

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

DENIED: May 3, 2001

GSBCA 15368

DOROTHY HALLQUIST,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Dorothy Hallquist, pro se, Sault Ste. Marie, MI.

Joel Malkin, Office of Regional Counsel, General Services Administration, Chicago, IL, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman) and **WILLIAMS**.

WILLIAMS, Board Judge.

This is an appeal from a contracting officer's decision denying appellant's claim for an adjustment in the price of a vehicle purchased at a Government auction. Specifically, appellant, Dorothy Hallquist, seeks a refund of \$4000 of the \$6700 she paid for the vehicle because the gas tank had several parts removed.

The appeal is denied for several reasons. First, the condition of the vehicle was not guaranteed. Second, there is no evidence in the record that indicates that the Government had prior knowledge of any defects in the vehicle. Third, even if the vehicle had been misdescribed, the only remedy available to appellant was a refund of the purchase price. Appellant did not meet two key requirements for obtaining a refund. She neither notified the contracting officer within fifteen calendar days of removal that the vehicle was misdescribed nor maintained the vehicle in the same condition as when she removed it. Finally, appellant's refusal to return the vehicle precluded even the contracting officer's extra-contractual offer to refund the purchase price in exchange for the car itself.

Findings of Fact

On April 18, 2000, the General Services Administration (GSA) conducted sale number 6CFBPC00017, an auction sale of Government automobiles, in Detroit, Michigan. Appeal File, Exhibit 6.

Prior to the sale, there were two periods -- totaling five hours -- in which the automobiles could be inspected by potential bidders. Appeal File, Exhibit 4.

Included in the auction was a 1996 Ford Taurus which was capable of operating on eighty-five percent ethanol fuels. Appeal File, Exhibits 1, 3, 4, 6.

The auction catalog contained the following Description of Warranty:

The Government warrants to the original purchaser that the property listed in the invitation for bid will conform to its description. . . . If a mis-description is determined after removal, the Government will refund any money paid, if the purchaser takes the property at his/her own expense to a location specified by the Contracting Officer. NO REFUND WILL BE MADE UNLESS THE PURCHASER SUBMITS A WRITTEN NOTICE TO THE CONTRACTING OFFICER WITHIN 15 CALENDAR DAYS OF THE DATE OF REMOVAL THAT THE PROPERTY IS MIS-DESCRIBED AND MAINTAINS THE PROPERTY IN THE SAME CONDITION AS WHEN REMOVED. . . .

This warranty is in place of all other guarantees and warranties, expressed or implied. The Government does NOT warrant the merchantability of the property or its fitness for any use or purpose. The amount of recovery under this provision is limited to the purchase price of the misdescribed property. The purchaser is not entitled to any payment for loss of profit or any other monetary damages, special, indirect, or consequential.

Appeal File, Exhibit 6 at 4.

On April 18, 2000, appellant signed the Sales Register, expressly agreeing under the terms of the register that any bid submitted by her was subject to the terms and conditions in GSA Standard Form 114C, Sale of Government Property General Sale Terms and Conditions, Appeal File, Exhibit 7 at 1. GSA Form 114C, paragraph 2, provides, in pertinent part:

Unless otherwise provided in the invitation, all property listed therein is offered for sale "as is" and "where is." Unless otherwise provided in the Invitation, the Government makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property, or its fitness for any purpose.

Appeal File, Exhibit 5.

On April 18, 2000, appellant purchased a 1996 Ford Taurus at auction for \$6700. She removed the car that day. Appeal File, Exhibit 8.

According to appellant, the Ford Owners Guide Supplement which was delivered with the vehicle stated:

Do not modify the fuel system configuration or components, or replace components with parts not especially designed for use with fuel methanol or fuel ethanol. Ford Motor Company has specially designed the materials, components and system configuration for methanol-or ethanol-fueled vehicles and each particular system is precisely calibrated for efficient operation. The use of different parts or materials could produce an untested configuration that could result in fire, personal injury, or could cause engine damage.

Complaint ¶ 1.

