

Docket Number: 2818

MARK KUTNYAK

Mark Kutnyak, Pro Se GQ5407

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

~~Sarah B. Vandenberg, Chief Counsel~~
~~Raymond W. Dorion, Assistant Counsel~~

CLOSED

December 31, 1998

Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: Unknown

January 12, 1999

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. ANSWER DUE FROM DEFENDANT February 12, 1999.

January 21, 1999

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General January 13, 1999.

February 4, 1999

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 4, 1999.

February 11, 1999

Respondent's Motion for Extension of Time to file Preliminary Objections and Supporting Brief filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

February 19, 1999

Defendant's Preliminary Objections, Brief in Support and Proposed Order filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant. **Response due from Plaintiff March 22, 1999.**

February 22, 1999

The Board rendered the following Order: **AND NOW**, this 22nd day of February, 1999, upon consideration of Respondent's, Commonwealth of Pennsylvania, Department of Correction's Motion for Extension of Time, said Motion is **GRANTED** and Respondent shall file Preliminary Objections and supporting brief on or before February 22, 1999.@ Copy forwarded to Plaintiff and attorney for Defendant.

February 26, 1999

Acceptance of Service of Order dated February 22, 1999 received

from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant February 24, 1999.

March 2, 1999

Status letter received from Plaintiff advising that he will be responding to Defendant's Preliminary Objections.

March 11, 1999

Letter and Proposed Order filed by attorney for Defendant requesting that this case be dismissed from the Department of Corrections.

March 15, 1999

Motion for Leave to Amend Petition for Review Nunc Pro Tunc filed by Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

March 17, 1999

Amended Complaint/New Matter Pursuant Pa RCP 1029/Boc 206 (b) (1) Against Pa Department of Corrections filed by Plaintiff. Copy forwarded to attorney for Defendant by Plaintiff.

March 19, 1999

Claimant's Responsive Pleadings to Pa. Department of Corrections Preliminary Objections and New Matter pursuant to Pa. R.C.P. 1028(d) 1029 and Brief in Support filed.

April 5, 1999

Status letter filed by Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

April 7, 1999

The Board rendered an Opinion and made the following Order: **AND NOW**, this 7th day of April, 1999, it is hereby **ORDERED** and **DECREED** that the Preliminary Objections of Defendant, Commonwealth of Pennsylvania, Department of Corrections are hereby **GRANTED** and the Claim of Mark Kutnyak is **DISMISSED** for lack of jurisdiction.@ Copy forwarded to Plaintiff and attorney for Defendant.

April 9, 1999

Letter received from attorney for Defendant setting forth what portion of the Claim they handle.

May 1, 2001

Letter received from Plaintiff requesting the decision in his case.

April 12, 1999

Acceptance of Service of Opinion and Order dated April 7, 1999 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant April 8, 1999.

May 5, 1999

Notice of Appeal of Board's Order dated April 7, 1999 received from Plaintiff. Copy forwarded to attorney for Defendant by Plaintiff.

May 18, 1999

Notice of Filing Petition for Review in Commonwealth Court. Docket Number: 1161 C.D. 1999.

May 19, 1999

File transmitted to Commonwealth Court.

August 20, 1999

Brief in Support Petition for Review as filed in Commonwealth Court filed by Plaintiff.

January 20, 2000

Reproduced Record and Brief of Petitioner as filed in Commonwealth Court filed by attorney for Plaintiff.

September 25, 2000

Copy of Opinion and Order received from Commonwealth Court. Order as follows: "AND NOW, this 15th day of February, 2000, the order of the Board of Claims (Board), dated April 7, 1999, dismissing Mark Kutnyak's bail bond claim is affirmed. In addition, this case is remanded to the Board for disposition of the power of attorney claim that Kutnyak raised in his amended

complaint." Dissenting Opinion filed by Dan Pellegini, Judge.
September 25, 2000

Copy of Order received from Supreme Court of Pennsylvania.
Order as follows: "AND NOW, this 29th day of August, 2000, the
petition for allowance of appeal is denied."

October 17, 2000

The Board rendered an Opinion and made the following Order:
"AND NOW, this 17th day of October, 2000, after due
consideration of the matter which was remanded to the Board of
Claims by Order of the Pennsylvania Commonwealth Court, it is
ORDERED that Plaintiff's request for leave to file an Amended
Complaint/New Matter is **DENIED** and such pleading is **DISMISSED**."
Copy forwarded to Plaintiff and attorney for Defendant.

October 26, 2000

Acceptance of Service of Opinion and Order dated October 17,
2000 received from attorney for Defendant. Receipt of same
acknowledged by attorney for Defendant October 26, 2000.

October 31, 2000

Notice of Appeal to Commonwealth Court filed by Plaintiff.

