

COMMONWEALTH OF PENNSYLVANIA

JOSEPH P. CLARK : BEFORE THE BOARD OF CLAIMS
 :
 v. :
 :
 COMMONWEALTH OF PENNSYLVANIA, :
 DEPARTMENT OF GENERAL SERVICES, :
 DEPARTMENT OF CORRECTIONS, AND :
 DEPARTMENT OF REVENUE : DOCKET NO. FC-986-92

FINDINGS OF FACT

1. The Claimant is Joseph P. Clark whose address is Wedgewood Road, Allentown, Pennsylvania 18104. (June 7, 1994 hearing, page 5, lines 9-16).
2. The Defendants are the Pennsylvania Department of General Services, Department of Corrections and Department of Revenue. (June 7, 1994 hearing, page 2, lines 2-6).
3. The Claimant was the owner of a property located at 608-610 Hamilton Mall, Allentown, Pennsylvania 18101. (June 7, 1994 hearing, page 5, lines 17-18: Joint Exhibit A-5: Defendants' Exhibit No.1).
4. The Claimant entered into a lease agreement with the Department of General Services (hereinafter "DGS") on August 5, 1985, to provide office space for the Pennsylvania Department of Corrections (hereinafter "Corrections"). (June 7, 1994 hearing, page 5, lines 23-25; page 6, lines 1-5: Defendants' Exhibit No. 1).
5. The Claimant testified that in 1985, DGS paid one hundred percent (100%) of the electric bill for the property at 608-610 Hamilton Mall. (June 7, 1994 hearing, page 6, lines 6-18).
6. The Claimant testified that two (2) years later DGS paid ninety percent (90%) of said electric bill. (June 7, 1994 hearing, page 6, lines 19-23: page 7, lines 1-3).
7. The Claimant testified that he made his claim for the period from 1987 to 1990 during which period DGS elected to pay sixty percent (60%) of the electric bill. (June 7, 1994 hearing, page 8, lines 3-16).
8. On or about November 8, 1991, the Claimant entered into a Memo of Understanding and Assignment with George Atiyeh, whereby the Claimant assigned "all right, title and interest in and to leases with agencies of the Commonwealth of Pennsylvania" for the property at 608-610 Hamilton Mall to George Atiyeh. (June 7, 1994 hearing, page 17, lines 4-6: Plaintiff's Exhibit No. 1).

9. On or about October 17, 1991, a title insurance policy was prepared for Quality Realty & Construction, Inc., for the transfer of the property located at 608-610 Hamilton Mall from Joseph P. Clark to Quality Realty. (June 7, 1994 hearing, page 17, lines 7-10: Plaintiff's Exhibit No. 2).

10. By letter dated November 4, 1991, Attorney Greg Feinberg, counsel to PP&L, wrote to William Kulp, who handled the closing on the 608-610 Hamilton Mall property, regarding outstanding bills which needed to be addressed at the closing of said property. (June 7, 1994 hearing, page 17, lines 10-14: Plaintiff's Exhibit No. 3).

11. The final date of the transfer of the title to the property located at 608-610 Hamilton Mall from the Claimant to George Atiyeh, Arif Atiyeh and Quality Realty & Construction, Inc., was in November of 1991. (June 7, 1994 hearing, page 18, lines 6-8).

12. On November 14, 1990, the Claimant sold the building located at 608-610 Hamilton Mall to George Atiyeh, Arif Atiyeh and Quality Realty & Construction, Inc. (June 7, 1994 hearing, page 11, lines 5-12: Defendants' Exhibit No. 2).

13. On December 21, 1990, a memo entitled "Change of Ownership, Department of Corrections, Allentown" was sent by the Pennsylvania Department of Treasury advising the Bureau of Real Estate that the Claimant was the former lessor and George Atiyeh was the new lessor. (June 7, 1994 hearing, page 25, lines 22-25; page 26, lines 2-3, 14-17: Defendants' Exhibit No. 5).

14. On October 7, 1991, the Claimant filed a Bankruptcy Complaint in the Eastern District of Pennsylvania. (June 7, 1994 hearing, page 12, lines 1-5: Defendants' Exhibit No. 2).

15. On April 20, 1992, the Claimant entered into a stipulation with the Defendants which stated that the Claimant's action was filed with the Board of Claims on March 20, 1992. (June 7, 1994 hearing, page 12, lines 17-22: Joint Exhibit A-2).

16. By letter dated March 4, 1992, the Claimant's attorney, David Dunn, Esquire, sent a letter along with a copy of the Bankruptcy Complaint to the Board of Claims, which the Board accepted as a Complaint. (June 7, 1994 hearing, page 13, lines 2-6: Joint Exhibits A-3, A-4, A-5).

CONCLUSIONS OF LAW

1. The Board of Claims has exclusive jurisdiction to hear and determine all claims against the Commonwealth of Pennsylvania arising from contracts entered into with the Commonwealth. (72 P.S. Section 4651-4).

