

Docket Number: 3426

~~*AUTOMATIVE TELEPHONE, INC.~~

STANLEY G. MAKOROFF, TRUSTEE for AUTOMATIVE TELEPHONE, INC., A
Pennsylvania Corporation

~~Joseph E. Hudak, Esquire
James R. Cooney, Esquire
Robert O. Lampl, Esquire
John R. Orie, Jr., Esquire~~

~~VS.~~

~~COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
and~~

~~D. MICHAEL FISHER, ATTORNEY GENERAL OF PENNSYLVANIA~~

~~Andrew S. Gordon, Chief Counsel
Howard G. Hopkirk, Deputy Attorney General~~

In the Court of Allegheny County Pennsylvania:

January 3, 2000

Complaint in Mandamus and/or for a Permanent Injunction and/or Other Equitable Relief.

February 4, 2000

Consent Order of Court

In Commonwealth Court of Pennsylvania

August 27, 2001

By Order of Commonwealth Court, case filed, Order as follows: AAND NOW, this 23rd day of August, 2001, following argument on respondents= preliminary objections and petitioner's motion to transfer, it is hereby ORDERED that the preliminary objections are SUSTAINED as to those portions of the petition for review seeking relief in equity and mandamus. The preliminary objections are OVERRULED as to the portion of the petition for review asserting the existence of a contract and damages based upon a breach thereof, and that action is hereby TRANSFERRED to the Board of Claims.®

BEFORE THE BOARD OF CLAIMS

September 19, 2001

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

September 24, 2001

Letter forwarded to Plaintiff requesting additional copies of Claim and filing fee.

September 27, 2001

Entry of Appearance of James R. Cooney, Esquire on behalf of Plaintiff filed by attorney for Plaintiff.

September 28, 2001

Copy of Claim forwarded to attorney for Defendant and Chief Deputy Attorney General. Response due from Defendant 10/29/01.

October 1, 2001

Notice of Service of Plaintiff's First Set of Interrogatories Directed to Defendants filed by attorney for Plaintiff.

October 1, 2001

Notice of Service of Plaintiff's First Request for Production of Documents Directed to Defendants filed by attorney for Plaintiff.

October 1, 2001

Notice of Service of Plaintiff's Requests for Admissions filed by attorney for Plaintiff.

October 1, 2001

Notice of Service of Deposition for LuAnn J. Schadle, Contracting Officer for PennDOT; Robert P. Peda, P.E., Director, Bureau of Maintenance and Operations for PennDOT; Jane H. Eckerd, Witness for PennDOT at the bid opening; Michael H. Kline, Esquire, Assistant Counsel in Charge, Contracts and Legal Services Section of PennDOT; Steve Chismar, Press Spokesman for PennDOT; Kevin Harley, Press Spokesman for D. Michael Fisher; a representative of the Pennsylvania Department of Revenue, Criminal Tax Investigation Division; and Sean Connolly, Press Spokesman for D. Michael Fisher filed by attorney for Plaintiff. Copy forwarded to attorney for Defendant by attorney for Plaintiff.

October 4, 2001

Acceptance of Service of Claim received from Chief Deputy Attorney General September 19, 2001. Receipt of same acknowledged by Chief Deputy Attorney General October 1, 2001.

October 4, 2001

Preliminary Objections of Commonwealth of Pennsylvania, Department of Transportation and Brief in Support filed by attorney for Defendant.

October 10, 2001

Proposed Order, Commonwealth of Pennsylvania, Department of Transportation's Motion for a Protective Order and/or Stay of Discovery and Brief in Support filed by attorney for Defendant.

November 8, 2001

Answer to Preliminary Objections and Brief in Support filed by attorney for Plaintiff.

November 14, 2001

Response and Brief in Opposition to Motion for Protective Order and/or Stay of Discovery filed by attorney for Plaintiff.

March 13, 2002

The Board rendered an Opinion and made the following Order: ~~A~~**AND NOW**, this 13th day of March, 2002, the preliminary objections of the Defendant, Commonwealth of Pennsylvania, Department of Transportation and the Attorney General of Pennsylvania are **DENIED**. Defendant is hereby directed to file its Answer to Plaintiff's Claim within thirty (30) days from the exit date of this Order.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

March 13, 2002

The Board rendered an Opinion and made the following Order: ~~A~~**AND NOW**, this 13th day of March, 2002, upon consideration of the Commonwealth of Pennsylvania, Department of Transportation's Motion for a Protective Order and/or Stay of Discovery, the Motion for a Stay of Discovery is hereby **DENIED**. The Motion for a Protective Order is hereby **GRANTED** as follows: 1) the deposition of an unnamed representative from the Department of Revenue, Criminal Tax Investigation Unit is hereby prohibited; 2) the Depositions of all Commonwealth employees shall be taken at a location convenient to the work place of each and at a time that will minimize disruption to their work schedule.@ Copy forwarded to attorney for Plaintiff and attorney for Defendant.

