



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 8, 2016

CBCA 4769

DUSTNSEW, LLC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Carolyn M. Stewart, Owner of DustNSew, LLC, Laveen, AZ, appearing for Appellant.

Michael J. Noble, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.

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

ZISCHKAU, Board Judge.

Appellant, DustNSew, LLC, was the winning bidder for a vehicle offered through the General Services Administration (GSA) online auction website, gsaauctions.gov. Appellant alleges that the vehicle did not have a vehicle identification number (VIN number) even though the vehicle's online description stated that it had one. The owner of DustNSew, Carolyn Stewart, submitted a claim to the GSA contracting officer (CO), who offered her a full refund on the condition that, among other things, she return the vehicle in the condition in which it was sold. Ms. Stewart refused the offer because she had made modifications to the vehicle. She chose to keep the vehicle but now seeks damages in the amount of one-half of the purchase price, which she claims is the difference between what she paid and what the vehicle is worth without a VIN number. The parties have elected to waive a hearing and seek

a decision on the record pursuant to Board Rule 19.¹ For the reasons stated below, we deny appellant's appeal.

Factual Findings

On March 13, 2015, GSA notified Ms. Stewart that DustNSew was the winning bidder for sale-lot number 91QSCI15107802, a "Replica 1993 Brockville Roadster." The item was placed for sale by the Department of the Interior's National Park Service (NPS), and the sale was conducted by GSA. The item description posted on the auction website read as follows:

Replica 1993 Brockville Roadster, Ford Pinto Engine: 1600, AT, 04CYL, VIN: NP80000048016, Est. mileage: 3,319, gasoline; Vehicle was purchased for the Living History program at Scotty's Castle. (149105-4225-#0003B); Inoperable; Long term outdoor storage; Condition Unknown; ***NOTE*** Property needs to be trailored out. . . . Repairs required, including but not limited to: fuel system replacement, needs new battery, tires, rough riding and narrow in the cab; and parts may be missing. Inspection is strongly recommended. . . . THE CONDITION OF THE PROPERTY IS NOT WARRANTED.

Exhibit 1 (emphasis added).²

The contract, agreed to upon registration and submission of a bid, contained the following terms and conditions:

Description Warranty & Refunds

The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website will conform to its written description. Features, characteristics, deficiencies, etc. not addressed in the description are excluded from this warranty. GSA further cautions bidders that GSA's written description represents GSA's best effort to describe the item based on the information provided to it by the owning agency. Therefore, gross omissions regarding the functionality of items, failures to cite major missing parts and/or restrictions with regards to usage may occur.

¹ 48 CFR 6101.19 (2015).

² All exhibits are found in the Appeal File, unless otherwise noted.

The Government does not warrant the merchantability of the property or its purpose. The purchaser is not entitled to any payment for loss of profit or any other money damages – special, direct, indirect, or consequential.

Refunds Claim Procedures

Please be advised that refunds are not a frequent practice of GSA AuctionsSM. A request for refund must be substantiated in writing to the Contracting Officer for issues regarding mis-described property, missing property and voluntary defaults within 15 calendar days from the date of award.

Refund Amount

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

Claims of Misdescription

If items have been awarded but not paid for and the successful bidder feels that the property is mis-described, he/she must follow these procedures: A written claim needs to be submitted to the **Sales Contracting Officer within 15 calendar days from the date of award** requesting release of contractual obligation for reasons satisfying that of a mis-description. No verbal contact with the custodian or the Sales Contracting Officer or any other federal official will constitute a notice of misdescription.

When items are awarded and payment has been received, regardless of the removal status (removal may or may not have occurred), the successful bidder must submit a written notice to the Sales Contracting Officer within 15 calendar days from the date of payment email notification (the Purchaser's receipt). If property has been removed and the claim is accepted by the Sales Contracting Officer, the purchaser must maintain the property in its purchased condition and return it at . . . [purchaser's] expense to the location designated by the Sales Contracting Officer or any other federal official.

