



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: July 31, 2007

CBCA 560

STEPHEN C. WINSLOW,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Stephen C. Winslow, pro se, Martinsburg, WV.

Judith A. Bonner, Office of Regional Counsel, General Services Administration, Philadelphia, PA, counsel for Respondent.

Before Board Judges **HYATT**, **McCANN**, and **SOMERS**.

McCANN, Board Judge.

Stephen C. Winslow purchased a 1986 Chevrolet truck at a General Services Administration (GSA) auction. Mr. Winslow appeals the GSA's decision not to reimburse him for certain costs he allegedly incurred in the transaction.

Findings of Fact

On December 8, 2006, GSA conducted a vehicle auction. Mr. Winslow was the highest bidder on a 1986 Chevrolet truck and won the award at the price of \$381. Appeal File, Exhibit 3. When Mr. Winslow attempted to take possession of the truck he noticed that

the photographs which appeared on-line on the sale website did not depict the actual vehicle that was being sold. Upon reviewing the situation, the contracting officer agreed that the vehicle had been misdescribed. In her final decision, the contracting officer refunded appellant the purchase price of the vehicle, but no additional costs. Appeal File, Exhibit 14.

Appellant seeks certain additional expenses. In his claim letter to the contracting officer of December 18, 2006, he seeks recovery under either of the following two options:

- A. All money used in the purchase for the vehicle, fines, and any and all expenses incurred by the buyer is fully reimbursed to the buyer.¹
- B. The vehicle pictured in the auction, or a different vehicle of the same quality, approved by the buyer, is delivered by GSA to Century, West Virginia since the buyer made an attempt to transport the vehicle back to there.

Appeal File, Exhibit 9.

The auction was subject to the Sale of Government Property Online Sale Terms and Conditions, which contained the following provisions:

Description Warranty. The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website will conform to its written description. If a misdescription is determined before payment, the contract will be cancelled without any liability to the bidder. If a misdescription is determined before removal of the property, the Government will keep the property and refund any money paid. If a misdescription is determined after removal, the Government will refund any money paid if the purchaser takes the property at his/her expense to a location specified by the Sales Contracting Officer. The Refund Claim Procedure described below will be strictly followed for filing a claim. No refunds will be made, after property is removed, for shortages of individual items within a lot. **This warranty is in place of all other guarantees and warranties, expressed or implied.**

¹ Mr. Winslow claims \$370.54 for mileage, \$1105 for labor, \$150 for dolly rental, \$264 for food, \$260 for room rental, \$84 for miscellaneous fees and expenses, and \$2775 for legal fees, totaling \$5008.54.

Refund Amount. The refund is limited to the purchase price of the misdescribed property.

Appeal File, Exhibit 2 at 2.

Discussion

Appellant is making a claim for relief in the alternative. He wants either his costs incurred, plus attorney fees, or a similar vehicle. The appellant has set forth no legal argument in support of his claim. He simply states that he believes he is entitled to one form of relief or the other.

The Online Sale Terms and Conditions do not support appellant. The Description Warranty clause states that a purchaser is entitled to a refund if a misdescription of the vehicle occurs before the property is removed. Both parties agree that that is exactly what happened here. A refund is appellant's only remedy in this case. *Dieker v. General Services Administration*, GSBCA 16050, 03-2 BCA ¶ 32,283 ("Generally, a refund under the description warranty is the sole remedy available for a misdescribed item under a contract like this one." *Dan Parish v. General Services Administration*, GSBCA 16025, 03-1 BCA ¶ 32,211). The Refund Amount clause limits that refund to the purchase price of the misdescribed property.

Decision

The appeal is **DENIED**.

R. ANTHONY McCANN
Board Judge

We concur:

CATHERINE B. HYATT
Board Judge

JERI K. SOMERS
Board Judge