



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DENIED: March 23, 2009

CBCA 1324

STEVEN A. GROSHONG,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Steven A. Groshong, pro se, Everett, WA.

Leigh Ann Bunetta, Office of Regional Counsel, General Services Administration, Denver, CO, counsel for Respondent.

**STEEL**, Board Judge.

Appellant, Mr. Steven Groshong, brings this appeal in the amount of \$1650 for partial offset of the cost of repairs to a truck that he purchased at a General Services Administration (GSA) online auction (<http://www.gsaauctions.gov>), under contract no. GS08F08FBE1961. Respondent argues that the cost of such repairs is not recoverable under the terms of the contract. Appellant has elected to have the case heard under CBCA Rule 52, Small Claims Procedure. Such an election provides that the panel chair alone shall resolve the appeal, and that the decision shall be final and conclusive, and shall not be set aside except in cases of fraud affecting the Board's proceedings. *Palmer v. Barram*, 184 F.3d 1373 (Fed. Cir. 1999). The parties have agreed to submit this matter for decision on the written record. This decision has no precedential value. The appeal is denied.

Facts

On May 14, 2008, Mr. Groshong was high bidder and purchased Lot No. 023, a 2000 Chevrolet K3500 truck, for \$9250. The pickup truck was located at the United States Department of Agriculture Forest Service (Forest Service) wareyard in Cedar City, Utah, and was offered via GSA Auction Invitation No. 81QSCI08039. Exhibit 1.<sup>1</sup>

The description of the vehicle was as follows:

Pickup Truck, Chevrolet K3500, 2000, 4WD, 8 CYL, 5SPD MT, AC, CRUISE, 454, CREWCAB, TAG:6109) [sic] (EST MI:68256), VIN:1GCHK33J4YF482726. (SEATS TORN, DENTS & SCRATCHES).

THE CONDITION OF THE PROPERTY IS NOT WARRANTED.

INSPECTION AND REMOVAL BY APPOINTMENT ONLY. NO INSPECTION OR REMOVAL ON FRIDAYS.

Exhibit 6.

As part of his registration process to submit bids at the GSA auction website, Mr. Groshong agreed to GSA's standard Sale of Government Property Online Sale Terms and Conditions. See <http://gsaauctions.gov/html/AboutGSAAuctions.htm>. These terms and conditions urge potential bidders to inspect the items being sold before submitting their bids, and does not warrant the property being offered for sale:

**Condition of Property.**

**The following replaces Clause No. 2 of the SF114C.** 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 and Refunds**

**Description Warranty.**

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<sup>1</sup> All exhibits are found in the appeal file, unless otherwise noted.

The Government warrants to the original purchaser that the property listed in the GSAAuctions.gov website will conform to its written description. If a misdescription is determined by the Contracting Officer of the sale before payment, the contract will be cancelled without any liability to the bidder. If a misdescription is determined by the Contracting Officer of the sale before removal of the property, the Government will keep the property and refund any money paid. If a misdescription is determined by the Contracting Officer of the sale 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 Sales Contracting Officer. . . . **This warranty is in place of all other guarantees and warranties, express 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.

**Mis-described Property.**

Prior to the closing of a sale, if an item has been determined to be inadequately described for example, a gross omission regarding the functionality of an item, failure to cite major missing parts, and/or restrictions with regards to its use after purchase or removal are omitted in the description, the property may be considered as mis-described. . . .

**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.

The online terms and conditions make clear that also applicable to GSAAuction sales are the Standard Form 114C Sale of Government Property General Sale Terms and Conditions. These terms include the following provisions:

## 2. CONDITION AND LOCATION OF PROPERTY.

Unless otherwise provided in the Invitation, all property listed therein is offered for sale “as is” and “where is.” Unless otherwise provided in the Invitation, the Government makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property, or its fitness for any use or purpose.

### Exhibit 4.

In addition, the online Other Special Requirements and Conditions state about vehicles:

The vehicles being offered in the GSAAuctions.gov website may not meet state motor vehicle emissions inspections or other state requirements and may require repairs to meet those standards.

### Exhibit 3 at 10.

Prior to bidding from Everett, Washington, Mr. Groshong spoke with a GSA payment official in Denver and a Forest Service property custodian at the wareyard in Cedar City, Utah, about the condition and maintenance of the truck. Exhibit 14. Following his telephone conversations, he placed his bid for \$9250 on May 14, 2008. Upon winning the auction, he paid for the truck. Exhibit 12.

The next day, Friday, May 15, 2008, Mr. Groshong flew to Cedar City, Utah, and upon arrival at the Forest Service wareyard, at approximately 3:00 p.m., he was given the keys and the truck was pointed out to him. Upon his inspection of the truck, he determined that the tires were bald with missing tread. He called the GSA contracting officer in Denver and left a message that he believed the truck was misdescribed. By this point, there appeared to be no one around to offer assistance, so Mr. Groshong removed the truck from the yard, purchased four new tires for the truck in Cedar City, and drove the 1139 miles to his home in Everett, Washington. Exhibit 14.

