

Docket Number: 1057

THE KLING PARTNERSHIP

~~John J. Soroko, Esquire~~
Kenneth L. Sable, Esquire

VS.

CLOSED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES

~~Thomas M. Devlin, Assistant Counsel~~
~~Michael D. Reed, Chief of Litigation~~
M. Shirley Young, Assistant Counsel

VS.

THE KLING PARTNERSHIP

~~Elizabeth McKenna, Esquire~~
Richard J. Davies, Esquire

April 10, 1986

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$43,398.14

April 14, 1986

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General.

April 16, 1986

Acceptance of Service of Complaint received from Defendant. Receipt of same acknowledged by Defendant April 15, 1986.

April 22, 1986

Acceptance of Service of Complaint received from Office of Attorney General. Receipt of same acknowledged by Office of Attorney General April 15, 1986.

May 30, 1986

Answer to Complaint of Claimant, The Kling Partnership with New Matter and Counter Claim filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 16, 1986

Answer of The Kling Partnership to New Matter filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

June 16, 1986

Entry of Appearance filed by Elizabeth McKenna, Esquire attorney for Respondent, The Kling Partnership on the Counterclaim. Copy forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Respondent.

July 14, 1986

Answer of Respondent on the Counterclaim to the Counterclaim of Commonwealth of Pennsylvania, Department of General Services filed by attorney for Respondent. Copy forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Respondent.

August 4, 1986

Respondent's Answers to Claimant's New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Respondent by attorney for Defendant.

April 1, 1987

Interrogatories of the Kling Partnership, Defendant on the Counterclaim, to Plaintiff on the Counterclaim filed by attorney for Respondent. Copy forwarded to attorney for Defendant by attorney for Respondent.

April 1, 1987

Request For Production of Documents of The Kling Partnership, Defendant on the Counterclaim, to Plaintiff on the Counterclaim filed by attorney for Defendant. Copy forwarded to attorney for Respondent by attorney for Defendant.

April 1, 1987

Respondent's Answers to Interrogatories of The Kling Partnership, Defendant on the Counterclaim filed by attorney for Defendant. Copy forwarded to attorney for Respondent by attorney for Defendant.

May 20, 1987

Response to Request for Production of Documents filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Respondent by attorney for Defendant.

December 6, 1989

Defendant's Request for Production of Documents filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Respondent by attorney for Defendant.

August 14, 1990

Letter/Motion to Compel filed by attorney for Respondent. Copy forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Respondent.

September 10, 1990

Answers of the Commonwealth of Pennsylvania, Department of General Services, to the Expert Interrogatories of The Kling Partnership on the Counterclaim filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Respondent by attorney for Defendant.

June 7, 1991

Motion of Defendant on the Counterclaim, The Kling Partnership, to Compel More Complete Answers to Expert Interrogatories Addressed to Defendant, Department of General Services and Memorandum of Law in Support of Motion of Defendant on the Counterclaim, The Kling Partnership, to Compel More Complete Answers to Expert Interrogatories Addressed to Defendant, Department of General Services and Proposed Order filed by attorney for Plaintiff. Copies forwarded to attorney for Defendant and attorney for Respondent by attorney for Plaintiff.

August 14, 1991

The Board rendered an Opinion and made the following Order: **"AND NOW,** this 14th day of August 1991, a **RULE TO SHOW CAUSE** is issued on the Defendant to show cause why all Interrogatories should not be answered. Said Rule is returnable within thirty (30) days of the date of this Order. If the Board does not receive a reply to the above-stated Rule within the designated time, the Rule will become absolute and the Defendant must supply answers to all Interrogatories within fifteen (15) days, of the date the Order becomes absolute.

The Rule will become absolute in absence of any activity on behalf of the Kling Partnership, Defendant on the Counterclaim. If the activity on behalf of The Kling Partnership, Defendant on the Counterclaim. If the Defendant does not answer all the Interrogatories in accordance with the above Order, the testimony as presented by the named witness at the time of trial as it relates to the unanswered Interrogatories will not be admitted as evidence."

Copies forwarded to attorney for Plaintiff, attorney for Defendant and attorney for Respondent.

August 27, 1991

Acceptance of Service of Opinion and Order dated August 14, 1991 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff August 23, 1991.

August 29, 1991

Acceptance of Service of Opinion and Order dated August 14, 1991 received from attorney for Respondent. Receipt of same acknowledged by attorney for Respondent August 26, 1991.

