



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: April 19, 2018

CBCA 6009-C(4734)

BELLE ISLE INVESTMENT COMPANY LIMITED PARTNERSHIP,

Applicant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Diana Parks Curran and Hadeel N. Masseoud of Curran Legal Services Group, Inc.,
Johns Creek, GA, counsel for Applicant.

Elyssa Tanenbaum, Office of General Counsel, General Services Administration,
Washington, DC, counsel for Respondent.

Before Board Judges **SOMERS** (Chair), **BEARDSLEY**, and **VERGILIO**.

SOMERS, Board Judge.

Belle Isle Investment Company Limited Partnership (Belle Isle) seeks \$81,683.39 in attorney fees and \$4,702.80 in costs pursuant to the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504 (2012), following our decision in *Belle Isle Investment Co. v. General Services Administration*, CBCA 4734, 18-1 BCA ¶ 37,022 (2017). Because we find GSA's position to be substantially justified, we deny the application.

Under EAJA, “[a]n agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that

the position of the agency was substantially justified or that special circumstances make an award unjust.” *Richlin Security Service Co. v. Chertoff*, 553 U.S. 571, 574 (2008) (quoting 5 U.S.C. § 504(a)(1) (2006)). Belle Isle satisfies the threshold eligibility requirements for a fee award under EAJA, 5 U.S.C. § 504(a), (b)(1)(B) (2012). See *Systems Integration & Management, Inc. v. General Services Administration*, CBCA 3815-C(1512), et al., 15-1 BCA ¶ 35,886, at 175,441. Belle Isle prevailed in CBCA 4734, filed an itemized fee application less than thirty days after that decision became final, attested that its net worth was below the statutory limit, and it had fewer than five hundred employees at the time it initiated the appeal, and alleged that GSA’s position was not substantially justified. GSA concedes that Belle Isle is eligible for a fee award.

The burden now shifts to the Government to establish that its position was “substantially justified.” *Systems Management & Research Technologies Corp. v. Department of Energy*, CBCA 5437-C(4068), 16-1 BCA ¶ 36,482, at 177,749. The Government’s position is substantially justified if it is “‘justified in substance or in the main’—that is, justified to a degree that could satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). We look at the “entirety of the government’s conduct and make a judgment call whether the government’s overall position had a reasonable basis in both law and fact,” including “the entirety of the conduct of the government . . . including the action or inaction by the agency.” *Chiu v. United States*, 948 F.2d 711, 715 (Fed. Cir. 1991).

We find that GSA’s overall position had a reasonable basis in fact and law. At the summary relief phase, the parties had two different interpretations of the meaning of a lease amendment. Based upon the record at that time, we could not resolve a potential ambiguity regarding the meaning of certain terms and phrases contained in the lease amendment. However, after hearing the testimony of the witnesses at trial, we found that GSA’s witnesses interpreted the phrase “annual rent” in a manner inconsistent with the actual terms of the amendment. The testimony made it clear that the plain language of the lease was not ambiguous per se; rather, GSA had a different understanding of what comprised the annual rent.

At trial, GSA attempted to support its interpretation of the meaning of annual rent with extrinsic evidence. We rejected that evidence, finding that the lease amendment constituted “the entire agreement of the parties” and was not ambiguous. Nonetheless, GSA’s position was substantially justified, even though it ultimately did not prevail.

Decision

The EAJA application is **DENIED**.

Jeri Kaylene Somers
JERI KAYLENE SOMERS
Board Judge

We concur:

Joseph A. Vergilio
JOSEPH A. VERGILIO
Board Judge

Erica S. Beardsley
ERICA S. BEARDSLEY
Board Judge