



(3) The Panel failed to give notice directly to Richardson Construction Company.

(4) The notice (Exhibit "A") of the Panel is confusing and easily misunderstood by receptionists and other minimally trained personnel.

The notice was mailed to Richardson's attorney at least fifteen days in advance of the hearing.<sup>1</sup> The notice is captioned in all capitals, "RE: NOTICE OF HEARING IN CASE NO. 1989-4 IN RE: PROTEST OF RICHARDSON CONSTRUCTION COMPANY." The second paragraph states, "All parties must attend and should be prepared to present their cases to the Panel when called." A 193-page record was attached to the notice.

The Panel finds that the notice was more than adequate to alert the reader that a hearing into the Richardson matter was to be held on the date specified. The failure of Richardson's attorneys to heed the notice was neglect.

The Panel finds this case analogous to those cases involving motions to relieve a party from entry of default. The Court of Appeals for South Carolina has held that, in considering default cases, the court should strive to see that justice is promoted and that cases are disposed of on the merits. Ricks v. Weinrauch, 293 S.C. 372, 360 S.E.2d

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<sup>1</sup>Following the usual procedure of the Panel, the notice was sent to its attorneys and not directly to Richardson Construction. Richardson was represented by these attorneys at the hearing before the CPO and the letter of appeal to the Panel was signed only by Richardson's attorneys.

535 (Ct. App. 1987). In the Ricks case, the court upheld the trial court's granting of relief from default where the party was not herself negligent but had relied on her attorney and insurance agent to handle her case. The court quoted with approval from a Georgia case as follows:

The law should not blindly impose standards which require individuals, in the conduct of their daily business, to distrust the parties with whom they deal. Likewise, a litigant should not unnecessarily be forced into default as a consequence of having reasonably relied upon the word of his fellow, particularly when no innocent party will suffer if the default is opened."

360 S.E.2d, at 537, quoting, Sears Roebuck & Company v. Ramey, 170 Ga. App. 873, 318 S.E.2d 740 (1984).

Similarly, the South Carolina Supreme Court has stated that a party may be held excusable for relying upon the diligence of counsel, who has been neglectful, when it appears that he himself has not been neglectful but has given all proper attention to the litigation. Detroit Fidelity & Surety Company v. Foster, 170 S.C. 121, 169 S.E. 871, at 879 (1933).

It appears that in this case Richardson was not sent notice of the hearing and was in no way responsible for its attorneys' negligence. Further, because Richardson's attorneys ably represented it at the hearing below and in filing the appeal to the Panel, Richardson reasonably relied on its attorneys' continued diligence.

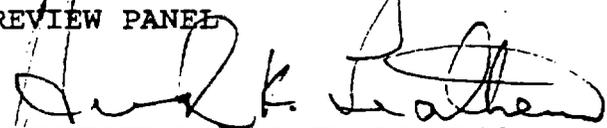
The Panel therefore finds that Richardson's petition to reinstate its appeal should be granted upon the following conditions.

Richardson shall pay to MUSC in advance such costs as were incurred by MUSC in attending the original hearing. MUSC is hereby directed to submit to the Panel, with a copy to Richardson, within 15 days of receipt of this Order an affidavit setting forth its attorneys' fees and witness fees associated with attending the first hearing. Such fees should reflect the amounts actually charged MUSC for travel and attendance at the hearing. Preparation time should not be included to the extent that MUSC will benefit from this preparation at the future hearing. Upon Richardson's payment of such costs as are approved by the Panel, the Panel will reschedule a hearing on Richardson's appeal.

For the reasons set forth above, the petition of Richardson Construction Company to reinstate its appeal is granted upon the condition that Richardson pay to MUSC its costs and attorney's fees incurred in attending the hearing before the Panel scheduled for April , 1989.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT  
REVIEW PANEL



Hugh K. Leatherman, Sr.  
Chairman

Columbia, S. C.

May 31<sup>st</sup>, 1989