

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

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DENIED: July 22, 2003

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GSBCA 16112

CINDY ENGLISH,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Cindy English, pro se, Northridge, CA.

Gabriel N. Steinberg, Office of Regional Counsel, General Services Administration,  
Atlanta, GA, counsel for Respondent.

**DANIELS**, Board Judge (Chairman).

Cindy English purchased a boat at an Internet auction conducted by the General Services Administration (GSA). The boat required repairs in areas not expected by Ms. English, and she asked GSA to pay for those repairs. The agency's contracting officer refused to make payment, and Ms. English has appealed her decision. We conclude that the contracting officer's decision was correct and deny the appeal.

Ms. English has elected to have this case considered under the small claims procedure, 41 U.S.C. § 608 (2000); Board Rule 202 (48 CFR 6102.2 (2002)). The consequence of this election is that the Board's decision is being issued by a single judge, is not precedential, and is final and conclusive unless fraud is found to have tainted the Board's proceedings. 41 U.S.C. § 608(d); Rule 202(b); Palmer v. Barram, 184 F.3d 1373 (Fed. Cir. 1999).

Findings of Fact

GSA offered for sale on the GSAAuctions.gov website a forty-two-foot-long Wellcraft Portofino Sportcruiser. The complete description of the boat was as follows:

1987 42ft Wellcraft Portofino Sportcruiser, 14ft 6in beam, and 454 Mercruiser engines. The port engine has been pulled and found to be inoperable (not on board, but available with accessories). The working condition of the starboard engine is unknown. The engine has oil and anti-freeze in it. The working condition of the Kohler gas generator is unknown. This vessel has a complete sewage system with macerator, the working condition is unknown. This vessel is currently sitting in the water with the port engine removed. The bench seats and cabinet that have been removed to gain access to the port engine compartment are placed back on the boat but are not bolted on (mounting hardware onboard). This vessel does not have a trailer and is currently in the water. The purchaser will have to provide trailer and this vessel must be removed by land. This vessel has a new canvas top, radar with full instrument panel and gauges.

In addition to this description, the website notice said, "Please contact the custodian for additional information about this item(s) and for inspection dates and times." The custodian of the vessel was said to be Drene Marrero of the Coast Guard Yard Curtis Bay in Baltimore, Maryland.

This item was listed on the website on October 24, 2002. The notice stated that bidding was permitted from 5 p.m. on October 27 to 5 p.m. on November 4. The notice also said that the boat could be inspected at Coast Guard Yard Curtis Bay on October 29.

The GSAAuctions.gov website listed not only items of property for sale, but also terms and conditions of purchases. An individual had to agree to these terms and conditions in order to register to make a bid on any of the items. Among the terms and conditions were the following:

**Condition of Property** is not warranted. . . . Deficiencies, when known, have been indicated in the property descriptions. However, absence of any indicated deficiencies does not mean that none exists.

**Description Warranty.** The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website 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 following the Refund Claim Procedure described below. No refunds will be made, after property is removed, for shortages of individual items within a lot. **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 purpose. The purchaser is not entitled to any payment for loss or profit or any other money damages - special, direct, indirect, or consequential.

**Refund Claim Procedure.** To file a refund claim for misdescribed property, (1) submit a written notice to the Contracting Officer within 15 calendar days

from the date of removal that the property was misdescribed, (2) maintain the property in the purchased condition until it is returned, and (3) return the property at your own expense to a location specified by the Contracting Officer.

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

**Oral Statements and Modifications.** Any oral statement or representation by any representative of the Government, changing or supplementing the offering or contract or any condition thereof, is unauthorized and shall confer no right upon the bidder or purchaser. Further, no interpretation of any provision of the contract, including applicable performance requirements, shall be binding on the government unless furnished or agreed to, in writing by the Contracting Officer or his designated representative.

Ms. English was among the five individuals who bid on the Wellcraft Portofino Sportcruiser. Ms. English acknowledges that she did not inspect the boat before submitting her bid. She says that she could not have made an inspection because she did not learn of the auction until after October 29, the day on which inspection was permitted.

Ms. English's bid of \$50,000 was selected for award. Ms. English paid for the boat and took possession of it on November 18, 2002. She and associates had it placed on a truck for transport to California. It arrived there ten days later and was taken to a marine repair facility.

By letter dated December 5, 2001 (but actually sent on December 16, 2002), Ms. English told the contracting officer that her partner, Roy Fortune, had discussed the vessel with its custodian, Ms. Marrero of the Coast Guard, before Ms. English had submitted her bid. The letter alleges that "Ms. Marrero advised Roy Fortune that the Boat had just been fitted with a brand new radar, had new upholstery in the cockpit area, and a new bimini top, and that the Coast Guard had completely gone over the Boat and deemed it to be a 'safe, sound and seaworthy hull.'" The letter asserts that the bid was made in reliance on Ms. Marrero's statements, but that after shipping the boat to California, she had determined that the statements were misrepresentations. According to Ms. English, the radar was built in the 1980's and was outdated, the upholstery was at least ten years old and was in need of replacement, and "the boat is so dry rotted that if that engine [in the boat] were started, the engine would tear out from the hull." Ms. English concluded by asking "to be reimbursed for the repairs and equipment to bring the Boat to exactly what we were told we were bidding on."

Ms. Marrero denies ever having made the statements attributed to her in Ms. English's letter. In a letter to the contracting officer dated December 16, 2002, she wrote:

Concerning all requests about the Boat, I informed all that inquired that the Boat had a bimiti [sic] top that was installed a year earlier and that the condition of the upholstery was satisfactory.

