

Docket Number: 3265

AMERICAN DECAL MFG. CO.

William H. Thomas, National Sales Manager
Thomas Cordina, Controller

VS.

CLOSED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

~~Andrew S. Gordon, Chief Counsel~~
Robert J. Shea, Assistant Counsel
Audrey Feinman Miner, Assistant Counsel

July 21, 2000

Claim and filing fee filed by Plaintiff. Amount of Claim: \$3350.00.

July 28, 2000

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. ANSWER DUE FROM DEFENDANT 8/28/00.

August 7, 2000

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General 8/2/00.

August 11, 2000

Acceptance of Service of Claim received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant August 11, 2000.

August 25, 2000

Preliminary Objections and Brief in Support filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant. Response due from Plaintiff September 29, 2000.

September 25, 2000

Letter/Type Response to Preliminary Objections filed by Plaintiff. Copy forwarded to attorney for Defendant by Plaintiff.

September 29, 2000

Letter/Type Reply to Plaintiff's Response Objecting to Defendant's Preliminary Objections filed by attorney for Defendant. Copy forwarded to Plaintiff by attorney for Defendant.

November 22, 2000

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 22nd day of November, 2000, upon consideration of the Preliminary Objections filed by the Defendant, Commonwealth of Pennsylvania, Department of Transportation, and the Opposition filed by the Plaintiff, American Decal, it is **ORDERED** that the Preliminary Objections are **OVERRULED** for the reasons set forth in the accompanying Opinion. Defendant shall respond to Plaintiff's Claim within thirty (30) days of the exit date of this Order." Copy forwarded to Plaintiff and attorney for Defendant.

November 29, 2000

Acceptance of Service of Opinion and Order dated November 22, 2000 received from Plaintiff. Receipt of same acknowledged by Plaintiff November 27, 2000.

December 5, 2000

Application to Amend Order to Include Statement Specified in 42 Pa. C.S. § 702(b) filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 20, 2000

Response to Defendant's Motion filed by Plaintiff. Copy forwarded to attorney for Defendant by Plaintiff.

January 11, 2001

The Board made the following Order: "AND NOW, this 11th day of January, 2001, upon consideration of Defendant's Commonwealth of Pennsylvania Department of Transportation Application to Amend its Order of November 22, 2000, the Application is **DENIED**." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

January 19, 2001

Acceptance of Service of Order dated January 11, 2001 received from Plaintiff. Receipt of same acknowledged by Plaintiff January 15, 2001.

February 1, 2001

Notice of Appeal received from Commonwealth Court. [No. 256 CD 2001]

February 22, 2001

The Board rendered the following Opinion: **SUPPLEMENTAL OPINION TO ORDER OF JANUARY 11, 2001, DENYING DEFENDANT'S APPLICATION TO AMEND ORDER TO INCLUDE STATEMENT SPECIFIED IN 42 Pa. C.S. §702 (b)** This opinion is to supplement this Board's Order of January 11, 2001 denying the Commonwealth of Pennsylvania, Department of Transportation's (PennDOT), Application to Amend Order to Include Statement Specified in 42 Pa. C.S. §702 (b). The Order sought to be amended was this Board's Order of November 22, 2000 denying PennDOT's Preliminary Objections. While this Board's Order of November 22, 2000 is interlocutory and not appealable, it may be appealed by permission under 42 Pa. C.S. §702 (b) if the questions in issue are certified by this Board. Such certification was denied on January 11, 2001 and it appears that a Petition for Review under Chapter 15 of the Rules of Appellate Procedure was filed pursuant to the note under Rule 311 wherein it is noted: "...petition for review under Chapter 15 of the unappealable order of denial is the proper method of determining whether the case is so egregious as to justify prerogative appellate correction of the exercise of discretion by the lower tribunal." (Emphasis added) This Board has issued an Opinion upon the Preliminary Objections, but has not issued an Opinion pertaining to the Order of January 11, 2001 denying PennDOT's request, hence the issuance of this supplemental Opinion. As PennDOT's Application to Amend concedes, the issue raised has been raised in other cases before this Board by PennDOT, but no Application for Appeal Certification was initiated in those proceedings. Upon examination of this case, perhaps PennDOT desires to achieve an advantage by playing downhill instead of utilizing a level playing field. The Claim here is in the amount of \$3,250.40 and is a pro se filing. It would be advantageous indeed to argue one's cause without advocacy from one's opposing learned counsel. It certainly appears, that having filed no appeals in the other cases with the same issues, that PennDOT picked its ground carefully by choosing a case that was without counsel and would receive only novice opposition pertaining to issues that require legal scholars. Further, the letter-type Claim of the Plaintiff dated July 5, 2000 and Response to Preliminary Objections dated September 21, 2000 both indicate that a written agreement, Purchase Order No. 8503980-01, did exist between the parties. Accordingly, a factual question thus would arise as to whether the representations made, as alleged, constitute misrepresentations or other cause for contract modification" as provided by Section 1712 (a) of the Procurement Code. Accordingly, to prevent arguing an issue without counsel,