On May 20, 2008, he submitted a letter to the GSA contracting officer claiming the vehicle was misdescribed and alleging a gross omission regarding the functionality of the vehicle. Exhibit 9. On June 6, 2008, the contracting officer denied Mr. Groshon's claim. Exhibit 11. Mr. Groshong timely appealed to this Board.

Nearly two months later, on July 8, 2008, Mr. Groshong had the truck inspected. He reports that the fuel injection system is clogged, the front portion of frame at the K member is bent, front suspension components including ball joints need replacing, the exhaust system leaks into the cab, the fuel gauge and cruise control light do not work, the rear shocks leak, the emergency brake release handle does not work, the ignition key sticks, and there is cosmetic interior and exterior damage. The truck remains in Everett. Exhibit 12.

### Discussion

Mr. Groshong initially requested of the contracting officer that he be reimbursed the purchase price of the vehicle. When his claim was denied, he appealed to the Board and seeks \$1650 towards the repairs.

Auctions conducted by GSA are governed by the rules and regulations set forth in the terms and conditions available online. Bidders must agree to these rules to participate in the auction, and therefore the rules are binding on Mr. Groshong. *Darren R. Gentilquore v. General Services Administration*, GSBCA 16705, 05-2 BCA ¶ 33,117.

The vehicle purchased by Mr. Groshong was correctly identified on the website as a 2000 Chevrolet K3500 truck with an estimated mileage of 68,256 and Vehicle Identification number 1GCHK33J4YF482726. The description also was correct as far as it went in stating that the seats were torn, and that there were dents and scratches. The truck advertised and pictured on GSA's auction site and the truck driven away from the Cedar City wareyard were the same vehicle. However, because the description did not also include information such as the fact that the frame was bent, the fuel gauge was broken, or that significant repairs were required, Mr. Groshong alleges (quoting the **Misdescribed Property** section above) that the vehicle was misdescribed, because the defects in the vehicle were inadequately disclosed, such that there was a "gross omission regarding the functionality of an item, failure to cite major missing parts, and/or restrictions with regards to its use after purchase or removal."

Brevity of description is not the same as misdescription. While repairs may be required on the vehicle Mr. Groshong purchased, there was no gross omission regarding functionality, failure to cite major missing parts, or restrictions with regard to its use.

After all, he was able to drive the vehicle to the tire dealer and then drive it 1139 miles to his home. Appellant's complaint does not implicate the accuracy of the description, but rather, the condition of the property he bought. *Claude Kobasic v. General Services Administration*, GSBCA 16456, 05-1 BCA ¶ 32,833 (2004); *see also Danny R. Mitchell*, GSBCA 16209, 04-1 BCA ¶ 32,551, *reconsideration denied*, 04-1 BCA ¶ 32,588.

Although GSA warrants that the items purchased are the items offered for sale, it specifically refuses to provide a warranty of condition. Property offered for sale is sold "as is." *Chris Ward v. General Services Administration*, GSBCA 16473, 05-1 BCA ¶ 32,881 (2005); *Coleridge D. Henri v. General Services Administration*, GSBCA 13991, 97-2 BCA ¶ 29,187, at 145,161. In fact, purchasers are vehemently urged to inspect the items for sale prior to bidding. If Mr. Groshong had inspected the vehicle, sat in the truck cab, and turned on the engine, the deficiencies of which he complains would have been apparent. Even the bent frame was apparent, as Mr. Groshong demonstrated by providing the Board with photographs of the damage. Exhibits 12 and 14.

Further, prospective bidders, including Mr. Groshong, are warned that they cannot rely upon the oral representations of government representatives, who are not authorized to supplement or modify the auction terms or item description. The information about how to contact the property custodian is only for the purpose of arranging an inspection visit. Conversation with personnel at the site is no substitute for a direct inspection. No relief is available even if the buyer can prove he was misled by site personnel as to the actual condition of the property. The buyer assumes the risk of purchasing a used vehicle through the auction process. *Chris Ward*.

Finally, in the rare case where a buyer can show that the property is misdescribed pursuant to the online terms and conditions, the only possible remedy is return of the property and reimbursement of the purchase price. Assessment of damages against the Government for repair of the property is not an option. *See Gavin L. Rouse v. General Services Administration*, GSBCA 15993, 03-1 BCA ¶ 32,210; *Dan Parish v. General Services Administration*, GSBCA 16025, 03-1 BCA ¶ 32,211. Here, Mr. Groshong seeks a contribution towards the cost of repair of the vehicle. Under the terms and conditions to which he agreed ("purchaser is not entitled to any payment for loss of profit or any other money damages - special, direct, indirect, or consequential," Description Warranty, *supra*), Mr. Groshong is not entitled to this relief, and neither the contracting officer nor this Board has authority to grant it. *Chris Ward*; *Greg Carlson v. General Services Administration*, CBCA 999, 08-2 BCA ¶ 33,945.

Decision

The appeal is **DENIED**.

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CANDIDA S. STEEL  
Board Judge