

Docket Number: 2455

JAMES D. MORRISSEY, INC.

Mason Avrigian, Jr., Esquire

CLOSED VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

~~John J. Robinson, Chief Counsel~~
~~Stephen J. Busterna, Assistant Counsel~~
Michael D. Alsher, Assistant Counsel

***June 11, 1997**

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$166,295.61+.

June 17, 1997

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

June 20, 1997

Acceptance of Service of Complaint received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General June 18, 1997.

June 23, 1997

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant June 20, 1997.

July 23, 1997

Preliminary Objections and Brief in Support thereof filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

August 20, 1997

Letter received from attorney for Plaintiff requesting an extension of time until September 6, 1997 to respond to Defendant's Preliminary Objections. Same granted 8/28/97.

September 8, 1997

Preliminary Objections to Defendant's Preliminary Objections and Brief in Support thereof filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 28, 1998

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 28th day of April, 1998, upon consideration of Defendant's Preliminary Objections to Plaintiff's Complaint and Plaintiff's Preliminary Objections to Defendant's Preliminary Objections, and for the reasons set forth in the accompanying Opinion, it is **ORDERED** that Defendant's Preliminary Objections are **OVERRULED** and Plaintiff's Preliminary Objections to Defendant's Preliminary Objections are **SUSTAINED**. Defendant is **ORDERED** to respond to the complaint within thirty (30) days of the entry date of this **ORDER**."

Copies forwarded to attorney for Plaintiff and attorney for Defendant.

June 1, 1998

Letter forwarded to the parties requesting a status report.

Response due 6/8/98.

June 9, 1998

Copy of letter received from attorney for Defendant relative to Defendant's response.

***July 16, 1998**

Amended Statement of Claim filed by attorney for Plaintiff. Amount of Claim: \$75,759.78+. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

July 31, 1998

Copy of Amended Statement of Claim forwarded to Chief Deputy Attorney General.

August 28, 1998

Answer and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

October 2, 1998

Reply to New Matter filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 7, 1998

Letter forwarded to the parties directing them to proceed with discovery.

August 13, 1999

Department's Interrogatories and Request for Production of Documents, First Set filed by attorney for Defendant. Copy served upon attorney for Plaintiff by attorney for Defendant.

August 19, 1999

Department's Responses to Plaintiff's Interrogatories, First Set filed by attorney for Defendant. Copy served upon attorney for Plaintiff by attorney for Defendant.

March 28, 2000

Letter forwarded to parties requesting a status. NOV Docket 4/28/00.

April 7, 2000

Status letter from Plaintiff advising that discovery is ongoing. Close of discovery letter received from Plaintiff advising that they will not close discovery until receipt and review of Claimant's answer to their discovery.

May 1, 2000

Faxed letter received from attorney for Plaintiff advising that they have completed their discovery from Defendant. Plaintiff request that the Board enter an Order directing the parties to complete all discovery within forty-five (45) days and then schedule a hearing.

May 1, 2000

US Mail letter received from attorney for Plaintiff advising that they have completed Defendant's discovery. Plaintiff request the Board to issue an Order directing the parties to complete discovery within forty-five (45) days and thereafter list the case for hearing.

May 1, 2000

Status letter received from Defendant advising that they are awaiting responses to its discovery requests served upon Plaintiff August of 1999. Upon receipt Defendant will depose the necessary parties, close discovery and set case for trial. Close of discovery letter received from Defendant advising that they have not received responses to discovery as Plaintiff alleges and will not agree to close discovery or set for trial until same is answered.

March 30, 2001

Letter forwarded to parties requesting a status report.

May 2, 2001

Letter received from attorney for Defendant advising that they have not completed its depositions in this matter. Defendant request that in the event the case is listed for hearings said hearing not take place within the next ninety (90) days.

May 9, 2001

Letter received from attorney for Plaintiff advising that Defendant has not requested any depositions or other discovery which remains outstanding. Plaintiff requests that the case be scheduled for hearing.

CLOSED

October 12, 2001

The Board made the following Order: **AND NOW**, this 12th day of October 2001, it is **ORDERED** and **DECREED** that this matter is set for a hearing before the Board's Panel composed of Richard B. Swartz Esquire, Panel Attorney and James L. Wilson, Esquire, Panel Member beginning on November 6, 2001, through November 8, 2001, if necessary. Said hearing shall be held in Courtroom No. 2, 6th Floor, Fulton Building, Harrisburg, Pennsylvania, commencing at 9:30 a.m. It is further **ORDERED** and **DECREED** that all discovery be completed by October 30, 2001. Copy forwarded to attorney for Plaintiff and Defendant.

