

Docket Number: 3281

~~RIVER STREET ASSOCIATES, d/b/a RIVERSTREET MANOR; *ROSE VIEW MANOR, INC., d/b/a ROSE VIEW CENTER; KINKORA PYTHIAN HOME CORPORATION, d/b/a KINKORA PYTHIAN HOME; MINERS MEMORIAL MEDICAL CENTER, d/b/a MINERS MEMORIAL GERIATRIC CENTER; PINECREST MANOR; ELLEN MEMORIAL HEALTH CARE CENTER; GOLDEN HILL NURSING HOME, INC., d/b/a GOLDEN HILL NURSING HOME; HIGHLAND MANOR NURSING AND CONVALESCENT CENTER; MAJESTIC OAKS; ROCHESTER MANOR; CHAPEL POINT AT CARLISLE; SOUTHWESTERN NURSING AND REHABILITATION CENTER; TNS HOMES OF PENNSYLVANIA, INC., d/b/a BOULEVARD NURSING HOME; RIDGE CREST, INC., d/b/a RIDGE CREST NURSING AND REHABILITATION CENTER; AND INTEGRATED HEALTH SERVICES AT PENN d/b/a I.H.S. @ BRYN MAWR AT THE BATHING; HEALTH AND LIVING CENTER, INC., d/b/a COLLINS HEALTH CENTER, INDIVIDUALLY AND ON BEHALF OF ALL PENNSYLVANIA NURSING FACILITY PROVIDERS SIMILARLY SITUATED~~

Louis J. Capozzi, Jr., Esquire
Craig Knaup, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

~~John A. Kane, Chief Counsel~~
Leonard W. Crumb, Assistant Counsel

August 28, 2000

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

September 5, 2000

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. ANSWER DUE FROM DEFENDANT 10/5/00.

September 11, 2000

Acceptance of Service of Claim received from Chief Deputy Attorney General. Receipt of same acknowledged by Chief Deputy Attorney General September 6, 2000.

CLOSED

Letter received from attorney for Defendant, via facsimile, requesting an extension of time to file its responsive pleading to Plaintiff's claim, pending settlement offers which Defendant plans to offer to all facilities in the very near future, which, if accepted, would resolve litigation in this matter.

October 10, 2000

Letter received from attorney for Defendant, via U.S. Mail, requesting an extension of time to file its responsive pleading to Plaintiff's claim, pending settlement offers which Defendant plans to offer to all facilities in the very near future, which, if accepted, would resolve litigation in this matter.

October 10, 2000

Letter/Objection to Defendant's Request for an extension of time, filed by Plaintiff, via facsimile, advising that by law Defendant is required to file a responsive pleading to this matter and Defendant never requested leave from the Plaintiff for an extension.

October 10, 2000

Letter/Objection to Defendant's Request for an extension of time, filed by Plaintiff, via U.S. Mail, advising that by law Defendant is required to file a responsive pleading to this matter and Defendant never requested leave from the Plaintiff for an extension.

October 13, 2000

Letter received from attorney for Defendant, via facsimile, responding to Plaintiff's objections to Defendant's request for an extension of time to file an Answer to Plaintiff's Claim and requesting that the Board direct Claimant to supply the missing provider agreements to the Claim as required by the Board's rules and then give Defendant thirty days from the date Plaintiff supplies the missing provider agreements in which to file its responsive pleading.

October 13, 2000

Letter received from attorney for Plaintiff, via facsimile and U.S. Mail, objecting to Defendant's letter of October 13, 2000, stating that Exhibit E of Plaintiff's Claim satisfied the requirement of the Board's Rule 202 and advising that the Statement of Claim plainly provides Defendant with the information in dispute. Plaintiff further advises that its Default Notice was served on DPW through its Office of Legal Counsel as required by Rule 237.1. Plaintiff requests that Defendant's requests be denied

October 19, 2000

Preliminary Objections, as well as Brief of the Department of Public Welfare in Support of Preliminary Objections filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

