



DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

2008 DEC 11 P 3:36

OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of)	PCH-2008-18
)	
CUSHNIE CONSTRUCTION)	ORDER DISMISSING PETITIONER'S
COMPANY, INC.,)	REQUEST FOR HEARING
Petitioner,)	
)	
vs.)	
)	
DEPARTMENT OF FINANCE, COUNTY)	
OF KAUAI,)	
Respondent.)	
)	

ORDER DISMISSING PETITIONER'S REQUEST FOR HEARING

On October 13, 2008, Cushnie Construction Company, Inc. ("Petitioner") filed its request for administrative hearing to contest the Department of Finance, County of Kauai's ("Respondent") decision to rescind an award to Petitioner. The matter was set for hearing and the Notice of Hearing and Prehearing Conference was duly served on the parties.

At the pre-hearing conference held on October 20, 2008, Petitioner was represented by Gordon W. Stewart, Esq. Harrison K. Kawate Esq., First Deputy County Attorney, made a special appearance on behalf of Respondent to request that the hearing be rescheduled because the Office of the County Attorney was advised that it must retain private counsel to represent Respondent in this matter. After some discussion, Petitioner agreed to reschedule the hearing from October 29, 2008 to December 16, 2008.

During the pre-hearing conference and in a subsequent letter dated October 29, 2008 to the parties, the Hearings Officer raised the issue of whether the Office of Administrative Hearings ("OAH") had jurisdiction over this matter. Since the issue remained unresolved, by a letter dated November 19, 2008, the Hearings Officer requested that the parties submit documentation to show that the OAH had jurisdiction to hear this matter.

By a letter dated November 25, 2008, Mona W. Clark, Esq., Deputy County Attorney, filed a response to the Hearings Officer's request. On December 2, 2008, Ralph Cushnie, Petitioner's President, filed a response to Ms. Clark's letter.

At a pre-hearing conference held on December 5, 2008, attended by Mr. Stewart on behalf of Petitioner and Mr. Kawate, making a special appearance on behalf of Respondent, the parties agreed that Petitioner could submit its memorandum on the issue of jurisdiction by December 9, 2008 and that Respondent would file a response by December 10, 2008. Petitioner's and Respondent's submissions were filed on the agreed upon dates.

It is well settled that every court must determine as a threshold matter whether it has jurisdiction to decide the issues presented. *Stoneridge Recoveries, LLC v. Department of Budget and Fiscal Services, City and County of Honolulu*, PCH 2003-5 (Final Order January 19, 2005). And, like courts, Hearings Officers are under an independent obligation to police his or her own jurisdiction. *Id.* Accordingly, the Hearings Officer has raised, *sua sponte*, whether the OAH has jurisdiction over this matter, and must dismiss this matter if jurisdiction is found to be lacking.

Hawai'i Revised Statutes ("HRS") § 103D-709(c) provides that "only parties to the protest made and decided pursuant to sections 103D-701, 103D-709(a), 103D-310(b) and [103D-702(g)] may initiate a proceeding under this section." Because it is Petitioner's position that its October 9, 2008 letter to Respondent was a request for clarification and not a protest, the Hearings Officer agrees with Petitioner's conclusion that HRS § 103D-701 does not apply here. After reviewing the other sections cited in HRS § 103D-709(c), the Hearings Officer finds that those sections are also not applicable. Accordingly, having reviewed and considered Petitioner's and Respondent's submissions, together with the entire record of this proceeding, the Hearings Officer hereby orders that this matter be and is hereby dismissed for lack of jurisdiction. The hearing in this matter set for December 16, 2008 has been taken off the calendar.

DATED: Honolulu, Hawaii, DEC 11 2008.

/s/ SHERYL LEE A. NAGATA
SHERYL LEE A. NAGATA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs