

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Traction Systems, Inc.) ASBCA No. 53081
)
Under Contract No. F04626-95-C-0008)

APPEARANCE FOR THE APPELLANT: Mr. Eddie Rye, Jr.
President

APPEARANCES FOR THE GOVERNMENT: COL Alexander W. Purdue, USAF
Chief Trial Attorney
CAPT Robert E. Luttrell, III, USAF
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE COLDREN

The Government has moved to dismiss this appeal based upon appellant's lack of standing because appellant was liquidated under Chapter 7 of The Bankruptcy Act, 11 U.S.C. §§ 701 *et seq.* Appellant opposes the motion. The record consists of exhibits attached to the Government's motion as well as the Rule 4 file.

FINDINGS OF FACT FOR PURPOSES OF THE MOTION

1. On 9 February 1995, the Government, by the United States Department of the Air Force, Travis AFB, California, awarded appellant the contract (R4, tab 1).
2. By a letter dated 7 April 1999, appellant filed a claim with the contracting officer requesting an equitable adjustment under the Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) standard clause to recover wage increases for appellant's employees due to a new collective bargaining agreement (R4, tab 25). Appellant's claim was certified pursuant to the Contract Disputes Act (CDA), 41 U.S.C. §§ 601 *et seq.*
3. On 19 May 1999, appellant filed a petition for bankruptcy in the U.S. Bankruptcy Court for the Western District of Washington (the Bankruptcy Court). Initially, appellant sought reorganization of its business pursuant to Chapter 11 of the federal bankruptcy code. (Gov't mot., attachs. 1, 2)
4. Bankruptcy proceedings were converted from Chapter 11 to Chapter 7 (Gov't mot., attach. 2).

5. The contracting officer issued a final decision granting only \$9,503.51 of appellant's claim for \$239,267.50 and denied the remainder of the claim. Appellant received that decision on 12 July 2000. (R4, tab 41)

6. Appellant appealed that decision to this Board on 8 October 2000 (Board corres. file).

7. On 29 March 2002, liquidation of appellant was completed and the Bankruptcy Court discharged the Chapter 7 Trustee and closed the bankruptcy estate (Gov't mot., attach. 2).

8. On 10 October 2002, the Government filed a motion to dismiss this appeal, alleging that appellant no longer had standing to prosecute this appeal due to its liquidation under Chapter 7 of the Bankruptcy Code. Appellant's former president opposes the motion in a letter dated 14 November 2002, arguing that it would amount to a denial of due process if this appeal were dismissed.

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 March 2002 (finding 4). 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.

Dated: 31 January 2003

JOHN I. COLDREN, III
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. 53081, Appeal of Traction Systems, Inc., rendered in conformance with the Board's Charter.

Dated:

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