DATE: November 26, 1997

In Re:

Resource Protection.

on behalf of

Allied Van Lines, Inc.

Claimant

Claims Case No. 97092208

CLAIMS APPEALS BOARD DECISION

DIGEST

A prima facie case of carrier liability exists with respect to the element of value when a shipper presents independent evidence of the value of certain art and antique objects from a person with some experience with such objects while the carrier merely objects but presents no evidence to counter the valuations or qualifications of the appraiser as presented by the shipper.

DECISION

Resource Protection, on behalf of Allied Van Lines, Inc., appeals the Air Force's set off of $3,701.75 of a total set off of $5,169.70, to recover transit loss or damage to a service member's household goods.(1) The carrier contends that the shipper and the Air Force failed to offer sufficient evidence of the value of the damages to establish a prima facie case of liability with respect to several antiques and art objects. The carrier also questions whether three items were art objects or antiques, and contends that there was pre-existing damage (PED) on a dining table.(2)

Background

The record indicates that Allied picked up the shipment on 5-6 August 1991, and delivered it to the service member on October 4, 1991. A Notice of Loss or Damage (DD Form 1840R) was dispatched to Allied on December 9, 1991, but the service member did not file her claim with the Air Force until almost two years thereafter in November 1993. The carrier states that it paid $3,036.20 on the Air Force's first demand of $3,130.15, but refused to pay additional amounts. The Air Force accepted the amount of $3,036.20 as sufficient for the first demand, but returned the check demanding an additional $2,133.50. The total amount of $5,169.70 was collected by set off.

While the objects in dispute are too numerous to list here, to be illustrative, we will describe a few of the articles on the List of Property and Claims Analysis Chart (AF Form 180) and the associated replacement costs and liability. Line Item 1 was described as a broken Hopi Indian bowl, 4" tall by 5-3/4" wide, approximately 60 years old, which was purchased in December 1973 for $80. The claimed replacement value was $80. Allied denies all liability; the Air Force adjudicated a carrier liability of $52.

Line Item 2 was described as a broken "Woodland Dancer," a Hopi Indian Cottonwood carving by a named artist which is a "Kachina doll." The shipper claims that she purchased it in January 1980 for $850, and that the replacement value was $2,000. Allied rejected all liability; the Air Force adjudicated liability in the amount of $1,500.

The Air Force based the carrier's liability on estimates provided by the shipper's appraiser. Resource Protection argues that the Air Force failed to demonstrate the expertise of the appraiser and alleges that she was not qualified. It also argues that the appraisal was conducted about two years after delivery and is invalid. The carrier did not obtain its own

appraisal of the value of these items, nor is there any indication that it even inspected the damage. In the Notice of Loss or Damage (DD Form 1840R), the shipper specifically indicated that the estimated loss was $10,000. As authority for its position, the carrier cites the following Comptroller General decisions among others: American Van Services, Inc., B-247767, Sept. 4, 1992; Suddath Van Lines, B-247430, July 1, 1992; and Cartwright International Van Lines, Inc., B-252430, June 30, 1992.

Resource Protection also contends that the Air Force erred in not charging depreciation for line items 13 and 24 (ginger jars) of AF Form 180. Item 13 (with a broken lid) was purchased for $100 in China in February 1973, and was an unsigned item. Item 24 was a broken china ginger jar made in Japan and purchased for $50 in May 1986. The carrier believes that these two items are nothing more than ordinary dishes which should have been depreciated at 10 percent per year, to a maximum of 75 percent, with a resulting refund of $65 for item 13 and $20 for item 24. The Air Force contends that both items were objects of art which were evaluated by the appraiser, and therefore, they were not subject to depreciation. Allied also contends that a chamber pot, line item 25, should have been depreciated at 10 percent per year to a maximum of 75 percent, but the Air Force contends that the appraiser identified the pot as being manufactured in the late 1800s and therefore is an antique not subject to depreciation.

