

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of
Business Interface of Maryland, LLC *

Under Department of Human Services * Docket No. 3065
Baltimore City Department of Social Services
Contract No. FIA-17-062 *

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ORDER

Having read and considered the Motion to Dismiss filed by Respondent, Department of Human Services, and the Response thereto, and a hearing having been requested by both parties, the Board states as follows:

In the context of a motion to dismiss for the alleged failure to file a timely claim, we assume the truth of all well-pleaded facts and all reasonable inferences that may be drawn therefrom. *See, e.g., U.K. Constr. & Mgmt., LLC*, MSBCA No. 2773 (2011). As we stated in *U.K. Constr.*, “a Motion to Dismiss may be granted only in the event of a failure to state a legally sufficient cause of action. At the early stage of the litigation, ambiguities are resolved in favor of the appellant and the Board examines the claim from the perspective of assuming the truth of all facts alleged by appellant.” *Id.* at 2.

In this case, Respondent contends that on April 10, 2017, it sent Appellant, via certified mail and electronic mail, a notice of termination of the contract for convenience, which was to become effective on May 15, 2017. Respondent contends that Appellant was required to file its notice of claim within 30 days from the date of the letter of termination (i.e., not later than May 10, 2017). Respondent argues that Appellant filed its Notice of Claim via electronic mail (which was ineffective by the terms of the contract) and by regular mail on May 10, 2017, and that the mailed Notice was not received by the procurement officer until May 15, 2017, five (5) days after

the 30-day period for filing a claim once the basis of the claim is known or should have been known had expired.

Appellant, however, contends that its claim against Respondent did not actually accrue until May 15, 2017, the date when the termination was to become effective, and that the April 10, 2017 email from Respondent was not proper notice of Respondent's intent to terminate under the terms of the contract. (Appellant contends that it has no record of having received the certified mail copy of the notice.) Appellant further contends that on May 10, 2017, it sent Respondent its Notice of Claim via email and first-class mail, and that Respondent acknowledged receipt of the emailed Notice on May 10, and the mailed Notice on May 15. Appellant argues that under Maryland law, a claim for breach does not accrue until the contract is actually breached, which, in this case, did not occur until May 15, 2017. Thus, according to Appellant, its Notice of Claim must have been received by the procurement officer within 30 days of the date when the breach accrued, in this case, not later than June 14, 2017.¹

The Court of Appeals made it abundantly clear that “the issue of untimely notice of a claim would be a defense and a factual question to be determined during the course of a full hearing on the merits, and not a jurisdictional bar to the pursuit of a contractor’s claim.”

Engineering Mgmt. Services, Inc. v. Maryland State Highway Administration, 375 Md. 211, 241 (2003). The Court determined that the filing of a timely claim is not a condition precedent to the existence of a claim, or to the exercise of the Board’s jurisdiction. *Id.* at 236-40. Likening the requirement to a statute of limitations, the Court explained that because a condition precedent

¹The parties also dispute the timeliness of the filing of the Claim itself, which is required to be filed within 30 days after the filing of the Notice of Claim, but no later than the date that final payment is made, pursuant to COMAR 21.10.04.02B. Respondent contends that the Claim should have been received by the procurement officer by June 9, 2017. Although the emailed Claim was received on June 9, the mailed Claim was not received until June 13, 2017, four (4) days late. Appellant contends that the Claim had to be filed not later than June 14, 2017, and that Respondent received the Claim on June 13, 2017, one day before the deadline for filing.

can be met by estoppel (or inducement, fraud, or waiver), and estoppel is a factual matter which can be determined only upon a full hearing on the merits, “it is inappropriate to view a statute [of limitations], which exists as a condition precedent to a claim in a summary judgment context, to be a matter of subject matter jurisdiction to which issues of estoppel and waiver may not be considered [under Maryland administrative law].” *Id.* at 240-41 (citing *Ohio Cas. Ins. Co. v. Hallowell*, 94 Md.App.444, 459 (1993)).

Therefore, in the context of a motion to dismiss, when facts regarding the timeliness of a claim are clearly in dispute (i.e., when a contractor knew or should have known that it had a claim), and where we are required to assume the truth of the facts pled by Appellant (and all reasonable inferences therefrom) in Appellant’s favor, we cannot make findings of fact regarding the timeliness of Appellant’s Notice of Claim or Claim without a full evidentiary hearing on the merits. In the context of a motion to dismiss, only where an appellant has failed to state a legally sufficient cause of action may the Board dispose of an appeal at this early juncture of the litigation.

It is only in the context of a motion for summary decision, where there is no genuine dispute of material fact, that the Board may dispose of an appeal at this juncture.² That is not what was filed here: Respondent filed a Motion to Dismiss,³ and there has been no allegation by Respondent that Appellant’s complaint failed to state a legally sufficient cause of action.

²The Board may also dismiss a case at any time for lack of subject matter jurisdiction, but that is not the issue here, as clarified by the Court of Appeals in the *EMS* case.

³Respondent did not file a motion to dismiss, or in the alternative, for summary decision, alleging that there was no genuine dispute of material fact.

Certification

COMAR 21.10.01.02 Judicial Review.

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing cases.

Annotated Code of MD Rule 7-203 Time for Filing Action.

(a) Generally. - Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. - If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA No. 3065, Appeal of Business Interface of Maryland, LLC, under Maryland Department of Human Services, Baltimore City Department of Social Services, Contract No. FIA-17-062.

Dated:

5/19/18

/s/
Ruth W. Foy
Deputy Clerk