I never informed anyone that the Coast Guard had deemed that the boat was [a] "safe, sound and seaworthy hull," with a new radar system. I spoke with no one about the radar and in fact informed all callers that I had not seen the boat in two years. I informed all that the boat had to be towed from the slip as [it] was not seaworthy. I had no discussions with anyone about the engine or the engine compartment.

Ms. English has submitted a declaration by Mr. Fortune attesting to the version of his conversation with Ms. Marrero contained in Ms. English's "December 5, 2001" letter. Ms. English has also submitted a declaration by herself stating that she knows Mr. Fortune's version to be correct. Ms. English says that she was with Mr. Fortune when he spoke with Ms. Marrero, and that during that conversation, Mr. Fortune repeated Ms. Marrero's statements aloud and sometimes put Ms. Marrero's voice on a speaker phone so that Ms. English could hear the statements herself. GSA has submitted a declaration by Ms. Marrero that the statements in her letter are true.

On January 13, 2003, the contracting officer responded to Ms. English's "December 5, 2001" letter. After referring to the various terms and conditions of sale noted above, the contracting officer concluded that the Government would not reimburse Ms. English for the cost of repairing the boat. The contracting officer styled her letter a final decision, and Ms. English has appealed this decision to this Board.

Ms. English has already paid \$26,971.40 for repairs to remedy the damage done to the hull of the boat by dry rot. She seeks an award of not only this amount, but also the estimated cost of completing the dry rot repairs (\$6,450), replacing the radar on the boat (\$6,500), and replacing the upholstery (\$3,000).

### Discussion

Ms. English contends that because the website notice of the auction says, "Please contact the custodian for additional information about this item," GSA "must be held liable for the acts and representations of its appointed custodian." Specifically, she maintains, because the custodian (Ms. Marrero) told Ms. English's partner (Mr. Fortune) "that the Boat had just been fitted with a brand new radar, had new upholstery in the cockpit area, and a new bimini top, and that the Coast Guard had completely gone over the Boat and deemed it to be a 'safe, sound and seaworthy hull,'" GSA should pay for the repairs necessary to put the boat into the condition the custodian described.

The terms and conditions of the auction in which Ms. English purchased the boat preclude the relief she seeks.

First, the "Description Warranty" paragraph of the terms and conditions provides that the Government's only warranty is that the property listed on the website will conform to its description. Ms. English does not allege that the boat does not conform to its written description.

Second, the "Oral Statements and Modifications" paragraph provides that "[a]ny oral statement or representation by any representative of the Government, changing or

supplementing the offering or contract or any condition thereof, is unauthorized and shall confer no right upon the bidder or purchaser." In light of this provision, whether Ms. Marrero made the statements Ms. English attributes to her or not – an issue over which the parties have expended much effort – is immaterial. The custodian's statements, if made, were oral only and therefore confer no right on the purchaser. Gaven L. Rouse v. General Services Administration, GSBCA 15993, 03-1 BCA ¶ 32,210, at 32,210.

Third, even if those purported oral statements did confer on Ms. English a right to recover for a misdescription, the "Description Warranty" and "Refund Claim" paragraphs provide that once an item has been removed by the purchaser, a refund is available only if the purchaser fulfills three requirements. She must submit a written notice of misdescription to the contracting officer within fifteen days of the date of removal, maintain the property in the purchased condition until it is returned, and return the property to a location specified by the contracting officer. Ms. English did not fulfill two of these requirements and says that fulfilling the third would be impossible. She submitted a written notice of misdescription to the contracting officer thirteen days later than the deadline, had the boat repaired extensively, and says that the boat is so large that it cannot be returned to a location specified by the contracting officer.

Fourth, the "Description Warranty" and "Refund Amount" paragraphs limit recovery in the event of a misdescription to a refund of the purchase price. Payment for repairs necessary to make the boat seaworthy is not allowed. Garrett J. Veenstra, GSBCA 7251, 85-2 BCA ¶ 18,127, at 90,983 (Board cannot reform contract to give purchaser of boat at auction the different remedy of keeping the vessel and receiving reimbursement for repairs); see also John A. Glasure v. General Services Administration, GSBCA 16046 (June 11, 2003) (regarding GSAAuctions.gov purchase under same terms and conditions as applied to Ms. English's purchase); Dan Parish v. General Services Administration, GSBCA 16025, 03-1 BCA ¶ 32,211, at 159,304.

Evidently hoping to avoid this sort of analysis, Ms. English suggests that because the boat she purchased was such a large and complex item, requiring transportation of several days to reach its destination and inspection by skilled mechanics to determine its condition, her case should be treated as a "special and unique circumstance." "GSA's terms and conditions should not apply," she argues, "as they are boiler plate in nature and cannot be applicable to each and every circumstance." This argument is not persuasive. As we explained in Veenstra, another case involving the purchase of a large boat at a GSA auction, the terms and conditions of the sale constitute an essential part of the contract between the two parties, and a tribunal cannot revise that contract simply because one party considers it unfair. The Board has heard other cases as well involving the purchase of boats at GSA auctions, and we have consistently applied the terms and conditions of the auctions in those cases. See, e.g., Howard Goody, GSBCA 8412, 89-1 BCA ¶ 21,224 (1988); Scott Construction Co., GSBCA 9281, 88-2 BCA ¶ 20,812; Joseph Ianzano, GSBCA 8408, 87-1 BCA ¶ 19,639.

Decision

The appeal is **DENIED**.

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STEPHEN M. DANIELS  
Board Judge