October 31, 2000

Acceptance of Service of Opinion and Order dated October 17,
2000 received from Plaintiff. Receipt of same acknowledged by
Plaintiff October 30, 2000.

November 3, 2000

Notice of Appeal received from Commonwealth Court.

November 16, 2000

Entry of Appearance of Raymond W. Dorian, Assistant Counsel
filed on behalf of Defendant.

November 16, 2000

Withdrawal of Appearance of Melissa A. Swauger, Assistant Counsel filed on behalf of Defendant.

November 8, 2000

Record transmitted to Commonwealth Court.

May 1, 2001

Letter received from Plaintiff requesting this case be transferred to the United States District Court for the Middle District of Pennsylvania as well as requesting information on when the Board is going to rule on his Claim.

May 8, 2001

Letter received from attorney for Defendant advising that they disagree with Plaintiff's request to transfer this case to the United States District Court for the Middle District of Pennsylvania as well as requesting information on when the Board is going to rule on his Claim.

May 11, 2001

Order rendered in Commonwealth Court as follows: "**AND NOW**, this 15th day of March, 2001, the order of the Board of Claims, dated October 17, 2000, is vacated, and this case is remanded to the Board of Claims for disposition of the power of attorney claim. Jurisdiction relinquished." File returned.

July 2, 2001

Respondent's Preliminary Objections to Claimant's Amended Complaint filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

July 20, 2001

Claimant's Responsive Pleadings to Respondent's Preliminary Objections to Demur Claimant's Amended Complaint, Brief in Support as well as Proposed Order filed by Plaintiff. Copy forwarded to attorney for Defendant by Plaintiff.

July 26, 2001

Respondent's Reply Brief in Support of Preliminary Objections to Amended Complaint filed by attorney for Defendant. Copy forwarded to Plaintiff by attorney for Defendant.

August 1, 2001

Change of Address filed on behalf of Plaintiff to SCI Dallas, 1000 Follies Road, Dallas, PA 18612-0286.

November 20, 2001

Letter received from Plaintiff advising of a change of his mailing address and further notifying that his mail is not considered privileged and request that the Board mail his mail registered.

January 14, 2002

Letter received from Plaintiff requesting the status of his case.

November 4, 2003

Board rendered Opinion and Order. Order as follows: **AND NOW**, this 4th day of November, 2003, upon consideration of the preliminary objections and supporting brief filed by the defendant, the opposition to the preliminary objections filed by the plaintiff and the reply brief filed by the defendant, **IT IS ORDERED** that the preliminary objections are overruled. The defendant is **ORDERED** to file a responsive pleading to the amended complaint within thirty (30) days of the exit date of this order.@ Copy forwarded to Plaintiff and Defendant.

November 12, 2003

Plaintiff filed Acceptance of Service of Opinion and Order dated November 4, 2003. Receipt of same acknowledged November 6, 2003.

November 25, 2003

Defendant filed Answer to Amended Complaint with New Matter. Copy forwarded to Plaintiff.

December 15, 2003

Plaintiff filed Response to Defendant's Answer and a Motion for Summary Judgment on the Pleadings.

December 19, 2003

Board forwarded letter to Defendant requesting response to Plaintiff's Response to Defendant's Answer/Motion for Summary Judgment on the Pleadings.

December 30, 2003

Defendant filed Respondent's Motion for Judgment on the Pleadings and Brief in Support. Copy forwarded to Plaintiff.

January 7, 2004

Defendant filed Answer to Claimant's Motion for Summary Judgment on the Pleadings as well as Brief in Support. Copy forwarded to Plaintiff.

January 16, 2004

Plaintiff's Response to Respondent's Motion for Judgment on the Pleadings. Copy forwarded to Defendant.

January 22, 2004

Plaintiff filed Answer to Defendant's Answer to Plaintiff's Motion for Judgment on the Pleadings and Brief in Support. Copy forwarded to Defendant.

February 25, 2004

Plaintiff filed letter advising that Plaintiff does intend to answer Defendant's discovery requests but is limited due to the prison's policy and Plaintiff's limited funds.

April 29, 2004

Board rendered the following Opinion and Order. Order as follows: **AND NOW**, this 29th day of April, 2004, upon consideration of Claimant's motion for summary judgment on the pleadings and Respondent's motion for judgment on the pleadings, together with attachments thereto and supporting briefs, it is **ORDERED** that the motions are **DENIED**. The parties are directed to proceed with discovery.@ Copy forwarded to Plaintiff and Defendant.

May 3, 2004

Defendant filed Acceptance of Service of Opinion and Order dated April 29, 2004. Receipt of same acknowledged May 3, 2004.

May 5, 2004

Plaintiff filed Acceptance of Service of Opinion and Order dated April 29, 2004. Receipt of same acknowledged May 3, 2004.

