



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED WITHOUT PREJUDICE: January 31, 2008

CBCA 825

BOWERS INVESTMENT COMPANY, LLC,

Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

Jerry Bowers, Managing Member of Bowers Investment Company, LLC, Fairbanks, AK, appearing for Appellant.

Glenn H. Brown, Office of the Regional Counsel, Federal Aviation Administration, Department of Transportation, Anchorage, AK, counsel for Respondent.

Before Board Judges **GILMORE**, **STERN**, and **SOMERS**.

**STERN**, Board Judge.

Appellant, Bowers Investment Company, LLC (Bowers), brought this appeal to the Board based on the failure of the contracting officer of the Federal Aviation Administration (FAA) to issue a final decision. The FAA moves to dismiss for lack of jurisdiction.

Background

In 1993, the parties entered into a fifteen-year lease under which appellant leased office space in Alaska to the FAA. The lease expired on September 20, 2006. Appellant claims that the FAA failed to make the September 2006 lease payment of \$22,021.60, that the FAA held over the tenancy beyond the end of the lease and failed to make a payment for this holdover period, that it is due \$2350 for the remediation of insect infestation caused by

the FAA, and that the FAA is liable for other miscellaneous costs including charges for cleaning services and the changing of building locks. The total amount of the claim is \$62,492.11.

In an effort to resolve these and other issues, the parties voluntarily submitted their dispute to the FAA's Office of Dispute Resolution for Acquisition (ODRA). Appellant submitted its claims to ODRA during the course of the ODRA proceeding. The contracting officer received appellant's claims as a result of this submission. ODRA recommended that the FAA pay certain of the amounts claimed by appellant. The FAA declined to accept ODRA's proposed resolution.

On April 19, 2007, after conclusion of the ODRA proceedings, the FAA's contracting officer wrote appellant regarding its claims and the ODRA proceedings. The contracting officer granted appellant's claim for rent adjustments for the year 2006, in the amount of \$8849. The contracting officer denied appellant's claim of \$22,341.37 for September 2006 rent, but suggested that appellant provide additional information (bank or tax records) to support its position. The contracting officer did not address any of appellant's other claims in this letter. The contracting officer concluded:

It is apparent to us, and I sense to you as well, that we are not going to be able to settle your claims through mediation or negotiation. Thus, we must now move on to the next step. The lease incorporates Federal Acquisition Regulation Clause No. 52-233-1 - Disputes (Dec. 1991). Under this clause, to initiate the claims process, subparagraph (d) requires you to submit your claims to the contracting officer in writing. Because you have already submitted them to the mediator and I obviously have copies of them, I am not going to insist that you resubmit them to me. I do, however, need you to review each of the various items in your claims, and let me know in writing which ones you still wish to pursue. In addition, please submit anything else you want me to consider before I issue a decision on each of your claims.

Appellant waited sixty days and, without further submission to the contracting officer, filed this appeal. Appellant concedes that the contracting officer did not issue a final decision but argues that the claim is properly before the Board pursuant to section 6 (c)(5) of the Contract Disputes Act (CDA), 41 U.S.C. § 605(c)(5) (2000), which authorizes an appeal from a claim that has not been acted upon by the contracting officer within sixty days of the submission of the claim.

The FAA moves to dismiss the appeal on the basis that appellant failed to comply with the CDA's requirement that a claim be submitted in writing to the contracting officer for a decision before invoking the jurisdiction of this Board.

### Discussion

The CDA requires that a claim by a contractor be filed with the contracting officer as a prerequisite to the Board's jurisdiction. "All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision." 41 U.S.C. § 605(a). Providing the contracting officer an opportunity to consider and render a decision on a submitted claim is a condition precedent to filing an appeal before the Board. *See Sharman Co. v. United States*, 2 F.3d 1564, 1558-69 (Fed. Cir. 1993). The courts and boards of contract appeals apply a common sense analysis to determine whether a claim has been submitted in writing to the contracting officer. The submission to the contracting officer must provide an unequivocal statement giving the contracting officer adequate notice of the basis of the claim. *Medical Development International, LTD v. Department of Justice*, DOT BCA 4547, 06-2 BCA ¶ 33,405, and cases cited therein; *D.C.I. Danaco Constructors, Inc.*, DOT BCA 2086, 90-2 BCA ¶ 22,750. At the same time, unless the demand for payment requests a contracting officer's final decision, whether explicitly or implicitly, the statutory prerequisite is not satisfied. *Heyl & Patterson, Inc. v. O'Keefe*, 986 F.2d 480, 483 (Fed. Cir. 1993); *Transamerica Insurance Corp. v. United States*, 973 F.2d 1572, 1576 (Fed. Cir. 1992).

Here, Bowers and the FAA engaged in an alternative dispute resolution proceeding at which appellant presented its claims to the settlement official. The contracting officer became aware of appellant's claims through those proceedings. The parties failed to settle their dispute before ODR and the contracting officer issued a letter granting one of appellant's claims and denying another. The contracting officer invited appellant to provide further support for its position on all of its claims. Without further correspondence with the contracting officer, appellant filed this appeal.

Submission to the contracting officer may have resulted in the resolution of some issues or the narrowing of the differences between the parties. This in turn could shorten the litigative process. Without such a formal submission to the contracting officer, this important step in the process was omitted. The statutory mandate of seeking a final decision from the contracting officer was not satisfied.

Because of Bowers' failure to submit its claim to the contracting officer and request a final decision, appellant may not invoke the provision of the CDA permitting an appeal to the Board based on the contracting officer's failure to timely act on a claim. If appellant wishes to pursue an appeal before this Board, it must first present its claims to the contracting officer so that he or she has an opportunity to address the claims. Once the statutory prerequisites are met, and a final decision is issued, the case may be brought to the Board.

The Board does not have jurisdiction over this appeal.

Decision

The motion to dismiss is granted. The appeal is **DISMISSED WITHOUT PREJUDICE**.

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JAMES L. STERN  
Board Judge

We concur:

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BERYL S. GILMORE  
Board Judge

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JERI KAYLENE SOMERS  
Board Judge