September 13, 1991

Respondent's Response to Rule to Show Cause filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Respondent by attorney for Defendant.

September 18, 1991

Hearings scheduled for March 24, 25, 26, 27 and 31, April 1, 2 and 3, 1992 as well as, April 7, 8, 9 and 10, 1992, if necessary, in Board's Courtroom No. , 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at a.m. **November 1, 1991**

CLOSED

The Board rendered an Opinion and made the following Order: **"AND NOW, this 18th day of November 1991, it is ORDERED and DECREED that the Rule to Show Cause under date of August 14, 1991, be, and is hereby DISMISSED as being MOOT."** Copies forwarded to attorney for Plaintiff, attorney for Defendant and attorney for Respondent.

November 27, 1991

Acceptance of Service of Opinion and Order dated November 18, 1991 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant November 19, 1991.

December 2, 1991

Acceptance of Service of Opinion and Order dated November 18, 1991 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff November 20, 1991.

January 16, 1992

Proposed Order, Motion of Respondent on the Counterclaim, The Kling Partnership, to Compel More Complete Answers to Expert Interrogatories Addressed to Respondent, Commonwealth of Pennsylvania, Department of General Services and Memorandum of Law in Support of Respondent's Motion on the Counterclaim filed by attorney for Respondent. Copy forwarded to attorney for Defendant by attorney for Respondent.

January 28, 1992

The Board rendered the following Order: **"AND NOW,** This 28th day of January, 1992, upon consideration of the Motion of Respondent on the Counterclaim, The Kling Partnership, to Compel More Complete Response to Expert Interrogatories Addressed to Respondent, Commonwealth of Pennsylvania, Department of General Services, and any responses thereto, it is hereby **ORDERED** and **DECREED** that Respondent, Commonwealth of Pennsylvania, Department of General Services, shall provide full and complete Answers to Expert Interrogatories 3 through 6 inclusive, within twenty (20) days from the date of this Order or be precluded from offering any evidence, by way of expert testimony or otherwise on these matters which are the subject of Expert Interrogatories 3 through 6." Copies forwarded to all parties of record.

CLOSED

February 4, 1992

Acceptance of Service of Order dated January 28, 1992 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff January 29, 1992.

February 6, 1992

Acceptance of Service of Order dated January 28, 1992, received from attorney for Respondent. Receipt of same acknowledged by attorney for Respondent January 31, 1992.

March 2, 1992

Motion of Respondent, Commonwealth of Pennsylvania, for Clarification of the January 28, 1992 Order Issued by the Board of Claims Limiting Testimony, and Brief in Support thereof, filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Respondent by attorney for Defendant.

March 4, 1992

Proposed Order which was inadvertently omitted from Motion for Clarification which was previously filed on March 2, 1992 filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Respondent by attorney for Defendant.

March 16, 1992

Response of the Kling Partnership to the Motion of the Commonwealth of Pennsylvania, Department of General Services, for Clarification of the January 28, 1992 Order issued by the Board of Claims Limiting Testimony, Memorandum of Law of Respondent on the Counterclaim, the Kling Partnership, in Opposition to the Commonwealth's Motion for Clarification of the January 28, 1992 Order of the Board of Claims, and Proposed Order filed by attorney for Respondent. Copy forwarded to attorney for Plaintiff and attorney for Defendant by attorney for Respondent.

March 17, 1992

CLOSED
The Board made the following Order: **AND NOW**, This 17th day of March, 1992, to further elucidate on the Board's Order of January 28, 1992, the Commonwealth of Pennsylvania Department of General Services, will not be allowed to introduce any expert testimony. The Response to the Motion for Clarification has been taken into consideration.

The Board will not permit a plea of surprise on the part of either party relative to this determination." Copies forwarded to attorney for Plaintiff, attorney for Defendant and attorney for Respondent.

March 24, 1992

Acceptance of Service of Order dated March 17, 1992 received from attorney for Respondent (Elizabeth McKenna). Receipt of same acknowledged by attorney for Respondent March 20, 1992.

March 24, 1992

Acceptance of Service of Order dated March 17, 1992 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff March 20, 1992.

March 24, 1992

Hearing held in Board's Courtroom No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 11:00 a.m.

March 25, 1992

Hearing held in Board's Courtroom No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:10 a.m.

March 26, 1992

Hearing held in Board's Courtroom No. 1, 707 Transportation and Safety Building Harrisburg, Pennsylvania commencing at 10:30 a.m. Case continued to March 31, 1992.