March 18, 2002

Acceptance of Service of Opinion and Order dated March 13, 2002 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 14, 2002.

March 18, 2002

Acceptance of Service of Opinion and Order dated March 13, 2002 received from attorney for Defendant. Receipt of same acknowledged by attorney for Defendant March 14, 2002.

March 25, 2002

Acceptance of Service of Opinion and Order dated March 13, 2002 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff March 15, 2002.

March 25, 2002

Acceptance of Service of Opinion and Order dated March 13, 2002 received from attorney for Plaintiff. Receipt of same acknowledged by attorney for Plaintiff March 18, 2002.

April 12, 2002

Answer to the Complaint filed by attorney for Defendant.

October 16, 2002

Letter forwarded to parties requesting a Status Report. Status Report due on or before **November 15, 2002.**

November 19, 2002

Letter received from attorney for Defendant advising that they have not taken any further action in this case after the letter they received on August 4, 2002 from Plaintiff advising that Plaintiff was in bankruptcy.

June 13, 2003

Board issued letter to parties requesting a status report. Status Report due on or before 7/14/03.

July 11, 2003

Defendant filed a status letter advising that the case has been inactive because Plaintiff filed for bankruptcy and that Plaintiff's counsel is no longer representing Plaintiff and Defendant has not been contacted by a new attorney for Plaintiff.

July 29, 2003

Plaintiff filed Motion to Amend Caption and Entry of Appearance of Robert O Lampl and John R. Orie, Jr. on behalf of Plaintiff.

***September 12, 2003**

Board rendered an Opinion and Order. Order as follows: **AAND NOW**, this 12th day of September, 2003, after consideration of Plaintiff's Motion to Amend Caption and Entry of Appearance, it is hereby **ORDERED** that the caption for this Claim be and is hereby amended as set forth below: STANLEY G. MAKOROFF, TRUSTEE for AUTOMATIVE TELEPHONE, INC., a Pennsylvania Corporation, Plaintiff vs. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, Defendant. It is further **ORDERED** that the Entry of Appearance of Robert O. Lampl, Esquire and John R. Orie, Jr., Esquire is hereby approved.@ Copy forwarded to Plaintiff and Defendant.

September 17, 2003

Defendant filed Acceptance of Service of Opinion and Order dated September 12, 2003. Receipt of same acknowledged September 16, 2003.

September 19, 2003

Plaintiff (Orie) filed Acceptance of Service of Opinion and Order dated September 12, 2003. Receipt of same acknowledged September 15, 2003.

April 29, 2005

Plaintiff filed a letter advising that after discussion with Defendant they are preparing a Stipulation regarding certain evidentiary matters which should be completed within the next few weeks.

May 13, 2005

Defendant filed Proposed Order, Commonwealth of Pennsylvania, Department of Transportation's Motion for Summary Judgment, Brief in Support and Documents in Support of Commonwealth of Pennsylvania, Department of Transportation's Motion for Summary Judgment.

May 16, 2005

Plaintiff filed Proposed Order, Claimant's Motion for Summary Judgment, Brief in Support and Exhibits to Plaintiff's Brief in Support of Motion for Summary Judgment.

June 13, 2005

Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment and Brief in Opposition.

June 13, 2005

Defendant filed Commonwealth of Pennsylvania, Department of Transportation's Brief in Opposition to ATI's Motion for Summary Judgment.

August 24, 2005

Board issued an Opinion and Order. Order as follows: **AND NOW**, this 24TH day of August, 2005, after review of Plaintiff's and Defendant's Cross Motion for Summary Judgment and the Briefs in Support thereof, it is hereby **ORDERED** and **DECREED** that both Motions for Summary Judgment are **DENIED**. Copies forwarded to all parties of record.

August 30, 2005

Plaintiff filed an Acceptance of Service of Opinion and Order dated August 24, 2005. Receipt of same acknowledged by Plaintiff August 26, 2005.

August 31, 2005

Plaintiff filed Acceptance of Service of Opinion and Order dated August 24, 2005. Receipt of same acknowledged by attorney for Plaintiff August 26, 2005.

September 29, 2005

Plaintiff filed a letter requesting that the case be scheduled for trial. Copy forwarded to Defendant.

October 5, 2005

Board issued letter to parties requesting each party to submit a proposed Scheduling Order including dates for filing of pre-trial statements; Pre-trial conference; last day for filing of pre-trial motions; and hearing (include a good faith estimate of how long it will take you to present your portion of the case).

October 20, 2005

Plaintiff transmitted via fax a Proposed Scheduling Order.

