

Docket Number: 3815 consolidated into 3789

NEW FOUNDATIONS, INC

Daniel F. Schranghamer, Esquire

VS.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF GENERAL SERVICES**

~~Trent Hargrove, Chief Counsel~~
David L. Narkiewicz, Assistant Chief Counsel
~~Tanya C. Leshko, Senior Counsel~~

CLOSED

November 7, 2005

By Order of Commonwealth Court, case filed, Order as follows:
AND NOW this 7th day of November, 2005, we enter the following order: 1. The motion to amend the petition for review is denied; 2. The preliminary objections filed by the Department of General Services are sustained; 3. The claims raised in the petition for review and the motion for enforcement of settlement are transferred to the Board of Claims. Having found that New Foundations' claims do not belong in this Court, or would be unsuccessful even if we had jurisdiction, we will sustain the preliminary objections. Further, because the underlying claim has no merit, granting the motion to amend would not be a prudent exercise of the Court's discretion. Accordingly, we also deny New Foundations' motion to amend the petition for review.

THE FOLLOWING FILED IN COMMONWEALTH COURT

August 18, 2005

Complaint filed.

August 22, 2005

Order Filed. The complaint shall be regarded and acted upon as a petition for review addressed to our original jurisdiction.

September 30, 2005

Praecipe for Appearance. Praecipe for Appearance Barrett, Linda Cadden, Esquire filed.

October 3, 2005

Argument scheduled for November 1, 2005 @11:00 a.m. in Courtroom 1, 10B, Harrisburg. Briefs in support shall be filed by October 12, 2005. Briefs in opposition shall be filed by October 27, 2005.

October 12, 2005

Application for Continuance.

October 13, 2005

Respondent's Brief Filed. Supporting Preliminary Objections.

October 21, 2005

Petition for Enforcement. Motion to Enforce Settlement Agreement.

October 26, 2005

Application to Amend. Motion to Amend Petition for Review.

October 27, 2005

Memorandum of Law filed in Opposition to Respondent's Preliminary Objections.

October 28, 2005

Order Filed. DGS is directed to file a response to petitioner's motion to amend the petition for review by October 31, 2005. The parties shall be prepared to present argument on the motion at the commencement of the hearing scheduled on November 1, 2005 @ 2:00 p.m.

October 28, 2005

Application for Extension of Time to File. Response to Motion to Enforce Settlement Agreement.

October 31, 2005

Order Granting Application for Extension of Time to File. DGS' response to the Petition to Enforce Settlement Agreement is due fourteen days after the Court issues a decision on the parties' preliminary objections.

October 31, 2005

Answer to Application to Amend petition for review.

November 7, 2005

Preliminary Objections Sustained. Memorandum & Order (8pgs). The motion to amend the petition for review is DENIED. The claims raised in the petition for review and the motion for enforcement of settlement are TRANSFERRED to the Board of Claims.

November 21, 2005

Transcript Filed.

November 29, 2005

Amended. Errata Sheet - Page 6, Line 9, Ms. Barrett.

December 7, 2005

Application to Publish Opinion. DGS Application to Publish Opinion construing the jurisdiction of the Board of Claims.

December 7, 2005

Praecipe for Appearance. Praecipe for appearance, Seivering, Mary Benefield.

December 16, 2005

Transfer to Tribunal. Transferred to the Board of Claims.

BEFORE THE BOARD OF CLAIMS

November 7, 2005

Commonwealth Court transferred record.

***November 10, 2005**

Defendant filed a letter (via fax) referencing two cases (Firetree and New Foundation) which were transferred to the Board from Commonwealth Court (Firetree - 165MD2005 and New Foundation - 431MD2005).

***November 16, 2005**

Board forwarded letter to Defendant, with copy to Plaintiff, advising that the Board had not received the transferred cases and that some administrative matters must first be resolved.

December 19, 2005

Board of Claims received file from Commonwealth Court. Amount of Claim: Unknown.

December 22, 2005

Board issued letter to Plaintiff requesting restated claim, original plus 3 copies, proof of mailing and filing fee.

January 12, 2006

Board forwarded letter to parties advising that no actions will be taken until restated claims are filed in Docket Nos. 3813 and 3815.

***February 13, 2006**

Plaintiff filed restated claim, proof of mailing and filing fee. Amount of Claim: unknown. ACCEPTED FOR FURTHER PROCESSING.

February 13, 2006

Board issued Acknowledgment letter and forwarded a copy of the Claim to Attorney General.

February 16, 2006

Attorney General filed Acknowledgment of Claim form. Receipt of same acknowledged February 15, 2006.

March 8, 2006

Defendant filed Preliminary Objections, Brief in Support and Proposed Order.

***March 20, 2006**

Plaintiff filed First Amended Statement of Claim and proof of mailing. Amount of Claim: unknown.

March 21, 2006

Board issued Acknowledgment letter and forwarded a copy of the First Amended Statement of Claim to Attorney General.

