

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

DENIED: December 4, 2003

GSBCA 15994

GREENWOOD ASSOCIATES, L.P.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Richard D. Grossman, Chicago, IL, counsel for Appellant.

Amanda Wood, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **NEILL**, and **GOODMAN**.

GOODMAN, Board Judge.

Appellant, Greenwood Associates, L.P. (Greenwood or appellant), appealed the General Services Administration's (GSA or respondent) contracting officer's final decision dated July 26, 2002, denying appellant's claim for payment of real estate taxes pursuant to a lease between appellant and respondent.¹ The parties have agreed to submit the appeal for a decision on the written record pursuant to Board Rule 111 (48 CFR 6101.11 (2002)). As discussed below, we deny the appeal.

Findings of Fact

1. On June 30, 1998, GSA awarded lease number GS-0513-16259 (the lease) to Greenwood for the Social Security Administration's use of office space in the building known as Greenwood Plaza (the building), 1111 East 87th Street, Chicago, Illinois. Appeal File, Exhibit 1 at 1.

¹ The appeal was initially filed by appellant's attorney on behalf of appellant in the name of appellant's managing agent, HSS Partners. Appeal File, Exhibit 14.

2. The lease was to commence on March 1, 1999. Appeal File, Exhibit 1 at 1. The actual commencement date, established by a supplemental lease agreement, was March 13, 2000. Appeal File, Exhibit 2.

3. GSA began paying monthly rental payments on August 1, 2000. The August 2000 payment reflected four and one-half months of rent from March 13, 2000, the lease commencement date. Appeal File, Exhibit 3.

4. GSA has made monthly payments every month thereafter. Appeal File, Exhibits 3, 4.

5. The lease contains a Tax Adjustment clause, which reads in relevant part:

2.8 Tax Adjustment, GSAR 552.270-24 (AUG 1992)

A. The Government shall make annual lump sum payments to cover its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). The amount of payment shall be based upon the submission of [a] proper invoice, including paid tax receipts /statements/bills, from the Lessor to the Contracting Officer. The due date for making payment shall be the 30th day after receipt of the invoice by the Contracting Officer or the 30th day after the anniversary date of the lease, whichever is later. If the invoice submitted does not meet the requirements of a proper invoice, it will be returned to the Lessor within 7 days of receipt. The Government will be responsible for payment only if the receipts are submitted within 60 calendar days of the date the tax payment is due. If no full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of full assessment. . . .

. . . .

D. In the event of any decreases in real estate taxes occurring during the term of occupancy under the lease to a rate below the base year, payment for taxes will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases provided under Paragraph A of this clause.

Appeal File, Exhibit 1 at 16.

6. By letter dated October 25, 2001, appellant, through its managing agent, HSS Partners, sent GSA a request for payment of real estate taxes pursuant to the Tax Adjustment clause. The letter read in relevant part:

In accordance with Article 2.8 regarding Tax Adjustment of the Solicitation of Offers for the above captioned premises, we submit the following statement of taxes owed.

Supplemental Lease Agreement No. 1 dated June 2, 2000 establishes the lease commencement date as March 12 [sic], 2000.

Taxes paid for the calendar year in which the lease commences (base year).

	\$125,862.38
Taxes Paid for calendar year 2001	<u>223,153.77</u>
Increase in Real Estate Taxes	\$97,291.39
[Government] share . . .	<u>26.538%</u>
<hr/> Real Estate Taxes Owed	\$25,819.19

The due date for making payment shall be the 30th day after the receipt of the invoice by the Contracting Officer or the 30th day after the anniversary date [of] the lease, whichever is later.

Appeal File, Exhibit 7 at 1.

7. Attached to the letter described above were copies of "Real Estate Tax Bill 1999," dated August 22, 2000, due October 2, 2000, for taxes for the calendar year 1999 totaling \$125,862.38 (indicating billings of taxes due in two installments - March 2000 and October 2000), and "Real Estate Tax Bill 2000," due November 1, 2001, for taxes for the calendar year 2000 totaling \$223,153.77 (indicating billings of taxes due in two installments - March 2001 and November 2001). Appeal File, Exhibit 7 at 2-7.

8. By letter dated May 22, 2002, appellant's attorney submitted a claim for payment of the real estate taxes requested in the previous letter and requested a final decision from the contracting officer. The letter read in relevant part:

The lease provides in paragraph 2.8(A) that:

"The Government shall make annual lump sum payments to cover its share of real estate taxes over taxes paid for the calendar year in which the lease commences. . . ."