While driving the vehicle away from the sales lot, appellant noticed that the gas gauge dropped from full to empty in about five minutes. Appeal File, Exhibit 13. Appellant drove the vehicle from Detroit to her home, a distance of approximately 350 miles, and continued driving for a week. Because the problem with the gas gauge persisted, she took the car to a Ford dealership. Id. The dealership initially believed that the vehicle needed a fuel pump sending unit, which it ordered. Id. However, when the part arrived over fifteen days later, the vehicle could not be repaired because parts of the fuel system had been removed. Id. The dealership's mechanic first discovered this when he "tore down" the vehicle and removed the gas tank. Id. at 4.

The dealership advised appellant that a number of fittings had been terminated and that the vapor control assembly and fuel pump module had been removed. Appeal File, Exhibit 13 at 4. These modifications cause the gas gauge to malfunction and prevent the vehicle from burning ethanol. Id.

On May 25, 2000, appellant submitted a claim requesting reimbursement for all present and future expenses and repair costs on this vehicle, or a full refund plus expenses if she returned the car. Appeal File, Exhibit 10.

By letter dated May 30, 2000, the contracting officer granted appellant's request for a full refund in exchange for the vehicle, but advised her that she could not receive any money for repairs outside of the purchase price. Appeal File, Exhibit 13.

On July 18, 2000, claimant filed this appeal seeking reimbursement of \$4000 of the purchase price. Of this, \$1200 represents repair costs and the remainder is compensation for GSA's "gross misrepresentation." Appeal File, Exhibit 13. Appellant stated that she is no longer willing to return the car and obtain a refund because she does not know whether the car is safe to drive 350 miles to Detroit in its current configuration. Id.

Discussion

Appellant claims that the contracting officer did not fairly adjust the bid price of the vehicle and that she was deceived because the removal of parts of the gas tank was not disclosed in the description of the vehicle. Appellant's claim fails. The only warranty made

to appellant in this sale was that the vehicle would conform to its description. All other warranties and guarantees, express or implied, were specifically excluded.

In order to recover based on misdescription, appellant must show that the specific mechanical problems experienced were known to the Government prior to the sale and that the information was not disclosed to prospective buyers. Mike Casey v. General Services Administration, GSBCA 11570, 92-2 BCA ¶ 24,882, at 124,102; Dorothy and Al Audycki, GSBCA 9309, 88-3 BCA ¶ 21,112, at 106,574. Appellant has not proved that the deficiencies in the vehicle were known to GSA at the time of the auction. Appellant makes the serious accusation that GSA willfully and grossly misrepresented the condition of the vehicle in order to obtain a better price at auction. Appeal File, Exhibit 13. Appellant's proof for this allegation falls far short of the mark. Appellant relies upon blank forms which GSA uses in handling surplus property to suggest that forms such as these must have disclosed the vehicle's alteration. However, appellant also recognizes that the alteration could not have been detected by ordinary inspection and was only discovered when the gas tank was removed.

As we have often explained before, "In a sale of this sort, where both buyer and seller are ignorant of a car's condition, the risk that unknown defects exist is on the buyer." Geoffrey W. Garner, GSBCA 9942, 89-3 BCA ¶ 22,163, quoting James P. Smith, GSBCA 8216, 86-3 BCA ¶ 19,131, at 96,715. For that reason, we have consistently held that "to recover based on a misdescription, appellants must allege and show that the specific mechanical problems experienced by appellants were known to the Government prior to the sale and that that information was not disclosed to prospective buyers." Garner, 89-3 BCA at 111,536; see also Audycki, 88-3 BCA at 106,574, and cases cited therein. The absence of information in the auction catalog as to a problem is an insufficient basis for a successful claim, as the catalog itself warns.

In these circumstances, the only remedy available to the buyer is, in accordance with the terms of the catalog, to return the car for a refund of the purchase price within fifteen days of the date of removal of the vehicle from the Government lot. The buyer does not have the option of repairing the car and seeking the cost of repairs. Audycki, 88-3 BCA at 106,575, and cases cited therein; see also Jerome T. Jenks, GSBCA 7952, 86-2 BCA ¶ 18,877.

In the instant case, the contracting officer generously offered to refund the purchase price upon return of the vehicle even though appellant had not met the contractual timeliness requirements for that relief. At this juncture, since claimant refuses to return the vehicle to Detroit in the condition in which it was purchased, no relief is available.

Decision

The appeal is **DENIED**.

MARY ELLEN COSTER WILLIAMS

Board Judge

I concur:

STEPHEN M. DANIELS
Board Judge