March 21, 2006

Board forwarded letter to parties requesting an updated status relative to the Plaintiff's letter requesting the stay be lifted and the Board's request to consolidate Docket Nos. 3789 and 3815.

March 22, 2006

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 22nd day of March, 2006, the preliminary objections filed by the Defendant on March 8, 2006, are hereby **DENIED** as **MOOT**." Copy forwarded to Plaintiff and Defendant.

March 27, 2006

Defendant filed Entry of Appearance of David L. Narkiewicz, Assistant Chief Counsel and Tanya C. Leshko, Senior Counsel on behalf of Defendant.

March 27, 2006

Defendant filed Acceptance of Service of Opinion and Order dated March 22, 2006. Receipt of same acknowledged March 24, 2006.

March 27, 2006

Attorney General filed Acknowledgment of Claim form. Receipt of same acknowledged March 22, 2006.

March 28, 2006

Plaintiff filed letter advising that Plaintiff does not oppose consolidating the claims pending at Docket Nos. 3789 and 3815.

March 28, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated March 22, 2006. Receipt of same acknowledged March 23, 2006.

March 31, 2006

Defendant filed (via fax) letter advising that Defendant agrees that the cases (3789 & 3815) should be consolidated.

April 13, 2006

Defendant filed Preliminary Objections and Brief in Support. [04A042506D]

April 24, 2006

Defendant filed Response to Preliminary Objections and Memorandum of Law in Opposition.

May 10, 2006

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 10th day of May, 2006, it is **ORDERED** and **DECREED** that Defendant's Preliminary Objections are **OVERRULED**. Defendant shall file a responsive pleading to Plaintiff's First Amended Statement of Claim within 20 days of the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

May 12, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated May 10, 2006. Receipt of same acknowledged May 11, 2006.

May 15, 2006

Defendant filed Acceptance of Service of Opinion and Order dated May 10, 2006. Receipt of same acknowledged May 12, 2006.

June 1, 2006

Defendant filed Answer and New Matter to First Amended Statement of Claim.

June 16, 2006

Plaintiff filed Answer to New Matter.

June 19, 2006

Board forwarded letter to parties directing them to proceed with discovery.

July 18, 2006

Plaintiff filed Motion for Partial Summary Judgment and Memorandum of Law in Support. [04A082506D]

September 1, 2006

Defendant filed Motion for Leave to Amend Paragraphs 18 & 19 of Defendant's Answer and New Matter to New Foundations, Inc.'s First Amended Claim, Memorandum of Law in Support and Proposed Order. [04A100206D]

September 8, 2006

Defendant filed Answer to Plaintiff's Motion for Partial Summary Judgment, Memorandum of Law in Opposition and Proposed Order

October 2, 2006

Plaintiff filed Response to Defendant's Motion for Leave to Amend Paragraphs 18 and 19 of Its Answer and New Matter, Memorandum of Law in Opposition and Proposed Order.

October 6, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 6th day of October, 2006, it is **ORDERED** and **DECREED** that Defendant is **GRANTED** leave to amend paragraphs 18 and 19 of Defendant's answer and new matter to Plaintiff's first amended claim. Defendant may refile its amended answers to paragraphs 18 and 19 within 10 days from the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

October 10, 2006

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

October 13, 2006

Defendant filed Acceptance of Service of Opinion and Order dated October 6, 2006. Receipt of same acknowledged October 10, 2006.

October 18, 2006

Defendant filed Amended Answer to First Amended Statement of Claim.

October 18, 2006

Board forwarded letter to Plaintiff, with copy to Defendant, requesting Plaintiff to advise the Board whether or not Plaintiff would like the Board to proceed with its motion for partial summary judgment.

October 23, 2006

Plaintiff filed letter requesting the Board proceed to a decision on Plaintiff's motion for partial summary judgment.

October 23, 2006

Plaintiff filed Notice of Service of Interrogatories, Request for Production of Documents and Notice to Take Oral Deposition of Mr. Swartz.

October 31, 2006

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 31st day of October, 2006, upon consideration of Plaintiff's motion for partial judgment on the pleadings, the motion is **DENIED."** Copy forwarded to Plaintiff and Defendant.

November 2, 2006

Defendant filed Acceptance of Service of Opinion and Order dated October 31, 2006. Receipt of same acknowledged November 1, 2006.

November 7, 2006

Plaintiff filed Acceptance of Service of Opinion and Order dated October 31, 2006. Receipt of same acknowledged November 4, 2006.

November 21, 2006

Defendant filed Notice of Service of Defendant's Responses to Plaintiff's Request for Production of Documents.

January 31, 2007

Plaintiff filed Motion to Compel Production of Documents and Memorandum of Law in Support.

February 16, 2007

Plaintiff filed (via fax) Motion and Memorandum of Law to Compel Discovery and Proposed Order.