March 31, 1992

Acceptance of Service of Order dated March 17, 1992 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 18, 1992.

March 31, 1992

Hearing held in Board's Courtroom No. 1, 707 Transportation and Safety Building, Harrisburg, Pennsylvania commencing at 10:30 a.m. Case completed.

CLOSED

April 22, 1992

Testimony of hearing held March 24, 25, 26 and 31, 1992 filed

April 27, 1992

Copy of testimony of hearing held March 24, 25, 26 and 31, 1992 forwarded to attorney for Defendant.

May 5, 1992

Acceptance of Service of testimony of hearing held March 24, 25, 26 and 31, 1992 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 22, 1992.

May 15, 1992

Proposed Order requesting an extension of time for Plaintiff to file his Proposed Findings of Fact, Proposed Conclusions of law and Brief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant and attorney for Respondent by attorney for Plaintiff.

July 31, 1992

Praecipe to Enter Appearance filed by Kenneth L. Sable, Esquire, attorney for Plaintiff. Copy forwarded to attorney for Defendant and attorney for Respondent by attorney for Plaintiff.

July 31, 1992

Corrected testimony of hearing held March 26, 1992 filed.

August 17, 1992

Proposed Findings of Fact of the Kling Partnership as Claimant, Proposed Conclusions of Law of the Kling Partnership as Claimant and Memorandum of Law of the Kling Partnership as Claimant in Support of its Proposed Findings of Fact and Conclusions of Law filed by attorneys for Plaintiff. Copies forwarded to attorney for Defendant and attorney for Respondent by attorney for Plaintiff.

September 21, 1992

The Board made the following Order: "The instant matter was filed with the Board on April 10, 1986. The matter was composed of an initial suit instituted by The Kling Partnership against the Commonwealth of Pennsylvania, Department of General Services. The matter, on May 30, 1986, the Department of General Services filed its Answer to the Claim and set forth a New Matter in a Counterclaim against The Kling Partnership. The matter was responded to by the Claimant and the matter proceeded through various pre-trial matters until on September 18, 1991, a hearing was scheduled for March 24, 25, 26, 27, and 31, 1992 and thereafter, until April 10, 1992, if necessary. The hearing began as scheduled and proceeded to the completion of the Claimant's case against the Department of General Services. At that time, the Board directed that it would establish a briefing schedule. The testimony in this matter has been fully transcribed and the parties have received their copies of same. The Claimant has on August 17, 1992 filed their Proposed Findings of Fact, Proposed Conclusions of Law and their Memorandum of Law in Support thereof. Appropriate service of same has been made upon the Department of General Services and the Board of Claims. The Commonwealth is presently directed to file within 30 days of the date of this Order its Suggested Findings of Fact, Suggested Conclusions of Law and Brief in Support thereof in the following manner: One copy of same shall be filed with the Claimant and the original and four copies filed with the Board of Claims. In that the matter contained, a Counterclaim which was heard by the Board of Claims and as the record will establish the Counterclaim of the Commonwealth was dismissed upon issuance of a motion for Nonsuit and the reasons thereof were set forth in the notes of testimony. The Commonwealth is directed to file, if it so determines to continue to keep alive its Counterclaim, its Brief setting forth wherein in its opinion the Board erred in proving the Motion to Dismiss in the following manner: A copy to be served upon The Kling Partnership as Respondent and the original and four copies upon the Board of Claims. Thirty days thereafter, the Respondent if it so desires,

September 21, 1992 (Cont'd Page Two)

shall file its Brief in Support on the Motion for Nonsuit which was heretofore granted by the Board of Claims. Upon receipt of all documents, the Board shall make every effort on its part within 90 days to render its determination. Appeals by either party would be in order within 30 days of the date of exit of the Board of Claims' final determination. If for any reasonable cause, additional time is needed by any of the parties, the Board of Claims will review same and render its decision on said extension. Dated: September 27, 1992."

September 24, 1992

Acceptance of Service of Order dated September 21, 1992 received from attorney for Plaintiff (Kenneth L. Sable). Receipt of same acknowledged by attorney for Plaintiff (Kenneth L. Sable) September 27, 1992.

October 2, 1992

Acceptance of Service of Order dated September 21, 1992 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff September 24, 1992.

October 5, 1992

Acceptance of Service of Order dated September 21, 1992 received from attorney for Respondent. Receipt of same acknowledged by attorney for Respondent September 25, 1992.

