

Docket Number: 4226

J.M. CLARK CONSTRUCTION, L.L.C.

~~Lee W. Davis, Esquire~~
D. Matthew Jameson, III, Esquire
Gerard A. Hornby, Esquire

VS.

COMMONWEALTH OF PENNSYLVANIA
STATE SYSTEM OF HIGHER EDUCATION,
SLIPPERY ROCK UNIVERSITY

~~Andrew Lehman, Chief Counsel~~
Laura J. Neal, University Legal Counsel
Michael S. Ferguson, University Legal Counsel

March 3, 2021

Plaintiff filed Claim, proof of mailing and filing fee. Amount of Claim: UNSPECIFIED.

March 3, 2021

Board issued Acknowledgment letter requesting response from Defendant and forwarding a copy of the Claim to Attorney General.

March 4, 2021

Attorney General filed acknowledgment of Claim. Receipt of same acknowledged March 4, 2021.

April 7, 2021

Defendant filed preliminary objections, brief in support and proposed order.

April 7, 2021

Board forwarded letter to Plaintiff requesting response to preliminary objections.

May 3, 2021

Plaintiff filed response to Defendant's preliminary objections.

May 24, 2021

Board rendered Opinion and Order. Order as follows: "**AND NOW**, this 24th day of May 2021, upon consideration of the claim filed by J.M. Clark Construction, L.L.C, the preliminary objections filed by the Commonwealth, State System of Higher Education, Slippery Rock University, and the response thereto, it is hereby **ORDERED** and **DECREED** that the preliminary objections of Respondent are **OVERRULED**. Respondent shall file its response to the Statement of Claim within 30 days." Copy forwarded to Plaintiff and Defendant.

June 4, 2021

Plaintiff filed Acceptance of Service of Opinion and Order dated May 24, 2021. Receipt of same dated June 2, 2021.

June 21, 2021

Defendant filed Acceptance of Service of Opinion and Order dated May 24, 2021. Receipt of same dated June 2, 2021.

June 21, 2021

Defendant filed Motion for Extension of Time to File Answer.

June 22, 2021

Board rendered Order. Order as follows: "**AND NOW**, this 22nd day of June, 2021, upon consideration of the request for a 14-day extension of time to file an answer submitted by Defendant, State System of Higher Education, Slippery Rock University, without concurrence from Plaintiff, it is hereby **ORDERED** that the Motion for Extension of Time to File Answer is **GRANTED**. Defendant shall file its Answer in this matter by no later than July 7, 2021." Copy forwarded to Plaintiff and Defendant.

June 25, 2021

Plaintiff filed acceptance of service of Order dated June 22, 2021. Receipt of same acknowledged June 23, 2021.

July 7, 2021

Defendant filed Answer with New Matter.

July 8, 2021

Board forwarded letter to Plaintiff, with copy to Defendant, requesting response to new matter.

July 14, 2021

Defendant filed acceptance of service of Order dated June 22, 2021. Receipt of same acknowledged June 28, 2021.

July 19, 2021

Plaintiff filed Answer to Defendant's New Matter.

July 20, 2021

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

October 8, 2021

Plaintiff filed a Motion for Leave to Withdraw as Counsel and proposed order.

October 18, 2021

Board forwarded letter to Plaintiff requesting new contact information for J.M. Clark Construction.

October 19, 2021

Plaintiff filed Substitution of Counsel withdrawing the appearance of Lee W. Davis, Esquire and entering the appearance of D. Matthew Jameson, III, Esquire and Gerard A. Hornby, Esquire of Burns White, LLC on behalf of Plaintiff.

October 21, 2021

Board rendered an Order. Order as follows: **"AND NOW**, this 21st day of October, 2021, upon consideration of the record in this case and the Motion to Withdraw as Counsel for J.M. Clark Construction, L.L.C. filed by Lee W. Davis, Esquire as well as Plaintiff's Substitution of Counsel, it is hereby **ORDERED** and **DECREED** that Lee W. Davis, Esquire is **WITHDRAWN** as counsel in this matter." Copy forwarded to Plaintiff and Defendant.