Exhibit 2 at 8-9.

On March 16, 2015, Ms. Stewart made a payment in full for the vehicle in the amount of \$22,510, and she picked up the vehicle the following day. Exhibit 7 at 1-2. Ms. Stewart asserts that on the day of pick up, she discovered the vehicle did not have a VIN number. Exhibit 12 at 2. When she inquired about the VIN number, an NPS facility service assistant informed her that the VIN number in the online description of the vehicle was in fact an NPS property number, and the vehicle did not possess a valid VIN number. Exhibit 7 at 2. Ms. Stewart left the lot with the vehicle knowing the vehicle did not have a valid VIN number.

Exhibit 12 at 2. She obtained a VIN number for the vehicle after the purchase.

On March 20, 2015, Ms. Stewart submitted a written claim to the CO seeking damages equal to one-half of the purchase price of the vehicle due to the fact that GSA erroneously inserted an NPS property number as the VIN number in the vehicle's online description.³ Exhibit 9 at 1-3. In response to the claim, the CO offered a full refund provided that appellant return the vehicle at her own expense and upon GSA's confirmation that it received the vehicle as well as the original SF-97 "Certificate to Obtain Title to a Vehicle" form, pursuant to the terms of the contract. Exhibit 11. Ms. Stewart did not accept GSA's offer because she had modified the vehicle by replacing boards in the bed of the vehicle, changing batteries, and switching-out tires. Exhibit 9 at 1-3; Notice of Appeal, Exhibit 1 at 4. On May 8, 2015, the CO issued a final decision denying appellant's claim. Exhibits 12 at 1-2, 13 at 1-2.

In this appeal, Ms. Stewart alleges that the vehicle she purchased had no VIN number and had a mileage error.⁴ Notice of Appeal, Exhibit 1 at 4. She seeks damages in the amount of \$11,255, which is one-half of the purchase price of the vehicle. *Id.* Ms. Stewart believes \$11,255 is the value of the vehicle without a VIN number, but she has not offered evidence substantiating her belief. *Id.* The agency offered to consider documentation of costs incurred by appellant in obtaining a VIN number, but appellant never submitted such documentation.

Discussion

The GSAAuctions contract governs disposition here, and its terms specify the limited remedies available to appellant. *Frances Spicer v. General Services Administration*, CBCA 1532, 09-2 BCA ¶ 34,195, at 168,993; *Greg Carlson v. General Services Administration*, CBCA 999, 08-2 BCA ¶ 33,945, at 167,961. Appellant agreed to the contract terms upon registration and submission of a bid, and is bound by its terms, including the Claims of Misdescription clause.

Under the Claims of Misdescription clause, the sole remedy available to appellant was a full refund pursuant to three conditions: (1) the purchaser must have submitted a written notice to the CO within fifteen days from the date of payment email notification, (2) the

³ Appellant also contends that an NPS employee knowingly fabricated a VIN number in order to sell the vehicle, but appellant has not provided compelling evidence to support this assertion.

⁴ The record does not provide substantiating documentation demonstrating that the mileage number was described in error.

purchaser must have maintained the property in its purchased condition, and (3) the purchaser must have returned the property at its expense to a CO-designated location. Appellant failed to meet two out of the three conditions. Although Ms. Stewart submitted a written notice to the CO within fifteen days from the date of payment, she did not meet the second requirement because she made modifications to the vehicle. Appellant also failed to meet the third condition because she did not return the vehicle to a CO-designated location.

Appellant seeks a damages remedy that is not provided for within the contract. Further, appellant fails to meet the conditions of the refund remedy offered by the CO.

Decision

The appeal is **DENIED**.

JONATHAN D. ZISCHKAU
Board Judge

We concur:

JOSEPH A. VERGILIO
Board Judge

HOWARD A. POLLACK
Board Judge