

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
HAM Investments, LLC) ASBCA No. 55070
)
Under Contract No. DAKF23-99-C-0347)

APPEARANCE FOR THE APPELLANT: Mr. Harold H. Hollenshead
Managing Partner

APPEARANCES FOR THE GOVERNMENT: COL Samuel J. Rob, JA
Chief Trial Attorney
Karl M. Ellcessor, III, Esq.
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE SHACKLEFORD
ON MOTION FOR RECONSIDERATION

Appellant has moved for reconsideration of our decision in *HAM Investments, LLC*, ASBCA No. 55070, 06-2 BCA ¶ 33,406, dismissing the appeal for lack of jurisdiction. The government opposes the motion.

In ruling on a motion for reconsideration, we look to see if “the motion is based upon any newly discovered evidence, errors in our fact findings or legal theories which the Board failed to consider in formulating its original decision.” *ITT Avionics Division*, ASBCA No. 50403 *et al.*, 03-2 BCA ¶ 32,378 at 160,214. We do not afford the party an opportunity to reargue contentions already fully considered and rejected by the Board. *E.g., McDonnell Douglas Electronics Systems Co.*, ASBCA No. 45455, 99-1 BCA ¶ 30,132.

A brief summary of the case is in order. The Army awarded a contract to Fire Security Systems, Inc. (FSS) to upgrade sprinkler systems in various buildings at Fort Campbell, Kentucky. Under the contract, FSS was allowed to assign its rights to be paid amounts due under the contract to a financial institution. On 5 September 2003, FSS purported to assign to HAM a specific account receivable in the amount of \$50,000. On 19 September 2003, FSS submitted an invoice to the government for \$59,523. Thereafter, on 1 October 2003, HAM forwarded to the government the assignment for \$50,000 apparently due to FSS for work under the contract. On 3 October 2003, FSS requested payment for its invoice previously submitted on 19 September 2003, and stated that the assignment to HAM was not enforceable because HAM was not a financial

institution. HAM argued to the contracting officer on 7 October 2003, that the assignment was to cover a loan it had made to FSS. The government paid FSS on 9 October 2003.

On 28 October 2003, the contracting officer advised HAM that she did not honor the assignment because HAM was not a financial institution. The claim filed by HAM is for the money it contends was improperly paid directly to FSS when the contracting officer chose not to honor the assignment.

The government moved to dismiss the appeal for lack of jurisdiction. HAM argued that it was not a contractor or a third party beneficiary. It further argued that it did not purport to have filed a claim under the Contract Disputes Act of 1978. Rather it stated that the claim was under 31 U.S.C. § 3727, 41 U.S.C. § 15 (Assignment of Claims Act) for payment to the wrong party.

We held simply that HAM was not a party to a government contract such that we could take jurisdiction under the CDA and that we did not have jurisdiction under the Assignment of Claims Act. In its motion, appellant reiterates that its claim was not under the CDA (mot. at 4) and states again its view that we have jurisdiction under the Assignment of Claims Act (mot. at 5). These are the same arguments previously made and the result is the same. Our jurisdiction under the CDA is predicated on claims being brought by parties to government contracts. HAM is not such a party. Moreover, we do not have jurisdiction under the Assignment of Claims Act. Appellant relies on *Thomas Funding Corp. v. United States*, 15 Cl. Ct. 495 (1988), to support its view that HAM has the right to bring this action against the government for wrongful payment to a third party. The Court in *Thomas Funding* in fact did find that the United States Claims Court (now called the United States Court of Federal Claims) had jurisdiction under the Assignment of Claims Act for the portion of that case alleging wrongful payment of contract proceeds to the Internal Revenue Service. That Court was deciding its own jurisdiction, not ours. Thus it has no application to the case at hand.

On reconsideration, appellant has not pointed to any newly discovered evidence or errors in our findings or legal theories which the Board failed to consider in formulating its original decision. Accordingly, the motion for reconsideration is denied.

Dated: 9 April 2007

RICHARD SHACKLEFORD
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 Order of Dismissal of the Armed Services Board of Contract Appeals in ASBCA No. 55070, Appeal of HAM Investments, LLC, rendered in conformance with the Board's Charter.

Dated:

CATHERINE A. STANTON
Recorder, Armed Services
Board of Contract Appeals