

## Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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DENIED: July 7, 2004

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GSBCA 16398

McNUTT USED CARS,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Robert McNutt of McNutt Used Cars, Booneville, AR, appearing for Appellant.

Andrew J. Sinn, Office of Regional Counsel, General Services Administration, Atlanta, GA, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **PARKER**, and **DeGRAFF**.

**PARKER**, Board Judge.

McNutt Used Cars (McNutt or appellant) appeals the decision of the General Services Administration (GSA or respondent) denying McNutt's claim for a partial refund of the purchase price of a mobile home purchased at a GSA online auction. GSA has moved for summary relief on the ground that it is entitled to relief as a matter of law on the basis of undisputed facts. We grant GSA's motion.

### Background

The following facts are undisputed. At a GSA online auction that ended on January 29, 2004, appellant was the successful bidder on an item described as a 2004 Adrian mobile home. McNutt has been buying cars from GSA "for more years than I care to think about." Appellant paid for the mobile home on February 3 and picked it up on February 11.

As a condition of participating in the online auction, appellant had indicated its acceptance of the terms and conditions that applied to the sale, including the following:

**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. . . . **This warranty is in place of all other guarantees and warranties, expressed or implied.**

. . . .

**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 expense to a location specified by the Contracting Officer.

On March 17, appellant faxed a letter to GSA's contracting officer stating that the Adrian mobile home was a 2002 model, rather than the 2004 model that was advertised. GSA's review of the matter determined that appellant was correct; the custodian of the mobile home, the Federal Emergency Management Agency, had improperly identified, and later improperly confirmed to GSA, that the mobile home was a 2004 model.

Because appellant had already moved, blocked, and tied down the mobile home and did not wish to return it, the company requested a partial refund of the purchase price equal to the difference in value between a 2004 Adrian mobile home and a 2002 model. Although GSA's contracting officer acknowledged that the mobile home had been misdescribed and apologized for any inconvenience, he denied McNutt's claim because appellant had failed to comply with the terms and conditions of the sale governing remedies for misdescribed property. Specifically, appellant had failed to notify the contracting officer within fifteen days of removal that the property was misdescribed and had requested a partial refund of the purchase price, rather than returning the property for a full refund.

### Discussion

Summary relief is appropriate when there are no genuine issues of material fact in

dispute and the moving party is entitled to relief as a matter of law. A fact is material if it could affect the Board's decision. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986); John A. Glasure v. General Services Administration, GSBCA 16046, 03-2 BCA ¶ 32,284.

Here, based on undisputed facts, GSA is entitled to relief as a matter of law. Although the mobile home was misdescribed, the terms and conditions of the sale, which appellant had acknowledged prior to bidding, provided that McNutt could obtain a refund of the purchase price if it notified the contracting officer of the misdescription within fifteen days of removing the mobile home from the Government's possession and returned the mobile home in the same condition to a location specified by the contracting officer. Appellant failed to notify the contracting officer of the misdescription until March 17, which was thirty-five days after the property was removed from the Government's possession. Moreover, appellant asked for a partial refund of the purchase price, rather than offering to return the mobile home for a full refund. It is well settled that these terms do not give the purchaser the option of obtaining a partial refund. Glasure; Bob's Auto Sales v. General Services Administration, GSBCA 14447, 98-1 BCA ¶ 29,647 (buyer's only remedy is to return car for refund when description misstated year of manufacture).

#### Decision

GSA's motion for summary relief is granted, and the appeal is **DENIED**.

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ROBERT W. PARKER  
Board Judge

We concur:

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STEPHEN M. DANIELS  
Board Judge

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MARTHA H. DeGRAFF  
Board Judge