considered by the Sanctions Board in the original proceedings in Sanctions Cases No. 77 and No. 110;

vi. the Original Decision;

vii. Sanctions Board Decision No. 43 (2011), denying the Respondents' first request for reconsideration; and

viii. the Sanctions Board's letter determination issued on May 9, 2012, denying the Respondents' second request for reconsideration.

II. PROCEDURAL BACKGROUND

3. The Original Decision addressed two sanctions cases – No. 77 and No. 110 – which had been contested by the Respondents.[1] Case No. 77 also named two additional respondents: the Respondent Firm's joint venture partner (the "JV Partner") and the JV Partner's managing director (the "Managing Director"), both of whom received uncontested debarments of three years for alleged corrupt practices. The present Request, filed on May 16, 2014, follows (i) the Respondents' request for reconsideration of the Original Decision, denied in Sanctions Board Decision No. 43; and (ii) the Respondents' request for reconsideration of Sanctions Board Decision No. 43, denied in the Sanctions Board's letter determination of May 9, 2012.

III. APPLICABLE STANDARDS OF REVIEW

4. The statutory and procedural framework that governed the original proceedings in Sanctions Cases No. 77 and No. 110, and which likewise governs the present Request, includes the Sanctions Board Statute as revised on September 15, 2010 (the "Statute"), and the Sanctions Procedures as adopted on May 11, 2009 (the "Sanctions Procedures").

5. Article XIV of the Statute and Section 20(1) of the Sanctions Procedures provide that Sanctions Board decisions are final and without appeal. However, as the Sanctions Board recognized in its Decision No. 43 (2011)[2] and reaffirmed in subsequent decisions on other requests for reconsideration,[3] fundamental principles of fairness allow for reconsideration of a final decision in narrowly defined and exceptional circumstances. The Sanctions Board has stated that examples of such circumstances may include 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.[4] Neither the sanctions framework nor past Sanctions Board precedent address the possibility of "clemency" as a path to early release from sanctions.

IV. THE PARTIES' PRINCIPAL CONTENTIONS

A. The Respondents' Principal Contentions in the Request

6. The present Request asks for "[c]lemency [o]r [p]ardon" and termination of the twelve-year fixed-term debarment imposed by the Original Decision. The Respondents refer to the Respondent Firm's asserted record of performance prior to the Original Decision, its new ethics and compliance program, and the willingness of certain national and international bodies to do business with the Respondent Firm either presently or after the current sanction is terminated. The Respondents also refer to correspondence from the Managing Director reportedly seeking

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[1] Sanctions Board Decision No. 41 (2010) at para. 1.

[2] Sanctions Board Decision No. 43 (2011) at para. 15.

[3] Sanctions Board Decision No. 57 (2013) at para. 8; Sanctions Board Decision No. 58 (2013) at para. 8; Sanctions Board Decision No. 62 (2014) at para. 6.

[4] See, e.g., Sanctions Board Decision No. 57 (2013) at para. 8 (citing Sanctions Board Decision No. 43 (2011) at paras. 25-27).

to apologize to the Respondents for "wrongfully embroiling" the Respondent Firm in misconduct. Finally, the Respondents contend that despite "some mistakes and organizational frailties" on their part, the sanctions imposed by the Original Decision are excessive and detrimental to the Respondents, who have learned from their experience.

B. INT's Principal Contentions in INT's Comments

7. INT objects to the Request, arguing that it constitutes a "Third Request for Reconsideration" which does not present any new, decisive evidence to merit review of the Sanctions Board's previous decisions relating to Sanctions Cases No. 77 and No. 110. INT additionally asserts that the Respondents' conduct since the Original Decision contradicts their claims of remorse and contrition. INT contends that the present Request uses misstatements to downplay the Respondents' misconduct. INT also contends that other evidence, as attached to INT's Comments, indicates that the Respondents have continued to bid on Bank-financed contracts through a different entity that appears to be the Respondent Firm operating under a new name.

C. The Respondents' Principal Contentions in the Counter Response

8. Following INT's Comments, the Respondents filed a Counter Response, in which the Respondents seek to distinguish their "request for clemency" from an "appeal of the decision," and reiterate points made in the Request. The Respondents additionally maintain that the Respondent Firm has not, and does not plan to, bid on Bank-financed projects for the duration of its debarment period. With respect to misconduct sanctioned by the Original Decision, the Respondents attribute the fraudulent conduct at issue in Case No. 110 to the isolated actions of an unsupervised staff member and deny participating in the corrupt actions at issue in Case No. 77. The Respondents attach a letter dated April 15, 2014 (the "2014 Letter"), which is ostensibly signed by the Managing Director and offers a "personal[] apolog[y]" for involving the Respondents in conduct that led to their exclusion from Bank-funded projects.

