

complaint filed with the Board, the University requests that the Board declare that “no valid contract exists between the parties”

The University’s complaint was served on the Defendants by first class mail on November 24, 2015. The Board sent a letter to the parties on November 30, 2015, acknowledging the filing and service of the complaint and directing the Defendants to file a response to the complaint within 30 days. On May 6, 2016, the University filed its request for default entry of declaratory judgment now before the Board. As of the date of this opinion and order, none of the Defendants has filed an answer to the University’s complaint or a response to the University’s request for default entry of declaratory judgment.

The University states that its complaint for declaratory judgment is brought pursuant to Section 7532 of the Declaratory Judgments Act, 42 Pa.C.S. § 7532, and it asserts that the Board has jurisdiction pursuant to Section 1724(b)(1) of the Procurement Code, 62 Pa.C.S. § 1724(b)(1). Section 7532 of the Declaratory Judgments Act provides as follows:

Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

42 Pa.C.S. § 7532.

By its clear language the grant of power in Section 7532 is restricted to “Courts of record.” “Court of record” as that term is used in the Judicial Code is defined to mean every court of this Commonwealth (42 Pa. C.S. § 321), and the Judicial Code provides that judicial power vests in the unified judicial system (i.e. the Supreme Court, Superior Court, Commonwealth Court, Courts of common pleas, Community Courts, Philadelphia Municipal Court; Pittsburgh Magistrates

Court; Traffic Court of Philadelphia; and Magisterial district judges). 42 Pa. C.S. § 301. The Board of Claims is not a court under the Judicial Code (42 Pa.C.S. § 301) but an independent administrative body and a tribunal that adjudicates claims arising from contracts entered into by the Commonwealth. Clairton Slag, Inc. v. Dep't. of Gen. Servs., 2 A.3d 765, 784 (Pa. Cmwlth. 2010). Because the Board is not a court of record for the purposes of the Declaratory Judgment Act, it is without power to issue declaratory judgments thereunder. See e.g. Costanza v. Department of Environmental Resources, 606 A.2d 645, 647 (Pa. Cmwlth. 1992) (holding that the Environmental Hearing Board is not a court of record with power under Section 7532 of the Declaratory Judgment Act). This Board's inability to grant declaratory relief is further highlighted by the numerous cases holding that the Board's authority is limited to the grant or denial of monetary damages. See e.g. Ezy Parks v. Larson, 451 A.2d 928, 934-935 (Pa. 1982); Emergency Medical Servs. Council v. Dep't. of Health, 451 A.2d 206, 209 (Pa. 1982); Lockheed Martin Corporation Integrated Systems & Solutions v. Commonwealth of Pennsylvania, Pennsylvania State Police, B.O.C. Docket No. 3917 (Opinion and Order issued February 28, 2008).

Even if the Board was a "Court of record" for the purposes of the Declaratory Judgment Act, declaratory judgment is not appropriate here because no actual controversy exists. To bring a declaratory judgment action, there must exist an actual controversy, as declaratory judgment is not appropriate to determine rights in anticipation of events which may never occur. Selective Way Ins. Co. v. Hospitality Group Services, Inc., 119 A.3d 1035, 1046 (Pa. Super. 2015). Declaratory judgment is an appropriate remedy only where a case presents antagonistic claims indicating imminent and inevitable litigation. Id. The Declaratory Judgments Act requires a plaintiff to demonstrate that an actual controversy, indicating imminent and inevitable litigation, exists. County Com'rs Ass'n. of Pennsylvania v. Dinges, 935 A.2d 926, 931 (Pa. Cmwlth. 2007).

While the University asserts that the Defendants in this action did commence a law suit in the Indiana County Common Pleas Court seeking damages for breach of contract, the University also notes in its request for default entry of declaratory judgment that the common pleas court dismissed that action in December 2015 “without prejudice to [Defendants] to bring an appropriate action for claims” within the jurisdiction of the Board. As of the date of this Order, the Defendants have not filed such a claim with the Board. Under these facts, and keeping in mind the relatively short time limits applicable to filing a contract claim against the Commonwealth, we find that there has been no showing that an actual controversy exists or that litigation before the Board is imminent or inevitable. Accordingly, declaratory judgment is not appropriate.

For all of the foregoing reasons, we find that the Board is without authority to grant the relief sought by the University in its complaint action for declaratory judgment. Accordingly, we issue the following order.

ORDER

AND NOW, this 28th day of June, 2016, upon consideration of the “Complaint Action for Declaratory Judgment” filed by the University on November 24, 2015, and the request for default entry of declaratory judgment filed May 6, 2016, it is hereby **ORDERED** and **DECREED** that the request for default entry of declaratory judgment is **DENIED** and the Complaint Action for Declaratory Judgment is **DISMISSED**.

BOARD OF CLAIMS

ORDER SIGNED

Jeffrey F. Smith
Chief Administrative Law Judge