

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Triad Microsystems, Inc.) ASBCA No. 52751
)
Under Contract No. F42600-86-C-0092)
)

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

APPEARANCES FOR THE GOVERNMENT: COL Alexander W. Purdue, USAF
Chief Trial Attorney
Thomas S. Marcey, Esq.
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE LIPMAN
ON MOTION TO DISMISS

The Government has moved to dismiss this appeal for lack of standing. Appellant has opposed dismissal and countered with its own motion for summary judgment. In addition to the evidentiary file, the record consists of exhibits and affidavits submitted along with the parties' arguments on the motion. The issue before us in 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 MOTION

1. In 1985, the Government, by the United States Department of the Air Force, Ogden Air Logistics Center, Hill AFB, Utah, awarded appellant the captioned contract. At the time of award, 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 May 2000, appellant filed the captioned appeal, 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 this appeal, 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 this appeal. Accordingly, the Government’s motion to dismiss is granted and the appeal is dismissed. Since our decision is dispositive of this appeal, it is unnecessary to consider any alternative grounds for dismissal and any other motions filed by the parties are moot.

Dated: 4 June 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 No. 52751, Appeal of Triad Microsystems, Inc., rendered in conformance with the Board's Charter.

Dated:

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