

BEFORE THE  
MARYLAND STATE BOARD OF CONTRACT APPEALS

IN THE APPEAL OF  
MANEKIN CONSTRUCTION, LLC

Under DGS Contract No.  
PO-183-040-001

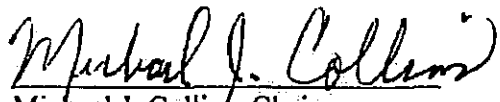
MSBCA No. 2874

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ORDER

Upon consideration of Respondent Maryland Department of General Services ("DGS") COMAR 21.10.05.06 D Third Motion for Partial Summary Decision, any response filed thereto, and any hearing on this Motion, it is this 21st day of September, 2015 hereby ORDERED that:

DGS's Third Motion for Partial Summary Decision is hereby GRANTED and that this Appeal is DISMISSED WITH PREJUDICE in its entirety.

  
Michael J. Collins, Chairman  
Maryland State Board of Contract Appeals

MARYLAND STATE BOARD OF CONTRACT APPEALS

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IN THE APPEAL OF :  
MANEKIN CONSTRUCTION, LLC : MSBCA # 2874  
: DGS # PO 183-040-001  
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6 St. Paul St.  
6th Floor  
Baltimore, Maryland

September 17, 2015

BEFORE: MICHAEL J. COLLINS, Chairman  
DANA DEMBROW, Presiding Member  
ANN MARIE DOORY, Board Member

The hearing was convened, pursuant to notice,  
at 9:42 a.m., DANA DEMBROW, presiding.

Proceedings recorded by electronic sound recording;  
transcript produced by Free State Reporting, Inc.

1 APPEARANCES:

2 ON BEHALF OF APPELLANT (MANEKIN CONSTRUCTION, LLC):

3 BRIAN JABLON  
4 JOHN COPPOCK, JR.  
5 Wellens & Jablon, LLC  
6 540 B&A Boulevard  
7 Suite #2  
8 Severna Park, MD 21146  
9 (410) 647-1493

10 DANIEL SHARPE

11 ON BEHALF OF THE RESPONDENT:

12 KERRY B. FISHER  
13 ALICE M. SOMERS  
14 Assistant Attorneys General  
15 Contract Litigation Unit  
16 Office of the Attorney General  
17 200 St. Paul Place  
18 19th Floor  
19 Baltimore, ME 21202  
20 (410) 576-6991

21 LAUREN BUCKLER  
22 JACOB MISHGAN

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Witness:

Examination by:

Page:

E X H I B I T S

Exhibit #:

Description

Marked Received

PROCEEDINGS

1  
2 PRESIDING MEMBER DEMBROW: Okay. At this time  
3 there will not be a need for recross-examination because  
4 the Board has unanimously determined to grant the State's  
5 Motion for Partial Summary Judgment Number 3. After  
6 listening carefully to the testimony of Mr. Sharpe, who  
7 is the Vice President of the Appellant Construction  
8 Company, Manekin, and the Project Manager on this job, it  
9 is clear that even giving the Appellant the benefit of  
10 all doubt the ripple effect claim was first raised to the  
11 State by correspondence November 2, 2011. It was  
12 formally submitted as a proposed change order on  
13 December 7, 2011. And the very next day the State  
14 indicated to Appellant that that PCO was, quote, void,  
15 end quote. Now that was clear in the mind of some of the  
16 Members of the Board that that meant reject. But giving  
17 Appellant the benefit of all doubt, because there is a  
18 bit of a nuance in that DGS also noted on that voiding of  
19 that PCO that they wanted fragnets. The Board notes that  
20 the last request, and there are a couple of them at  
21 least, that the State made of the Appellant to submit the  
22 fragnets needed to support PCO 68, the last reference to  
23 fragnet was made on January 19, 2012.

24 There was a progress meeting on February 2,  
25 2012, and in the minutes of that progress meeting, the

1 minutes being dated February 7, 2012, there is reference  
2 that Mr. Sharp stated or at least the minutes state,  
3 quote, Dan Sharpe offered March 1, 2012 and leave  
4 discussion open on compensational, period. That's  
5 certainly not an example of the greatest grammar because  
6 it's somewhat difficult to know what that even means.  
7 But it does appear beyond a shadow of a doubt that on  
8 February 2, 2012, when PCO 68 was marked void there was  
9 no reference to fragnets at that point. There had not  
10 been a reference for the need for further documentation  
11 by way of fragnets since January 19, 2012. At least as  
12 of February 1st Mr. Sharpe was saying we'll do this by  
13 March 1, 2012.

14 COMAR says, and this is 21.10.04.02, a  
15 contractor shall file a written notice of a claim  
16 relating to a contract with the appropriate procurement  
17 officer within 30 days after the basis for the claim is  
18 known or should have been known. It appears that the  
19 basis of the claim was initially known back in November  
20 of 2011. It certainly was known as of February 2012.  
21 But this claim was not filed until a year later. So even  
22 if we give the, the Appellant the benefit of all doubt  
23 and give them 'till March 1, 2012, as the trigger date  
24 for the beginning of that 30-day statute of limitations,  
25 we're still a year late. And the Board is directed by

1 COMAR 21.10.04.03 -- no, I'm sorry, 21:10.04:02C, quote,  
2 a notice of a claim or a claim that is not filed within  
3 the time prescribed shall be dismissed. Emphasis on the  
4 word shall.

5 Fair or unfair, that's what the regulation  
6 requires. It is based on State Finance and Procurement  
7 Article 15-220. The Board has no choice but to not  
8 address the substantive merits of a claim that is filed a  
9 year late. And the Board concludes that that is the  
10 correct categorization of this appeal. Therefore, it  
11 will be dismissed at this time without the necessity of  
12 further testimony.

13 With that, I will ask if the other Members of  
14 the Board concur.

15 CHAIRMAN COLLINS: I concur.

16 MEMBER DORY: I concur.

17 PRESIDING MEMBER DEMBROW: And we would only  
18 note that we've been deliberating about this for months.  
19 We wanted to hear testimony from Mr. Sharpe and give the  
20 Appellant the benefit of all doubt. We are comfortable  
21 that we've done that now. So this was not a, a decision  
22 made in haste, but one that we've been thinking about for  
23 a long time. And the testimony that we have confirmed  
24 the view of some of the Board Members a long time ago.  
25 But at this point the, the appeal shall be, should be and

1 is hereby dismissed.

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CERTIFICATE OF REPORTER

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I, BRYSON DUDLEY, do hereby certify that the foregoing transcription was digitally recorded by me and reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

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BRYSON DUDLEY, Court Reporter  
Free State Reporting, Inc.

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 Order in MSBCA 2874, appeal of Under DGS Contract No. PO-183-040-001.

Dated:

9/20/15



Michael L. Carnahan  
Clerk