February 16, 2007

Defendant filed Motion for Protective Order Pursuant to Pa.R.C.P. 4012 and Brief in Support.

February 20, 2007

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 20th day of February, 2007, the depositions of the parties reflected in Defendant's Motion for Protective Order shall be **STAYED** until the matter can be fully briefed by the parties as instructed by the Board under separate correspondence." Copy forwarded to Plaintiff and Defendant.

February 20, 2007

Plaintiff filed (via U.S. Mail) Motion and Memorandum of Law to Compel Discovery and Proposed Order.

February 22, 2007

Defendant filed Acceptance of Service of Opinion and Order dated February 20, 2007. Receipt of same acknowledged February 20, 2007.

February 23, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated February 20, 2007. Receipt of same acknowledged February 21, 2007.

February 23, 2007

Defendant filed Acceptance of Service of Opinion and Order dated February 20, 2007. Receipt of same acknowledged February 22, 2007.

February 26, 2007

Plaintiff filed Answer to Motion for Protective Order, Memorandum of Law and Proposed Order.

February 26, 2007

Defendant filed Praecipe to Withdraw Appearance of Tanya C. Leshko, Assistant Counsel, on behalf of Defendant.

March 1, 2007

Board rendered an Order. Order as follows: **"AND NOW**, this 1st day of March, 2007, pursuant to the motion for protective order filed by the Department of General Services and the motion to compel discovery filed by New Foundations, Inc., and following a discovery conference held February 28, 2007, the Board enters the following **ORDER**, based on the discussion held during said conference and on the representations of counsel to both parties: 1. Depositions of Secretary Creedon, former Secretary Cunningham, former Deputy Secretary Wheeler, Michael Yaron and Charles Breslin shall be held on the dates agreed to by the parties from among those specified in the email of February 16, 2007, attached as Exhibit H to the Department's motion for protective order, or on such other dates as mutually agreed to by the parties; 2. The deposition of former Secretary Cunningham shall be held at his offices in Allentown, Pennsylvania; 3. Counsel for New Foundations shall produce to counsel for the Department all documents intended to be used at the deposition of Secretary Creedon and former Secretary Cunningham at least ten days before the depositions occur; 4. Pursuant to the agreement of the parties, Plaintiff's counsel shall be permitted to question the above-named deponents regarding: a. New Foundation's attempted purchase of 229 Arch Street in 2005, b. Firetree's attempted purchase of Laurelton Center in 2005, c. the meeting in April 2005, in Harrisburg, discussing possible settlement of

litigation, and d. the meetings and discussions between Secretary Creedon and representatives of New Foundations and Firetree discussing possible settlement in August and September of 2005. 5. Questions on additional relevant topics will be allowed if reasonably calculated to lead to the discovery of admissible evidence pursuant to the Pennsylvania Rules of Civil Procedure. 6. The Board **DENIES** the Department's request to limit the duration of the depositions herein ordered and **DENIES** the Department's request to require Plaintiff to submit deposition questions in writing prior to the taking of said depositions." Copy forwarded to Plaintiff and Defendant.

March 6, 2007

Plaintiff filed Acceptance of Service of Order dated March 1, 2007. Receipt of same acknowledged March 5, 2007.

March 7, 2007

Defendant filed Acceptance of Service of Order dated March 1, 2007. Receipt of same acknowledged March 2, 2007.

April 4, 2007

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 4th day of April, 2007, it is **ORDERED** and **DECREEED** that Plaintiff's motion to compel production of documents is **GRANTED**. Defendant is **ORDERED** to produce to Plaintiff the notes taken by Brad Swartz, Chief of Land Management, at the meeting of the parties in August 2005, within 20 days from the exit date of this Order." Copy forwarded to Plaintiff and Defendant.

April 9, 2007

Defendant filed Acceptance of Service of Opinion and Order dated April 4, 2007. Receipt of same acknowledged April 6, 2007.

April 27, 2007

Plaintiff filed Acceptance of Service of Opinion and Order dated April 4, 2007. Receipt of same acknowledged April 9, 2007.

October 18, 2007

Defendant filed status letter advising that the parties are in discovery and requesting that Docket Nos. 3789, 3815 and 3813 are consolidated.

November 1, 2007

Board rendered an Opinion and Order. Order as follows: **"AND NOW,** this 1st day of November, 2007, upon the request of the parties to consolidate the actions docketed at numbers 3789 and 3815 (New Foundations) and 3813 (Firetree), the request is **GRANTED** with regard to Docket Nos. 3789 and 3815. These two claims filed by New Foundations against the Commonwealth of Pennsylvania, Department of General Services are hereby consolidated for all purposes under Docket No. 3789. The request to consolidate Firetree's claim docketed at number 3815 is hereby **DENIED.**" Copy forwarded to Plaintiff and Defendant.

SEE DOCKET SHEET NO. 3789 FOR FURTHER ENTRIES.
