

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of --)
)
Manshul Construction Corporation)
by its Trustee in Bankruptcy) ASBCA Nos. 47795, 47797
)
Under Contract Nos. N62472-84-C-0268)
N62472-89-C-0071)

APPEARANCES FOR THE APPELLANT: Yann Geron, Esq.
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APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.
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OPINION BY ADMINISTRATIVE JUDGE KIENLEN
ON
RESPONDENT'S MOTION FOR RECONSIDERATION

These appeals, which were then captioned as the Appeals of Manshul Construction Corporation, were dismissed for failure to prosecute (unpublished decision of 12 March 2001). Manshul was at that time in Chapter 7 bankruptcy proceedings. The trustee timely moved for reconsideration and reinstatement of these appeals on the Board's docket. On 13 February 2002, the trustee's motion was granted and the appeal was reinstated on the Board's docket and the caption changed to reflect the appearance of the trustee in bankruptcy. *Manshul Construction Corporation by its Trustee in Bankruptcy*, ASBCA Nos. 47795, 47797, 02-1 BCA ¶ 31,766.

The respondent timely moved for reconsideration of our decision reinstating these appeals. Essentially, the respondent contends that the "Board erred in finding that the Trustee had no knowledge of these appeals." In support of this contention the respondent argues that (1) the trustee's counsel "knew enough about these appeals to pursue them," and (2) the knowledge of the counsel is necessarily imputed to the trustee. (Mot. at 1)

The respondent had previously submitted extensive excerpts from the bankruptcy proceedings. In our decision we considered that record, and even quoted at some length from it. We agree with the respondent that the knowledge obtained by counsel from that record can be imputed to the trustee. In our decision reinstating these appeals, we did impute, albeit impliedly so, to the trustee the knowledge which his counsel had obtained as a result of those proceedings.

We concluded that the trustee, from the information available to his counsel, *could have* discovered the existence of the claims underlying these appeals, and perhaps *could have* discovered that these two appeals were pending before this Board. Regardless of what the trustee or his counsel *could have* discovered, we found that “the trustee was not aware that the claims under the two instant contracts were pending before this Board; and, that the information available to the trustee was insufficient to put the trustee on notice that these two appeals were pending.” *Manshul*, 02-1 BCA at 156,891. This finding was based on our review of the record. To the extent that the respondent contends otherwise, the respondent has failed to cite to specific and competent evidence. The record does not support a conclusion that either the trustee or his counsel knew that these two appeals were pending before this Board.

The heart of the respondent’s argument is that the trustee did not do enough. The respondent asserts, “Reason would dictate that documents and testimony that identify the Navy as a party in a construction claim would be sufficient knowledge to cause a Trustee who is tasked with marshalling [sic] such assets to take further action.” (Mot. at 6) This is mere argument. There is no evidence that the trustee failed to take any particular action or set of actions which it reasonably should have taken at the time, and which would have led to the discovery that these appeals were pending before this Board.

The facts do not compel the respondent’s conclusion. Although the trustee and his counsel spent approximately 32 hours discussing issues with Ms. Sigmond, those discussions were for the purpose of gaining enough information about 132 offensive and defensive actions to support retaining Ms. Sigmond as special counsel to the trustee. The purpose of those discussions was not to conduct an investigation of those individual claims. The court itself noted that the bankruptcy case involved 138 adversaries. We found that the court’s injunction inhibited using Ms. Sigmond for an investigation of all possible claims. (Trustee resp. at 5-6; resp’t reply to trustee mot. for recon., tab G-2, tr. at 4 (14 April 1997); 02-1 BCA at 156,891)

The bankruptcy case was not a simple one with limited assets and claims. It was a large complex case, measured by the number of parties and known claims; and it was made more difficult by the apparent attempts of the sole shareholder of the bankrupt to conceal assets from the trustee. Given those circumstances, we do not believe that the trustee failed to do anything in particular, which the trustee should have done, that would have led the trustee to discover that these appeals were pending before this Board. There is nothing

in the respondent's motion which warrants any change in our original decision reinstating these appeals.

We affirm our original decision.

Dated: 4 June 2002

RONALD A. KIENLEN
Administrative Judge
Armed Services Board
of Contract Appeals

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. 47795, 47797, Appeals of Manshul Construction Corporation by its Trustee in Bankruptcy, rendered in conformance with the Board's Charter.

Dated:

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