

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

In the Appeal of	*	
ALLAN MYERS MD, INC.	*	
	*	Docket No. MSBCA 3119
Under State Highway Administration	*	
Contract No. HA3485770R	*	
Appearance for Appellant	*	Paul A. Logan, Esq. Post & Schell, P.C. Philadelphia, PA
Appearance for Respondent	*	Craig H. DeRan, Esq. Assistant Attorney General Contract Litigation Unit Baltimore, MD
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OPINION AND ORDER

Upon consideration of Appellant’s Motion for the Board to Vacate its September 12, 2019 Order and for Leave to File its Answer to the Respondent Maryland State Highway Administration’s Motion for Partial Summary Decision, Respondent’s Response in opposition, and Appellant’s Reply thereto, the Board finds as follows.

The Board has no authority under the Maryland Administrative Procedure Act or COMAR to vacate a final decision. *See, Peter J. Scarpulla, Inc.*, MSBCA No. 1209 (December 11, 1984). The Board does, however, have the authority to reconsider a decision where it is shown that an error was committed due to fraud, surprise, mistake, or inadvertence, provided it is done in a reasonable time and before an appeal has been filed. *Id.* That authority has been codified in COMAR 21.10.06.28. Mere disagreement with the Board’s decision does not provide grounds for reconsideration. *See, Id.; George I. Clingerman*, MSBCA No. 2002 (May

28, 1998); *Economic & Technical Consultants, Inc.*, MSBCA No. 1572 (June 11, 1991); *Engineering Technology Associates, Inc.*, MSBCA No. 1362 (April 4, 1988); *Reliable Janitorial Services*, MSBCA No. 1247 (March 21, 1986); *11 Firstfield Road Limited Partnership*, MSBCA No. 2002 (November 5, 1985); and *Fruin-Colnon Corp., & Horn Constr. Co., Inc.*, MSBCA No. 1002 (1981).

Based on the foregoing, the Board decided to treat Appellant's Motion to Vacate as a motion for reconsideration. The Board finds that Appellant has failed to allege, or offer any facts that would support an allegation, that an error in the Board's decision was caused by fraud, surprise, mistake, or inadvertence.

The Board granted Respondent's Motion for Partial Summary Decision ("Motion") by Order dated September 12, 2019 after reviewing Respondent's Motion and finding, pursuant to COMAR 21.10.05.06D, that (1) after resolving all inferences in favor of Appellant, there was no genuine issue of material fact; and (2) Respondent was entitled to prevail as a matter of law. Based on Respondent's allegation that the material facts were not in dispute, and taking into consideration Appellant's failure to file a timely Response to the Motion that either contravened Respondent's allegation or identified material facts that were in dispute, the Board concluded that (1) Appellant's change order request in the amount of \$2,506,791.18 submitted on December 21, 2017 was not a claim that met the requirements of COMAR 21.10.04.02, (2) Appellant never submitted a proper claim to the procurement officer as required pursuant to COMAR 21.10.04.02, and (3) pursuant to MD CODE ANN., STATE FIN. & PROC. §15-211(a), the Board lacked jurisdiction to hear and decide Appellant's appeal because there was never a final action by the agency addressing Appellant's purported claim.

Accordingly, it is this 26th day of September 2019 hereby:

ORDERED that Appellant's Motion to Vacate is DENIED.

/s/

Bethamy N. Beam, Esq.,
Chairman

I concur:

/s/

Michael J. Stewart Jr., Esq.
Member

/s/

Lawrence F. Kreis, Jr., Esq.
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.

* * *

I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals decision in MSBCA No. 3119, Appeal of Allan Myers MD, Inc., under Maryland State Highway Administration Contract No. HA3485770R.

Dated: September 26, 2019

/s/
Ruth W. Foy
Deputy Clerk