D. INT's Principal Contentions in the Additional Comments

9. INT's Additional Comments reiterate points made in its original comments on the Request, challenge the reliability and significance of the 2014 Letter, and submit that the Respondents' "request for clemency" should be denied.

V. THE SANCTIONS BOARD'S ANALYSIS AND CONCLUSIONS

10. The Sanctions Board first considers whether the Request may be reviewed as an appeal for clemency under a standard that is distinct from, and potentially lower than, the standard for requests for reconsideration. The Sanctions Board also addresses the merits of the Respondents' submissions under the present standard for requests for reconsideration.

A. Whether the Request should be considered under a lower "clemency" standard

11. The Respondents' submissions seek to distinguish the present Request from a request for reconsideration of the Original Decision, and suggest that a different and lower standard may apply to the consideration of what they describe as a request for clemency. However, as noted in Paragraph 5 above, neither the sanctions framework nor the Sanctions Board's past precedents refer to the possibility of clemency, let alone standards that might apply to the grant of clemency.

12. Sanctions Board Decision No. 43 clearly established that the principle of finality may yield only in certain narrowly defined and exceptional circumstances, in which case reconsideration of a final decision would be possible.[5] The decision did not suggest another option of clemency. In addition, a review of the governing rules and procedures for other international administrative tribunals, including those of the sanctions bodies at other multilateral development banks and the World Bank's Administrative Tribunal, does not reveal an opportunity for a respondent to request or receive clemency under a lower standard than that of formal reconsideration.[6] In this context, the Sanctions Board finds no basis on which the Sanctions Board may entertain or grant clemency requests, and accordingly denies the Respondents' request for relief in the form of clemency.

B. Whether the Request may be granted under the standard for requests for reconsideration

13. The Sanctions Board has previously looked to the substance of a respondent's submission, and not strictly its title, in considering the nature of that respondent's request. For example, past requests for the Sanctions Board to "clarify" a previous decision and reduce the minimum period of debarment have been considered under the standard of review for requests

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[5] Sanctions Board Decision No. 43 (2011) at paras. 15-24.

[6] See Integrity Principles & Guidelines of the Asian Development Bank (2015); Sanctions Procedures of the African Development Bank Group (2013); Enforcement Policy and Procedures of the European Bank for Reconstruction and Development (2014); Sanctions Procedures of the Inter-American Development Bank (2015); Statute of the Administrative Tribunal of the International Bank for Reconstruction and Development, International Development Association and International Finance Corporation (2009); Rules of the World Bank Administrative Tribunal (2002); Statute of the Administrative Tribunal of the International Monetary Fund (2009); Rules of Procedure of the Administrative Tribunal of the International Monetary Fund (2004); Statute of the Administrative Tribunal of the International Labour Organization (2008); Rules of the Administrative Tribunal of the International Labour Organization (2014); Statute of the Administrative Tribunal of the United Nations (2005); Rules of the Administrative Tribunal of the United Nations (2004); Statute of the United Nations Dispute Tribunal (2008); Rules of Procedure of the United Nations Dispute Tribunal (2009); Statute of the United Nations Appeals Tribunal (2014); Rules of Procedure of the United Nations Appeals Tribunal (2012).

for reconsideration as first established in Sanctions Board Decision No. 43.[7] Similarly, the Sanctions Board may now consider the present Request in substance to be a request for reconsideration, and decide whether relief may be granted under this standard.

14. Consistent with the standards noted in Paragraph 5, the Sanctions Board has previously reviewed requests for reconsideration by evaluating whether the challenged decision should be reopened due to exceptional circumstances including, but not necessarily limited to, 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.[8] The Sanctions Board does not find any such circumstances justifying reconsideration of the Original Decision in the present case.

