

In Re:

American Intercoastal Movers, Inc.

Claimant

DATE: January 31, 1997

Claims Case No. 96081209

CLAIMS APPEALS BOARD DECISION

DIGEST

On disputed questions of fact between the claimant and the administrative officers of the government, we accept the statement of fact furnished by the administrative officers in the absence of clear and convincing contrary evidence.

DECISION

American Intercoastal Movers, Inc. (American) appeals the June 6, 1996, settlement of the U.S. General Accounting Office (Settlement Certificate Z-2868356-5) which disallowed American's claim for a refund of \$679.69 set off by the Air Force for transit damages to the household shipment of a service member. ⁽¹⁾ Pursuant to Public Law No. 104-316, October 19, 1996, title 31 of the United States Code, Section 3702 was amended to provide that the Secretary of Defense shall settle claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at government expense. The Secretary of Defense delegated this authority to this Office.

Background

The record shows that American obtained the shipment in Alexandria, Virginia in May 1993, and delivered it to the service member in Los Angeles in July 1993. At delivery, the service member and carrier's agent reported on a Joint Statement of Loss or Damage at Delivery, DD Form 1840, that the ornate molding at the top of a schrank (Item 373) was broken off and missing. In August 1993, the service member reported on a Notice of Loss or Damage, DD Form 1840R, that the wood carving was broken off the tops of items 204 and 205. These items were described as hutches. Items 204, 205 and 373 were part of a 13-part schrank. The Descriptive Inventory at origin reported that the hutches (Items 204 and 205) were scratched, but there was no indication that anything was broken; therefore, the broken conditions were treated as transit damage. American also contests the calculation of damages to a headboard, Item 291, which also sustained additional damages in transit.

American argued that the total amount of damages for the schrank ought to be \$225, not \$1,200, as originally adjudicated by the Air Force. American pointed out that there were two separate estimates in the record: an estimate from Grossman Furniture Repair Service (Grossman) which it interprets as applying to the repair of the ornate molding and two wood carvings⁽²⁾ at \$600, and an estimate from Edmon's Unique Furniture and Stone Gallery (Edmon) which estimated repair for eight carvings at \$600. American contended that there was proof of damage for a total of only two of the wood carvings in Items 204 and 205, not eight, plus damage to the ornate molding. American considered damage to the molding to be equivalent to damage to the carvings, and because Edmon's would replace eight carvings for \$600, it figured it would repair a carving (or molding) for \$75 each, or \$225 for three pieces.

The Air Force Legal Service Agency (AFLSA) reviewed American's position and in its March 25, 1994, letter to American found that the Grossman estimate pertained only to the ornate molding on Item 373, not to the wood carvings on Items 204 and 205. The record contains a November 1993 memorandum for the record by an Air Force claims examiner indicating that she interviewed the service member's spouse by telephone and confirmed that Grossman was not able to repair, and did not repair, the carvings, and that the service member paid an additional \$600 to repair the wood carvings at Edmon. However, AFLSA did agree that the record did not contain proof of damage to eight carvings,

only two. Therefore, it refunded \$450, leaving a total liability of \$750.

American also contends that the depreciated replacement cost of the schrank was only \$640, and that in any event, the repair cost could not have exceeded this amount. It requests additional consideration for the salvage value (\$160). American believes that the Air Force improperly used Adjusted Dollar Value (ADV) as a measure to determine replacement cost for the schrank items and the headboard. American states that neither the Air Force nor the service member obtained the current replacement costs for the schrank and headboard, and that ADV rarely is used by the military. Based on the military services' prior practice, it argues that a depreciation of the original cost is the proper measure to determine the value of the schrank and the headboard. The record indicates that the schrank was purchased in 1975 for \$1,000 and is solid oak.

American argues that it should receive a refund of \$154.69 for the headboard based on a setoff by the Air Force of \$225 and a depreciated replacement cost of \$70.31 (calculated by a 75% maximum depreciation after applying 7 percent per year depreciation, from an original purchase price of \$375 in 1980, to \$93.75, plus credit for salvage). On the other hand, AFLSA's March 25, 1994, letter to American indicates that the headboard was solid walnut and depreciated at 2 percent per year; therefore, 13 years multiplied by 2 percent per year results in a depreciated purchase price of \$277.50 even using the original purchase price instead of current replacement cost.

Discussion

The Grossman repair estimate refers only to missing molding, not to the wood carvings. We also note the memorandum for record by the Air Force claims examiner made shortly after delivery. Accordingly, AFLSA had a reasonable basis for its factual finding that the Grossman estimate applied only to the molding. It is uncontested that the cost of repair of each carving was \$75; therefore, there was sufficient evidence to support a total repair cost of \$750 for the Schrank.

The applicable Air Force Regulation generally assumed for purposes of adjudicating the service member's claim against the Air Force that a comparison would be made between repair costs and the actual value (i.e., current depreciated replacement cost) at the time of the loss. The service member is paid the lower of the two.⁽³⁾ This approach has been applied in recoveries against carriers: the base value of an item is considered to be current replacement cost at owner's destination area of residence. See the Joint Military/Industry Depreciation Guide. Thus, the service member should have obtained the estimated undepreciated replacement cost for the schrank when he obtained the repair cost.⁽⁴⁾ But, it is reasonable to believe that the undepreciated replacement cost of a similar solid oak schrank would have substantially exceeded \$1,000 in 1993. The claims examiner's memorandum indicates that the schrank probably would have cost about \$3,000. Accordingly, there is no doubt that the Air Force could produce substantial evidence to show that the depreciated replacement cost of the schrank well exceeded the repair liability of \$750.

The record indicates that American did not inspect the damage, and offered no evidence to counter AFLSA's factual assertion that the headboard was solid walnut. On disputed questions of fact between the claimant and the administrative officers of the government, we accept the statement of fact furnished by the administrative officers in the absence of clear and convincing contrary evidence. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978). A solid wood item of furniture is depreciated at 2 percent per year, rather than at the 7 percent claimed by American. See the Joint Military/Industry Depreciation Guide. Thus, the issue of what value was proper, ADV or original purchase price, is moot because the lower repair cost (\$225) applies.

Conclusion

We affirm the settlement of the General Accounting Office.

/s/ Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

/s/ Joyce N. Maguire

Joyce N. Maguire

Member, Claims Appeals Board

/s/ Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

1. Settlement Certificate Z-2868356(5) pertains to Personal Property Government Bill of Lading SP-436,797, and Air Force Claim Los Angeles AFB 94-42 and American's file A93-009.
2. A "carving" is a decorative wood component which, in design, looks like the top of many marble columns of public buildings. The record indicates that they are hand carved.
3. See Claims:Claims and Tort Litigation, Air Force Regulation (AFR) 112-1, para. 6-26 (October 31, 1989) which applied at the time of the move.
4. While there may be some circumstances where we may consider the ADV of an item, there was no showing here that actual value using current depreciated replacement cost was unavailable or inaccurate, and there was no showing how ADV applied.