

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

DENIED: December 21, 2001

GSBCA 15530-TD

FRANCESCO DeBRASI,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Marquis D. Jones, Jr., of McGivney & Kluger, P.C., Florham Park, NJ, counsel for Appellant.

Barbara H. Vail, Office of Chief Counsel, Department of the Treasury, Washington, DC, counsel for Respondent.

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

GOODMAN, Board Judge.

Appellant, Francesco DeBrasi, files this appeal from a contracting officer's final decision dated January 12, 2001, denying his claim. After submission of the appeal file and several conferences with the Board, the parties have submitted the appeal for a decision on the written record pursuant to GSBCA Rule 111.

As discussed below, we deny the appeal.

Background

1. On August 24, 2000, appellant purchased three Rolex watches at an auction held by the Department of the Treasury in Edison, New Jersey. The total purchase amount for the three watches was \$12,100. Notice of Appeal at 1.
2. Before bidding, appellant executed a Bidder Registration Form which signified his acknowledgment of the terms and conditions of sale and his agreement to abide by them. The Bidder Registration Form contained the following statement: "I agree to comply with the terms of sale contained in the sale catalog for this sale and all future sales I attend." Appeal File, Exhibit 3.
3. Paragraph 12, Limitation of Government and Contractor Liability, of the applicable Sale of Government Property General Sale Terms and Conditions, states: "Except for reasonable packing, loading, and transportation costs (such as packing, loading, transportation costs being recoverable only when a return of property at the Government's cost is specifically authorized in writing by the Contracting Officer) the measure of the liability of the Government or its authorized agent in any case where liability of the Government to the Purchaser has been established shall not exceed the refund of such portion of the purchase price as the Government may have received. Appeal File, Exhibit 2.
4. Paragraph 19, Merchandise/Property Description, of the applicable Sale of Government Property General Sale and Terms and Conditions, states: "The Government warrants to the original Purchaser that the property listed in the sales catalog for bids will conform to its description. The Government does not warrant the condition, quality, or merchantability of the property or its fitness for use or purposeThe 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, including special, direct, indirect, incidental, or consequential." Appeal File, Exhibit 2.
5. On September 1, 2000, appellant requested a full refund of \$12,100 for the property he had purchased. He stated that after his purchase, he had the watches appraised and discovered that the Rolex watches were counterfeit. Appeal File, Exhibit 6.
6. On September 27, 2000, appellant submitted a request for additional expenses he incurred in the amount of \$1,705.16. Appeal File, Exhibit 8.
7. The Government had the watches reappraised and determined they were not Rolex watches. Appeal File, Exhibit 7.
8. On October 13, 2000, appellant was informed that he would receive a total refund of \$12,387.56, which included the purchase price of \$12,100 plus \$287.56 for expenses which appellant claimed he had incurred and for which the Government agreed to make compensation. Appeal File, Exhibit 10.
9. On November 8, 2000, appellant's attorney wrote to the contracting officer requesting a refund of \$1,417.60, which represents the additional expenses claimed in the amount of

\$1,705.16 excluding the \$287.56 which was approved and refunded. Appeal File, Exhibit 14.

10. By letter dated January 12, 2001, the contracting officer issued a decision which read in relevant part:

It is the decision of the contracting officer that your client, Mr. DeBrasi has been adequately compensated upon his receipt of the total refund in the amount of \$12,387.56, which represented the purchase price of \$12,100 plus \$287.56 for allowable expenses incurred by him. Therefore, your request for additional reimbursement for expenses is denied. Please note under the provisions of both Paragraph 12 and 19, of the Terms and Conditions of Sale, U.S. Customs liability for the sale of the counterfeit Rolex watches to your client was limited only to the purchase price made by your client. In refunding Mr. DeBrasi for a portion of the additional expenses he incurred, we exceeded our liability to your client under the Terms and Conditions of Sale. Therefore, we cannot justify allowing him additional reimbursement for the expenses he incurred in traveling to the initial viewing/sale nor for his travel to St. Martin, Puerto Rico.

Appeal File, Exhibit 16.

11. Claimant appealed the contracting officer's decision to this Board.

Discussion

Appellant seeks expenses allegedly incurred as the result of his purchase of counterfeit watches at a Government auction. The Government, pursuant to the terms of the contract of sale, has refunded the purchase price of \$12,100. In addition, the Government has paid claimant \$287.56 of \$1,705.16 in expenses for which appellant has sought reimbursement and has denied reimbursement of the remainder. Appellant has appealed this denial and seeks the remaining amount of \$1,417.60 which is for alleged costs discussed below.

Appellant seeks costs incurred in traveling to the auction site to view the items for sale before the auction and traveling to the auction on the day of the auction. These costs would have been incurred even if appellant had not been the successful bidder for any item of sale and claimant is not entitled to recover these costs.

Appellant also seeks costs allegedly incurred in traveling to Puerto Rico to sell the watches, costs incurred for an appraisal of the watches by a third party¹, and costs incurred

¹ The Government has reimbursed appellant \$100 for obtaining the appraisals, mileage at the IRS reimbursable rate per mile, and tolls. Claimant seeks additional costs allegedly incurred in obtaining third party appraisals - cab fare for which he has not submitted receipts and for personal time for which claimant has charged an hourly rate and has not indicated any out-of-pocket costs.

to return the watches to the Government.² As stated in the contract of sale, the amount of recovery is limited to the purchase price, which appellant has been paid by the Government. These costs are in the nature of "other money damages" which are disclaimed under the contract of sale. Appellant is not entitled to these costs.

Decision

The claim is **DENIED**.

ALLAN H. GOODMAN
Board Judge

² The Government has reimbursed appellant mileage at the IRS reimbursable rate per mile and tolls incurred in returning the watches to the Government. Claimant seeks additional costs allegedly incurred in returning the watches - cab fare for which he has not submitted receipts and for personal time for which claimant has charged an hourly rate and has not indicated any out-of-pocket costs.

We concur:

CATHERINE B. HYATT
Board Judge

MARTHA H. DeGRAFF
Board Judge