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Star Computer Supply, LLC, No. 3002 (MSBCA Aug. 15, 2017)

The Maryland State Board of Contract Appeals aims to ensure “fair and equitable treatment of all persons who deal with the State procurement system.” The Board tries hard to achieve this goal. As shown by a recent decision, the Board succeeds.

Star Computer Supply, LLC, No. 3002 (MSBCA Aug. 15, 2017). The State Board of Elections (“SBE”) solicited bids for manufacturer’s extended warranties for 31 Ballot-on-Demand printers. The master contractor, Star Computer Supply, LLC (“Star”), was selected for award. Star furnished the products; in turn, SBE was required to complete the warranty cards and mail them back for activation. SBE paid Star in full.

Five months after receiving the warranty cards, SBE discovered that the printers’ *original* manufacturer’s warranties expired years earlier, and therefore *extended* manufacturer’s warranties could not have been purchased for these printers in the first place. Or, as the Board put it, SBE “used the wrong procurement process to order the wrong thing.”

SBE demanded a refund well after the expiration of Star’s 30-day return policy, which Star promptly refused. After all, the Board found, Star did not breach the contract; rather, the problems stemmed from SBE’s failure to solicit and procure the correct product.

The story gets worse; or, in the Board’s words, “[t]he train then derailed.” SBE elected not to follow the formal procedure to file a claim against Star for money. Instead, SBE sent the disputed claim to the Central Claims Unit (“CCU”) “and magically turned it into a debt.” The State proceeded to withhold payments due to Star for good work on other contracts as a way to recover the money.

Troubled by the actions of SBE and CCU denying Star its due process rights, the Board concluded that Star fully performed all of its contractual obligations, and that any damage to SBE “was wholly due to its own negligence and/or incompetence in ordering the wrong warranty to begin with” and failing to timely activate the warranty cards.

Finding in favor of Star, the Board aptly summarized the facts as follows:

[SBE] ordered an item it could not use, paid for it after it was delivered, promptly lost what it had ordered, never returned it for a refund within the 30-day timeframe for returns set forth in Star's Technical Proposal, demanded a refund five months later, and resorted to self-help by taking the claimed refund and assessing a collection fee from monies due to Star under other unrelated contracts, all without ever filing a claim against Star and having such claim legally determined to be a legitimate debt.

The Board held, "[w]hether through ignorance or negligence, there is no question that both [SBE] and CCU ignored [the] statutory process and took Star's money without due process of law."

Reluctantly concluding that it lacked the authority to award attorney's fees to Star, the Board concluded that Star was owed its collection fees plus interest. The Board would have awarded Star the contract price as well but for the fact that Star was able to mitigate its damages by obtaining a credit from its distributor.