



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

GRANTED IN PART: June 6, 2008

CBCA 1185

STATE AUTOMOBILE MUTUAL INSURANCE COMPANY,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

Phillip G. Alber of Alber Crafton, PSC, Troy, MI, counsel for Appellant.

Charlma J. Quarles, Office of the General Counsel, Department of Veterans Affairs, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **SOMERS**, and **KULLBERG**.

DANIELS, Board Judge.

The Department of Veterans Affairs (VA) terminated for default a contract under which Edge Construction Company (Edge) was to perform the work necessary for Gravesite Development Phase 1 at the Great Lakes National Cemetery in Holly, Michigan. Edge's surety, State Automobile Mutual Insurance Company (State Auto), assumed responsibility for completion of the project pursuant to a "Tender Agreement with Release" which was signed by the VA, State Auto, and State Auto's completion contractor.

One paragraph of the tender agreement with release contains the following provision:

[The VA] and [State Auto] acknowledge and agree that the Unpaid Contract Balance includes Retainage in the amount of \$374,583.00 . . . [The VA] and [State Auto] further acknowledge and agree the Retainage is subject to the claims by [the VA] for Incidental Expenses in the amount of \$145,855.17, incurred by [the VA] as a result of the termination for default of [Edge]. If [State Auto] objects to all or part of the Incidental Expenses it will attempt to reach a resolution regarding its objection with the [VA]. If [State Auto] and the [VA] are unable to reach a resolution regarding [the VA's -- sic] objection, [State Auto] and the [VA] will utilize . . . ADR [alternative dispute resolution] procedures If ADR is unsuccessful, [State Auto] will have the right to submit a claim in accordance with Clause 52.233-1 Disputes.

State Auto objected to the VA's claims for incidental expenses. The parties engaged in an ADR session conducted by a judge of this Board as to this matter. As agreed in that session, State Auto then submitted to a VA contracting officer a claim for the amount of retained funds to which it believed it was entitled (\$116,337.83), the contracting officer denied the claim, State Auto appealed his decision, and the parties filed a joint motion for a stipulated judgment on the appeal. In the motion, the parties "stipulate to an award in the amount of \$70,400 and move the Board for entry of Judgment in favor of [State Auto] for \$70,400 and containing or incorporating all terms and conditions of the Settlement Agreement." This decision incorporates by reference the terms and conditions of the agreement, one of which is that the sum of \$70,400 is "full and complete compensation for all costs, direct and indirect, including but not limited to any attorney's fees associated with any and all facts, issues, or matters underlying, associated with, or in any way related to CBCA No. 1185." In the motion, the parties also state that they will not seek reconsideration of, or relief from, a Board decision which makes the stipulated award, and that they will not appeal such a decision.¹

¹ The parties additionally request that the decision "state that the Board retains jurisdiction to enforce the Settlement Agreement." We deny this request. Whether the Board has jurisdiction to enforce a settlement agreement is a question of law, not a matter as to which parties or the Board may stipulate. The Board makes no determination as to whether its jurisdiction includes the resolution of disputes which may arise under the settlement agreement. *GHR Fire Management Services v. Department of Agriculture*, CBCA 1078 (Apr. 29, 2008); *Fluor Intercontinental, Inc. v. Department of State*, CBCA 670, et al., 07-2 BCA ¶ 33,691.

Decision

The appeal is **GRANTED IN PART**. The Department of Veterans Affairs shall pay to State Automobile Mutual Insurance Company the sum of \$70,400. Rule 25(b). This payment shall be made from the permanent indefinite judgment fund. 31 U.S.C. § 1304 (2000).

STEPHEN M. DANIELS
Board Judge

We concur:

JERI KAYLENE SOMERS
Board Judge

H. CHUCK KULLBERG
Board Judge