October 21, 2021

Plaintiff filed acceptance of service of Order dated October 21, 2021. Receipt of same acknowledged October 28, 2021.

December 30, 2022

Plaintiff filed Motion for Leave to Amend Claim, Brief in Support and Proposed Order.

January 3, 2023

Board forwarded letter to Defendant, with copy to Plaintiff, requesting response to Plaintiff's motion for leave to amend claim.

February 1, 2023

Defendant filed letter provided change of address and requesting a 30 day extension of time in which to file its response to Plaintiff's motion for leave to amend claim.

February 3, 2023

Board issued letter to Defendant, with copy to Plaintiff, granting extension of time for Defendant to file its response to Plaintiff's motion for leave to amend claim.

February 24, 2023

Defendant filed Brief in Opposition to Motion for Leave to Amend.

March 2, 2023

Board forwarded letter to Plaintiff, with copy to Defendant, requesting reply to Defendant's Brief in Opposition.

March 22, 2023

Plaintiff filed Reply Brief to Defendant's Brief in Opposition.

April 27, 2023

Board rendered an Opinion and Order. Order as follows: "**AND NOW**, this 27th day of April 2023, upon consideration of the Motion to Amend Claim and Brief in Support filed by Claimant, J.M. Clark Construction, L.L.C.; the Brief in Opposition to Claimant's Motion for Leave to Amend filed by Respondent Slippery Rock University of the Pennsylvania State System of Higher Education; and the Reply thereto filed by Claimant; the Board of Claims hereby **ORDERS** and **DECREES** that the current Motion for Leave to Amend is **DENIED**." Copy forwarded to Plaintiff and Defendant.

May 4, 2023

Plaintiff filed acceptance of service of Order dated April 27, 2023. Receipt of same acknowledged May 1, 2023.

May 26, 2023

Plaintiff filed Motion for Reconsideration of Board's April 27, 2023 Opinion and Order and Proposed Order.

May 31, 2023

Board forwarded letter to Defendant requesting a response to Plaintiff's Motion for Reconsideration.

June 26, 2023

Defendant filed Response and Argument in Opposition to Motion for Reconsideration.

August 22, 2023

Board forwarded letter to parties requesting Plaintiff provide materials related to its administrative claim which it asserts are missing from those currently before the Board.

November 20, 2023

Plaintiff filed Motion to Compel Production of Documents.

November 29, 2023

Board forwarded letter to parties requesting Plaintiff to file a brief in support of its motion to compel, as well as, requesting Defendant to file its response to Plaintiff's motion to compel and brief.

December 8, 2023

Plaintiff filed brief in support of motion to compel production of documents.

January 8, 2024

Defendant filed its brief in opposition to motion to compel.

February 20, 2024

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 20th day of February, 2024, upon consideration of the Motion to Compel Production of Documents and supporting brief filed by J.M. Clark Construction, L.L.C., and the responsive brief filed by Commonwealth of Pennsylvania, State System of Higher Education, Slippery Rock University, it is hereby **ORDERED** and **DECREED** that the Motion to Compel Production of Documents filed by J.M. Clark Construction, L.L.C. is **GRANTED** in **PART**, in accordance with this opinion. Within 30 days of the date of this Order, Respondent shall provide Claimant with all materials (in written or electronic format) filed by Claimant or its representatives with Respondent in connection with the administrative claim that is now the subject of these proceedings before the Board. It is further **ORDERED** and **DECREED** that, within 20 days of its receipt of said discovery materials, Claimant shall file with the Board a final brief identifying, with specificity, any and all materials that have been heretofore missing from the record in support of its argument for reconsideration." Copy forwarded to all parties of record.

