



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: January 14, 2010

CBCA 1745

JAMES R. DUYON,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

James R. Duyon, pro se, Lynn, MA.

Kathleen K. Barksdale, Office of Regional Counsel, General Services Administration, Philadelphia, PA, counsel for Respondent.

Before Board Judges **McCANN**, **DRUMMOND**, and **SHERIDAN**.

SHERIDAN, Board Judge.

Appellant, James R. Duyon, disputes the final decision of a General Services Administration (GSA or Government) contracting officer defaulting GSA contract GS03F09FBE9340 and assessing a total of \$730 in liquidated damages for appellant's failure to pay for and remove a "2006 GULD STREAM CVDH TRAVEL TRAILER." The appeal was submitted for decision on the written record pursuant to Board Rule 19 (48 CFR 6101.19 (2008)). The record considered by the Board consists of the pleadings and appeal file (exhibits 1 through 14).

Mr. Duyon's primary complaint is that, while using the GSA Auctions internet website, he made a mistake in bidding on the trailer, and believes that he should be released from the sale without consequence. We deny the appeal because appellant failed to

demonstrate satisfactory evidence of a mistake for which the law would grant relief from the contract.

Findings of Fact

Prior to the dispute in issue, Mr. Duyon has had past experience with GSA Auctions and used the website to bid on and purchase items. Appeal File, Exhibit 14. In May 2008, he asked that two sales be cancelled because he did not realize he was bidding on two different items. *Id.* The contracting officer informed him that bidders could not cancel bids, but that she would release him from one of the sales because GSA had misdescribed the item that was auctioned. *Id.* Mr. Duyon was held responsible for payment and removal of the second item. *Id.* Appellant was familiar with the terms and conditions coincidental with bidding on the GSA Auctions website.

By registering with GSA Auctions and submitting a bid, appellant agreed to the terms and conditions of sale and, if the bid was accepted, to pay for and remove the property by the specified dates. Exhibit 1 at 2. Consistent with applicable terms and conditions, on August 17, 2009, Mr. Duyon was informed via email that he was the winning bidder for a “2006 GULD STREAM CVDH TRAVEL TRAILER” listed on the website. Exhibit 3. He was also instructed that he must pay for the trailer within two business days and remove it within ten business days. *Id.*

On August 20, 2009, after he did not respond to the August 17 email message, the contracting officer contacted Mr. Duyon again via email stating that GSA had not heard from him regarding the award, and that it was his responsibility to follow-up on the bid and pay for the property. Exhibit 4. Appellant was warned he was subject to liquidated damages of \$730 if his contract was terminated for default based on nonpayment. *Id.* Responding via email on August 21, 2009, Mr. Duyon represented:

I just received an email today about lot 31qsc109205107 that I won the bid[.] I was unaware that I bid on the lot[.] I was bidding on another lot[.] I bid up to [\$]3900, that was a max[imum] bid, and was out bid so I signed off the computer. Not realizing that I won another lot. I think what happen[ed] is that I got the two mixed up[.] I didn't want this lot[.] I feel that it was a mistake[.] I am sorry this happen[ed] and would like to cancel.

Exhibit 5.

The contracting officer sent appellant an email message on August 24, 2009, stating that she would not release him from the contract “because [the GSA Auctions] terms do not

allow bidders to cancel their bids.” Exhibit 6. The contracting officer cited the Modification of Bids clause set forth in the website’s terms and conditions, which provides: “**Bidders cannot cancel bids.**” *Id.*; Exhibit 1 at 4. The contracting officer also cited the “Frequently Asked Questions” section of the website, at <http://gsaauctions.gov/html/faq.htm>, which informs bidders that they cannot cancel a bid but that “[i]n cases of extremely abnormal circumstances, you should contact the regional Sales Contracting Officer . . . to advise them of any circumstances that would warrant such a request.” Exhibit 6.

The Default clause set forth in the website’s terms and conditions provides:

Default.

