

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

DENIED: December 17, 2004

GSBCA16456

CLAUDE KOBASIC,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Claude Kobasic, pro se, Escanaba, MI.

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

HYATT, Board Judge.

This appeal is from a contracting officer's decision denying a claim for refund of the purchase price of a boat purchased from the General Services Administration (GSA) pursuant to an online auction. Appellant, Claude Kobasic, has elected to proceed under the Board's expedited procedure for small claims. Rule 202 (48 CFR 6102.2 (2003)). This rule permits issuance of a decision in summary form. Decisions issued under the small claims procedure are final and shall not be set aside except in cases of fraud affecting the Board's proceedings. 41 U.S.C. § 608 (2000); Palmer v. Barram, 184 F.3d 1373 (Fed. Cir. 1999). This decision has no value as precedent.

Findings of Fact

1. On February 10, 2004, the Department of the Interior's National Park Service filed a Report of Personal Property for Sale with GSA. Among the items reported was a fifteen foot 1988 fiberglass Boston Whaler utility boat with a trailer. The report stated that the trailer would not transport the boat and that the boat's engine needed work. The boat was

located at the Canaveral National Seashore in New Smyrna Beach, Florida. Appeal File, Exhibit 1.

2. The boat and trailer in question were offered for sale to the public on the GSA auctions website (<http://www.GSAAuctions.gov>) under invitation for bids number 41 FBPI04194, item 002. This item went up for bids on March 30, 2004; the bid closing date was April 7, 2004. The following description, accompanied by a picture, was provided:

1988 15FT BOSTON WHALER, UTILITY BOAT, WITH CENTER CONSOLE, GAS POWERED JOHNSON ENGINE, NEEDS WORK . . . INCLUDES TRAILER, GALVANIZED, POOR CONDITION, WILL NOT TRANSPORT BOAT, . . . REPAIRS REQUIRED TO BOAT AND TRAILER.

The item description for the utility boat also provided a name, address, and telephone number for the custodian of the property and advised the prospective purchaser to contact the custodian for additional information and for inspection dates and times. Appeal File, Exhibit 3.

3. The terms and conditions of sale applicable to online auctions are posted at GSAAuctions.gov. These include the following:

Acceptance Period. By marking the required box next to the Terms and Conditions located at the bottom of the registration form and submitting a bid, the bidder agrees to the Terms and Conditions of sale and to pay for and remove the property, if the bid is accepted, by the date and times specified in each lot.

. . . .

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

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.**

The Government does not warrant the merchantability of the property or its purpose. The purchaser is not entitled to any payment for loss of 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.

Inspection. Bidders are invited, urged and cautioned to inspect the property prior to bidding. Bidders must contact the custodian indicated in the item description for inspection dates and times.

....

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.

Bidders are required to agree to these terms and conditions in order to register to make a bid on the items featured for auction. Appeal File, Exhibit 4.

4. Mr. Kobasic states that he called the number provided for the property custodian and spoke to one or two people about the condition of the boat before formulating his bid. He told the individual he spoke with that he would have to travel 1600 miles (one way) to pick up the boat. In response to his questions about the boat he was told that the trailer needed a cross-member and that the "boat's in excellent condition" although it had an oil leak. Based on this information he formulated his bid for the boat in the amount of \$4004. Appeal File, Exhibits 6, 12.

5. Two bids were submitted for the boat. Appellant's bid was slightly higher than the second bid and he was awarded the boat. Appeal File, Exhibit 6.

6. In early May, Mr. Kobasic arrived in Florida to complete the purchase of the boats and transport it back to his home in Michigan. Upon arrival, and after paying for the boat, he discovered that all of the trailer's cross-members were rotted out and there was virtually nothing left of the trailer which, he determined, was the wrong size for this particular boat. In addition, the boat's motor and linkage were frozen. The motor had to be replaced and the linkage required extensive repairs. When appellant attempted to trailer the boat home, the trailer fell apart on the road a few miles from the location where he took possession of the boat. Ultimately, it cost twice as much to repair the boat as it did to purchase it. Appeal File, Exhibits 7, 12 ; Conference Memorandum, October 12, 2004.

7. On May 12, 2004, the contracting officer received a letter from Mr. Kobasic raising numerous issues with respect to the condition of the boat and the trailer. Specifically, Mr. Kobasic stated that although he had been told that only one cross-member on the trailer was rotted out, in fact all of them were completely eroded away and fell onto the highway almost immediately after he attempted to remove the boat. In addition, the trailer's fenders and taillights fell off within seventy-five miles from the property's location at purchase. These deficiencies in the trailer, which was also too large for the boat in question, made the journey to Michigan disastrous and hazardous both to appellant and other motorists. Additionally, the boat itself required numerous repairs. To name a few, the wiring harness was severed, the steering wheel was frozen, and the motor was frozen and not susceptible to salvage. Appeal File, Exhibit 8.

8. Based on the above complaints, Mr. Kobasic asked the contracting officer for compensation for the considerable expenses he had incurred to transport the boat and trailer to Michigan and to repair the boat for use. In his claim, he states that relief is justified under the circumstances because he relied on the erroneous information he received in bidding on the boat. Appeal File, Exhibit 8.

9. A memorandum dated May 17, 2004, from the property custodian to the contracting officer, reflects the custodian's recollection that he told callers that the boat trailer was unsafe for driving and that the engine had not been operated for over a year. He also recalled mentioning to prospective bidders that the hull "would require a lot of elbow grease." Appeal File, Exhibit 10.