October 27, 2000

Claimants' Answer to Preliminary Objections with Brief Attached filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 17, 2000

Letter/Request for Hearing Prior to December 15, 2000 to Allow Withdrawal of Named Plaintiff from Class Action as well as Motion to Permit Withdrawal of Named Plaintiffs, which Plaintiff requests be considered at the hearing, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 21, 2000

Supplement to Motion to Permit Withdrawal of Named Plaintiffs, adding Pinecrest Manor, and Proposed Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 22, 2000

Answer to Motion to Permit Withdrawal of Named Plaintiffs filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

November 27, 2000

Supplement to Motion to Permit Withdrawal of Named Plaintiffs, adding Kinkora Pythian Home, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

November 27, 2000

Letter/Response to Defendant's Answer to Motion to Permit Withdrawal of Named Plaintiffs filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 1, 2000

Reply Brief of the Department of Public Welfare filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 4, 2000

Supplement to Motion to Permit Withdrawal of Named Plaintiff's, adding Miners Memorial Geriatric Center, filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 7, 2000

Letter-type Response to modified requests for a hearing filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

December 8, 2000

Letter received from attorney for Plaintiff advising that they intend to file a Brief in Answer to Defendant's Reply Brief prior to December 15, 2000. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 8, 2000

Supplement to Motion to Permit Withdrawal of Named Plaintiffs, adding Rose View Manor, Inc.; Highland Manor Nursing and Convalescent Center; Majestic Oaks, Rochester Manor; Integrated Health Services, Inc. at Penn d/b/a I.H.S. of Bryn Mawr at the Chateau; and Health and Living Centers, Inc., filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

December 13, 2000

Claimant's Response to DPW's Reply Brief filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

Supplement to hearing request of November 17, 2000 received from attorney for Plaintiff advising that some but not all of the parties have accepted settlement and the remaining parties are still negotiating settlement.

January 4, 2000

Supplement to Motion to Permit Withdrawal of Named Plaintiffs (adding TNS of Pennsylvania, Inc., d/b/a Boulevard Nursing Home, and Ridge Crest, Inc., d/b/a Ridge Crest Nursing & Rehabilitation Center) filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

January 10, 2001

Praecipe for Discontinuance as to Some Named Plaintiffs filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

*** January 16, 2001**

The Board made the following Order: "**AND NOW**, this 16th day of January, 2001, upon receipt of a Praecipe For Discontinuance as to Some Named Plaintiffs, advising that '. . . this matter may be closed, ended and discontinued with prejudice as to all periods from July 1, 1997 through June 30, 2001, but without prejudice to any periods thereafter, with respect to . . . Rose View Manor, Inc., Kinkora Pythian Home Corporation, Miners Memorial Medical Center, Pinecrest Manor, Ellen Memorial Health Care Center, Golden Hill Nursing Home, Inc., Highland Manor Nursing and Convalescent Center, Majestic Oaks, Rochester Manor, Chapel Pointe at Carlisle, Southwestern Nursing and Rehabilitation Center, TNS Homes of Pennsylvania, Inc., Ridge Crest, Inc., Health and Living Centers, Inc. and Integrated Health Services at Penn d/b/a I.H.S. of Bryn Mawr at the Chateau, executed by Louis J. Ciozzzi, Esquire, on behalf of Plaintiff, River Street Associates, et al., and docketed with this Board under date of January 16, 2001, it is **ORDERED** and **DIRECTED** that the above-named Plaintiffs are hereby withdrawn, and River Street Associates is the only remaining Plaintiff in this matter." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

January 18, 2001

Acceptance of Service of Order dated January 16, 2001 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff January 17, 2001.

January 19, 2001

Acceptance of Service of Order dated January 16, 2001 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant January 17, 2001.

May 25, 2001

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 25th day of May, 2001, it is **ORDERED** and **DECREED** that Defendant's Preliminary Objections are **DENIED** and Defendant is instructed to file a timely Answer to the Plaintiff's Complaint." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

June 4, 2001

Acceptance of Service of Opinion and Order dated May 25, 2001 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff May 31, 2001.

