



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: January 31, 2014

CBCA 2910

TOMA WEST MANAGEMENT CORP.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Joseph J. Bronesky of Sherman & Howard L.L.C., Denver, CO, counsel for Appellant.

Elyssa Tanenbaum and James F. H. Scott, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **STERN**, and **ZISCHKAU**.

**STERN**, Board Judge.

This is an appeal filed by Toma West Management Corp. (Toma), managing agent for 633 17<sup>th</sup> Street Operating Company, LLC (17<sup>th</sup> Street), from the decision of a contracting officer of the General Services Administration (GSA) denying Toma's claim for additional payments under a lease executed by 17<sup>th</sup> Street and GSA.

The Contract Disputes Act (CDA) defines a "contractor" as "a party to a Federal Government contract other than the Federal Government." 41 U.S.C. § 7101 (Supp. IV

2011). Only a contractor may appeal a contracting officer's decision to the Board. 41 U.S.C. § 7104. We have stated,

The requisite privity of contract needed to permit an appeal under the CDA has generally been limited to prime contractors who have actually contracted with the Government. Attempts by other parties, such as subcontractors and sureties, to extend the concept of privity beyond the prime contractor have typically been rejected. See [*Winter v. Floorpro, Inc.*], 570 F.3d [1367] at 1372-73 [(Fed. Cir. 2009)]; *Admiralty Construction, Inc. v. Dalton*, 156 F.3d 1217, 1220-21 (Fed. Cir. 1998); *United States v. Johnson Controls, Inc.*, 713 F.2d 1541, 1551 (Fed. Cir. 1983); *Cosmic Construction Co. v. United States*, 697 F.2d [1389] at 1390 [(Fed. Cir. 1982)]; *Wackenhut International, Inc. v. Department of State*, CBCA 1235, 09-2 BCA ¶ 34,255; *Edward W. Scott Electric Co. v. Department of Veterans Affairs*, CBCA 1388, 09-2 BCA ¶ 34,181.

*Eagle Peak Rock & Paving, Inc. v. Department of the Interior*, CBCA 2770, 12-2 BCA ¶ 35,146, at 172,521.

Toma had no contractual relationship with GSA and is not a contractor as required by the CDA. We lack jurisdiction over the appeal.

#### Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

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JAMES L. STERN  
Board Judge

We concur:

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STEPHEN M. DANIELS  
Board Judge

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JONATHAN D. ZISCHKAU  
Board Judge