

Docket Number: 3948

BUCHART HORN, INC.

John J. Sylvanus, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

~~Andrew S. Gordon, Chief Counsel~~
Jody L. King, Assistant Counsel

CLOSED

December 19, 2008

*Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: \$277,304.00.

December 23, 2008

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

January 5, 2009

Chief Deputy Attorney General filed Acknowledgement of Claim dated December 23, 2008. Receipt of same acknowledged December 30, 2008.

January 14, 2009

Defendant filed a Notice of Appearance of Jody L. King, Assistant Counsel of behalf of Defendant.

January 21, 2009

Defendant filed Preliminary Objections to Claim and Brief in Support. [07A030209]

February 23, 2009

Plaintiff filed a letter requesting an extension of time until March 2, 2009 in which to file its response and brief in response to Defendant's Preliminary Objections.

February 23, 2009

Board issued letter to Plaintiff, with copy to Defendant granting extension of time for Plaintiff to file Response and Brief to Defendant's Preliminary Objections.

March 2, 2009

Plaintiff filed Response to Preliminary Objections with New Matter and Brief in Opposition.

March 23, 2009

Defendant filed Response to New Matter in Plaintiff's Response to Preliminary Objections.

April 28, 2009

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 28th day of April, 2009, it is **ORDERED** and **DECREED** that the preliminary objections of the Defendant, Commonwealth of Pennsylvania, Department of Transportation, are **DENIED IN PART** and **GRANTED IN PART**. The preliminary objections based on the lack of subject-matter jurisdiction according to Section 1724(c) of the Procurement Code are **DENIED**. The preliminary objections based on Plaintiff's apparent failure to comply with Sections 1712.1 of the Procurement Code will be **GRANTED** and this case will be dismissed with prejudice unless, within 20 days of the exit date of this Order, Plaintiff files an amended claim as allowed by this Opinion." Copy forwarded to Plaintiff and Defendant.

May 1, 2009

Defendant filed an Acceptance of Service of Opinion and Order dated April 28, 2009. Receipt of same acknowledged April 29, 2009.

May 4, 2009

Plaintiff filed an Acceptance of Service of Opinion and Order dated April 28, 2009. Receipt of same acknowledged April 30, 2009.

***May 18, 2009**

Plaintiff filed Amended Statement of Claim.

May 19, 2009

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

June 1, 2009

Chief Deputy Attorney General filed Acknowledgement of Amended Claim dated May 19, 2009. Receipt of same acknowledged May 27, 2009.

June 22, 2009

Defendant filed Preliminary Objections to Amended Claim and Brief.

July 28, 2009

Plaintiff transmitted via facsimile Reply to Preliminary Objections and Brief.

July 29, 2009

Plaintiff filed Reply to Preliminary Objections and Brief.

September 24, 2009

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 24th day of September, 2009, it is **ORDERED** and **DECREED** that the preliminary objection of the Defendant, Commonwealth of Pennsylvania, Department of Transportation, based on Plaintiff's failure to exhaust administrative remedy and comply with Section 1712.1 of the Procurement Code will be **GRANTED**. Moreover, because the pleadings in Plaintiff's amended complaint establish this defense and provide no basis to estop Defendant from asserting same after invitation from the Board for Plaintiff to plead such matters, this amended complaint is hereby **DISMISSED** with prejudice." Copy forwarded to Plaintiff and Defendant.

October 2, 2009

Plaintiff filed Acceptance of Service of Opinion and Order dated September 24, 2009. Receipt of same acknowledged September 28, 2009.

October 2, 2009

Defendant filed Acceptance of Service of Opinion and Order dated September 24, 2009. Receipt of same acknowledged September 28, 2009.

October 14, 2009

Plaintiff filed Petition for Review as filed in Commonwealth Court.

October 23, 2009

Commonwealth Court issued Notice of Filing of Petition for Review.
(No. 2001 C.D._2009).

January 22, 2010

Plaintiff filed copy of Brief of Appellant and the Reproduced
Record as filed in Commonwealth Court.

February 22, 2010

Plaintiff file copy of Supplemental Reproduced Record as filed in
Commonwealth Court.

July 14, 2010

Commonwealth Court issued Opinion and Order. Order as follows:
"AND NOW, this 13th day of July, 2010, the order of the Board of
Claims dated September 24, 2009, is affirmed."

April 27, 2011

Supreme Court issued Order. Order as follows: "AND NOW, this 5th
day of April, 2011, the Petition for Allowance of Appeal is
DENIED."

May 12, 2011

Commonwealth Court returned file.
