

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
HomeStar Services Inc.) ASBCA No. 57194
)
Under Contract No. N69450-09-M-4328)

APPEARANCE FOR THE APPELLANT: Ms. Renee Kish
President

APPEARANCES FOR THE GOVERNMENT: Ronald J. Borro, Esq.
Navy Chief Trial Attorney
Stephen D. Tobin, Esq.
Trial Attorney
Naval Facilities Engineering Command
Litigation Office
Washington, DC

OPINION BY ADMINISTRATIVE JUDGE TUNKS
ON GOVERNMENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION

This appeal arises from the termination for cause of a purchase order to renovate restrooms at the Naval Air Station, Key West, FL. The government moves to dismiss on the ground that HomeStar Services Inc. (appellant) is a dissolved corporation and lacks capacity to maintain the appeal.

STATEMENT OF FACTS FOR PURPOSES OF THE MOTION

1. Appellant accepted Purchase Order (PO) No. N69450-09-M-4328 in the amount of \$39,375 to renovate male and female restrooms on the first floor of Building A-931 at the Naval Air Station, Key West on 29 September 2009 (R4, tab 3 at 57). The delivery date was 11 January 2010 (R4, tab 3 at 66). The government terminated the PO for cause on 23 February 2010 (R4, tab 45). On 2 April 2010, appellant appealed the termination to this Board, where it was docketed as ASBCA No. 57194 on 12 April 2010.

2. On 26 January 2011, the Board *sua sponte* directed the parties to address whether appellant was a corporation in good standing under the laws of the State of Florida at the time appellant accepted the award.

3. On 21 February 2011, the government submitted records from the website maintained by the Florida Department of State, Division of Corporations, showing that

appellant was administratively dissolved on 25 September 2009 for failure to file an annual report. The report did not indicate that appellant had been reinstated.

4. On 23 March 2011, appellant replied as follows:

Homestar Services Inc was incorporated at the time of award and in good standing with the Florida Department of State all fees and Documentation were filed on time.

It has only come to our attention when we checked our status with the state after receiving your request. We have contacted the State of Florida, Division of Corporations the department assured us it will update there [sic] records to reflect that HomeStar Services, Inc was active at the time of award of Contract N69450-09-M-4328 and still is today.

5. As of 28 April 2011, the Florida State Corporations website indicated that HomeStar was “PENDING REINSTATEMENT.” The website did not indicate that HomeStar had been retroactively reinstated to 29 September 2009, the date of the PO.

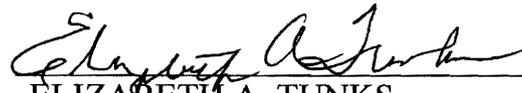
DECISION

In determining capacity, we look to the law of the state of incorporation. *TPS, Inc.*, ASBCA No. 52421, 01-1 BCA ¶ 31,375 at 154,916-17. HomeStar was “administratively dissolved” under Florida law on 25 September 2009 for failure to file an annual report. Under Fla. Stat. § 607.1421(3), a dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs. Fla. Stat. § 607.1405(1) allows a dissolved corporation to carry on the following activities:

- (a) Collecting its assets;
- (b) Disposing of its properties that will not be distributed in kind to its shareholders;
- (c) Discharging or making provision for discharging its liabilities;
- (d) Distributing its remaining property among its shareholders according to their interests; and
- (e) Doing every other act necessary to wind up and liquidate its business and affairs.

The Florida courts have interpreted the statutes to allow a dissolved corporation to commence proceedings in its own name to collect assets as long as it was necessary to wind up and liquidate business. *Cygnets Homes v. Kaleny Ltd.*, 681 So.2d 826 (Fla. Dist. Ct. App. 5th Dist. 1996). In *PBF of Fort Myers, Inc. v. D & K P'ship*, 890 So.2d 384 (Fla. Dist. Ct. App. 2d Dist. 2004), a dissolved corporation was allowed to pursue a counterclaim in a matter concerning a lease on property owned by the corporation. In *Levine v. Levine*, 734 So.2d. 1191 (Fla. Dist. Ct. App. 2d Dist. 1999), a dissolved corporation was allowed to sue for damages resulting from a breach of fiduciary and professional duties owed by the corporations' accountants. Based upon the statute and the case law, it is our opinion that accepting a new PO is not permissible under Fla. Stat. § 607.1405(1). Accordingly, we dismiss the appeal.

Dated: 13 May 2011



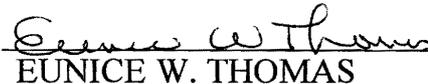
ELIZABETH A. TUNKS
Administrative Judge
Armed Services Board
of Contract Appeals

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 No. 57194, Appeal of HomeStar Services Inc., rendered in conformance with the Board's Charter.

Dated:

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