

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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DISMISSED FOR LACK OF JURISDICTION: April 29, 2004

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GSBCA 16319-ST

ZBIGNIEW OSTASZEWSKI,

and

RYSZARD GRABOWSKI,

Appellants,

v.

DEPARTMENT OF STATE,

Respondent.

Zbigniew Ostaszewski and Ryszard Grabowski, pro se, Warsaw, Poland.

Dennis J. Gallagher and John C. Sawyer, Office of the Legal Advisor for Buildings and Acquisitions, Department of State, Rosslyn, VA, counsel for Respondent.

Before Board Judges **HYATT**, **DeGRAFF**, and **GOODMAN**.

**GOODMAN**, Board Judge.

Appellants, Mr. Zbigniew Ostaszewski and Mr. Ryszard Grabowski, are owners of property located in Warsaw, Poland, which has been leased to the United States Embassy. On November 14, 2003, appellants filed this appeal. Respondent, the Department of State, has filed a motion to dismiss the appeal for lack of jurisdiction. We grant the motion and dismiss the appeal.

## Findings of Fact

1. Appellants both own portions of a single property in Warsaw, Poland, consisting of office, workshop, and shelter space, and the surrounding grounds.

2. In September 1998, the United States Government entered into two separate leases (the leases), one with each appellant, for the purpose of leasing the property their respective portions of the property. With the exception of the rent paid and amount of square footage

owned by each owner, the terms and conditions of the two leases were identical. Respondent's Motion to Dismiss (Respondent's Motion), Exhibits A, B.

3. The leases commenced on September 24, 1998, for a term of five years ending September 23, 2003. Upon expiration of the lease terms, the leases were renewable with each rental rate to be determined by mutual agreement between the owner and the Department of State. Respondent's Motion, Exhibits A, B.

4. The leases provided that dispute resolution would be determined in accordance with the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601-613. Respondent's Motion, Exhibits A, B.

5. On September 23, 2003, the United States Government amended each lease to extend the lease terms for a period of six months from September 24, 2003, to March 23, 2004. Respondent's Motion, Exhibits C, D.

6. The leases define a claim to mean "a written demand or written assertion by the LANDLORD or Tenant seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of the lease terms, or other relief arising under or relating to this lease." Respondent's Motion, Exhibits A at art. 15, B at art. 15.

7. Appellants sent a letter to the American Ambassador to Poland, Mr. Christopher Hill, dated October 20, 2003, and hand delivered another letter entitled "Complaint" to the contracting officer on October 17, 2003. Appellants' letters alleged that a staff member of the American Embassy in Warsaw has made a decision not to continue to lease the property and instead to seek to lease property outside of Warsaw that is less desirable, less secure, and requires a longer commute for embassy employees. The letter entitled "Complaint" concludes that the employee is "not acting in the interest of the embassy and that this case requires an explanation."

8. Appellants forwarded copies of their letters to the Armed Services Board of Contract Appeals. That board received appellants' letters on November 10, 2003, and forwarded them to this Board as a "Notice of Appeal."

9. This Board docketed the appeal as GSBCA 16319-ST on November 14, 2003. As of that date, the contracting officer had not issued a response to either of appellants' letters.

10. On November 24, 2003, respondent filed a motion to dismiss the appeal, alleging that the Board lacks jurisdiction. Pursuant to Board Rule 108, appellants were required to file a response to the motion within twenty days. Appellants did not file a response. By letter dated February 4, 2004, the Board directed appellants to file a response to the motion by March 1, 2004. The appellants did not file a response to the motion.

### Discussion

Appellants are joint owners of property in Warsaw, Poland which was leased to the respondent. The lease was for a period of five years and was extended for an additional six months. Appellants wrote letters to the American Embassy in Warsaw and the contracting

officer alleging that an embassy staff person was not acting in the interest of the embassy in deciding to lease other property instead of appellants' property. Appellants sent their letters to another board of contract appeals which forwarded the letters to this Board. Appellants' letters were docketed as a notice of appeal by this Board.

Respondent moves to dismiss the appeal for lack of jurisdiction on three alternative grounds: 1) appellants had not submitted a claim pursuant to the CDA; 2) the claim had not been certified; and 3) there was no appealable decision, as the contracting officer had not issued a response to appellants' letter addressed to him, and sixty days had not passed since the delivery of that letter to the contracting officer. We resolve the motion by addressing the third ground. In so doing, we make no finding as to the sufficiency of appellants' letters as a "claim" under the CDA.

The CDA provides that all claims relating to Government contracts shall be the subject of decisions by contracting officers. 41 U.S.C. § 605(a) (2000). The CDA requires the contracting officer to issue a decision on a submitted claim of \$100,000 or less within sixty days of the receipt of a written request from the contractor that a decision be rendered within that period. If the claim exceeds \$100,000, the contracting officer must within sixty days of receipt issue a decision or notify the contractor of the time within which the decision will be issued. Id. § 605(c)(1), (2). Failure of the contracting officer to respond within the requisite time frame will be deemed to be a decision by the contracting officer denying the claim and will authorize the commencement of an appeal. Id. § 605 (c)(5). The CDA further provides that each such decision may be appealed to an agency board of contract appeals. Id. § 606.

The Court of Appeals for the Federal Circuit has explained that a contracting officer's decision is "the very linchpin and necessary prerequisite for the board's jurisdiction." McDonnell Douglas Corp. v. United States, 754 F.2d 365, 370 (Fed. Cir. 1985) (citing Paragon Energy Corp. v. United States, 645 F.2d 966, 967 (Ct. Cl. 1981)); see also Grant Communications, Inc. v. Social Security Administration, GSBCA 14862-SSA, 99-1 BCA ¶ 30,281.

At the time the appeal was docketed, there was no appealable contracting officer's decision, and the time period for the contracting officer to respond had not expired. Accordingly, we do not have jurisdiction in this appeal.

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Decision

Respondent's motion to dismiss is granted. The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

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ALLAN H. GOODMAN  
Board Judge

We concur:

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CATHERINE B. HYATT  
Board Judge

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MARTHA H. DeGRAFF  
Board Judge