

**United States Small Business Administration
Office of Hearings and Appeals**

IN THE MATTER OF:

Total Solutions, Inc.

Petitioner

SBA No. EAJA-1104

Decided: February 3, 2011

ORDER DISMISSING APPEAL

I. Facts

On January 24, 2011, Total Solutions, Inc. (Petitioner), filed with the Small Business Administration (SBA) Office of Hearings and Appeals (OHA), an application for fees and expenses under the Equal Access to Justice Act (EAJA) and 13 C.F.R. § 134.601 *et seq.*

Petitioner references its administrative litigation resulting in OHA's January 13, 2011 decision in *Size Appeal of Total Solutions*, SBA No. SIZ-5184 (Size Appeal). Petitioner prevailed over the SBA in the Size Appeal. Petitioner now seeks to recover fees and expenses of \$16,104.85 incurred in litigating its case before OHA.

II. Discussion

Recovery of EAJA fees is not generally available. EAJA establishes procedures for prevailing parties in certain administrative proceedings to apply for reimbursement of fees and other expenses incurred "in connection with that proceeding." 5 U.S.C. § 504(a)(1); *see also* 13 C.F.R. § 134.601. SBA regulations authorize OHA to conduct proceedings in cases involving the "[a]llowance of fees and expenses under the Equal Access to Justice Act." 13 C.F.R. § 134.102(g). Subpart F of 13 C.F.R. part 134 sets out the requirements for applicants seeking reimbursement.

Pursuant to 13 C.F.R. § 134.602(a), a party may request reimbursement under EAJA when the party has prevailed over the SBA in a final decision in an "adversary adjudication." The provision at § 134.602(b) pertains to ancillary or subsidiary issues in an "adversary adjudication." Finally, § 134.602(c) permits reimbursement to a party that has prevailed in a final decision in a matter "which the agency orders to be determined as an 'adversary adjudication' under 5 U.S.C. 554."

Regardless of which provision of 13 C.F.R. § 134.602 an EAJA reimbursement is sought under, the core prerequisite to eligibility is that the administrative proceeding must have been

one that is an “adversary adjudication.” This term is defined in 13 C.F.R. § 134.603 which, in relevant part, provides:

For purposes of this subpart, adversary adjudications are administrative proceedings before OHA which involve SBA as a party and which are required to be conducted by an Administrative Law Judge (“ALJ”). These adjudications (“administrative proceedings”) include those proceedings listed in § 134.102(a), (i), and (j)(1), but do not include other OHA proceedings such as those listed in § 134.102(k).

OHA’s authority to conduct size appeals derives from 13 C.F.R. § 134.102(k), the regulatory provision whose listed proceedings are specifically excluded by 13 C.F.R. § 134.603. Further, there is no requirement that an ALJ conduct a size appeal proceeding. Therefore, a size appeal is not an eligible adversary adjudication under 13 C.F.R. § 134.602 for purposes of EAJA. *Matter of ONS21 Security Services, LLC*, SBA No. EAJ-1103 (2010).

III. Conclusion

Accordingly, because a size appeal is not an eligible adversary adjudication under 13 C.F.R. § 134.602, Petitioner’s application for fees and expenses under EAJA is DISMISSED.

CHRISTOPHER HOLLEMAN
Administrative Judge