15. Firstly, the record does not support a finding of newly available and potentially decisive facts or credibly suggest fraud or other misconduct in the original sanctions proceedings. As presented in the Counter Response, the 2014 Letter appears to contradict the Managing Director's reported statements during INT's investigation in 2005 and 2006, which directly implicated the Respondents in the corrupt practice alleged in Sanctions Case No. 77.[9] However, the Respondents provide no evidence to verify the source or credibility of the 2014 Letter, or to show that they could not have obtained this information from the Managing Director at an earlier point in time. In addition, it should be noted that the Original Decision took into account a diverse array of inculpatory evidence – including documentary evidence of a corrupt payment, contemporaneous email correspondence between the Managing Director and the Respondent Owner, and records of interviews with other witnesses[10] – all of which corroborated INT's allegation that the Respondents had made a corrupt payment to a public official, particularly in view of the lack of credible contrary arguments from the Respondents.[11] Thus the record does not support a finding that the 2014 Letter constitutes newly available and potentially decisive evidence.

16. As the record in the original proceedings included evidence of the Respondents' background and past experience in both the corporate sector and international development projects, which the Sanctions Board expressly noted and took into account,[12] the Request's assertions regarding the Respondents' record of performance prior to the Original Decision also

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[7] See Sanctions Board Decision No. 57 (2013) at paras. 9, 11 (reviewing as a request for reconsideration the respondent and named affiliate's request that the Sanctions Board "clarify" its original decision in order to re-calculate their minimum period of debarment); Sanctions Board Decision No. 62 (2014) at paras. 7, 9 (reviewing as a request for reconsideration the respondent's request "to reduce the minimum period of debarment" based on, inter alia, the respondent's asserted performance record, corrective measures, and good faith).

[8] See, e.g., Sanctions Board Decision No. 57 (2013) at paras. 11-16; Sanctions Board Decision No. 62 (2014) at paras. 9-13.

[9] See Sanctions Board Decision No. 41 (2010) at para. 32.

[10] See id. at paras. 31, 33-39.

[11] See id. at paras. 40-44.

[12] See id. at paras. 30, 43, 60.

fail to demonstrate the type of newly available and potentially decisive facts that could justify reconsideration.[13]

17. Secondly, the Respondents do not assert, and the record does not reveal, any clerical mistake in the issuance of the Original Decision that could justify reconsideration or revision of that decision. The Sanctions Board notes that the Respondents seem to assert another type of error in the Sanctions Board's rejection, in the original sanctions proceedings, of the Respondents' potentially mitigating evidence of remedial actions. However, the Original Decision reflects that the Respondents offered the evidence during the Sanctions Board hearing and well after the applicable Response deadline;[14] and the Respondents' belated proffer of evidence was rejected consistent with the Sanctions Board Chair's authority to admit or exclude additional submissions, "as a matter of discretion," under Section 10(4) of the Sanctions Procedures.

18. Finally, the Request does not allege any other exceptional circumstances that could justify reconsideration. For example, the Sanctions Board does not find the Respondent Firm's asserted introduction of a new ethics and compliance program to constitute an exceptional circumstance that may justify review of the Original Decision, particularly considering the Sanctions Board's previously expressed concerns with respect to the Respondents' apparently persistent failures to adopt compliance improvements.[15] Nor would the willingness of other national or international bodies to contract with the Respondents justify reconsideration, as other entities may have different standards and eligibility criteria. Assertions of the adverse consequences of debarment – which the Sanctions Board has repeatedly found insufficient to justify mitigation even in the Sanctions Board's initial determination of sanctions[16] – would not meet the higher standard of exceptional circumstances justifying the Sanctions Board's reconsideration of existing sanctions. In addition, the Original Decision already took into account the issue of proportionality between the sanctions imposed and the Respondents' role in the misconduct.[17]

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[13] See Sanctions Board Decision No. 62 (2014) at paras. 9, 11 (finding no newly available or potentially decisive fact where the respondent's asserted history of performance had been duly considered in the original sanctions proceedings).

[14] Sanctions Board Decision No. 41 (2010) at para. 59.

[15] See id. at para. 82 (rejecting the Respondents' invocation of remedial measures to try to avoid or minimize culpability, given what appeared from the record to be their persistent failures to timely establish and effectively utilize appropriate compliance measures to prevent and redress further irregularities, despite their repeated claims to have taken all appropriate actions).

[16] See, e.g., Sanctions Board Decision No. 66 (2014) at para. 48.

[17] See Sanctions Board Decision No. 41 (2010) at paras. 86-89.

19. For all the reasons stated above, the Sanctions Board hereby denies the Respondents' request for relief in the form of clemency or reconsideration.

L. Yves Fortier (Chair)

On behalf of the
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