



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR SUMMARY RELIEF DENIED: September 12, 2007

CBCA 528

GEORGE P. GOBBLE,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

George P. Gobble, pro se, Vinton, VA.

Gabriel N. Steinberg, Office of Regional Counsel, General Services Administration,
Atlanta, GA, counsel for Respondent.

Before Board Judges **PARKER**, **BORWICK**, and **DEGRAFF**.

PARKER, Board Judge.

The General Services Administration (GSA) has filed a motion for summary relief in connection with George P. Gobble's appeal of a contracting officer decision terminating his contract for default and assessing liquidated damages. The damages were assessed for Mr. Gobble's failure to pay for a trailer he allegedly purchased at a GSA online auction. Mr. Gobble claims that he did not bid on the trailer, or even participate in the auction. Because there are material facts in dispute, we deny GSA's motion.

Background

On July 19, 2006, someone using Mr. Gobble's registered username and password was the high bidder for a trailer at a GSA online auction. When notified of the award, Mr. Gobble told the GSA contracting officer that he had not bid on the item and had not used his GSA account for years. Mr. Gobble explained that, as a computer repairman, he keeps a computer at the front of his store for use by his customers, and he suspects that someone may have discovered his account information through the use of a nefarious computer program or virus.

The contracting officer's supervisor suggested that Mr. Gobble file reports with his credit bureau (his credit card had been used in the auction) and/or the police department and forward them to GSA. When no documentation had been received by the August 7, 2006, deadline set by the contracting officer's supervisor, GSA issued a default determination and assessment of liquidated damages in the amount of \$1000 (twenty percent of the \$5000 purchase price, as provided in the terms and conditions of the sale). After more telephone conversations, Mr. Gobble was given until September 7 to produce the requested information. Mr. Gobble states that due to both his and the GSA employees' vacation schedules and other communications difficulties, he was not able to fax the information to the contracting officer until September 12. The faxed information consisted of a July 29 letter from Experian's Consumer Fraud Assistance group informing Mr. Gobble that the firm had added a security alert to his credit file and a copy of a letter from the Vinton, Virginia, police department showing that Mr. Gobble had filed on September 8 a complaint of "computer/identity fraud[.] Someone placed order for a Travel Trailer on subject's Computer." Appeal File, Exhibit 15. The contracting officer decided to consider the information submitted by Mr. Gobble, but found it insufficient to establish identity theft. On September 13, the contracting officer sent a letter reaffirming his decision to terminate the contract for default. This appeal ensued.

Discussion

Summary relief is appropriate when the moving party is entitled to judgment as a matter of law, based on undisputed material facts. The moving party bears the burden of demonstrating the absence of genuine issues of material fact. All justifiable inferences must be drawn in favor of the nonmovant. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). A fact is considered to be material if it will affect the Board's decision, and an issue is genuine if enough evidence exists such that the fact could reasonably be decided in favor of the nonmovant after a hearing. *Fred M. Lyda v. General Services Administration*, CBCA 493 (July 17, 2007); *John A. Glasure v. General Services Administration*, GSBCA 16046, 03-2 BCA ¶ 32,284.

The issue raised by Mr. Gobble is certainly material: GSA acknowledges that if someone illegally obtained Mr. Gobble's account information and used it to bid on the trailer, Mr. Gobble likely will not be held to have breached a contract with GSA. The issue is also genuine: Mr. Gobble's testimony, combined with evidence of his reporting the theft of his identity to the credit bureau and to the police could result in the issue being reasonably decided in Mr. Gobble's favor. This is especially so at this juncture because we are required, for purposes of deciding this motion, to make all justifiable inferences in Mr. Gobble's favor. Accordingly, because a genuine issue of material fact exists, GSA is not entitled to judgment as a matter of law, and the motion must be denied.

Decision

GSA's **MOTION FOR SUMMARY RELIEF** is **DENIED**. Very shortly, the Board will issue an order on further proceedings.

ROBERT W. PARKER
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

MARTHA H. DEGRAFF
Board Judge