October 18, 2001

Faxed letter received from attorney for Plaintiff advising that both parties have agreed to file their pretrial statements on October 24, 2001.

October 18, 2001

Acceptance of Service of Order dated October 12, 2001 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff October 17, 2001.

October 19, 2001

US Mail letter received from attorney for Plaintiff advising that both parties have agreed to file their pretrial statements on October 24, 2001.

October 19, 2001

Acceptance of Service of Order dated October 12, 2001, received from

attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff October 17, 2001.

October 25, 2001

PennDOT'S Pre-Trial Statement filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

October 25, 2001

Faxed Claimant's Pre-trial Statement filed by attorney for Defendant. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 26, 2001

Claimant's Pre-Trial Statement filed. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 6, 2001

Panel Hearing (Swartz Wilson) held in Board's Courtroom No. 6, 6th Floor, Fulton Building, Harrisburg, Pa commencing at 4:30 p.m. Case complete

November 30, 2001

Testimony of Panel Hearing held November 6, 2001 filed.

December 6, 2001

Copy of Testimony panel hearing November 6, 2001, forwarded to attorney for Defendant. Plaintiff's Findings of Fact, etc. due January 7, 2002.

January 2, 2001

Faxed letter received from attorney for Plaintiff requesting an extension of time until January 11, 2002, in which to file their proposed findings of fact, conclusions of law and brief in support.
Response granted to 1/11/02.

January 4, 2001

US Mail letter received from attorney for Plaintiff requesting an extension of time until January 11, 2002, in which to file their proposed findings of fact, conclusions of law and brief in support.
Response granted to 1/11/02.

January 11, 2002

Plaintiff, James D. Morrissey, Inc.'s Proposed Findings of Fact,

Conclusions of Law and Brief in Support filed by attorney for Plaintiff.

February 11, 2002

Letter received from Defendant requesting a short extension of time until February 14, 2002, in which to file its Proposed Findings of Fact, etc. **Response granted until 2/14/02.**

February 13, 2002

PennDOT's Proposed Findings of Fact and Conclusions of Law filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

February 13, 2002

PennDOT's Memorandum of Law in support of its proposed Findings of Fact and Conclusions of Law filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

February 14, 2002

Letter forwarded to Swartz & Wilson requesting the Panel Report.

March 28, 2002

Panel Report (Richard B. Swartz and James Wilson) filed.

April 26, 2002

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 26th day of April, 2002, it is hereby **ORDERED** and **DECREED** that Judgment be entered for Plaintiff and against Defendant in the sum of Seventy-Five Thousand Seven Hundred Fifty-Nine Dollars and Seventy-Eight Cents (\$75,759.78), plus statutory interest at the rate of six percent (6%) per annum from June 11, 1997. Each party shall bear its own costs and attorneys' fees." Copy forwarded to attorney for Plaintiff, attorney for Defendant and Chief Deputy Attorney General.

May 2, 2002

Acceptance of Service of Opinion and Order dated April 26, 2002 received from Chief Attorney General. Receipt of same acknowledged by Chief Attorney General April 29, 2002.

May 2, 2002

Acceptance of Service of Opinion and Order dated April 26, 2002,

received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff April 29, 2002.

May 20, 2002

Copy of Petition for Review received from Commonwealth Court.
{No.: 1198 CD 2002}

May 24, 2002

Case transferred to Commonwealth Court.

October 9, 2003

Supreme Court denied Petition for Allowance of Appeal from Commonwealth Court. Supreme Court Docket's No. 1198 CD 2002.

CLOSED

Supreme Court of Pennsylvania filed an Order: **AND NOW:** this 17th day of September, 2003, the Petition for Allowance of Appeal is hereby denied.

Commonwealth Court filed an Order: **AND NOW,** this 8th day of November 2002, the Order of the Pennsylvania Board of Claims in the above-captioned matter is affirmed.

October 14, 2003

Supreme Court of Pennsylvania filed an Order: **AND NOW,** this 17th day of September 2003, the Petition for Allowance of Appeal is hereby denied.

October 14, 2003

File returned from Commonwealth Court.
