



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

AFFIRMED ON RECONSIDERATION: November 21, 2012

CBCA 2870-R

AMIN FARNAM,

Appellant,

v.

DEPARTMENT OF THE TREASURY,

Respondent.

Amin Chaim Farnam, pro se, Roslyn Heights, NY.

Ashley M. Bender, Office of Chief Counsel, Internal Revenue Service, Department of the Treasury, Washington, DC, counsel for Respondent.

Before Board Judges **POLLACK**, **GOODMAN**, and **ZISCHKAU**.

GOODMAN, Board Judge.

Appellant, Amin Farnam, has filed a motion for reconsideration of our decision dated October 5, 2012, which granted summary relief to respondent. *See Amin Farnam v. Department of the Treasury*, CBCA 2870, 12-2 BCA ¶ 35,159. We grant appellant's motion for reconsideration and affirm our prior decision.

Background

Appellant states in his motion for reconsideration that the auction documentation listed several defects that actually were not on the vehicle he purchased, and he believes that

the person listing the defects may have been looking at another vehicle.¹ He states further that the auction documentation did state that the “check engine” light was illuminated, and he thought this meant the engine was in running condition. However, when he took possession of the vehicle he found that the engine did not start, and he therefore spent \$2500 to get the vehicle running and correct defects not noted in the auction documentation.

Appellant states that the Board in its decision misunderstood the reason why he incurred costs for repairs, as the Board found that he incurred costs to repair the conditions indicated by the illuminated “check engine” light. He has clarified that the costs he incurred were to repair conditions that were not noted in the auction documentation, i.e., that the engine would not start. Appellant states that “[i]n my case miss description [sic] is determined after removal of the car from the storage lot, the Government will refund any money paid toward the cost or repair create[d] by the miss description [sic].”²

Discussion

In our decision granting summary relief to respondent, the Board incorrectly concluded that appellant incurred the costs for repairing the problems indicated by the illumination of the “check engine” light. Rather, as appellant asserts, the repairs were for conditions not noted in the auction documentation. As we misinterpreted an issue of fact, we grant the motion for reconsideration. However, upon reconsideration, the Board affirms its prior decision.

As we stated in our decision, the vehicle was sold “as is” and was not misdescribed. The only warranty contained in the general sales terms and conditions was that the vehicle would be properly described. The fact that the vehicle was accurately described by year, make, model, and VIN number satisfies the warranty of description.

In appellant’s case, the terms of the auction urged bidders to inspect the items for sale prior to bid. The fact that the engine would not start would have been apparent to appellant had he inspected the vehicle prior to bid. He is not entitled to reimbursement for the repairs

¹ Appellant has submitted as Exhibit G to his motion for reconsideration a document which he alleges shows the auctioneer misdescribing other vehicles. This information is not relevant to the resolution of this appeal.

² Appellant cites *Carl Lukitsch v. General Services Administration*, CBCA 1013, 08-2 BCA ¶ 33,894. That decision is not favorable to appellant. The Board denied the claim, noting that the appellant was on notice that there were no guarantees as to the vehicle’s condition and repairs for defects not noted in the auction documentation may be required.

he made, even though the fact that the engine would not start was omitted from the description.

Decision

Our decision is **AFFIRMED ON RECONSIDERATION.**

ALLAN H. GOODMAN
Board Judge

We concur:

HOWARD A. POLLACK
Board Judge

JONATHAN D. ZISCHKAU
Board Judge