

Docket Number: 2947

VARTAN ENTERPRISES, INC., AGENT FOR THE MUSALAIR TRUST AND
DAUPHIN COUNTY GENERAL AUTHORITY

~~Thomas Scott, Esquire~~
~~Paula J. McDermott, Esquire~~

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION ACTING THROUGH

~~Andrew S. Gordon, Chief Counsel~~

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES

~~Gregory C. Santoro, Chief Counsel~~
~~Peter M. Good, Esquire~~
~~Therese Hargrove, Chief Counsel~~
Nancy Kippenhan, Assistant Chief Counsel
Jeffrey M. Davis, Assistant Counsel

July 23, 1999

*Claim and filing fee filed by attorney for Plaintiff. Amount of Claim: \$18,687.50+8% interest to be paid monthly from July 1, 1999 until resolution of this issue.

July 28, 1999

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. **ANSWER DUE FROM DEFENDANT 8/27/99.**

August 6, 1999

Acceptance of Service of Claim received from Attorney for Defendant (DGS). Receipt of same acknowledged by Attorney for Defendant July 29, 1999.

August 6, 1999

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General August 4, 1999.

August 6, 1999

Acceptance of Service of Claim received from attorney for Defendant (DOT). Receipt of same acknowledged by attorney for Defendant July 30, 1999.

August 26, 1999

Answer and New Matter filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant. **Response due from Plaintiff. 10/4/99**

September 23, 1999

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

October 6, 1999

*Vartan Enterprises, Inc. Amended Statement of Claim filed by attorney for Plaintiff. Amount of Claim: (\$668,547.12)

October 18, 1999

Copy of Amended Complaint forwarded to attorney for Defendant and Chief Deputy Attorney General. Response due from Defendant (**November 18, 1999**).

October 22, 1999

Acceptance of Service of Amended Claim received by attorney for Defendant. Receipt of same acknowledged by attorney for Defendant October 20, 1999.

October 29, 1999

Acceptance of Service of Amended Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General October 21, 1999.

November 5, 1999

Answer and New Matter to Amended Statement of Claim filed by attorney for Defendants. Copy forwarded to attorney for Plaintiff by attorney for Defendants. **Response due from Pltf. 12/9/99.**

December 8, 1999

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

May 23, 2000

Motion to Compel Answers to Interrogatories and Production of Documents filed by attorney Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant. Pltf. Response due 6/22/00.

September 19, 2000

Letter forwarded to parties requesting a status. DUE 10/19/00.

October 19, 2000

Status Report filed by attorney for Plaintiff advising that they have concluded discovery, parties are ready to schedule depositions and are currently involved in settlement negotiations. Copy forwarded to attorney for Defendant.

April 27, 2001

Letter forwarded to parties requesting a status. Due 5/29/01.

May 17, 2001

Letter received from attorney for Plaintiff advising that they are engaged in serious negotiations in an effort to resolve this matter. The parties are delaying the taking of Depositions

unless or until the matter appears that it cannot be amicably resolved.

June 11, 2002

Letter forwarded to parties requesting a status report. Response Due 7/11/02.

June 18, 2002

Letter received from Plaintiff advising that discovery is ongoing.

September 26, 2002

Praecipe to List Case for Trial filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 9, 2002

Letter received from attorney for Defendant advising that the Plaintiff's Praecipe filed is premature in that depositions are just now being scheduled. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

October 21, 2002

Letter received from attorney for Plaintiff advising that the parties are scheduling discovery in this matter. Plaintiff requests that the matter be scheduled for trial. Defendant objects as this is premature. The Board's proposed scheduling for hearing is Feb. or March of 2003. Plaintiff requests that the matter be listed for trial in Feb. or March of 2003. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 23, 2002

Letter received from attorney for Plaintiff advising that at the present time the parties are scheduling discovery in this matter. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 25, 2002

Letter received from attorney for Defendant advising that it is premature to list this matter for trial before discovery is

complete. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 20, 2003

Defendants filed a withdrawal of appearance of Peter M. Good, Chief Counsel on behalf of Vartan Enterprises, Inc., and an entry of appearance of Trent Hargrove, Chief. Copy forwarded to Plaintiff.