April 10, 2005

Commonwealth Court rendered the following Order: "**AND NOW**, this 15th day of March, 2001, the order of the Board of Claims, dated October 17, 2000, is vacated, and this case is remanded to the Board of Claims for disposition of the power of attorney claim.

April 28, 2005

Plaintiff filed Motion for Evidentiary Hearing as well as Notice of Change of Address.

May 2, 2005

Plaintiff filed letter outlining the difficulties he is having with mailings from the prison.

May 18, 2005

Board forwarded letter to Plaintiff acknowledging Plaintiff's change of address and requesting additional information from Plaintiff prior to addressing issue on hearing.

June 8, 2005

Defendant filed letter advising that Defendant does not anticipate conducting any discovery in this matter and that trial is expected to last two days at most.

June 10, 2005

Defendant filed Suggestion of Mootness. Copy forwarded to Plaintiff.

June 30, 2005

Plaintiff filed letter outlining Plaintiff's Proposed Scheduling Order as well as Plaintiff's Response to Defendant's Suggestion of Mootness. Copy forwarded to Defendant.

August 25, 2005

Board rendered the following Opinion and Order. Order as follows: "**AND NOW**, this 25th day of August, 2005, the Suggestion of Mootness filed by the Commonwealth of Pennsylvania, Department of Corrections, is **DISMISSED**."

September 16, 2005

Board rendered the following Scheduling Order: "AND NOW, this 16th day of September, 2005, it is hereby **ORDERED** and **DECREED** as follows that this matter is set for hearing beginning on Wednesday, December 14, 2005 and running through Thursday, December 15, 2005, as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101 commencing at 9:30 a.m." Copy forwarded to Plaintiff and Defendant.

December 13, 2005

Board forwarded letter to parties postponing the hearing scheduled for December 14 & 15, 2005 indefinitely.

December 15, 2005

Defendant filed letter requesting the Board to reconsider the indefinite postponement of this matter.

December 28, 2005

Board forwarded letter to parties requesting that when a decision is reached Mr. Kutnyak inform the Board where he may be reached so that a hearing can be rescheduled.

January 13, 2006

Plaintiff filed letter in response to Board's letter dated December 28, 2005.

January 23, 2006

Board forwarded letter in response to Plaintiff's letter dated January 9, 2006. Copies forwarded to Defendant and Mr. Brian Brooks.

March 20, 2006

Plaintiff filed letter requesting that the Board suspend all proceedings until the outcome of the matter regarding his location and that Agent Brooks no longer remain a party of interest. Copy forwarded to Defendant.

May 5, 2006

Plaintiff filed letter advising Board that he will be incarcerated for three years and would prefer to schedule a hearing at earliest convenience. Copy forwarded to Defendant.

May 15, 2006

Board issued Scheduling Order. Order as follows: **"AND NOW,** this 15th day of May 2006, it is hereby **ORDERED** and **DECREED** that, pursuant to the request of both parties, this matter is set for hearing before a panel beginning on Wednesday, June 21, 2006, commencing at 9:30 a.m., and if necessary running through Thursday, June 22, 2006, at the State Correctional Institution-Camp Hill, 2500 Lisburn Road, Camp Hill, Pennsylvania, 17001. The parties will not submit pretrial statements, but will be permitted to submit post-trial briefs as directed by the panel."
Copy forwarded to Plaintiff and Defendant.

May 17, 2006

Plaintiff filed letter requesting the Board suspend further proceedings indefinitely as originally ordered. Copy forwarded to Defendant.

May 18, 2006

Defendant filed Acceptance of Service of Scheduling Order dated May 15, 2006. Receipt of same acknowledged May 17, 2006.

May 19, 2006

Board issued a letter to Plaintiff advising that the hearing in this matter will proceed as scheduled.

May 31, 2006

Defendant filed letter advising that they oppose the Petitioner's request to have this matter suspended. It concurs with the Board that the hearing in this matter should proceed as scheduled. Copy forwarded to Plaintiff.

June 2, 2006

Plaintiff filed letter advising that he was advised of the hearing by Mr. Dorian, and that he still has not received any correspondence from us regarding this hearing and that he needs more information, such as location, as well as, 5 subpoenas with the hearing information on them.

June 6, 2006

Board forwarded letter to Plaintiff (hand delivered by Defendant) forwarding five subpoenas, the Board's Order of May 15, 2006, Board's letter of May 19, 2006 and a copy of the Board's docket entries.

June 6, 2006

Board forwarded letter to Defendant relative to hand delivery of documents to Plaintiff.

June 7, 2006

Plaintiff filed change of address.

June 20, 2006

Pennsylvania State Police filed copy of letter which was forwarded to Mr. Kutnyak relative to Pennsylvania State Police's rules regarding subpoenas.