October 14, 1992

Corrected copy of testimony of hearing held March 26, 1992 filed.

December 14, 1992

Proposed Findings of Fact of the Commonwealth of Pennsylvania, Department of General Services, Respondent, Proposed Conclusions of Law of the Commonwealth of Pennsylvania, Department of General Services, Respondent and Commonwealth's Brief in Support of Commonwealth's Proposed Findings of Fact and Conclusions of Law filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff and attorney for Respondent by attorney for Defendant.

January 20, 1993

Supplemental Memorandum of The Kling Partnership as Claimant in Support of its Proposed Findings of Fact and Conclusions of Law filed by attorneys for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Respondent by attorney for Plaintiff (John J. Soroko, Esquire)

February 16, 1993

Brief of Respondent on the Counterclaim, The Kling Partnership filed by attorney for Respondent. Copy forwarded to attorneys for Plaintiff and attorney for Defendant by attorney for Respondent.

April 8, 1994

The Board rendered an Opinion and made the following Order: "AND NOW this 8th day of April, 1994, as awarded hereby entered in favor of the Kling Partnership and against the Commonwealth of Pennsylvania, Department of General Services, in the amount of One Hundred Twenty Two Thousand Three Hundred Twelve Dollars and Seventy Cents (\$122,312.70). Interest shall be paid at a rate of six percent (6%) per annum from the date of the filing of the complaint, April 10, 1986, on One Hundred Eighteen Thousand Three Hundred Twelve Dollars and Seventy Cents (\$118,312.70). \$122,312.70- \$4,000.00 Counts III and IV Total \$118,312.70 From the date of the Order, interest shall be paid at a rate of six percent (6%) per annum on the total of \$122,312.70. Upon receipt of said award, Plaintiff shall forthwith file with the Board of Claims a Praecipe that the case be marked settled, discontinued and ended with prejudice. Each party to bear its own costs and attorneys' fees." Copies forwarded to all parties of record.

April 12, 1994

Acceptance of Service of Opinion and Order dated April 8, 1994, received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General April 11, 1994.

April 14, 1994

Acceptance of Service of Opinion and Order dated April 8, 1994, received from Chief Deputy Attorney General. Receipt of same acknowledged by attorney for Defendant April 11, 1994.

April 19, 1994

Acceptance of Service of Opinion and Order dated April 8, 1994, received from attorney for Plaintiff (John J. Soroko, Esquire). Receipt of same acknowledged by attorney for Plaintiff April 14, 1994.

April 28, 1994

Acceptance of Service of Opinion and Order dated April 8, 1994, received from attorney for Plaintiff (Kenneth L. Saylor, Esquire). Receipt of same acknowledged by attorney for Plaintiff April 27, 1994.

April 27, 1994

The Board made the following Amended Order: **AND NOW**, this 27th day of April 8, 1994, as the Board had inadvertently failed to include in its Order of April 8, 1994, any reference to the Counterclaim of the Commonwealth of Pennsylvania, Department of General Services, it is hereby **ORDERED** that the Commonwealth of Pennsylvania, Department of General Services' Counterclaim is hereby **DENIED**." Copies forwarded to all parties of record.

May 4, 1994

Acceptance of Service of Amended Order dated April 27, 1994, received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 2, 1994.

May 11, 1994

Copy of Petition for Review as filed in Commonwealth Court filed by attorney for Defendant.

May 12, 1994

Petition for review filed by Commonwealth Court. (1174 C.D. 1994)

May 5, 1994

Acceptance of Service of Amended Order dated April 27, 1994, received from attorney for Respondent. Receipt of same acknowledged by attorney for Respondent May 2, 1994.

May 10, 1994

Acceptance of Service of Amended Order dated April 27, 1994, received from attorney for Plaintiff (John J. Soroko, Esquire). Receipt of same acknowledged by attorney for Plaintiff May 5, 1994.

May 27, 1994

Acceptance of Service of Amended Order dated April 27, 1994, received from attorney for Defendant (Elizabeth A. O'Reily, Assistant Counsel). Receipt of same acknowledged by attorney for Defendant April 28, 1994.

July 21, 1994

File transmitted to Commonwealth Court.

June 5, 1995

Opinion and Order rendered in Commonwealth Court follows: Now, June 2, 1995, the order of the Board of Claims in the above case, is affirmed.

CLOSED

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