

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

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MOTION TO REQUIRE FILING OF COMPLAINT GRANTED;  
MOTION FOR ENLARGEMENT OF TIME GRANTED: January 17, 2002

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GSBCA 15698

TOM & TONY'S AUTO WRECKER SERVICE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Sam Zalman Gdanski, Suffern, NY, counsel for Appellant.

Kelly A. Gillin, Office of General Counsel, General Services Administration,  
Washington, DC, counsel for Respondent.

**WILLIAMS**, Board Judge.

This matter comes before the Board on respondent's motion to require appellant to file a formal complaint, in lieu of designating its notice of appeal and request for equitable adjustment (REA) as its complaint. Because appellant, which is represented by counsel, has failed both to allege facts addressing the jurisdiction of this Board and to articulate clear legal grounds for relief, respondent's motion is granted.

Background

On November 16, 2001, the Board docketed this appeal from a decision issued on October 24, 2001, by the General Services Administration's (GSA's) KY Fleet Manager for GSA's Southeast Sunbelt Region. The fleet manager's letter was not denominated a contracting officer's final decision, but was a response to two letters sent by appellant to her on October 4 and October 10, 2001. Appellant's October 10, 2001, letter, which was signed by an employee of appellant, was denominated "Request for Equitable Adjustment and Fifth Amendment Unjust Taking Claim." The REA was also denominated a certified claim seeking \$251,931.65 representing lost profits, lost income, expenses, and other damages due to an alleged reduction in GSA business. Although the REA contains numerous factual allegations regarding a "blacklisting" of appellant, it did not clearly articulate why these facts

give rise to the remedy it seeks or why this Board would have jurisdiction over what appellant termed a "de facto debarment," an "unjust Fifth Amendment Taking," a "Bivens" action, or a request for injunctive relief.

By letter dated December 19, 2001, appellant requested that the REA and the notice of appeal constitute its complaint. On January 2, 2002, counsel for respondent objected to that request and moved the Board for an order directing appellant to file a formal complaint. In the alternative, respondent sought leave to file a dispositive motion or a motion for a more definite statement. Respondent pointed out that there was no statement addressing the Board's jurisdiction in the REA and claimed that no contract had been awarded to appellant. By letter dated January 11, 2002, appellant replied, arguing that the REA contained simple, concise, and direct terms and that a complaint would be duplicative. Appellant's counsel stated that if the Board required him to address issues of jurisdiction, he would request a sixty-day enlargement of time due to five matters he was handling in other fora. Appellant further noted that the issue of jurisdiction should be addressed by a motion to dismiss or legal submissions and would require "exhaustive briefing."

#### Discussion

We recognize that Board Rule 107 permits the Board to "designate the notice of appeal, a claim submission, or any other document as the complaint, either on its own initiative or on the request of the appellant, if such document sufficiently states the factual basis and the amount of the claim." Nonetheless, rather than have the parties embark on a full scale litigation on the issue of the Board's jurisdiction at this stage of the proceedings, based on appellant's submissions to date which do not plead jurisdictional facts and are unclear as to what legal theories it invokes, we direct appellant to file a complaint and allege the legal bases of the Board's jurisdiction.

The filing of a concise complaint alleging grounds for the Board's jurisdiction and the elements of the legal claims will enable respondent to determine whether a motion to dismiss is appropriate, and will permit the Board to determine whether the statement of appellant's claim is sufficient to allege entitlement to relief that the Board has jurisdiction to grant. On the submissions as they presently exist, such assessments would be extremely difficult and time-consuming, if not impossible.

Importantly, the REA contains no allegation that a contract was in fact awarded to appellant. Nor does the REA allege the existence of an implied-in-fact contract between the parties. Before the parties can address the Board's jurisdiction, appellant's legal claims must be clarified. For example, if appellant contends that there is a contract between itself and GSA, it must identify the contract by number and allege when it took effect and articulate any claims arising from the contract. If, on the other hand, appellant is arguing that there was an implied-in-fact contract between the parties and seeks relief based upon that theory, appellant must plead the factual and the legal requisites of an implied-in-fact contract, i.e. (1) mutuality of intent to contract; (2) consideration; (3) lack of ambiguity in offer and acceptance; and (4) actual authority in the Government representative to bind the Government. Barrett Refining Corp. v. United States, 242 F.3d 1055, 1060 (Fed. Cir. 2001); MTD Transcribing Service, ASBCA 53104, 01-1 BCA ¶ 31,304, at 154,539-41; HTC Industries, Inc., ASBCA 40562, 93-1 BCA ¶ 25,560, at 127,310.

Order

Respondent's motion for an order directing the filing of a complaint is **GRANTED**. Appellant's motion for an enlargement of time of sixty days within which to file such complaint is **GRANTED**, and the complaint is due on **March 15, 2002**.

At its election, respondent may either file an answer or dispositive motion within thirty days after the complaint is filed. Board Rule 107(c).

The telephonic conference scheduled for January 30, 2002, is canceled and will be rescheduled once the Board receives respondent's answer or motion papers.

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MARY ELLEN COSTER WILLIAMS  
Board Judge