March 4, 2024

Plaintiff filed acceptance of service of Opinion and Order dated February 20, 2024. Receipt of same acknowledged February 27, 2024.

March 11, 2024

Defendant filed acceptance of service of Opinion and Order dated February 20, 2024. Receipt of same acknowledged February 28, 2024.

April 10, 2024

Plaintiff filed its brief in support of reconsideration of motion for leave to amend claim.

May 9, 2024

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 9th day of May, 2024, upon consideration of the Motion for Reconsideration of the Opinion and Order dated April 27, 2023, filed by Claimant J.M. Clark Construction, L.L.C., on May 26, 2023, the response filed by Respondent Commonwealth of Pennsylvania, State System of Higher Education, Slippery Rock University, on June 26, 2023, and the final brief and documents filed by Claimant on April 10, 2024, it is hereby **ORDERED** and **DECREED** that the Motion for Reconsideration of the Opinion and Order dated April 27, 2023, is **DENIED** in accordance with this opinion." Copy forwarded to all parties of record.

July 26, 2024

Plaintiff filed notice of service of first set of interrogatories and requests for production of documents.

October 11, 2024

Plaintiff filed Motion to Compel Discovery Responses.

October 15, 2024

Board forwarded letter to Defendant, with copy to Plaintiff, requesting a response to Plaintiff's Motion to Compel.

November 12, 2024

Defendant filed its response to Plaintiff's motion for discovery.

November 14, 2024

Plaintiff filed reply in support of Motion to Compel Discovery Responses.

November 20, 2024

Board rendered Opinion and Order. Order as follows: **"AND NOW**, this 20th day of November, 2024, upon consideration of the motion to compel discovery responses filed by J.M. Clark Construction, L.L.C. (JM Clark) on October 11, 2024; the response filed by the Commonwealth of Pennsylvania State System of Higher Education, Slippery Rock University (PASSHE) on November 12, 2024; and JM Clark's reply filed on November 14, 2024, it is hereby **ORDERED** as follows: 1. JM Clark's motion to compel discovery responses is **GRANTED**. 2. In accordance with B.O.C. Rule 899.401 and Pa. R.C.P. 4009.12, PASSHE is directed to produce all responsive, non-privileged documents requested in JM Clark's July 23, 2024, discovery requests by December 4, 2024." Copy forwarded Plaintiff and Defendant.

December 2, 2024

Plaintiff filed acceptance of service of Opinion and Order dated November 20, 2024. Receipt of same acknowledged November 27, 2024.

December 13, 2024

Defendant filed a motion for extension of time to file answer and proposed order.

December 16, 2024

Board forwarded letter to Plaintiff, with copy to Defendant, requesting a response to Defendant's motion.

January 15, 2025

Plaintiff filed Response in Opposition to Motion for Extension.

February 5, 2025

Board rendered Opinion and Order. Order as follows: **"AND NOW,** this 5th day of February, 2025, upon review of the Motion for Extension of Time to File Answer filed by the Commonwealth of Pennsylvania State System of Higher Education, Slippery Rock University (PASSHE) on December 13, 2024, and the response filed by J.M. Clark Construction, L.L.C. (JM Clark) on January 15, 2025, for the reasons stated in the accompanying opinion, it is hereby **ORDERED** as follows:

1. PASSHE shall immediately produce the privilege log relating to the discovery produced in accordance with the Board of Claims Order of November 20, 2024, if the same has not already been provided to JM Clark.

The Board will not consider the January 15, 2025, response filed by JM Clark for the dual purpose of a motion for sanctions. If JM Clark deems it appropriate to file a motion for sanctions, it may do so in accordance with BOC Rule 899.301 and Pa. R.C.P. 4019." Copy forwarded to all parties of record.

February 18, 2025

Plaintiff filed Acceptance of Service of Opinion and Order dated February 12, 2025. Receipt of same acknowledged February 13, 2025.
