

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of MAP AUTOMOTIVE
WAREHOUSE

Under DGS Lease
2001 Frederick Avenue

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Docket No. MSBCA 1376

June 1, 1988

Jurisdiction - The Board lacks jurisdiction over a dispute in a real property lease that has been entered into regardless of when the lease was entered into.

APPEARANCE FOR APPELLANT

None

APPEARANCE FOR RESPONDENT

Michael P. Kenney
Assistant Attorney General
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OPINION BY CHAIRMAN HARRISON

This timely appeal arises out of a dispute concerning payment for certain utilities under a lease of real property that was entered into in January of 1986 between Appellant as lessor and the Department of General Services (DGS) as lessee.

Findings of Fact

1. In January 1986, Appellant and DGS entered into a lease for the premises at 2001 Frederick Avenue, Baltimore, Maryland.
2. A dispute arose over which party, Appellant or DGS, was responsible for payment of the water bill. Upon Appellant's request that he issue a final decision in the dispute, the procurement officer found Appellant liable for payment of the water bill under the terms of the

lease.

3. Appellant appealed and requested expedited processing of the appeal pursuant to COMAR 21.10.06.12. In a prehearing telephone conference conducted pursuant to COMAR 21.10.06.12, the Board questioned whether it had jurisdiction over the appeal.

Decision

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

Section 11-137(f), Division II, State Finance and Procurement Article dealing with appeals to this Board provides:

(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. (Underscoring added).

Subsection (f)(2) was first enacted by Chapter 840 (Senate Bill 162) in 1986, with a delayed effective date of July 1, 1987. We believe that the plain language of subsection (f)(2) clearly precludes this Board from exercising jurisdiction in connection with a dispute over a real property lease¹ that has been entered into since such language eliminates

¹Lease is defined to mean "...a contract under which the State uses real or personal property to which the State does not have title." Section 11-101 (v), Division II, State Finance and Procurement Article.

the right to take an appeal to this Board from final agency action. Compare Engineering Technologies Associates, Inc., MSBCA 1362, 2 MSBCA (1988) ¶174. We further observe that the Bill Analysis prepared by the Maryland Department of Legislative Reference for use during consideration of Senate Bill 162 by the Senate's Economic and Environmental Affairs Committee stated in relevant part that: "A substantive change removes disputes involving executed contracts for the lease of real property from the jurisdiction of the Board of Contract Appeals.

As noted, the effective date of subsection (f)(2) was July 1, 1987, while the lease in question was entered into in January 1986, when an appeal to this Board respecting a dispute over an executed lease was provided for. However, the provisions of subsection (f)(2) specifically preclude an appeal to this Board respecting a dispute that has arisen on a real property lease that has been entered into regardless of when such lease was entered into. However, we believe that subsection (f)(2) merely affects the procedural remedies for resolution of disputes in leases that have been entered into and that an aggrieved party to an executed lease would, in view of the waiver of sovereign immunity in contract, have access to judicial remedies. We further believe that the General Assembly may retroactively so alter or enlarge such procedural remedies on State contracts without impairing the obligation of contract. See James Julian, Inc., MSBCA 1222, 1 MSBCA (MICPEL) ¶100 (1985). We thus dismiss the appeal.