October 24, 2005

Plaintiff filed a Proposed Scheduling Order.

October 24, 2005

Defendant PennDOT's Proposed Scheduling Order.

October 26, 2005

Board issued Scheduling Order. Order as follows: **AND NOW**, this 26th day of October, 2005, it is hereby **ORDERED** and **DECREED** as follows: 1. All depositions and discovery shall be completed by January 31, 2006; 2. The last day for filing any Pre-Trial Motions is February 15, 2006; 3. Plaintiff's pre-trial statement shall be filed with the Board and served upon the Defendant no later than February 28, 2006; 4. Defendant's pre-trial statement shall be filed with the Board and served upon the Plaintiff no later than March 14, 2006; 5. A pre-trial conference is scheduled for Thursday, March 30, 2006, at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101; and 6. This matter is set before the Board beginning on Monday, May 8 and running through Friday, May 12, 2006, as necessary. Said hearing shall be held at 200 North Third Street, Fulton Building, 6th Floor, Harrisburg, PA 17101. Copy forwarded to all parties of record.

November 2, 2005

Plaintiff filed Acceptance of Service of Opinion and Order dated October 26, 2005. Receipt of same acknowledged October 31, 2005.

November 2, 2005

Attorney General filed Acceptance of Service of Opinion and Order dated October 26, 2005. Receipt of same acknowledged November 1, 2005.

November 2, 2005

Defendant filed letter requesting that the Pre-Trial Conference that is to commence on March 30, 2006, be re-scheduled.

November 2, 2005

Defendant filed an Acceptance of Service of a Scheduling Order dated October 26, 2005. Receipt of same acknowledged by attorney for Defendant November 1, 2005.

November 2, 2005

Plaintiff filed Acceptance of Service of a Scheduling Order dated October 26, 2005. Receipt of same acknowledged by attorney for Plaintiff October 31, 2005.

November 22, 2005

Board issued an Amended Scheduling Order: Order as follows: Pursuant to the letter of counsel for defendant, Commonwealth of Pennsylvania, Department of Transportation, requesting a revision to the date previously scheduled for the pre-trial conference in the above referenced case, which conference was originally scheduled for March 30, 2006, the Scheduling Order of October 26, 2005, is modified to schedule the pre-trial conference for Wednesday, April 5, 2006, at 1:00 p.m. Said conference shall be held at 200 North Third Street, Fulton Building, 7th Floor, Harrisburg, PA 17101. All other aspects of the Board's October 26, 2005 Order shall remain in place. Copies forwarded to all parties of record.

November 30, 2005

Plaintiff filed Acceptance of Service of Amended Scheduling Order dated November 22, 2005. Receipt of same acknowledged November 28, 2005.

November 30, 2005

Defendant filed Acceptance of Service of Amended Scheduling Order dated November 22, 2005. Receipt of same acknowledged November 29, 2005.

February 15, 2006

Defendant filed Proposed, Order, Commonwealth of Pennsylvania, Department of Transportation's Motion in Limine and Brief in Support. [06A21506D]

February 17, 2006

Plaintiff filed Claimant's Pre-Trial Narrative.

March 13, 2006

Defendant filed PennDOT's Pre-Trial Statement.

March 22, 2006

Plaintiff filed Claimant's Response to Defendant's Motion in Limine and Brief in Opposition.

March 31, 2006

Defendant filed Reply Brief in Support of Defendant's Motion in Limine.

April 3, 2006

Board issued an Opinion and Order. Order as follows: AND NOW, this 3rd day of April, 2006, upon consideration of the Defendant's Commonwealth of Pennsylvania, Department of Transportation's Motion in Limine and Plaintiff's Stanley G. Makoroff, Trustee for Automative Telephone, Inc.'s response thereto, it is **ORDERED** and **DECREED** that (1) the motion to exclude Kevin Harley, Press Secretary of the Attorney General's Offices; Sean Connolly, former Press Secretary of the Attorney General's Office; and Steve Chizmar, a Press Spokesman for Defendant is **DENIED**; (2) the motion to bar Plaintiff from presenting evidence regarding damages relating to loss profits is **DENIED**; and (3) the motion to bar Plaintiff from presenting testimony or other evidence relating to its claim that it sustained damages as a result of tortuous action is **GRANTED**. Copies forwarded to all parties of record.

April 6, 2006

Plaintiff filed an Acceptance of Service of Opinion and Order. Receipt of same acknowledged by Plaintiff April 3, 2006.

April 6, 2006

Defendant filed an Acceptance of Service of Opinion and Order. Receipt of same acknowledged by Defendant April 6, 2006.

April 12, 2006

Plaintiff filed letter requesting ten subpoenas.

April 14, 2006

Board issued letter forwarding ten subpoenas to Plaintiff.

May 3, 2006

Plaintiff filed Exhibits.

