

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

DENIED: May 17, 2001

GSBCA 15448

RENE A. HERNANDEZ,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Rene A. Hernandez, pro se, Colorado Springs, CO.

Leigh Ann Holt, Office of Regional Counsel, General Services Administration,
Denver, Co, counsel for Respondent.

Before Board Judges **NEILL**, **HYATT**, and **GOODMAN**.

HYATT, Board Judge.

Appellant, Rene A. Hernandez, purchased a 1992 Dodge Dakota at a Government auction conducted on July 25, 2000, in Lakewood, Colorado. Although the vehicle was described in the auction literature as requiring certain repairs, after he took possession Mr. Hernandez learned that additional repairs would be required. He contacted the contracting officer and requested, alternatively, that the Government either help defray the cost of the additional repairs or allow him to return the vehicle for a full refund of the purchase price. The contracting officer denied his claim, and Mr. Hernandez appealed. Both parties elected to submit this matter for decision on the written record. Rule 111; 48 CFR 6101.11 (2000). The record consists of the notice of appeal and supporting attachments provided by appellant, the Government's answer, and Rule 104 appeal file exhibits attached to the answer. For the reasons stated below, we deny the appeal.

Findings of Fact

On July 25, 2000, the General Services Administration (GSA) conducted sealed bid sale number 81FBPS00-023, an auction sale of Government vehicles and other surplus property. The auction was held at the GSA facility in Lakewood, Colorado. Appeal File, Exhibit 1.

GSA's sales brochure included the following reminder on the form which appellant used to enter his bid:

NOTE: Check your bid & item numbers. Mistakes can be costly! Condition of items offered is not warranted. Absence of any indicated deficiency does not mean the item may not have deficiencies. Bidders should not assume that deficiencies do not exist even if none are listed. Inspection of sale items prior to bidding is highly recommended.

The sales terms and conditions accompanying the sales brochure contained cautionary information for bidders:

Description Warranty and Refunds Description Warranty. The Government warrants to the original purchaser that the property listed in the Invitation for Bid will conform to its description. If a misdescription is determined before removal of the property, the Government will keep the property and refund any money paid. If a misdescription is determined after removal, the Government will refund any money paid if the purchaser takes the property at his/her 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 MISDESCRIBED AND MAINTAINS THE PROPERTY IN THE SAME CONDITION AS WHEN REMOVED.** After the property has been removed no refund will be made for shortages of property sold by the "LOT." This warranty is in place of all other guarantees and warranties, express 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 money damages - special, direct, indirect, or consequential.

The sales terms and conditions further stated:

Deficiencies: Deficiencies, when known, have been indicated in the item description. However, absence of any indicated deficiencies does not mean that none exist. It is the bidder's

responsibility to inspect property for deficiencies before bidding.

Inspection: The bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. Condition of items offered is not guaranteed.

Oral Statements and Modifications: Any oral statement or representation by any representative of the Government, changing or supplementing the invitation or contract or any condition thereof, is unauthorized and shall confer no right upon the Bidder or Purchaser.

Appeal File, Exhibit 1.

The sales brochure incorporated Standard Form 114C, General Sales Terms and Conditions, by reference. Appeal File, Exhibit 1. Paragraph 2 of the General Sales Terms and Conditions stated in pertinent part that:

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 the quantity, kind, character, quality, weight, size, or description of any property, or its fitness for any use or purpose. . . .

Appeal File, Exhibit 7.

Mr. Hernandez submitted a bid for several vehicles, including item 078 in the auction. Appeal File, Exhibit 2. Item 078 was a truck that has previously been owned by the United States Department of Agriculture (USDA), at the Dixie National Forest in Cedar City, Utah. This item was described as follows:

PICKUP TRUCK, DODGE 1992, DAKOTA, 4X4, 6CYL,
5SPD MT, (EST MI 106570), NO:A254618,
VIN:1B7GG26X2NS602176, (NEEDS THROW OUT
BEARING/FREEZE PLUGS).

Appeal File, Exhibit 1. Mr. Hernandez bid the amount of \$2210 for this vehicle. Appeal File, Exhibit 2. Bid opening took place on July 25, 2000, and title passed to appellant on that date. On July 28, 2000, appellant received a written notice of award, informing him that his bid for Item 078 had been accepted. On August 18, 2000, Mr. Hernandez took possession of the vehicle. Appeal File, Exhibits 2-5.

In a letter dated October 11, 2000, Mr. Hernandez informed GSA that he had taken the vehicle to AAMCO Transmissions for repairs of the throw out bearing and freeze plugs and was informed by AAMCO that the vehicle also required a new clutch and a new transfer

case. The total estimated cost of repairs was \$2000, with \$1500 of that amount attributable to the cracked transfer case. He stated his opinion that had a mechanic thoroughly examined the vehicle, the crack in the transfer case would have been noticed and noted in the item description, which would have allowed him either to pass over the truck or to have adjusted his bid accordingly. Mr. Hernandez then requested that GSA either refund him the amount of \$1105 to defray the cost of repairs or return the full amount of the purchase to him and arrange to pick up the truck at his residence in Colorado Springs. Appeal File, Exhibit 6.

After receiving Mr. Hernandez's letter, the contracting officer contacted USDA in Cedar City, Utah, about the condition of the vehicle. She was told that the USDA employee responsible for maintaining vehicles at the Dixie National Forest was familiar with this vehicle and, in response to reports that the vehicle was making an odd noise, had arranged for a mechanical inspection prior to the sale. The mechanic at the local automotive repair company determined that the throw out bearing and freeze plug needed replacement, which was duly reported in the sales brochure. In the opinion of the USDA employee who maintained the vehicle, it was unlikely that the transfer case was cracked at that time because if it had been there would have been signs of leaking oil, since the truck was parked in the same place at the forest for many months prior to its sale. USDA also noted that, at appellant's request, arrangements had been made for the local automotive repair company to fix the truck the afternoon that appellant came to Cedar City, but that Mr. Hernandez apparently had chosen not to have the truck repaired that day. The available repair history for the vehicle did not manifest any problems with the transfer case or the clutch. Appeal File, Exhibit 8.

Based on the information received from the USDA, the contracting officer, in a letter dated October 19, 2000, denied appellant's claim, noting that the vehicle had been properly described based on the information available to the agency. Since appellant's complaint related to the condition of the vehicle, which was not warranted but sold "as is," the contracting officer denied appellant's claim. Appeal File, Exhibit 7.

Discussion

Appellant argues in the alternative that either he should receive a price reduction to defray the cost of the needed repairs or GSA should pick up the truck, which has not yet been repaired, and refund the purchase price. In support of his claim, appellant urges that if the mechanic who determined the throw out bearing and freeze plugs needed replacement had opened the transmission, he would have seen the crack in the transmission crank case and this information would then have been disclosed to prospective purchasers. Had Mr. Hernandez had the benefit of this information, he would either have passed over this vehicle or adjusted his bid accordingly.

GSA's response is that the vehicle is properly described and known defects were disclosed. Since there is no evidence that either USDA or GSA was aware of the defects subsequently discovered by appellant, no relief is available under the terms of the auction.

As the Board has previously stated in addressing similar claims:

An individual purchasing a vehicle at auction "as is" and free of any warranties other than that of description, inevitably accepts certain risks and uncertainties. As we have pointed out in the past, the uncertainties inherent in such a transaction are presumably reflected in the price bid. Audycki, GSBCA 9309, 88-3 BCA ¶ 21,112, at 106,575; James P. Smith, GSBCA 8216, 86-3 BCA ¶ 19,131, at 96,712. In purchasing a Government-owned vehicle at auction, the purchaser accepts the uncertain risk of repair. In doing so, however, the purchaser pays a price presumably lower than that which would be sought by the Government if the condition of the vehicle were subject to warranty. Appellant, therefore, should have already received a certain benefit price-wise in purchasing his vehicle from GSA free from any warranty. Under the contract, he is not entitled to anything more.

Coleridge D. Henri v. General Services Administration, GSBCA 13991, 97-2 BCA ¶ 29,187, at 145,161; accord William B. Wobig v. General Services Administration, GSBCA 14424, 98-1 BCA ¶ 29,650. Although appellant here contends that the Government could easily have discovered this defect by conducting a proper inspection, there is no evidence that USDA or GSA did know of the defect, nor is there any requirement that the Government undertake a mechanical inspection of a vehicle prior to selling it at auction on an "as is" basis. Indeed, to impose such a requirement would be antithetical to the very nature of a sale in which warranties are expressly disclaimed. John C. Cruden, GSBCA 9331, 89-1 BCA ¶ 21,348 (1988); James P. Smith, GSBCA 8216, 86-3 BCA ¶ 19,131.

Moreover, even if a misdescription had been established, the contract expressly requires that the purchaser notify GSA within fifteen days after taking possession of the vehicle and return the vehicle to a location specified by GSA. Mr. Hernandez did not comply with either of these conditions.

To summarize, the contracting officer properly disallowed appellant's claim. Neither she nor the Board has the authority to disregard the clear terms of the contract of sale, under which the buyer assumed the risk that the vehicle might require repairs beyond those listed in the item description. See Henri, 97-2 BCA at 145,162; Magdi A. Risk v. General Services Administration, GSBCA 13572, 96-2 BCA ¶ 28,401, at 141,820.

Decision

The appeal is **DENIED**.

CATHERINE B. HYATT
Board Judge

We concur:

EDWIN B. NEILL
Board Judge

ALLAN H. GOODMAN
Board Judge