

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)	
)	
Triad Microsystems, Inc.)	ASBCA Nos. 52723, 52724, 52725,
)	52727, 52749, 52768,
Under Contract Nos.)	52840, 52841, 52842,
DAAH01-87-D-0153)	53086, 53087, 53101,
DAAH01-83-C-A137)	53127
DAAH01-87-D-0165)	
DAAH01-83-C-A070)	
DAAH01-86-D-0060)	

APPEARANCE FOR THE APPELLANT: Mr. Bartola J. Pacetti
President

APPEARANCES FOR THE GOVERNMENT: COL Michael R. Neds, JA
Chief Trial Attorney
MAJ David T. Crawford, JA
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE LIPMAN
ON MOTION TO DISMISS

These appeals, which arise from a series of contracts which the Army awarded to appellant, have not been formally consolidated, but present an identical issue. The Government has moved to dismiss the appeals for lack of standing. Appellant has opposed dismissal and countered with its own motions for summary judgment. In addition to the evidentiary file, the record consists of exhibits and affidavits submitted along with the parties' arguments regarding the motion to dismiss.

FINDINGS OF FACT
FOR PURPOSES OF THE MOTION

1. Starting in 1983, the U.S. Army Missile Command (Army or Government) awarded appellant the captioned contracts. At the time of award, Triad was a corporation organized under the laws of the state of California (decl. of Bartola J. Pacetti).

2. In May 1988, Triad filed a petition for bankruptcy in the U.S. Bankruptcy Court for the Central District of California (the Bankruptcy Court). Initially, Triad sought reorganization of its business pursuant to Chapter 11 of the federal bankruptcy code. (R4, tab 11) The Bankruptcy Court approved Triad's reorganization plan in August 1989 (R4, tab 5A). However, in May 1992, the Bankruptcy Court determined that Triad had

“materially defaulted under its plan of reorganization,” and was “unable to effectuate substantial consummation of the confirmed plan.” As a result, the Bankruptcy Court converted Triad’s case from a Chapter 11 reorganization into a Chapter 7 liquidation proceeding. (R4, tab 6)

3. On 24 June 1994, the trustee of the bankruptcy estate filed a “No Asset Report” with the Bankruptcy Court. The report indicated that Triad’s estate was devoid of assets, with the exception of items that “are burdensome or of inconsequential value or are encumbered beyond value and the Trustee asserts no interest therein.” By Order dated 28 July 1994, the Bankruptcy Court formally closed the case and estate. (Gov. ex. 2)

4. At the request of the trustee, the Bankruptcy Court twice reopened Triad’s case to explore “further administration of possible assets” (Gov. exs. 3, 4). In both instances, the trustee eventually filed a “No Asset Report” and the Bankruptcy Court closed the case. The proceedings were closed for the final time on 2 July 1998. (R4, tab 11; Gov ex. 5) There has been no activity in the bankruptcy case since that date (R4, tab 11; decl. of Raymond D. Battocchi, at ¶ 5).

5. Beginning in April 2000, Triad filed the captioned appeals. Each involves allegations of Government actions or omissions predating Triad’s liquidation in bankruptcy. In light of the bankruptcy actions and our earlier *Triad* decision, the Board requested that the parties address whether Triad has standing to pursue these appeals. Both parties responded to the Board’s inquiry. Triad also filed two “supplemental” briefs on the standing issue.

DECISION

It is settled law that a corporation liquidated in a Chapter 7 bankruptcy proceeding is defunct. At the close of Chapter 7 proceedings, the corporation ceases to operate, or to own any assets, and has no right to conduct business, including the prosecution or defense of claims, outside the bankruptcy estate. *Terrace Apartments, Ltd.*, ASBCA No. 40125R, 95-1 BCA ¶ 27,458.

Triad urges us to overrule *Terrace Apartments* and the line of cases following it, and contends that we should look to California corporate law, rather than to federal bankruptcy law, to ascertain whether Triad is a valid legal entity. Triad further argues that it properly disclosed the instant causes of action as “assets” in bankruptcy court. According to Triad, those causes of action were abandoned by the bankruptcy trustee and subsequently reverted back to Triad.

Although the empty shell of the liquidated corporation may temporarily survive until dissolved by state law, the corporation’s existence outside the confines of the bankruptcy estate is wholly extinguished. *Terrace Apartments, supra; Caesar Constr. Co., Inc.*,

ASBCA No. 46023, 97-1 BCA ¶ 28,665, *aff'd*, 132 F.3d 51 (Fed. Cir. 1997) (table); *Sheppard's Interior Constr. Co., Inc.*, ASBCA No. 45902, 97-1 BCA ¶ 28,744, *aff'd*, 152 F.3d 947 (Fed. Cir. 1998) (table); *Microscience, Inc.*, ASBCA No. 45264, 98-1 BCA ¶ 29,480; *Norton Bankr. Law & Prac. 2d* § 74:2 n.13 (2000) (“The liquidated corporation becomes defunct, never to rise again, and without further assets or prospect to generate assets.”).

In the instant case, Triad underwent Chapter 7 liquidation in 1998. (Findings 2-4) It is therefore a defunct corporation without standing to prosecute these appeals. Indeed, we have previously dismissed other appeals filed by this same contractor on precisely these grounds. *Triad Microsystems, Inc.*, ASBCA Nos. 39478, 42349, 98-2 BCA ¶ 29,830, *appeal dismissed*, 185 F.3d 883 (Fed. Cir. 1999) (table).

Accordingly, the Government’s motion to dismiss is granted and the appeals are dismissed. Since our decision is dispositive of these cases, it is unnecessary to consider any alternative grounds for dismissal, or appellant’s cross-motion.

Dated: 21 May 2001

RONALD JAY LIPMAN
Administrative Judge
Armed Services Board
of Contract Appeals

(Signatures continued)

I concur

I concur

MARK N. STEMLER
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

EUNICE W. THOMAS
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA Nos. 52723, 52724, 52725, 52727, 52749, 52768, 52840, 52841, 52842, 53086, 53087, 53101, and 53127, Appeals of Triad Microsystems, Inc., rendered in conformance with the Board's Charter.

Dated:

EDWARD S. ADAMKEWICZ
Recorder, Armed Services
Board of Contract Appeals