

# **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

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October 19, 2004

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GSBCA 16471-RATE

In the Matter of ARPIN INTERNATIONAL GROUP

Mark Greene, GSA and Alaska Division, Arpin International Group, East Greenwich, RI, appearing for Claimant.

James F. Fitzgerald, Director, Audit Division, Office of Transportation and Property Management, Federal Supply Service, Washington, DC, appearing for General Services Administration.

Christinia K. Sisk, Deputy Assistant Administrator, Office of Acquisition Management, Drug Enforcement Administration, Department of Justice, Washington, DC, appearing for Department of Justice.

**DANIELS**, Board Judge (Chairman).

This case is dismissed because the claimant did not pursue its administrative remedies within the time permitted by law.

## Background

Arpin International Group (Arpin) transported household goods for the Drug Enforcement Administration (DEA) in April 1997. In January 1999, the General Services Administration (GSA) audited DEA's payment for this service and determined that DEA had overpaid Arpin \$1587.41. GSA therefore issued to Arpin a notice of overcharge in that amount.

In February 1999, Arpin protested the notice of overcharge. GSA says that it denied the protest on August 20, 1999. Arpin says that it has never received any response to its protest. On June 24, 2004, however, Arpin's representative told GSA that Arpin "got a denial" after "rebutt[ing]" GSA's notice of overcharge.

GSA asserts that at its direction, on August 27, 1999, the Government's Defense Finance and Accounting Service (DFAS) deducted the amount in question from payments otherwise due Arpin for services performed. Arpin does not challenge this assertion.

On July 22, 2004, Arpin asked the Board to review GSA's determination that it had overcharged the Government for its services on the DEA shipment.

After reviewing comments by GSA and DEA which urge that the case be dismissed, Arpin acknowledges, "It appears that everyone agrees that we are outside of a time limit." The carrier also states that it "would appreciate an answer" as to the substance of its disagreement with GSA "so that [we] might learn something from this."

### Discussion

By statute, a carrier or freight forwarder which transports an individual or property for the Government may make a claim to the Administrator of General Services for payment for its services. 31 U.S.C. § 3726(c)(1) (2000). The claim may only be made, however –

if it is received by the Administrator not later than 3 years (excluding time of war) after the late[st] of the following dates:

- (A) The date of accrual of the claim.
- (B) The date payment for the transportation is made.
- (C) The date a refund for an overpayment for the transportation is made.
- (D) The date a deduction [by the Government from an amount otherwise due] is made.

Id. § 3726(c)(2). By regulation, if GSA denies a protest and takes some action to collect the amount it believes is due from a carrier, the carrier may submit a claim to GSA. 41 CFR 102-118.450, -118.645 (2003); DHL Worldwide Express, GSBCA 16308-RATE, 04-1 BCA ¶ 32,549.

Once DFAS, at GSA's direction, deducted from amounts otherwise due to Arpin the amount which became at issue through Arpin's protest, Arpin had three years in which to make a claim to GSA, seeking return of the money. The deduction was made in August 1999. Arpin did not ever make a claim to GSA. Instead, nearly five years later, it filed a case with the Board – something which may be done only after GSA has ruled on a claim. 31 U.S.C. § 3726(i)(1); 48 CFR 6103.2(a)(5); Tri-State Motor Transit Co., GSBCA 14352-RATE, 98-1 BCA ¶ 29,521.

We have no authority to consider matters relating to payment for transportation services which were not previously presented in a timely fashion to GSA in the form of claims. The matter at issue in this case was not presented to GSA as a claim within three years of the Government's deduction of the amount in question, and therefore may not now be presented for decision by this Board.

Nor do we offer thoughts as to matters which are not properly before us. The Board is a quasi-judicial tribunal; it decides cases, but does not provide legal advice. 48 CFR

6103.1(b); cf. Pamela R. Harris, GSBCA 15645-RELO, 01-2 BCA ¶ 31,640 (as quasi-judicial body, Board decides cases on basis of information provided by parties; it "does not perform independent investigations" of matters raised). Arpin's request for advice is more appropriately addressed to GSA, not the Board.

Decision

The case is dismissed.

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STEPHEN M. DANIELS  
Board Judge