

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

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| CORRECTIONAL MEDICAL CARE, INC., | : | August Term, 2004 |
| | : | |
| Plaintiff, | : | No. 3980 |
| | : | |
| v. | : | |
| CITY OF PHILADELPHIA, PHILADELPHIA PRISON SYSTEM, MHM SERVICES, INC. and MICHAEL PINKERT, | : | COMMERCE PROGRAM |
| | : | |
| Defendants. | : | Control Number 110001/110055 |
| | : | |

ORDER

AND NOW, this 20TH day of December, 2004, upon consideration of the Preliminary Objections of Defendant City of Philadelphia and Philadelphia Prison System (cn 110001) and Defendant MHM Services, Inc. and Michael Pinkert (cn 110055), responses in opposition, memoranda, all matters of record and in accord with the contemporaneous Memorandum Opinion to be filed of record, it hereby is

ORDERED and **DECREED** that

1. Defendants' Preliminary Objections as it pertains to the legal capacity of Philadelphia Prison System are **Sustained**.
2. Defendants' Preliminary Objections as it pertains to Correctional Medical Care, Inc.'s standing to sue are **Overruled**.
3. Defendant MHM Services, Inc. and Michael Pinkert's Preliminary Objection

compelling arbitration is deferred in accordance with the Commonwealth Court's orders dated September 8, 2004, September 10, 2004 and October 18, 2004.

BY THE COURT,

C. DARNELL JONES, II, J.

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MEMORANDUM OPINION

JONES, II, J.

Presently before the court are the Preliminary Objections of defendants City of Philadelphia (“City”) and Philadelphia Prison System (“PPS”) and the Preliminary Objections of defendants MHM Services, Inc. (“MHM”) and Michael Pinkert (“Pinkert”) to Plaintiff Correction Medical Care, Inc.’s (“CMC”) complaint. For the reasons discussed below, the preliminary objections are **Sustained** in part, **Overruled** in part and deferred in part.

BACKGROUND

The facts alleged in the complaint are as follows: CMC and MHM were parties to a joint venture for purposes of responding to an RFP made by the City of Philadelphia. (Complaint ¶ 7). According to the allegations within the complaint, the joint venture was necessary since MHM lacked the necessary requirements to satisfy the City’s bidding process and was out of state. (Id. ¶ 9). Subsequent to the submission of the bid and before award of the contract, CMC alleges that MHM and Pinkert began meeting directly and secretly with the City, outside of the RFP process, in an attempt to secure the

behavioral health portion of the contract for itself and to the exclusion of CMC. (Id. ¶ 12). Despite MHM and Pinkert’s efforts, on August 10, 2004, the City and PPS awarded the contract to CMC-MHM to provide behavioral health services which was accepted by CMC on behalf of MHM. (Id. ¶ 13, 14).

According to CMC, on August 12, 2004, MHM and Pinkert at the request of the City falsely stated that the CMC-MHM joint venture could not accept the Award “because the joint venture no longer existed.” (Id. ¶ 15). As a result, the City notified CMC-MHM that it rescinded the Award. (Id. ¶ 16). Immediately thereafter, the City and the PPS awarded the contract for behavioral health services without ever providing any other provider the opportunity to bid on the mental health portion of the RFP to MHM only.

Thereafter, CMC filed the instant action seeking declaratory relief (Count I) and injunctive relief (Count II) against MHM and the City and for breach of contract (Count III), breach of fiduciary duty (Count IV), promissory estoppel/unjust enrichment (Count V) and civil conspiracy (Count VI) against MHM.

Discussion

I. CMC’s Claim Against Philadelphia Prison System is Legally Insufficient.

In Count I and II of the complaint, CMC seeks declaratory and equitable relief against PPS as well as the City. As the City points out in its Memorandum of Law in Support of its Preliminary Objections, PPS is not a legal entity that can be sued. Title 53 P.S. 16257 provides that “all suits growing out of City department transactions...shall be in the name of the City of Philadelphia.” PPS is a municipal agency of the City and thus has no legal

existence of its own and cannot be sued directly. Accordingly, all claims made against this entity must be made against the City of Philadelphia. *See* Griffith v. Phila. Prison Sys., 2001 U.S. Dist. Lexis 11511, *2 n. 1 (E.D. Pa. 2001); *see also* Montanez v. Thompson, 2004 U.S. Dist. Lexis 23570, *11-12 n. 3 (E.D. Pa. 2004). Based on the foregoing, defendants' preliminary objections are sustained and PPS is dismissed as a defendant.

II. CMC Has Standing to Sue.

In an attempt to dismiss Counts I and II of the complaint, defendants argue that CMC is merely a disappointed bidder on a public contract that does not have standing to sue since it fails to allege in the complaint taxpayer status in the City of Philadelphia. In light of the facts alleged in the complaint, this is not a case where an unsuccessful bidder argues the award of a contract is illegal because the bidding process was unfairly infected. Instead, this is a case where the City allegedly awarded a contract to CMC and MHM and later rescinded the award based on alleged misconduct by the City and MHM. Thus, CMC's claim is one based in contract and not that of a frustrated bidder. *See* Xpress Truck Lines, Inc. v. Pennsylvania Liquor Control Bd., 503 Pa. 399, 469 A.2d 1000 (1983). Accordingly, defendants' preliminary objections as to CMC's standing to sue are overruled.

III. MHM's Preliminary Objection Based Upon An Agreement to Arbitrate Are Deferred.

MHM argues that Counts III through VI of the complaint fall within the confines of an arbitration provision contained within the joint venture agreement executed by CMC and MHM and therefore the parties should be directed to proceed to arbitration on these

counts. MHM's attempt to compel arbitration of Counts III through VI of the complaint is not new. MHM made the same request to this court as well as the Commonwealth Court. The Commonwealth Court on September 8, 2004, September 10, 2004 and October 18, 2004, denied MHM's request to proceed to arbitration until this court conducts hearings and enters findings of fact and conclusions of law on Count I and II of the complaint. Based on the foregoing orders, this court defers consideration of MHM's preliminary objections in accordance with the Commonwealth Courts orders dated September 8, 2004, September 10, 2004 and October 18, 2004.

Conclusion

For the foregoing reasons, defendants' preliminary objections are overruled in part, sustained in part and deferred in part as follows:

1. Defendants' Preliminary Objections as it pertains to the legal capacity of Philadelphia Prison System are **Sustained**.
2. Defendants' Preliminary Objections as it pertains to Correctional Medical Care, Inc.'s standing to sue are **Overruled**.
3. Defendant MHM Services, Inc. and Michael Pinkett's Preliminary Objection compelling arbitration is deferred in accordance with the Commonwealth Court's orders dated September 8, 2004, September 10, 2004 and October 18, 2004.

BY THE COURT,

C. DARNELL JONES, II, J.