June 7, 2001

Motion to Amend Order to Contain Statement Specified by 42 Pa. C.S. §702(b) and Brief in Support of Motion to Amend Order filed by attorney for Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 8, 2001

Claimant's Answer to Motion to Amend Order to Contain Statement Specified by 42 Pa. C.S. §702(b) and Memorandum of Law in Support of Claimant's Answer to Motion to Amend Order filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

June 11, 2001

Letter received from attorney for Defendant requesting an extension of time until July 29, 2001 in which to file Defendant's responsive pleading to Plaintiff's Claim. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 13, 2001

Letter forwarded to attorney for Defendant, with copy to attorney for Plaintiff, granting Defendant's request for an extension of time until **July 29, 2001** in which to file its responsive pleading to Plaintiff's Claim.

June 27, 2001

Petition for Review in the Nature of Original Action for a Writ of Prohibition filed by Defendant. Copy forwarded to attorney for Plaintiff by attorney for Defendant.

June 28, 2001

Petition for Review received from Commonwealth Court. (No. 1458 CD 2001).

July 2, 2001

Copy of Petition for Review from Collateral Order of the Board of Claims, as filed in Commonwealth Court, filed by attorney for Defendant.

July 2, 2001

Copy of Petition for Review from the Order of the Board of Claims Refusing to Include Language that Would Permit an Interlocutory Appeal by Permission Under Pa.R.A.P. 1311, as well as Appendices to Same, as filed in Commonwealth Court, received from Defendant.

July 2, 2001

Copy of Certificate of Service of Defendant's Petition for Review as filed in Commonwealth Court, received from attorney for Defendant.

July 11, 2001

Reply to Petition for Review in the Nature of Original Action for a Writ of Prohibition filed in Commonwealth Court by the Board of Claims. Copy forwarded to attorney for Department of Public Welfare and Louis J. Capozzi, Jr., Esquire, by the Board of Claims.

July 12, 2001

Interrogatories to Respondent, Board of Claims, filed by attorney for Defendant, via facsimile. Copy forwarded to attorney for Plaintiff and Board of Claims, by attorney for Defendant. {No. 320 M.D. 2001}

July 16, 2001

Interrogatories to Respondent, Board of Claims, filed by attorney for Defendant via U.S. Mail. Copy forwarded to attorney for Plaintiff and Board of Claims by attorney for Defendant. {No. 320 M.D. 2001}

July 16, 2001

Preliminary Objections of River Street Associates, et al. as well as Brief of River Street Associates, et al. in Support of Preliminary Objections filed by attorney for River Street Associates, et al, in Commonwealth Court. Copy forwarded to attorney for Department of Public Welfare and Board of Claims, by attorney for River Street Associates. {No. 320 M.D. 2001}

July 17, 2001

File Transmitted to Commonwealth Court.

July 19, 2001

Answers to Interrogatories to Respondent, Board of Claims, forwarded to attorney for RiverStreet and attorney for Department of Public Welfare, by the Board of Claims.

July 24, 2001

Copy of Order (re: No. 320 M.D. 2001) received from Commonwealth Court. Order as follows: "NOW, July 20, 2001, proceedings in the above matter are stayed *sua sponte* pending disposition of the matter docketed at No. 1459 C.D. 2001. Petitioner shall by status report advise this court within 20 days of disposition of that matter in this court."

July 24, 2001

Copy of Order (re: No. 1458 C.D. 2001) received from Commonwealth Court. Order as follows: "NOW, July 20, 2001, upon consideration of petitioner's petition for review from collateral order of the Board of Claims, the above matter is dismissed on the basis that the order appealed does not constitute a collateral order under Pa. R.A.P. 313 and *Geniviva v. Frisk*, 55 Pa. D. 589, 15 A.2d 120 (1999)."

CLOSED

July 24, 2001

Copy of Order (re: No. 1459 C.D. 2001) received from Commonwealth Court. Order as follows: "NOW, July 20, 2001, upon consideration of respondents' application for relief in the nature of a motion to quash, the application is denied. Upon consideration of petitioner's petition for review filed pursuant to the note to Pa. R.A.P. 1311, the petition is granted and the appeal is allowed from the order entered by the Board of Claims on May 5, 2001, at Docket Number 3281. The Chief Clerk is directed to list oral argument on the merits of this matter on the October 2001 argument list in Pittsburgh. The Board of Claims shall certify the record to this court by August 7, 2001. Petitioner's shall file and serve its brief (15 copies) and reproduced record (8 copies) on or before August 28, 2001. Respondent's shall file and serve their briefs (15 copies) on or before September 28, 2001. All proceedings in this matter before the Board of Claims are stayed pending resolution of the instant appeal. In addition to mailing copies of this Order to counsel of record, the Chief Clerk shall mail a copy of same to the Secretary for the Board of Claims."

August 1, 2001

Copy of Application for Relief Motion to Dismiss as filed in Commonwealth Court (re: No. 320 M.D. 2001) received from attorney for Plaintiff (RiverStreet).

August 15, 2001

Copy of DPW's Response to Motion to Dismiss as filed in Commonwealth Court (re: No. 320 M.D. 2001) received from attorney for Department of Public Welfare.

August 20, 2001

Copy of Order (re: No. 320 M.D. 2001) received from Commonwealth Court. Order as follows: "NOW, August 16, 2001, upon consideration of respondents' motion to dismiss, the motion is denied without prejudice to renew the motion after there has been compliance with this court's order of July 20, 2001."

January 9, 2002

CLOSED
Copy of Opinion and Order (re: No. 1459 C.D. 2001) received from Commonwealth Court. Order as follows: "AND NOW, this 9th day of January, 2002, the decision of the Board of Claims in the above-captioned matter is reversed and this case is remanded to the Board of Claims with instruction to sustain the preliminary objections of the Department of Public Welfare and dismiss the complaint. Jurisdiction relinquished."

April 24, 2002

Copy of Opinion and Order (re: No. 320 M.D. 2001) received from Commonwealth Court. Order as follows: "AND NOW, this 19th day of April, 2002, it appearing that petitioner has failed to comply with our prior Order of July 20, 2001, petitioner shall, within 10 days of the date of this Order, file a status report with respect to this case, or the above petition for review shall be dismissed as of course."

April 30, 2002

Copy of Status Report, as filed in Commonwealth Court re: No. 320 M.D. 2001, received from Department of Public Welfare, requesting the current stay in this matter continue and that they be instructed to file another Status Report within 30 days from the date the Supreme Court enters an Order resolving the pending motion for allocatur in 1459 C.D. 2001.

May 2, 2002

Copy of Order (re: No. 320 M.D. 2001) received from Commonwealth Court. Order as follows: "NOW, April 30, 2002, upon consideration of petitioner's status report, it is ordered that the stay entered by this court's order of July 20, 2001, shall continue and that petitioner is instructed to file a further status report within 30 day of final disposition by the Supreme Court of the pending petition for allocatur in *Pa. Dept. of Public Welfare v. River Street Associates*, No. 1459 C.D. 2001."

August 29, 2002

Copy of Order received from Supreme Court, Middle District. Order as follows: "AND NOW, this 5th day of August 2002, the Petition for Allowance of Appeal is hereby **DENIED**." {No. 243 MAL 2002}

September 9, 2002

Notice of Discontinuance of Action re: No. 320 M.D. 2001 received from Commonwealth Court.

January 8, 2003

The Board rendered an Opinion and made the following Order: "**AND NOW**, this 8th day of January, 2003, it is **ORDERED** and **DECREED** that Defendant's Preliminary Objections are **SUSTAINED** and Plaintiff's Complaint is **DISMISSED** with prejudice." Copy forwarded to attorney for Plaintiff and attorney for Defendant.

January 14, 2003

Acceptance of Service of Opinion and Order dated January 8, 2003 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff January 13, 2003.