2. This claim is brought against the Department of General Services, Department of Corrections and the Department of Revenue, which are all Commonwealth agencies.

3. The Board has jurisdiction over the parties to this claim. (72 P.S. Section 4651-1 et seq.)

4. The Board has subject matter jurisdiction over the claim asserted by the Claimant. (72 P.S. Section 4651-1 et seq.)

5. The Board has no power and may not exercise jurisdiction over a claim asserted against the Commonwealth unless the claim is filed within six (6) months after it accrued. (72 P.S. Section 4651-6)

6. Utility bills accrue as of the date when they are due.

7. The Defendants raised the Statute of Limitations issue in Paragraph 16 of Defendants' New Matter.

8. The Claimant filed his Claim beyond the six (6) month statutory period.

OPINION

This matter was called to a hearing on June 7, 1994, before the Eastern District Hearing Panel, composed of Edward J. Leonard, Chairman and Law Member, and Howard G. Minckler, Engineer Member. The Panel Report has been submitted, for review and decision, to the Board of Claims.

The issue in this case is whether the Claimant filed his claim within the six month statutory period. Section 6 of the Act of May 20, 1937, P.L. 728, as amended, 72 P.S. Section 4651-6 (Act) provides as follows:

"The Board shall have no power and exercise no jurisdiction over a claim asserted against the Commonwealth unless the claim shall have been filed within six months after it accrued."

The jurisdiction period begins to run from the time the cause of action arose, and that is when the injured party is first able to litigate the claim. Allen N. Lashner, Inc. v. Department of Highways, 1 Pa. Cmwlth. 486, 275 A.2d 403 (1971). A party is first able to litigate a claim when

the amount due under the claim is known. Commonwealth of Pennsylvania, Department of Public Welfare v. The School District of Philadelphia, No. 1199 C.D. 1986; see also, Department of Public Welfare v. Federated Security, Inc., 49 Pa. Cmwlt. 411, 411 A.2d 284 (1980). The amount due is known when the Plaintiff can prepare a detailed statement of the claim as required by Section 6 of the Act. Department of Community Affairs v. Craftech International Ltd., 72 Pa. Cmwlt. 162, 456 A.2d 247 91983); see also, Little Brown Bear Day Care, Inc. v. Department of Public Welfare, Board of Claims' Docket No. 1284 (1990), appealed Pa. Cmwlt. No. 1111 C.D. 1990, appealed and reversed (Opinion not reported).

Furthermore, Section 6 of the Act also provides that:

"The claimants shall advise the Department involved, in writing, of such claim, specifying the details thereof, and shall, within the same period, file with the Secretary of the Board a concise and specific written statement of this claim, signed and verified by the claimant before an officer authorized to administer oaths."

It is apparent to the Board that as of November 14, 1990, any claims the Claimant may have had against the Commonwealth accrued on or before that date. This was the date the Plaintiff sold all of his right, title and interest in the property. The approval of the sale by the Bankruptcy Court was a formality particular to this Claimant's situation. The Claimant exercised no control or interest over the property following the settlement on November 14, 1990, therefore, the Claimant's contention that he is not barred by the Statute of Limitations is without merit.

Furthermore, the Claimant testified at the hearing held on June 7, 1994, that he made his claim for the period from 1987 to 1990. (See page 8, lines 3-16 of June 7, 1994 hearing transcript). By his own testimony, the Claimant has indicated that, as he understands the contract, the Defendants' obligation to pay him ended in 1990. Therefore, the Claimant knew that his claim accrued in 1990.

The Claimant has alleged that the Defendants waived their right to raise the Statute of Limitations as a defense because they did not raise the issue prior to the hearing which was held on June 7, 1994. The Board notes that the Defendants did raise this issue in paragraph 16 of their "New Matter". Therefore, the Board finds that this assertion is without merit.

The Claimant next argues that the Defendants waived their right to assert the Statute of Limitations as a defense by stipulating to remove the claim from the Bankruptcy Court to the Board of Claims. A stipulation to allow a party to file a complaint in the proper forum, without restriction, does not exclude any party from asserting their claims or defenses to the said complaint. There was a stipulation entered into by the parties; however, the Defendants did not agree to waived their right to assert a Statute of Limitations defense by entering said stipulation.

Based on the foregoing, the Board finds that the Claimant failed to file his claim within the six (6) month statutory period.

ORDER

AND NOW, this day of , 1997, the Board finds in favor of the Defendants, Department of General Services, Department of Corrections and Department of Revenue, and against the Plaintiff, Joseph P. Clark. Plaintiff's Complaint is **DISMISSED**.

It is hereby **ORDERED** that the costs and attorneys' fees incurred by the respective parties will be paid by the respective parties.

BOARD OF CLAIMS

David C. Clipper
Chief Administrative Judge

Louis G. O'Brien
Engineer Member

James W. Harris
Citizen Member

Opinion Signed

April 7, 1997