



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: October 29, 2018

CBCA 6238

MATTHEW LISTIAK,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Matthew Listiak, pro se, Los Angeles, CA.

Mark Ezersky, Office of Regional Counsel, General Services Administration, San Francisco, CA, counsel for Respondent.

Before Board Judges **DRUMMOND**, **RUSSELL**, and **CHADWICK**.

CHADWICK, Board Judge.

This Board occasionally receives appeals under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 (2012) (CDA), by winning bidders in General Services Administration (GSA) auctions who are unhappy with the short inspection and removal periods and limited buyers' remedies. Such appeals typically lack merit. "Auctions conducted by GSA are governed by the rules set forth in the terms and conditions that accompany the solicitation. Bidders . . . must agree to those rules to participate in the auction. Thus, the rules become binding on all bidders." *Carlson v. General Services Administration*, CBCA 999, 08-2 BCA ¶ 33,945, at 167,961 (citing *Gentilquore v. General Services Administration*, GSBCA 16705, 05-2 BCA ¶ 33,117); see also *DustNSew, LLC v. General Services Administration*, CBCA 4769, 16-1 BCA ¶ 36,284, at 176,948 ("Appellant agreed to the contract terms upon registration and

submission of a bid, and is bound by its terms, including the Claims of Misdescription clause.”).

This case is no exception. The appellant, Matthew Listiak, purchased 130 three-ring binders at auction from the respondent, GSA, for \$10. Under the terms and conditions applicable to the auction, submitted to us by GSA under Board Rule 4(a) (83 Fed. Reg. 41,009, 41,011 (Aug. 17, 2018)), Mr. Listiak was “responsible for packing, loading and removal of . . . property awarded to [hi]m,” and he had “15 calendar days from the date of payment” to notify the contracting officer if the auction listing had misdescribed the items. Any refund would “not exceed the purchase price of [any] mis-described property.” By his own description in his notice of appeal, which we have deemed the complaint, Mr. Listiak received confirmation that he paid for the binders on May 15, 2018, and he emailed GSA on June 21, 2018, to complain that the binders were “not as described in the auction” and were damaged in transit to him, allegedly due to poor packing by an employee of the Department of Justice, Bureau of Prisons, the agency that had possessed the binders.

Mr. Listiak asked the contracting officer for a refund of the purchase price plus his shipping cost of \$145.04. When correspondence did not resolve the dispute, Mr. Listiak emailed the contracting officer a claim for “a full refund including the shipping cost” on July 3, 2018. On August 2, 2018, the contracting officer emailed Mr. Listiak a decision denying the claim as “untimely.”

Mr. Listiak filed this appeal on August 20, 2018, “requesting the cost of shipping and the auction [price, totaling] \$155.04.” We have jurisdiction under the CDA. 41 U.S.C. § 7104(a); *see Red Gold, Inc. v. Department of Agriculture*, CBCA 2259, 12-1 BCA ¶ 34,921, at 171,721 (2011). GSA moves to dismiss for failure to state a claim on which the Board could grant relief, arguing that the sale contract made Mr. Listiak responsible for arranging appropriate shipping and gave him until May 30, 2018, to ask for a refund based on misdescription. Mr. Listiak did not respond to GSA’s motion, even after a reminder.

We agree with GSA. Mr. Listiak notified the contracting officer of the alleged misdescription too late. *See Saighi v. General Services Administration*, CBCA 3693, 15-1 BCA ¶ 35,920, at 175,587. Mr. Listiak cannot obtain compensation for damage to the binders in transit because the auction rules plainly made shipping and handling his responsibility, even if he chose to rely on a government employee to help him. Mr. Listiak does not raise “factual allegations sufficient to support the conclusion that there has been a breach of [any] identified contractual duty.” *Bell/Heery v. United States*, 739 F.3d 1324, 1330 (Fed. Cir. 2014). Therefore, we dismiss the claim. *See Board Rule 8(e)*.

Decision

The appeal is **DENIED**.

Kyle Chadwick

KYLE CHADWICK

Board Judge

We concur:

Jerome M. Drummond

JEROME M. DRUMMOND

Board Judge

Beverly M. Russell

BEVERLY M. RUSSELL

Board Judge