June 20, 2006

Defendant filed Motion to Quash Subpoena directed to Jeffrey A. Beard, Ph.D., Secretary of the Department of Corrections. Copy forwarded to Plaintiff.

June 20, 2006

Pennsylvania State Police filed letter advising that they forwarded Mr. Kutnyak's Subpoena back to him as it was not properly executed and was not served on the correct individual.

June 22, 2006

Administrative Office of the United States Courts filed a letter addressed to Plaintiff advising that the subpoena served on them was improper and objectionable and that they have no legal obligation to comply with the terms of the subpoena.

June 21, 2006

Panel hearing (Martin/Kline) held at the State Correctional Institution-Camp Hill, 2500 Lisburn Road, Camp Hill, Pennsylvania, 17001, commencing at 9:30 a.m. Case complete.

July 20, 2006

Plaintiff filed Claimant's Post-Trial Brief in Support of Respondent's Breach of Contractual Duty Prescribed by Power of Attorney.

July 21, 2006

Board forwarded copy of Claimant's Post-Trial Brief as well as Acceptance of Service to Defendant.

July 25, 2006

Defendant filed Acceptance of Service of Claimant's Post-Trial Brief dated July 21, 2006. Receipt of same acknowledged July 24, 2006.

July 27, 2006

Testimony for hearing held June 21, 2006 filed.

July 28, 2006

Board forwarded copy of testimony for hearing held June 21, 2006 to Defendant.

July 28, 2006

Defendant filed letter requesting a copy of the hearing testimony. Copy forwarded to Plaintiff.

August 2, 2006

Plaintiff filed Acceptance of Service of Testimony dated July 28, 2006. Receipt of same acknowledged August 1, 2006.

August 4, 2006

Plaintiff filed letter advising that he already filed his Post-Trial Brief. Copy forwarded to Defendant.

August 23, 2006

Plaintiff filed change of address.

September 7, 2006

Defendant filed Findings of Fact and Conclusions of Law. Copy forwarded to Plaintiff. (Certificate of Service Unsigned)

September 8, 2006

Plaintiff filed Acceptance of Service of Claimant's Legal Brief in Support. Copy forwarded to Defendant.

September 8, 2006

Defendant filed Praecipe to Substitute the Certificate of Service of the Department of Corrections' Findings of Fact and Conclusions of Law as well as signed certificate of service for Defendant's Findings of Fact and Conclusions of Law. Copy forwarded to Plaintiff.

September 11, 2006

Plaintiff filed Legal Brief in Support of Amendments, Revisions and Findings of Fact of Law and will be forwarding pages (2), (13), (17) and (24), which are missing from this document, on a later date due to library being closed. Copy forwarded to Defendant.

September 13, 2006

Plaintiff filed pages (2), (13), (17) and (24), which were

missing from Plaintiff's Legal Brief in Support of Amendments, Revisions and Findings of Fact of Law. Copies forwarded to Defendant.

September 25, 2006

Plaintiff filed Counter Brief to Defendant's Post Hearing Brief. Copy forwarded to Defendant.

October 13, 2006

Plaintiff filed letter requesting copy of docket sheet for acknowledgement that the Board received his documents. Copy forwarded to Defendant.

October 26, 2006

Panel Members filed Panel Report.

October 26, 2006

Plaintiff filed letter regarding address.

December 6, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW**, this 6th day of December, 2006, it is hereby **ORDERED, ADJUDGED** and DECREED that judgment is entered in favor of the Respondent, Commonwealth of Pennsylvania, Department of Corrections, and against Claimant, Mark Kutnyak. The parties will each bear their own costs and attorneys' fee." Copies forwarded to Plaintiff, Defendant and Chief Deputy Attorney General

December 12, 2006

Attorney General filed Acceptance of Service of Opinion and Order dated December 6, 2006. Receipt of same acknowledged December 11, 2006.

December 13, 2006

Plaintiff filed letter seeking information as to whether a decision has been made. Copy forwarded to Defendant.

December 15, 2006

Defendant filed Acceptance of Service of Opinion and Order dated December 6, 2006. Receipt of same acknowledged December 11, 2006.

December 22, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated December 6, 2006. Receipt of same acknowledged December 11, 2006.

December 26, 2006

Commonwealth Court filed Notice of Filing of Petition for Review. [2346 CD 2006].

January 5, 2007

Defendant filed letter advising he served a copy of the Board's recent decision dated December 6, 2006 upon Plaintiff. Copy forwarded to Plaintiff.

January 19, 2007

Board transmitted certified list comprising the record from the Board of Claims to Commonwealth Court.

May 17, 2007

Commonwealth Court issued Opinion and Order. Order as follows:
"AND NOW, this 16th day of May, 2007, the order of the Board of Claims, dated December 6, 2006, is hereby affirmed."

July 27, 2007

Commonwealth Court returned file.