Bidders are cautioned to bid only on items they are prepared to pay for and remove in accordance with the online sale terms and conditions of this sale. Failure to pay for and remove all awarded items, or all items within a lot within the timeframe specified, could result in termination of the contract. The bidder also may be subject to paying liquidated damages. . . .

If you are awarded an item on GSA Auctions®, you have the responsibility to pay for the item or lot that you were awarded within 2 business days from the date & time notification was sent and promptly remove it before 10 business days from the date & time the award email notification was sent, unless otherwise specified in the contract. If you fail to meet either of these two conditions, you will be in violation of the online sale terms and conditions of your contract with the Government and will be considered “in default.”

As a defaulted bidder, you will be responsible for the payment of liquidated damages, an administrative fee for the processing and re-handling of the item for which you neglected to pay for and/or remove. The charge will total 20% of the purchase price of the award amount or \$200, whichever is greater. The Government shall be entitled to retain (to collect) this amount of the purchase price of the item(s) as to which the default occurred.

Exhibit 1 at 7.

Email correspondence continued between Mr. Duyon and the contracting officer until August 25, 2009, when the contracting officer wrote appellant telling him if he did not pay for the property by August 31, 2009, and remove it by September 11, 2009, she would terminate the contract and assess liquidated damages against him in the amount of \$730.

Exhibit 11. The termination notice was issued on September 9, 2009, and Mr. Duyon was assessed \$730 in liquidated damages. Exhibit 12. Mr. Duyon appealed the termination and assessment of liquidated damages to the Civilian Board of Contract Appeals.

Discussion

Appellant contends that he made a mistake in bidding on the trailer in issue and feels that when someone wins property in a GSA auction “they should have more time to cancel in case of error.” While he frames his claim as seeking cancellation of the contract, appellant is essentially asking that the default be overturned and the Government’s claim for liquidated damages be invalidated. GSA contends that there are no grounds to release appellant from the contract and that the default and assessment of liquidated damages is proper.

Appellant has had past experience with bidding and sales on GSA Auctions and is well aware of the applicable terms and conditions associated with this type of auction. Appellant does not allege that GSA misdescribed the item or had any role in his making a mistake. Appellant simply states that he was unaware that he was bidding on the trailer. Thus, at best, appellant made an unilateral mistake.

Where a unilateral mistake is alleged, post-award relief may be granted in certain instances, either by rescission or reformation. To obtain relief, the mistake must be “a clear cut clerical or arithmetic error, or a misreading of specifications,” and not a mistake in judgment. *United States v. Hamilton Enterprises, Inc.*, 711 F.2d 1038, 1046 (Fed. Cir. 1983); *Aydin Corp. v. United States*, 669 F.2d 681 (Ct. Cl. 1982). In addition, the bidder must establish that the Government either knew or should have known of the mistake at the time the offer was accepted. *Bromley Contracting Co. v. United States*, 794 F.2d 669 (Fed. Cir. 1986); *Wender Presses, Inc. v. United States*, 343 F.2d 961 (Ct. Cl. 1965).

Appellant has provided no evidence to support relief from the terms of this contract based on unilateral mistake. His bid did not involve a clerical or arithmetic error and there is no indication that GSA should have known of appellant’s mistake. Further, we refuse to indulge appellant’s attempt to take advantage of his own lack of due care in failing to monitor the items on which he was bidding. The undisputed record discloses nothing more than a unilateral error of judgment, which arose out of appellant’s own negligence, for which no relief is appropriate. See *Satyadev Duggirala v. General Services Administration*, CBCA 463, 07-1 BCA ¶ 33,489, at 165,999 (citing *McClure Electrical Constructors v. Dalton*, 132 F.3d 709 (Fed. Cir. 1997)).

Decision

The appeal is **DENIED**.

PATRICIA J. SHERIDAN
Board Judge

We concur:

R. ANTHONY McCANN
Board Judge

JEROME M. DRUMMOND
Board Judge