February 22, 2001 (Continued)

that was raised in there proceedings having counsel where no appeal was filed, and as a factual matter had to be heard to dispose of the case, the Board was of the opinion that a hearing would not be avoided by granting the Section 702 (b) requesting certification; and, that to avoid delay and to reach the merits and factual matters at issue the request to amend, in accordance with 42 Pa. C.S. §702(b), should be denied.

March 2, 2001

File forwarded to Commonwealth Court.

March 5, 2000

Supplement to Petition for Review filed by attorney for Defendant.
Copy forwarded to Plaintiff by attorney for Defendant.

May 2, 2001

Copy of Order received from Commonwealth Court. Order as follows:
NOW, March 10, 2001, upon consideration of upon consideration of (sic) petitioner's petition for review and the supplement thereto, and it appearing that petitioner has failed to establish that the Board of Claim's refusal to certify the interlocutory order of November 22, 2000, is "so egregious as to justify prerogative appellate correction" see note to Pa. R.A.P. 1311, the petition for review is denied."

May 2, 2001

File returned from Commonwealth Court.

May 10, 2001

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 10th day of May, 2001, Defendant, Commonwealth of Pennsylvania, Department of Transportation, is **DIRECTED** to respond to Plaintiff's, American Decal Mfg. Co., Claim within thirty (30) days from the exit date of this Order." Copy forwarded to Plaintiff and attorney for Defendant.

May 17, 2001

Acceptance of Service of Opinion and Order dated May 10, 2001 received from Plaintiff. Receipt of same acknowledged by Plaintiff May 15, 2001.

June 11, 2001

Answer and New Matter filed by attorney for Defendant. Copy forwarded to Plaintiff by attorney for Defendant. **Reply due from Plaintiff 7/12/01.**

July 12, 2001

Letter response to Defendant's New Matter filed by Plaintiff. Copy forwarded to attorney for Defendant by Plaintiff.

July 16, 2001

Letter forwarded to parties directing parties to commence with discovery.

CLOSED

January 17, 2002
Letter forwarded to parties requesting a Status Report. Status Report due on or before **February 19, 2002**
February 17, 2002

Status letter received from attorney for Defendant advising that the case is active but before PennDOT proceeds any further, they are waiting for Plaintiff to be represented by an attorney.

February 19, 2002

Status letter received (via fax) from Plaintiff advising that Plaintiff does not have any additional information to present and that it feels it has sufficiently proved its position in this case and requests that a decision be rendered based on the information provided.

March 15, 2002

The Board rendered the following Order: "**AND NOW**, this 15th day of March, 2002, it is **ORDERED** and **DECREED** that this matter is set for a hearing before the Board's Panel, beginning on June 25, 2002 through June 27, 2002, 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 no later than May 10, 2002.

May 28, 2002

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

June 24, 2002

Letter received (via fax) from Plaintiff advising that Plaintiff wishes to withdraw its case.

June 24, 2002

Letter received (via U.S. Mail) from Plaintiff advising that Plaintiff wishes to withdraw its case.

June 24, 2002

Panel hearing scheduled for June 25, 26 & 27, 2002 canceled due to letter received from Plaintiff withdrawing its case.

June 27, 2002

Letter received from attorney for Defendant responding to Plaintiff's letter dated June 24, 2002 withdrawing the case.

July 7, 2002

The Board rendered an Opinion and made the following order: "**AND NOW**, this 8th day of July, 2002, it is hereby **ORDERED** and **DECREED** that the case docketed to Board of Claims' number 3265 is discontinued with prejudice and the docket shall be marked accordingly." Copy forwarded to Plaintiff and attorney for Defendant.
