

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

DISMISSED FOR LACK OF JURISDICTION:
February 5, 2004

GSBCA 16320

THOMAS F. D'ALBENZIO,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Thomas F. D'Albenzio, pro se, Warrenton, VA.

A.R. Dattolo, Office of Regional Counsel, General Services Administration, Atlanta, GA, counsel for Respondent.

Before Board Judges **PARKER, BORWICK, and HYATT.**

HYATT, Board Judge.

This appeal arises from the purchase by appellant, Thomas F. D'Albenzio, of a surplus vehicle on the General Services Administration's (GSA's) internet online auction, GSAAuctions.gov. GSA moves the Board to dismiss this appeal for lack of jurisdiction. We agree that the appeal was untimely filed and, accordingly, grant GSA's motion.

Background

On May 31, 2003, Mr. D'Albenzio purchased a 1996 Jeep Cherokee through the GSA Auctions web site. On June 26, 2003, appellant, by e-mail, informed the cognizant contracting officer that a dispute had arisen with respect to the aforementioned vehicle. He stated that the vehicle had been misdescribed as to its condition and that various repairs had been required since he had completed the purchase. Appellant proposed that GSA split the cost of the repairs on a fifty-fifty basis. In his e-mail communication with the contracting

officer, Mr. D'Albenzio asked her to provide him with the appropriate "appeal procedures" in the event his request for an adjustment to the contract price was denied.¹ Respondent's Motion to Dismiss, Exhibit 2.

In response, by letter dated July 17, 2003, the contracting officer issued her decision denying Mr. D'Albenzio's claim and informing him of his appeal rights under the Contract Disputes Act of 1978 (CDA), including the right to appeal to the Board within ninety days from the date the decision was received. The Government has submitted a copy of a certified mail return receipt signed by Mr. D'Albenzio to show that the decision was received on July 23, 2003. Respondent's Motion to Dismiss, Exhibits 3, 4.

The subject appeal was filed at the Board on November 14, 2003. GSA filed a motion seeking to dismiss the appeal for lack of jurisdiction. Mr. D'Albenzio responded that personal circumstances delayed his appeal and that he is not a legal expert and did not understand all the nuances of the documents sent to him by GSA. He asks for the Board's understanding and requests that the appeal be permitted to proceed notwithstanding the timeliness issue raised by GSA.

Discussion

The CDA provides that an appeal to a board of contract appeals of a contracting officer's decision is timely only if it is filed within ninety days of the contractor's receipt of the decision. 41 U.S.C. § 606 (2000). GSA has provided a copy of a signed return mail receipt indicating that the contracting officer's decision was received by appellant on July 23, 2003. To be timely, an appeal of the contracting officer's decision should have been filed, at the very latest, by October 21, 2003.

Because the CDA's time limitation is part of a statute waiving sovereign immunity, it must be strictly construed. We have no jurisdiction to hear an appeal filed more than ninety days after receipt of the contracting officer's final decision. D. L. Braugher Co. v. West, 127 F.3d 1476, 1480 (Fed. Cir. 1997); Cosmic Construction Co. v. United States, 697 F.2d 1389, 1390 (Fed. Cir. 1982); accord, e.g., DePonte Investments, Inc. v. General Services Administration, GSBCA 15601, 01-2 BCA ¶ 31,571; CWI Consultants & Services v. General Services Administration, GSBCA 11889, 98-1 BCA ¶ 29,343 (1997), reconsideration denied, 98-1 BCA ¶ 29,476. This jurisdictional bar means that the Board may not consider personal circumstances or equity, or in any other way exercise discretion as to acceptance of an appeal filed later than the statutory deadline. E.g., Mid-South Metals, Inc. v. General Services Administration, GSBCA 15702, 02-1 BCA ¶ 31,723; Gateway El Paso Business Center Associates, L.P. v. General Services Administration, GSBCA 13883, 97-1 BCA ¶ 28,777; D. L. Woods Construction, Inc. v. General Services Administration, GSBCA 13882, 97-2 BCA ¶ 29,009 (1996).

Decision

¹ The Federal Acquisition Regulation defines the term "in writing" to include electronically transmitted information. 48 CFR 2.101 (2002).

Accordingly, this appeal must be **DISMISSED FOR LACK OF JURISDICTION.**

CATHERINE B. HYATT
Board Judge

We concur:

ROBERT W. PARKER
Board Judge

ANTHONY S. BORWICK
Board Judge