August 4, 2003

Defendant filed a Praecipe for a withdrawal of appearance of Trent Hargrove, Chief Counsel and entry of appearance of Nancy Kippenhan, Assistant Chief Counsel, on behalf of Defendant. Copy forwarded to Plaintiff.

October 31, 2003

Board issued letter to parties requesting a status report. Status Report due on or before November 30, 2003.

April 15, 2004

Plaintiff filed letter advising that Praecipe for Withdrawal and Entry of Appearance is being filed. Plaintiff has completed discovery and is filing a Praecipe to list case for trial. Defendant has no objection to the matter being listed for trial.

April 19, 2004

Defendant filed a letter advising that they are in receipt of Plaintiff's correspondence dated April 14, 2004, in which Plaintiff seeks to list the matter for trial. Defendant had advised Plaintiff that they intend to file a motion for summary judgment in the near future. Defendant has no objection to the matter being listed for trial, although, Defendant requests that the schedule be set with the understanding that Defendant intends to file summary judgment motion, and (ii) sufficient time be allowed for the resolution of the motion. Copy forwarded to Plaintiff.

April 22, 2004

Plaintiff filed Withdrawal of Appearance of Thomas Scott, Esquire and entry of appearance for Paula J. McDermott, Esquire as counsel for Plaintiff. Copy forwarded to Defendant.

May 6, 2004

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 6th day of May, 2004, it is hereby **ORDERED** and **DECREED** as follows: 1. Discovery in this matter shall be closed upon the exit date of this Order. 2. Pre-trial statements of both parties shall be filed with the Board and served upon one another no later than August 9, 2004; 3. A pre-trial conference is scheduled for Thursday, August 26, 2004, at 10:00 a.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; 4. The last day for filing pre-trial motions is September 3, 2004; and 5. This matter is set for hearing before the Board beginning on Monday, October 25, 2004, and running through Wednesday, October 27, 2004, 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 all parties of record.

May 13, 2004

Defendant filed Acceptance of Service of Opinion and Scheduling Order dated May 6, 2004. Receipt of same acknowledged by Defendant May 11, 2004.

May 21, 2004

Plaintiff filed Praecipe. Deposition transcripts of record in the above-captioned matter: Robert C. Yingst, taken on November 4, 2002; Bonnie L. Cvejkus, taken on November 20, 2002; Michael E. Adams, taken on November 20, 2002, and James W. Martin, taken on November 22, 2002. Copy forwarded to Defendant.

May 25, 2004

Plaintiff filed Acceptance of Service of Opinion and Scheduling Order dated May 6, 2004. Receipt of same acknowledged by attorney for Plaintiff May 26, 2004.

June 2, 2004

Board issued letter to Defendant directing them to file a response to Plaintiff's Praecipe to enter deposition transcripts.

June 30, 2004

Defendant filed a letter advising that they do not oppose Plaintiff's Praecipe to Enter Deposition Transcripts.

July 15, 2004

Board issued Opinion and Order. Order as follows: **AND NOW**, this 15th day of July, 2004, deposition transcripts of Robert C. Yingst, taken on November 4, 2002; Bonnie L. Cvejkus, taken on November 20, 2002; Michael E. Adams, taken on November 20, 2002; and James W. Martin, taken on November 22, 2002, shall be **ORDERED** and **DECREED** to be incorporated as part of the formal record of this matter. Copy forwarded to attorney for Plaintiff and Defendant.

July 20, 2004

Plaintiff filed Acceptance of Service of Opinion and Order dated July 15, 2004. Receipt of same acknowledged by Plaintiff July 20, 2004.

August 2, 2004

Defendant filed Acceptance of Service of Opinion and Order. Receipt of same acknowledged by attorney for Defendant July 20, 2004.

August 9, 2004

Respondent's Pre-Trial Statement filed. Copy forwarded to Plaintiff.

August 9, 2004

Respondent's Motion for Summary Judgment and Supporting Memorandum of Law. Copy forwarded to Plaintiff.