Discussion

Preliminarily, we agree with the carrier that the shipper must establish a prima facie case of liability against it before the shipper, or the Air Force in subrogation, can recover. To do so, the shipper must show tender in a certain condition, arrival in a more damaged condition, and the amount of damages. Thereafter, the burden is on the carrier to show that it was free from negligence and that damage was due to an excepted cause relieving the carrier of liability. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964); and American Van Services, Inc., B-247767, supra.

In our view the current claim is distinguishable from the decisions cited by the carrier. In Suddath Van Lines, B-247430, supra, an oriental carpet was lost and other than her claim, the shipper offered almost no evidence of the nature of the carpet and its value. In the present claim, the objects still existed and were available for the carrier's inspection. In American Van Services, Inc., B-247767, supra, the shipper supported its claim for damage to furniture with an estimate completed almost two years after the damages were discovered, and some of the damages noted on the repair estimate were inconsistent with damages noted on the Joint Statement of Loss or Damage at Delivery (DD Form 1840) completed at delivery. The Comptroller General questioned the value of the particular repair estimate for reasons other than just the time between its completion and the discovery of the damage. In Cartwright International Van Lines, Inc., B-252430, supra, there was no indication that the appraiser had actually examined the figurine; the carrier did inspect the item; the government did not inspect it; and there was insufficient information in the record to determine the nature and value of the broken figurine.

The administrative report in the present claim indicates that the appraiser had dealt in objects like these for 20 years and was a certified antique dealer. Resource Protection alleges that she was not a qualified expert, but it offered no evidence to support this allegation. The report is supported with a memorandum for record from a field claims official who also spoke with the appraiser. The appraiser was familiar with Hopi Kachina dolls and other items, and stated to the claims official that the items she appraised were originals which are hard to replace and lose their value when damaged. For verification purposes, the claims official contacted an Air Force claims official at another installation and a commercial figurine dealer, and while neither were experts in Hopi Kachina dolls or other Hopi art objects, and neither physically inspected the items, they were experienced enough to verify the relative high value of these items.

The claimant could have supported her claim with more detailed, and certainly more timely, evidence. But, she did offer some substantive evidence of value which went beyond her own subjective opinion. We have also recognized that the property owner's valuation, in some circumstances, may be relevant evidence of value. See DOHA Claims Case No. 96081208 (December 20, 1996); and American Van Services, Inc. - Reconsideration, B-249834.2, Sept. 3, 1993. In contrast, the carrier offered nothing. Our Office is reluctant to find insufficient evidence of valuation where some evidence of damage is offered by the shipper and the item was available for a carrier's inspection. Compare DOHA Claims Case No. 96070214 (January 6, 1997). We accept the determinations of the administrative officers of the government on disputed questions of fact, such as valuation, in the absence of clear and convincing contrary evidence from the carrier. SeeMcNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978).

We agree with Resource Protection with respect to line items 13 and 24. Other than the appraiser's inclusion of the two objects in her report, the Air Force did not provide any basis for departing from the rate of 10 percent per year for crockery in accordance with the guidance in the Joint Military/Industry Depreciation Guide. The jars were not antiques. While the appraiser is familiar with certain Native American art, there is no indication that she is also familiar with Oriental art objects. We agree with the Air Force that there is a reasonable basis to find that the chamber pot was an antique because the object was created in the late 1800s according to the appraiser who is a certified antique dealer.

Conclusion

We affirm the Air Force Legal Services Agency's adjudication with the exceptions of line items 13 and 24 on the AF Form 180.

Signed: Michael D. Hipple

Michael D. Hipple

Chairman, Claims Appeals Board

Signed: Christine M. Kopocis

Christine M. Kopocis

Member, Claims Appeals Board

Signed: Jean E. Smallin

Jean E. Smallin

Member, Claims Appeals Board

1. This matter is related to Personal Property Government Bill of Lading RP-766,144, and Air Force Claim No. Keesler AFB 94-6. The Claims Appeals Board has decided to directly settle this matter for administrative reasons.

2. In its administrative report, the Air Force agrees to the carrier's position on the PED to the table, and it will not be discussed herein.