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In Re:

Resource Protection

on behalf of

Allied Van Lines, Inc.

Claimant

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DATE: March 13, 1998

Claims Case No. 98022314

## CLAIMS APPEALS BOARD DECISION

### DIGEST

We will not question an agency's calculation of the value of damages to an item in a shipment of household goods unless the carrier demonstrates by clear and convincing evidence that the agency's determination was unreasonable.

### DECISION

Resource Protection, on behalf of Allied Van Lines, Inc. (Allied), appeals the February 3, 1998, Settlement Certificate of the Defense Office of Hearings and Appeals in DOHA Claim No. 97111907, which upheld the Air Force's set off of \$132.65 for transit loss and damage to a service member's household goods.<sup>(1)</sup> Resource Protection appeals Allied's \$25 liability for damage to a china plate (in Inventory Item 23), stating that it was appealing the Settlement as a matter of principle.

### Background

Resource Protection contends that there is no proof that the broken dinner plate was fine chinaware. Applying maximum depreciation of 75 percent for ordinary dishware, Resource Protection contends that its client is due \$18.75. Resource Protection contends that the member did not claim he was claiming "fine" china until the Air Force's letter of October 9, 1997, and the member did not indicate the brand name and number of place settings. Resource Protection also contends that the inventory does not state that the plate was "fine china."

### Discussion

Our review of the record indicates the following: Item 23 was a dishpack carton labeled "china and crystal." The Notice of Loss or Damage (DD Form 1840R) indicates that one dinner plate was broken. The List of Property and Claims Analysis Chart (DD Form 1844) indicates that the set was purchased in August 1984 for \$350, and the undepreciated replacement cost of the dinner plate was \$25. The Air Force's claim, including a copy of the DD Form 1844, adjudication worksheets and other substantiation, was dispatched on May 16, 1995. The Joint Military/Industry Depreciation Guide indicates that crockery, including dishes and ordinary glassware, normally is depreciated at ten percent per year, to a maximum of 75 percent, but "china (fine)" and crystal are not depreciated.

The record reasonably supports the Settlement. The carrier labeled the container "china and crystal," not "dishes and glasses" or even "dishes and crystal." The DD Form 1844, a copy of which was provided to the carrier with the claim, indicated that no depreciation was applied to this item contained in a dishpack of china and crystal. The carrier was placed on notice no later than May 1995 that the Air Force considered the damaged article to be fine china. Moreover, the Federal courts will not allow a carrier to avoid liability by failing to investigate a claim, or by failing to thoroughly investigate it, when a carrier is provided sufficient information to do so. See Insurance Company of North America v. G.I. Trucking Company, 1 F. 3d 903, 907 (9th Cir. 1993), cert. denied, 510 U.S. 1044 (1994). There is no indication that

Allied ever made an attempt to inspect the damage during its inspection period, <sup>(2)</sup> where it could have identified the brand of dishware and number of place settings. Based on this inspection and other proper investigation, Allied may have offered a different value estimate. Compare DOHA Claims Case No. 97021808 (June 25, 1997); DOHA Claims Case No. 96121606 (June 6, 1997); American Van Services, Inc., B-270379, May 22, 1996; and American International Moving, B-247576.9, Aug. 2, 1995. Accordingly, with no clear and convincing contrary evidence of value, we uphold the agency determination.

### Conclusion

We affirm the Settlement.

/s/

Michael D. Hipple

Chairman, Claims Appeals Board

/s/

Christine M. Kopocis

Member, Claims Appeals Board

/s/

Jean E. Smallin

Member, Claims Appeals Board

1. This transaction involves Personal Property Government Bill of Lading (PPGBL)

VP-799,570; Air Force Claim No. Nellis 95-743; ALLV File No. 401363.

2. We note that there were other damages in the shipment that the carrier also could have inspected.