

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

IN THE APPEAL OF COLLECTION )  
AND RECOVERY, INC. )  
 ) Docket No. MSBCA 2270  
Under MVA Contract #V-HQ-99104-S )

September 17, 2002

Termination for Convenience - The Board lacks jurisdiction to hear a claim under COMAR 21.07.01.12 (mandatory termination for convenience provision for all contracts) unless a termination claim has been submitted to and determined by the Procurement Officer as required by the applicable provisions of COMAR 21.07.01.12A(2).

APPEARANCE FOR APPELLANT: Timothy M. Gunning, Esq.  
Baltimore, MD

APPEARANCE FOR RESPONDENT: Jonathan Acton, II  
Assistant Attorney General  
Glen Burnie, MD

OPINION BY BOARD MEMBER HARRISON ON MOTION TO DISMISS

Respondent Motor Vehicle Administration (MVA) moves for dismissal of the appeal of Appellant for lack of jurisdiction under COMAR 21.10.06.05. For the reasons that follow we grant the Motion to Dismiss.

Findings of Fact

1. The MVA on July 1, 1999 awarded Contract No. V-HQ-99104-S to Appellant for the removal of license plates from vehicles with suspended registrations due to lapse of insurance. By letter dated July 2, 2001, the MVA suspended performance of the work for convenience.
2. Thereafter, on February 6, 2002, the MVA determined to terminate the contract for convenience pursuant to COMAR 21.07.01.12A, and Appellant timely appealed that determination to this Board.<sup>1</sup>

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<sup>1</sup> According to the Motion to Dismiss, the Appellant's Contract was actually terminated on February 20, 2002. Appellant seeks reinstatement of its contract and money damages. While the Board might opine on whether the termination was in the best interest of the State under COMAR 21.07.01.12A, and while based on the record developed to date there is clearly support for the State's action, the Board lacks equitable jurisdiction and thus could not order reinstatement of the Contract. As a practical matter, therefore, the Board's jurisdiction is limited to a determination of the money damages, if any, resulting from the termination pursuant to the specific provisions of COMAR 21.07.01.12A(2) relating to money damages. See Driggs Corp. v. MD. Aviation, 348 Md. 389, 406 (1998).

3. Paragraph 13.0 of the Contract with Appellant incorporated the "General Conditions for Service Contract" by reference, including paragraph 34B, which is the short form of the mandatory Termination for Convenience clause. Under that clause, the provisions of COMAR 21.07.01.12A(2) govern the rights and obligations of the parties on termination for convenience.
4. COMAR 21.07.01.12A(2)"(3)" provides in pertinent part that, upon termination for convenience, the contractor shall, within a year of the termination, unless extended by the Procurement Officer, submit a termination claim to the Procurement Officer for determination. COMAR 21.07.01.12A(2)"(7)" provides that only after a timely termination claim has been submitted to and determined by the Procurement Officer is there a right of appeal to the Board of Contract Appeals under the Disputes clause set forth in COMAR 21.07.01.06.
5. At no time since the Contract was terminated for convenience on February 20, 2002 has Appellant submitted a termination claim to the Procurement Officer.
6. Respondent filed the instant Motion to Dismiss on July 22, 2002. Appellant did not respond to the Motion, nor did Appellant appear at the September 13, 2002 hearing on the Motion.

#### Decision

The Board of Contract Appeals lacks jurisdiction to hear this case because to date no termination claim has been submitted to and determined by the Procurement Officer as required by the applicable provisions of COMAR 21.07.01.12A(2) for a right of appeal to the Board of Contract Appeals. Accordingly, the Motion to Dismiss is granted.

Wherefore, pursuant to COMAR 21.10.06.05, it is Ordered this 17<sup>th</sup> day of September, 2002 that the appeal is dismissed for lack of jurisdiction.

Dated: September 17, 2002

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Robert B. Harrison III  
Board Member

I Concur:

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Michael J. Collins  
Board Member

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 on Motion to Dismiss in MSBCA 2270, appeal of Collection and Recovery, Inc. under MVA Contract #V-HQ-99104-S.

Dated: September 17, 2002

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Loni Howe  
Recorder