August 9, 2004

Claimant's Pre-Trial Statement filed. Copy forwarded to Defendant.

August 10, 2004

Letter forwarded to Plaintiff directing them to file a response to Defendant's Motion. Response due September, 2004.

August 26, 2004

Plaintiff and Defendant filed Stipulation of Facts not in Dispute.

September 2, 2004

Plaintiff filed Proposed Order and Motion to Preclude Testimony. Copy forwarded to Defendant.

September 2, 2004

Plaintiff filed Claimant's Motion for Summary Judgment and Brief in Support. Copy forwarded to Defendant.

September 2, 2004

Plaintiff filed Resumes for Mr. Vartan and Mr. Nalbandian, as well as the Lease referenced in our Pre-Trial Memorandum. Statement of Undisputed Material Facts and Attachments filed. Copy forwarded to Defendant.

September 8, 2004

Plaintiff filed Claimant's Response to Respondent's Motion for Summary Judgment and Brief in Opposition. Copy forwarded to Defendant.

September 9, 2004

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 9th day of September, 2004, Plaintiff's Motion to Preclude Testimony is **GRANTED IN PART** and **DENIED IN PART**. It is hereby **ORDERED** that Gregory J. Ricci be made available to the Plaintiff for deposition on or before September 22, 2004. The Board denies Plaintiff's motion to preclude Mr. Ricci from testifying at hearing at this time. Copy forwarded to Plaintiff and Defendant.

September 13, 2004

Plaintiff filed Acceptance of Service of Opinion and Order dated September 9, 2004. Receipt of same acknowledged by Plaintiff September 10, 2004.

September 16, 2004

Defendant filed Acceptance of Service of Opinion and Order dated September 9, 2004. Receipt of same acknowledged by attorney for Defendant September 14, 2004.

September 17, 2004

Board issued Opinion and Order. Order as follows: **AND NOW**, this 17th day of September, 2004, it is hereby **ORDERED** and **DECREED** as follows. The scheduling Order entered by the Board on May 6, 2004, shall be amended in Paragraph 5 as follows: 5. This matter is set for hearing before a Panel beginning on Monday, October 25, 2004, and running through Wednesday, October 27, 2004, 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. Copies forwarded to all parties of record.

September 22, 2004

Plaintiff filed Acceptance of Service of Opinion and Order dated September 17, 2004. Receipt of same acknowledged by attorney for Plaintiff September 21, 2004.

September 22, 2004

Defendant filed Acceptance of Service of Opinion and Order dated September 17, 2004. Receipt of same acknowledged by attorney for Defendant September 21, 2004.

October 1, 2004

Defendant filed Respondent's Response to Claimant's Motion for Summary Judgment and Claimant's Statement of Undisputed Material Facts, with Supporting Memorandum of Law. Copy forwarded to Plaintiff.

October 15, 2004

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 15th day of October, 2004, upon consideration of Motions for Summary Judgment by each party and Responses thereto, it is hereby **ORDERED** that Respondent's Motion for Summary Judgment filed on August 9, 2004, it is hereby **DENIED**. It is further **ORDERED** that Claimant's Motion for Summary Judgment filed on September 2, 2004, is hereby **DENIED**. Copy forwarded to all parties.

October 19, 2004

Plaintiff filed Proposed Order, Concurred in Motion for Continuance of Trial. Copy forwarded to attorney for Defendant.

October 20, 2004

Defendant filed Acceptance of Service of Opinion and Order. Receipt of same acknowledged by attorney for Defendant October 19, 2004.

October 21, 2004

Board issued Amended Scheduling Order. Order as follows: **AND NOW**, this 22nd day of October, 2004, it is hereby **ORDERED** and **DECREED** as follows. The Amended Scheduling Order entered by the Board on September 17, 2004, shall be amended at Paragraph 5 as follows:

5. This matter is set for hearing before a Panel beginning on Wednesday, December 1, 2004, and running through December 3, 2004, 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 all parties of record.

October 25, 2004

Acceptance of Service of Amended Scheduling Order. Receipt of same acknowledged by attorney for Plaintiff October 21, 2004.

