

BEFORE THE
MARYLAND STATE BOARD OF CONTRACT APPEALS

Appeal of THE PISCATAWAY)
COMPANY, INC.) Docket No.
) MSBCA 1595
Under DNR RFP to Operate)
Fort Washington Marina)

September 25, 1991

Timeliness - Appeals in bid protests must be filed with this Board within the time allowed by COMAR 21.10.02.10.

APPEARANCE FOR APPELLANT: A.H. Michael Rankin, Esq.
Upper Marlboro, MD

APPEARANCE FOR RESPONDENT: Sean Coleman
Assistant Attorney General
Annapolis, MD

OPINION BY MR. MALONE

Respondent moves to dismiss Appellant's appeal on timeliness grounds.

Findings of Fact

1. Appellant filed a protest with the Department of Natural Resources regarding an RFP to operate the Fort Washington Marina, and a Procurement Officer's final decision was issued on July 29, 1991.

2. A copy of the final decision was sent by certified mail to Appellant at the following business address provided by Appellant on its letterhead:

Ms. Juliette P. Coyle, President
The Piscataway Company, Inc.
P.O. Box 441102
Forst Washington, Maryland 20744

3. Appellant permitted a friend, Mr. Russell Benedict, to pick up and sign for the company's mail, and he signed for receipt of the procurement officer's final decision. Mr. Benedict is the

subscriber to the post office which Appellant uses as its mailing address. This arrangement was implemented solely by Appellant.

4. Mr. Benedict erroneously informed Appellant that he had signed for the letter on August 3, 1991, when in fact he signed for it on August 2, 1991 as evidenced on the "green card" receipt.

5. Appellant argues that its company employees received the letter from Mr. Benedict on August 4, 1991, and that August 4, 1991 should be considered as the date on which to begin counting the time to file an appeal to the Board, not August 2, 1991, the date on which Mr. Benedict signed for the letter.

6. This Board finds that Appellant received the final decision on Friday, August 2, 1991.

7. Appellant filed an Appeal with this Board on August 13, 1991.

Decision

COMAR 21.10.02.10 requires an appeal of a procurement officer's final decision to be filed within 10 days of receipt of notice of the final procurement agency decision. Since the final decision was sent to the business address given by Appellant and signed for on August 2, 1991, the requirements of notice and receipt were fulfilled. The act of signing for the letter constitutes receipt and starts the clock running. Consequently, the appeal is late as it was filed with this Board on August 13, 1991 which is more than 10 days after it was received. The State cannot be faulted for the manner in which Appellant decided to receive its mail.

This Board has repeatedly held that appeals must be filed

within the time allowed by COMAR. *W.B.M. Communications*, MSBCA 1470, 3 MSBCA ¶ 220 (1989)., *Coopers & Lybrand*, MSBCA 1098, 1 MSBCA ¶37 (1983). The Board has not required a showing of prejudice as a standard to grant a Motion to Dismiss an untimely appeal. The appeals are dismissed when untimely on grounds of jurisdiction. The Board has no authority to forgive or expand the mandatory 10 day filing period.

Therefore the Motion to Dismiss is granted.

Dated: 9/25/91

Neal E. Malone
Board Member

I concur:

Robert B. Harrison, III
Chairman

Sheldon H. Press
Board Member

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA 1595, appeal of THE PISCATAWAY COMPANY, INC., under DNR RFP to Operate Fort Washington Marina.

Dated: September 25, 1991

Mary F. Priscilla
Recorder

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