May 4, 2006

Plaintiff filed Exhibit Nos. 39; 57a: and 57b.

May 5, 2005

Defendant filed Exhibits.

May 8, 2006

B. Patrick Costello, Esquire filed via fax a Proposed Order and a Petition To Quash Subpoena.

May 8, 2006

Board Hearing held in Board's Court Room #1, 6th Floor, Fulton Bank Building, Harrisburg, PA, commencing at @9:30 a.m.

May 9, 2006

Board Hearing held in Board's Court Room #1, 6th Floor, Fulton Bank Building, Harrisburg, PA , commencing at @9:30 a.m.

May 10, 2006

Board Hearing held in Board's Court Room #1, 6th Floor, Fulton Bank Building, Harrisburg, Pa, commencing at @9:30 a.m. Case completed.

June 7, 2006

Testimony of Board hearing held filed.

June 8, 2006

Board forwarded copy of testimony of Board hearing held May 8, 9, and 10, 2006 to Defendant. Last day of Testimony.

June 14, 2006

Defendant filed Acceptance of Service of Testimony dated June 8, 2006. Receipt of same acknowledged by attorney for Defendant June 13, 2006.

July 25, 2006

Plaintiff filed Proposed Findings of fact and Conclusions of Law.

August 23, 2006

Defendant filed Proposed Order and Motion for an Extension of time of fourteen (14) days in which to file its proposed findings of fact and conclusions of law, and supporting brief.

August 24, 2006

Board issued letter to Defendant, with copy to Plaintiff granting extension of time for Defendant to file findings of fact, conclusions of law and supporting brief.

August 29, 2006

Board issued letter to Defendant, amending their extension of time for Defendant to file findings of fact, conclusions of law and brief.

September 11, 2006

Defendant filed Proposed Findings of Fact and Conclusions of Law and Brief in support. Copy forwarded to Plaintiff.

September 26, 2006

Plaintiff transmitted via fax Proposed Order and a Motion for Extension of time until October 6, 2006, in which to file a Reply Brief.

September 28, 2006

Plaintiff filed via U.S. mail Proposed Order and a Motion for Extension of time until October 6, 2006, in which to file a Reply Brief.

September 28, 2006

Board forwarded letter to Plaintiff granting extension of time to file Reply Brief. Copy forwarded to Defendant.

October 10, 2006

Plaintiff filed Reply Brief.

October 25, 2006

Deputy Attorney General filed letter to advise Board of Supreme Court's decision in Office of Disciplinary Counsel.

November 1, 2006

Plaintiff filed letter in response to Deputy Attorney General's letter dated October 25, 2006.

November 3, 2006

Board issued letter to parties acknowledging receipt of Deputy Attorney General and Plaintiff's letters of October, 2006.

November 9, 2006

Plaintiff filed a Timeline relative to contract bids.

January 12, 2007

Board issued Opinion and Order. Order as follows: **AND NOW**, this 12th day of January, 2007, after a hearing, **IT IS ORDERED** and **DECREED** that the claims of plaintiff, Stanley G. Makoroff, Trustee for Automative Telephone, Inc. are hereby **DENIED**. Judgment of no liability on the claims made in this case is entered for defendant, Commonwealth of Pennsylvania, Department of Transportation. Each party herein will bear its own costs and attorney fees. Copy forwarded to all parties of record.

January 18, 2007

Deputy Attorney General (Hopkirk) filed Acceptance of Service of Opinion and Order dated January 12, 2007. Receipt of same acknowledged on January 17, 2007.

January 18, 2007

Deputy Attorney General (Mulle) filed Acceptance of Service of Opinion and Order dated January 12, 2007. Receipt of same acknowledged on January 17, 2007.

January 19, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated January 12, 2007. Receipt of same acknowledged on January 16, 2007.

February 12, 2007

Plaintiff's Petition for Review of the Order of the Board of Claims entered on January 12, 2007, as filed in Commonwealth Court.

February 15, 2007

Commonwealth Court of Pennsylvanian - Notice of Filing Petition for Review.

March 13, 2007

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

December 3, 2007

Commonwealth Court issued Opinion and Order. Order as follows: "**AND NOW** this 30th day of November, 2007, the order of the Board of Claims is hereby **AFFIRMED**."

January 28, 2008

Commonwealth Court issued Order. Order as follows: "NOW, January 24, 2008, having considered petitioner's application for reargument before the Court en banc, the application is denied."

February 27, 2008

Supreme Court filed Notice of Appeal. [122 WAL 2008]

October 14, 2008

Supreme Court of Pennsylvania, Western District issued an Order:
Order as follows: **AND NOW**, this 22nd day of September, 2008, the
Petition for Allowance of Appeal is **DENIED**. [283 CD 2007]