

By: Strama

H.C.R. No. 203

CONCURRENT RESOLUTION

1 WHEREAS, WB IND-HP, Ltd., alleges that:

2 (1) on or about August 8, 2002, the Texas Building and
3 Procurement Commission entered into a leasing contract with WB
4 IND-HP, Ltd., for 44,456 square feet of net usable office space
5 located at 4616 West Howard Lane in Austin, Texas;

6 (2) 10,850 square feet of that office space was leased
7 by the Texas Building and Procurement Commission on behalf of the
8 Texas Commission on Private Security;

9 (3) the term of the lease was 60 months and
10 contractually scheduled to end on October 31, 2007;

11 (4) at or shortly after the commencement of the lease,
12 the Texas Commission on Private Security took occupancy of the
13 building;

14 (5) the Texas Commission on Private Security ceased to
15 use the space for conducting the affairs of the Texas Commission on
16 Private Security on August 31, 2003;

17 (6) the Texas Building and Procurement Commission,
18 through the Texas Commission on Private Security, ceased making
19 lease payments after August 2003;

20 (7) the Texas Building and Procurement Commission did
21 not send any notice to attempt to cancel the lease until April 29,
22 2004;

23 (8) the Texas Building and Procurement Commission
24 admits that WB IND-HP, Ltd., was a responsive landlord and fully

1 performed on all of its duties to the Texas Commission on Private
2 Security;

3 (9) the Texas Commission on Private Security continued
4 to occupy the space by leaving furniture and office equipment in the
5 space;

6 (10) the Texas Commission on Private Security's
7 furniture remains on the premises today;

8 (11) the lease between WB IND-HP, Ltd., and the Texas
9 Building and Procurement Commission states that the contract "is
10 made contingent upon the continuation of federally funded programs,
11 or upon the availability of state funds appropriated by the
12 Legislature, to cover the full term and cost of this lease. In the
13 event a curtailment of federally funded programs occurs, or in the
14 event state appropriated funds are unavailable, the Building and
15 Procurement Commission, hereinafter referred to as the Commission,
16 may assign another State agency to the space, or a part thereof,
17 covered by this lease. Should the Commission be unable to find
18 another State agency or agencies to fill, or partially fill the
19 space, the Commission, upon written notice to the Lessor, either
20 may terminate this lease, or adjust it in accordance with the
21 provisions of this lease";

22 (12) the Texas Building and Procurement Commission has
23 not shown that state funds have not been appropriated to the Texas
24 Commission on Private Security;

25 (13) the Texas Building and Procurement Commission has
26 not found another tenant to take over the Texas Commission on
27 Private Security lease;

1 (14) by assuming the responsibilities of the Texas
2 Commission on Private Security under House Bill 28 (enacted by the
3 78th Legislature, 3rd Called Session, 2003), the Texas Department
4 of Public Safety is still in possession of the premises;

5 (15) the Texas Commission on Private Security's
6 vacating of the lease premises and the Texas Building and
7 Procurement Commission's cancellation of the lease on behalf of the
8 Texas Commission on Private Security without satisfying the
9 procedural requirements of the lease and the Texas Building and
10 Procurement Commission's refusal to make further lease payments
11 constitute a breach of the lease;

12 (16) despite its reasonable efforts, WB IND-HP, Ltd.,
13 has not been able to lease the building;

14 (17) for each day that WB IND-HP, Ltd., is unable to
15 lease the premises, it incurs damages of approximately \$445.89 in
16 lost rental income;

17 (18) WB IND-HP, Ltd., has incurred damages of
18 approximately \$261,251.03 in unpaid rent owed to WB IND-HP, Ltd.,
19 by the State of Texas, reflecting: (a) rent due and unpaid for the
20 time period September 2003 to April 30, 2004, in the amount of
21 \$98,501.03 (reflecting the time period that the Texas Commission on
22 Private Security had left the premises but had not indicated that it
23 had canceled the lease), and (b) rent due and unpaid for the time
24 period May 1, 2004, to April 28, 2005, in the amount of \$162,750.00
25 (for the time period in which the Texas Building and Procurement
26 Commission failed to remove the furniture from the leased premises
27 and failed to return possession of the premises to the landlord

1 pursuant to the lease agreement);

2 (19) both the Texas Department of Public Safety and
3 the Texas Building and Procurement Commission have been
4 unresponsive to WB IND-HP, Ltd., in their attempts to negotiate
5 payments of the owed rent payments. As a result, WB IND-HP, Ltd.,
6 filed a formal claim with the Texas Building and Procurement
7 Commission dated April 28, 2005; and

8 (20) the Texas Building and Procurement Commission and
9 the Texas Department of Public Safety have failed and refused to
10 make a good faith effort to resolve this dispute; now, therefore, be
11 it

12 RESOLVED by the Legislature of the State of Texas, That WB
13 IND-HP, Ltd., is granted permission to sue the State of Texas, the
14 Texas Building and Procurement Commission, and the Texas Department
15 of Public Safety subject to Chapter 107, Civil Practice and
16 Remedies Code, for breach of the lease, together with reasonable
17 attorney's fees necessarily incurred in the litigation, interest on
18 any amounts due as may be authorized by law, and costs of court;
19 and, be it further

20 RESOLVED, That the chairmen of the Texas Building and
21 Procurement Commission and the Public Safety Commission be served
22 process as provided by Section 107.002(a)(3), Civil Practice and
23 Remedies Code.