10. A second memorandum to the contracting officer, written by the Park Ranger who was present when appellant removed the boat, states that he assisted appellant and his son in securing the vessel to the trailer but did not impart any information or comments about the boat, with which he was not familiar prior to April 25, 2004. Appeal File, Exhibit 10.

11. On June 1, 2004, the contracting officer issued a final decision, denying Mr. Kobasic's claim for compensation. Appeal File, Exhibit 11. Following receipt of that decision, Mr. Kobasic filed his appeal with the Board. *Id.*, Exhibit 12. Following a telephonic conference of the parties in October 2004, the parties agreed to submit the matter for decision on the record pursuant to Board Rule 111.

Discussion

Mr. Kobasic argues that he was misled about the condition of the boat and the trailer when he submitted his bid. Based on his conversation with someone in the custodian's office, he expected that the boat would be transportable and usable, despite the fact that it needed work. Instead, upon arrival in Florida, he discovered that the trailer was the wrong size for the boat, was rotting out in numerous places, required major repairs, and, given its dilapidated condition, constituted a hazard both to Mr. Kobasic and other motorists for the lengthy return journey to his home in Michigan. The boat was in similarly poor shape. By the time he invested enough repairs to be able to use the boat, Mr. Kobasic had spent again about as much as he paid to acquire the boat in the first place. He states that had he been fully informed of the true condition of the boat and the extensive repairs required both to the boat and the trailer, he would not have bid in the first place and then traveled the lengthy distance that was required to pick up the boat. Mr. Kobasic suggests that under these circumstances the boat and trailer should be deemed to have been misdescribed and he should be compensated accordingly.

GSA responds that no relief is available under the terms and conditions of the auction sale, which prospective purchasers must accept in order to submit a bid. The item advertised on GSA's auction site and purchased by appellant in Florida was in fact the boat with trailer that was identified and pictured on the auction site -- a fifteen foot 1988 fiberglass Boston Whaler utility boat with a trailer. There was no warranty as to the condition of the boat or trailer. Thus, GSA argues, the appeal must be denied.

The boat and trailer advertised on GSA's internet auction site, and the boat and trailer made available for pick-up by appellant in Florida, were in fact the same items identified and pictured on the auction site -- a 1988 fifteen foot Boston whaler utility boat with a trailer. Mr. Kobasic thus purchased the boat identified in the auction, and, as stated, both the boat and the trailer required repairs. The written description specifically advised that the trailer was in poor condition and would not transport the boat. Appellant's real complaint concerns the condition of the property he bought, and is not properly directed to the accuracy of the description. In short, GSA did not misdescribe the vehicle such that the remedy available under the misdescription warranty would apply. See Danny R. Mitchell, GSBCA 16209, 04-1 BCA ¶ 32,551, reconsideration denied, 04-1 BCA ¶ 32,588.

Although GSA warrants that the items purchased in its auctions are the items they are stated to be, it expressly disavows any warranty of condition. Property that is listed for auction sale to the public is sold "as is" and, at best, purchasers are told of any known deficiencies. Coleridge D. Henri v. General Services Administration, GSBCA 13991, 97-2 BCA ¶ 29,187, at 145,161 (citations omitted); accord, Rene Hernandez v. General Services Administration, GSBCA 15448, 01-2 BCA ¶ 31,463; William B. Wobig v. General Services Administration, GSBCA 14424, 98-1 BCA ¶ 29,650. Prospective bidders are strongly encouraged to inspect property in person prior to bidding and are cautioned that they cannot rely on the oral representations of Government representatives, who are not authorized to supplement or modify the auction terms or item description. The information allowing bidders to contact the property custodians is provided for the purpose of arranging to inspect the property in person. Talking to the custodian is not a substitute for a site inspection, and we can provide no relief in circumstances where the buyer asserts he or she was misled by the property custodian as to the condition of a property sold under the auction procedures.

Here, Mr. Kobasic's complaint concerns the condition of the trailer and the boat he purchased. In essence, both the trailer and the boat required far more extensive repairs than he had planned for based on the description and his conversations with the custodian in New Smyrna Beach, Florida. Admittedly, the description provided little information beyond model and age of the boat, a statement that both the trailer and the boat needed repairs, and the additional proviso that the trailer was in poor condition and would not transport the boat in its present state. As we explain above, the buyer assumes the risks and uncertainties inherent in purchasing a used boat and trailer through the auction process. It is expected that the buyer will account for these risks and uncertainties, including the possible need for extensive repairs, in formulating the price that is bid for the property. If it is impracticable to inspect the property prior to submitting a bid, the buyer should consider the possibility that, in the absence of a warranty as to condition, the article purchased may require substantial repairs. The terms and conditions of these auction sales do not provide a remedy for the optimistic bidder who is disheartened to learn, upon making arrangements to accept delivery of the property, that the repairs required are more extensive than he or she had anticipated. At that point the bidder has two choices -- to breach the contract, decline to purchase the property, and pay the resulting liquidated damages, or to honor the contract, purchase the property, and remove it from the Government's premises. There is no option to make repairs and then seek compensation from the Government. The contracting officer has no authority to provide this relief and neither does the Board.

Decision

The appeal is **DENIED**.

CATHERINE B. HYATT
Board Judge