

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -- )  
)  
Triad Microsystems, Inc. ) ASBCA Nos. 52726, 52839  
)  
Under Contract Nos. N61339-87-C-0143 )  
N61339-82-D-0007 )  
)

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

APPEARANCES FOR THE GOVERNMENT: Fred A. Phelps, Esq.  
Navy Chief Trial Attorney  
John A. Evans, Esq.  
Trial Attorney  
Naval Air Warfare Center Training  
Systems Division  
Orlando, FL

OPINION BY ADMINISTRATIVE JUDGE LIPMAN  
ON MOTIONS TO DISMISS

The Government has moved to dismiss these 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 on the motions. The issue before us on the Government's motion is identical to that presented in our decision in *Triad Microsystems, Inc.*, ASBCA Nos. 52723 *et al.*, slip op. dated 21 May 2001. Our findings and decision below reflect, in summary form, the findings and decision in our earlier decision.

FINDINGS OF FACT  
FOR PURPOSES OF THE MOTIONS

1. In 1987 and 1982, respectively, the Government, by the United States Department of the Navy, Naval Training Systems Center (currently the Naval Air Warfare Center Training Systems Division), Orlando, Florida, awarded appellant the captioned contracts. At the time of the awards, appellant was a corporation organized under the laws of the state of California.

2. In May 1988, appellant filed a petition for bankruptcy in the U.S. Bankruptcy Court for the Central District of California (the Bankruptcy Court). Initially, appellant

sought reorganization of its business pursuant to Chapter 11 of the federal bankruptcy code. The Bankruptcy Court approved the reorganization plan in August 1989. However, in May 1992, the Bankruptcy Court determined that appellant 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 appellant’s case from a Chapter 11 reorganization into a Chapter 7 liquidation proceeding.

3. After the trustee of the bankruptcy estate filed “No Asset” reports, the Bankruptcy Court formally closed the case and estate, then twice reopened the case; it closed the bankruptcy proceeding for the final time on 2 July 1998 and there has been no activity in the bankruptcy case since that date.

4. In April and June 2000, respectively, appellant filed the captioned appeals, alleging Government actions or omissions predating appellant’s liquidation in bankruptcy. The Board requested that the parties address the issue of whether appellant has standing to pursue these appeals, the Government has moved to dismiss, and both parties have submitted briefs on the issue.

#### DECISION

It is settled law that a corporation liquidated in a Chapter 7 bankruptcy proceeding is defunct; it 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. 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).

Here, appellant underwent Chapter 7 liquidation in 1998. It is therefore a defunct corporation without standing to prosecute these appeals. Accordingly, the Government’s motions to dismiss are granted and the appeals are dismissed. Since our decision is

dispositive of these appeals, it is unnecessary to consider any alternative grounds for dismissal and any other motions filed by the parties are moot.

Dated: 1 June 2001

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RONALD JAY LIPMAN  
Administrative Judge  
Armed Services Board

of Contract Appeals

I concur

I concur

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

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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. 52726 and 52839, Appeals of Triad Microsystems, Inc., rendered in conformance with the Board's Charter.

Dated:

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