

Findings of Fact

1. Appellants and SHA entered into a lease agreement¹ on July 1, 1980 covering a portion of Edgewater Marina owned by Appellants and located in Anne Arundel County, Maryland. In addition, SHA was granted easements through the marina as a necessary adjunct to the construction of the South River Bridge adjacent to the marina. SHA also agreed under the terms of the agreement to restore the marina property to its preconstruction condition.

2. On May 6, 1983 the same parties entered into an Entry And/Or Easement Agreement which allowed SHA to come onto Appellants property to make certain improvements and for restoration work.

3. Apparently not satisfied with the restoration work done by SHA, Appellants instituted an action in the Circuit Court for Anne Arundel County for alleged damages they sustained as result of SHA utilizing their property for construction of the South River Bridge. That court granted a stay of those proceedings and remanded the matter to allow Appellants to exhaust their administrative remedies.

4. An appropriate claim was filed with the SHA procurement officer to which SHA answered and filed a counterclaim. On June 16, 1988 the procurement officer issued his final decision denying Appellants' claim and awarding SHA \$762,170.25 for its counterclaim.

5. Appellants' filed a timely appeal with this Board on July 7, 1988.

6. They then filed a Motion to Vacate the Procurement Officer's Decision on Respondent's [SHA's] Counterclaim and to Dismiss Counterclaim for Lack of Jurisdiction alleging that the counterclaim sounded in tort, therefore, the

¹ While not styled in usual and customary language, both parties agree, and we find, that the July 1, 1980 agreement was a lease of real property.

procurement officer had no jurisdiction to render a decision.

7. Appellants filed a subsequent Motion to Dismiss asking the Board to dismiss the appeal with regard to both the original claim and the SHA counterclaim alleging that this Board lacked jurisdiction since the claim arises out of a lease agreement for real property.

Decision

Appellants seek dismissal of this appeal on the grounds that (1) this Board lacks jurisdiction over disputes concerning contract claims arising from the lease of real property and (2) SHA's counterclaim sounds in tort, precluding the procurement officer from reviewing or deciding the matter.

For reasons that follow we conclude that the Board does lack jurisdiction over the appeal.

Section 15-211(a), State Finance and Procurement Article, Annotated Code of MD., (1988 Vol.), dealing with the Appeals Board's jurisdiction provides:

- (a) Jurisdiction - The Appeals Board shall not have jurisdiction to hear and decide all appeals arising from the final action of a unit:
- (1) on a protest relating to the formation of a procurement contract; or
 - (2) except for a contract claim relating to a lease of real property, on a contract claim concerning:
 - (i) breach;
 - (ii) performance;
 - (iii) modification; or
 - (iv) termination. (Underscoring added).

And Section 15-220(a), generally dealing with an appeal from an agency, provides:

- (a) In general. - Except for a contract claim related to a lease for real property, a bidder or offeror, a prospective bidder or offeror, or a contractor may appeal the final action of a unit to the Appeals Board. (Underscoring added).

The underscoring portions of the above sections are new language which became effective July 1, 1988. The Revisor's Notes to the above sections indicate that

the changes made from former SF § 11-137,² were made to expressly state that which was formerly only implied in the law, i.e., that the Appeals Board does not have jurisdiction over a contract claim relating to a lease of real property.

We believe that the plain language of Sections 15-211(a) and 15-220(a) preclude this Board from exercising jurisdiction in connection with a contract dispute arising from a real property lease. The language clearly eliminates the right to take an appeal to this Board from final agency action. See MAP Automotive Warehouse, MSBCA 1376, 3 MSBCA ¶__, (June 1, 1988). While the lease in question was entered into prior to the effective dates of Sections 15-211 and 15-220, these sections specifically preclude an appeal to this Board regardless of when such lease was entered into. See MAP, supra.

We, therefore, grant Appellants' Motion to Dismiss without prejudice on the ground that this Board does not have jurisdiction over contract claims arising from the lease of real property. Having granted Appellants' motion to dismiss on that ground, we need not address Appellants' motion regarding SHA's counterclaim sounding in tort.

For the foregoing reasons, we hereby grant Appellants' Motion to Dismiss without prejudice.

² Section 11-137(f) provided:
(f) Appeals to Board. - (1) A bidder or offeror, a prospective bidder or offeror, or a contractor may appeal the final action of a procurement agency to the Appeals Board:
(i) within 10 days after notice of a final action as to a protest regarding the formation of a contract and, in which case, the Appeals Board shall decide the case expeditiously giving it precedence over other matters before the Appeals Board; and
(ii) within 30 days after receiving notice of a final action relating to a contract that has been entered into.
(2) Subparagraph (1) (ii) of this subsection does not apply to complaints relating to real property leases that have been entered into.