In this case the lease commencement date is March 12 [sic], 2000. Thus the calendar year for which the lease commenced is 2000. Taxes paid for the year 2000 were \$125,862.38. Taxes paid for the year 2001 were \$223,153.77, thus providing a \$97,291.39 increase in taxes. The Government's share of that increase (since it occupies 16,500 square feet of the total 62,175 square feet rented) is 26.538% or \$25,819.19.

[The Lessor] has previously made this demand as the due date[s] for payment . . . have long since passed.

Complaint, Exhibit 1.

9. On July 26, 2002, GSA's contracting officer issued a final decision which read in relevant part:

As discussed in our recent telephone conversation, if the year 2000 taxes that were paid for the building . . . was not for a fully assessed building than [sic] the year 2000 will not be considered the base year for taxes. The base year cannot be established until the location is fully assessed by the Cook County Assessor.

Appeal File, Exhibit 9.

10. The parties now agree that the year 2000 is the "base year." Respondent's Reply to Appellant's Brief on Appeal at 4. Respondent states that "this agreement is for this case only, and does not apply to any other government lease." Id. at 4 n.2.

11. The parties also agree that Cook County Illinois "bills real estate taxes in arrears" and that the "taxes paid in 2000 were assessed in 1999." Appellant's Brief on Appeal at 4.

Discussion

This case involves the interpretation of a Tax Adjustment clause in a lease by which the Government rents office space in a building in Cook County, Illinois, owned by appellant.

The parties agree that the base year, for the purpose of the clause, was 2000. Cook County bills real estate taxes in arrears, i.e., during the current calendar year for taxes assessed for the previous calendar year. The taxes paid by appellant in calendar year 2000 in the amount of \$125,862.38 were based on an assessment of the property in 1999. The taxes paid by appellant in calendar year 2001 in the amount of \$233,153.77 were based on an assessment of the property in 2000.

The parties differ as to the proper interpretation of the following phrase in the Tax Adjustment clause: "taxes paid for the calendar year in which the lease commences (base year)."

Appellant asserts that these taxes billed by Cook County and paid by appellant in the year 2000 are taxes "paid for" the base year, even though these taxes were assessed by Cook County on the property for calendar year 1999 and billed in arrears.

Respondent maintains that "it is well established through case law that the proper interpretation of this phrase, in its plain meaning, shows that GSA owes lessors, such as Appellant, only those taxes incurred for specific time periods, not taxes paid in such periods when calculating adjustments to rental payments." Respondent's Reply to Appellant's Brief on Appeal at 2. Respondent asserts that the plain meaning of the phrase in the Tax Adjustment clause -- "taxes paid for . . . the base year" -- must be taxes that are assessed on the property for the base year 2000, regardless of when these taxes are assessed and paid, and

cannot be those taxes assessed on the property in the base year for calendar year 1999 that were billed and due for payment during the base year.

This Board has previously upheld respondent's reading of the same language. In 9th and D Joint Venture v. General Services Administration, GSBCA 14448, 98-2 BCA ¶ 29,834, reconsideration denied, 98-2 BCA ¶ 29,949, aff'd, 194 F.3d 1338 (Fed. Cir. 1999) (table), we interpreted the same language in a Tax Adjustment clause of a lease and held that the lease "speaks of comparing 'taxes paid for' periods of time, not taxes paid in such periods, when calculating adjustments to rental payments." 98-2 BCA at 147,704.

Accordingly, as the parties have stipulated that the base year of the lease is the year 2000, the taxes "paid for" calendar year 2000, i.e., \$223,153.77, are those by which the Government's obligations for increases and decreases in taxes are to be measured pursuant to the Tax Adjustment clause, even though the two installments totaling this amount were billed to and paid by appellant in 2001. The fact that the taxes "paid for" the base year 2000 are not imposed by the taxing authority until 2001 does not entitle appellant to an adjustment pursuant to the Tax Adjustment clause based on the taxes for 1999, which were assessed and "paid in" the base year 2000.

Decision

The claim is **DENIED**.

ALLAN H. GOODMAN
Board Judge

We concur:

STEPHEN M. DANIELS
Board Judge

EDWIN B. NEILL
Board Judge