October 25, 2004

Acceptance of Service of Opinion and Order. Receipt of same acknowledged by attorney for Plaintiff October 19, 2004.

October 28, 2004

Acceptance of Service of Amended Scheduling Order. Receipt of same acknowledged by attorney for Defendant October 26, 2004.

November 4, 2004

Acceptance of Service of Amended Scheduling Order. Receipt of same acknowledged by attorney for Defendant October 21, 2004.

November 29, 2004

Praecipe for Entry of Appearance of Jeffrey W. Davis, Assistant Counsel for Defendant. Copies served upon Plaintiff and Defendant.

December 1, 2004

Panel Hearing (McLaughlin and Wilson) held on 6th Floor, 200 North Third Street, Harrisburg, PA, commencing at 9:30 a.m.

December 2, 2004

Panel Hearing (McLaughlin and Wilson) held on 6th Floor, 200 North Third Street, Harrisburg, PA, commencing at 9:30 a.m. Case completed.

December 29, 2004

Testimony of panel hearing held December 1 & 2, 2004. Copy forwarded to attorney for Defendant.

December 30, 2004

Letter forwarded to parties directing them to file its Findings of Fact, Conclusions of Law and Brief in Support.

February 4, 2005

Plaintiff filed a letter via fax requesting a two-week extension of time in which to file the parties briefs. Copy forwarded to Defendant.

February 7, 2005

Plaintiff filed a letter via US mail requesting a two-week extension of time in which to file the parties briefs. Copy forwarded to Defendant.

February 8, 2005

Board issued a letter granting the parties a two-week extension of time in order to file their Briefs, Findings of Fact and Conclusions of Law.

February 28, 2005

Defendant filed Proposed Findings of Fact and Conclusions of Law submitted on behalf of Respondent Commonwealth of Pennsylvania, Department of Transportation. Copy forwarded to Plaintiff.

February 28, 2005

Defendant filed Post-Hearing Brief Submitted on behalf of Respondent Commonwealth of Pennsylvania, Department of Transportation. Copy forwarded to Plaintiff.

February 28, 2005

Plaintiff filed Claimant Vartan Enterprises, Inc.'s Proposed Findings of Fact, Proposed Conclusions of Law and Legal Argument. Copy forwarded to Defendant.

April 20, 2005

Panel Members (Wilson and McLaughlin) filed Panel Report.

September 8, 2005

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 8th day of September, 2005, after hearing in this matter and a review of the briefs and record, it is hereby **ORDERED** and **DECREED** that the claim of Vartan Enterprises, Inc., against Commonwealth of Pennsylvania, Department of Transportation, acting through Department of General Services, is hereby **DENIED**. Each party shall bear its own costs and attorneys' fees. Copy forwarded to all parties of record.

September 15, 2005

Plaintiff filed an Acceptance of Service of Opinion and Order dated September 8, 2005. Receipt of same acknowledged by

Plaintiff September 13, 2005.

September 15, 2005

Chief Deputy Attorney General filed Acceptance of Service of Opinion and Order dated September 8, 2005. Receipt of same acknowledged Chief Deputy Attorney General September 12, 2005.

October 7, 2005

Case transferred to Commonwealth Court.

October 11, 2005

Commonwealth Court filed Notice of Filing Petition for Review.

October 11, 2005

Plaintiff filed Petition for Review of Vartan Enterprises, Inc. Copy forwarded to all parties of record.

October 14, 2005

Commonwealth Court filed Docketing Statement/Petition for Review.

October 20, 2005

Plaintiff filed a copy of the Docketing Statement filed on behalf of Vartan Enterprises. Copy forwarded to all parties of record.

January 23, 2006

Plaintiff filed a Proposed Order and an Application for Extension of Briefing Schedule in Commonwealth Court. Copy forwarded to Defendant.

July 26, 2006

Commonwealth Court filed an Opinion and Order. Order as follows: **NOW**, July 25, 2006, the order of the Board of Claims in the above-captioned matter is hereby affirmed.

September 22, 2006

Commonwealth Court returned file.
