



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DENIED: March 7, 2007

CBCA 426

GHULAM H. SYED,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Ghulam H. Syed, pro se, Elmhurst, NY.

Sandra Balmer, Office of Regional Counsel, General Services Administration, Atlanta, GA, counsel for Respondent.

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

PARKER, Board Judge.

The General Services Administration (GSA) has filed a motion for summary relief in connection with Ghulam H. Syed's appeal of a GSA contracting officer's decision assessing liquidated damages. The liquidated damages were assessed as a result of Mr. Syed's failure to pay for some used computer equipment for which he was the high bidder at a GSA online auction. For the reasons discussed below, we grant GSA's motion and deny the appeal.

Findings of Fact

The facts are undisputed. Mr. Syed's bid of \$35 was the highest for some used computer equipment sold at auction in August 2005 by GSA on the agency's website, www.gsaauctions.gov. In order to participate in the electronic auction, Mr. Syed had registered by providing various personal and credit information, and by accepting the terms and conditions of the sale.

Among the terms and conditions he accepted were the following:

Notification of Sale Results. Successful bidders will be notified by email and must contact the regional sales office within 2 business days from the date the email notification was sent. Bid results will not be furnished via telephone or fax. It is the bidder's responsibility to follow-up on the status of his/her bid and to ensure that his/her email address and all registration data are kept accurate and up to date. . . .

Payment and Removal. Property must be paid for within 2 business days and property removed within 10 business days from the time & date of the email notification of sale results, unless otherwise specified in contract.

. . . .

Default. Bidders are cautioned to bid only on items they are prepared to pay for and remove in accordance with the Terms and Conditions of this sale. Failure to pay for and remove all items awarded within the specified time could result in termination of the contract. The bidder will also be subject to paying liquidated damages. . . .

If, after the award, the Purchaser breaches the contract by failure to make payment within the time allowed by the contract . . . the Purchaser shall lose all right, title, and interest which he/she might otherwise have acquired in and to such property as to which a default has occurred. The Purchaser agrees that in the event he/she fails to pay for the property or remove the same in the prescribed period(s) of time, the Government shall be entitled to retain (or collect) as liquidated damages a sum equal to the greater of (a) 20 percent of the purchase price of the item(s) as to which the default occurred, or (b) \$200 whichever is greater[.]

On August 23, 2005, GSA notified Mr. Syed by email that he had been awarded the contract for the computer equipment and that payment was due by August 26, 2005. The email message also informed Mr. Syed that the property was to be removed by September 8, 2005. Appeal File, Exhibit 5.

Having received no payment by August 26, GSA's contracting officer attempted to reach Mr. Syed by telephone, but was unable to do so because Mr. Syed had not included his telephone number in the information submitted to GSA. The contracting officer, on her own, extended the deadline for payment until August 30. Appeal File, Exhibits 4, 12.

When no payment was received by August 30, the contracting officer issued a Termination of Contract Notice, placed Mr. Syed's account in default, and assessed liquidated damages in the amount of \$200, using the formula set forth in the terms and conditions. Appeal File, Exhibit 6.

On September 1, Mr. Syed called the GSA sales office and provided his credit card information and telephone number. When the contracting officer received the information, she called Mr. Syed to explain that he was already in default and that she would not accept his attempted payment. Appeal File, Exhibit 12.

Mr. Syed appealed the contracting officer's decision assessing liquidated damages and claimed \$50,000 in damages of his own. According to Mr. Syed, GSA punished him for his actions on this procurement by also barring his wife, Tanvir Syed, from participating in GSA online auctions.

In February 2003, Mrs. Syed had been placed in default, assessed liquidated damages, and placed on a defaulted bidder's list in connection with the failed purchase of a vehicle at a GSA online auction. On May 12, 2003, after considering an explanation from Mrs. Syed, GSA's contracting officer rescinded the default and the request for liquidated damages. As a result of Mr. Syed's allegations in this appeal concerning his wife's inability to bid in GSA online auctions, GSA investigated Mrs. Syed's situation and found that in 2003 GSA had inadvertently failed to remove Mrs. Syed's name from the list of defaulted bidders. GSA promptly removed her name from the list on March 13, 2006. GSA Statement of Uncontested Facts at 4.

Discussion

Summary relief is appropriate when the moving party is entitled to judgment as a matter of law, based on undisputed material facts. The moving party bears the burden of demonstrating the absence of genuine issues of material fact. All justifiable inferences must

be drawn in favor of the nonmovant. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).

Based on undisputed facts, GSA is entitled to judgment as a matter of law. When GSA accepted Mr. Syed's bid, the terms and conditions of the online auction became part of a contract between the agency and the buyer. *Darren R. Gentilquore v. General Services Administration*, GSBCA 16705, 05-2 BCA ¶ 33,117. It is undisputed that Mr. Syed: (1) agreed to the terms and conditions of the electronic auction, (2) submitted the winning bid, and (3) failed to pay for the items after being notified by email that his bid had been accepted. The contracting officer even tried to call Mr. Syed, but she could not reach him because he had failed to provide his telephone number. The terms and conditions of the sale stated that successful bidders would be notified by email, not by telephone or fax, and that failure to pay for and remove the items within the prescribed time periods would result in an assessment of liquidated damages in the amount of \$200 or twenty percent of the purchase price, whichever is greater.

Mr. Syed's failure to pay for the computer equipment was a breach of the contract, and the contracting officer's assessment of liquidated damages was proper. Although appellant's computer problems might possibly have prevented him from receiving the contracting officer's electronic mail message, under the contract's terms and conditions, it was the bidder's responsibility to "follow-up on the status of his/her bid." *Joon Soo Kyong v. General Services Administration*, GSBCA 16692, 06-01 BCA ¶ 33,209. The Government followed the contract to the letter -- Mr. Syed did not.

With regard to Mr. Syed's allegation that GSA punished him by preventing his wife from participating in GSA online auctions, the facts do not support Mr. Syed's allegation. Mrs. Syed was placed on the default list in May 2003 -- more than two years before the auction that Mr. Syed participated in was even held. In any event, to the extent Mr. Syed is alleging some sort of tortious conduct by GSA, the Board lacks jurisdiction to consider the matter. *Danny R. Mitchell v. General Services Administration*, GSBCA 16122, 04-1 BCA ¶ 32,511.

Decision

Based on undisputed material facts, GSA is entitled to judgment as a matter of law. Accordingly, GSA's motion for summary relief is granted, and the appeal is **DENIED**.

ROBERT PARKER
Board Judge

We concur:

ANTHONY S. BORWICK
Board Judge

MARTHA H. DEGRAFF
Board Judge