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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fogarty Van Lines--Claim for Refund of Amounts Set Off for Damage to Household Goods

File: B-257111

Date: December 29, 1994

DIGEST

The Coast Guard inspected household goods damaged in a move and based its damage calculations on that inspection and on repair estimates made by a company chosen by the shipper. In the absence of clear and convincing evidence that the Coast Guard acted unreasonably, this Office will not question the Coast Guard's use of that information rather than repair estimates from a company hired by the carrier. Since the Coast Guard properly followed debt collection regulations, this Office will not question its imposition of interest and fees on the carrier.

DECISION

This is in response to an appeal of a Claims Group settlement which denied in part the claim of Fogarty Van Lines, Inc., for refund of amounts set off by the United States Coast Guard against it for damage to household goods. We affirm the Claims Group's settlement; however, any interest or penalities assessed should be recalculated to reflect the Claims Group settlement.

At the time Fogarty delivered the household goods of Coast Guard member Dean W. Ehler in July 1990, damage was noted immediately by the member and the carrier's driver. A prima facie case of carrier liability was established by the inventory of goods shipped, a form 1840 with a general notation of damage, and a form 1840R submitted within 75 days with a list of 54 damaged items. A Coast Guard inspector examined the household goods, and the member obtained repair estimates. The Coast Guard calculated the damage to the member's goods based on its inspection and the estimates provided by the member. Although the Coast Guard originally calculated Fogarty's liability as $2,201.10, the amount currently in question is $618.50 plus interest and administrative fees of $53.35.

Fogarty claimed that it was being charged for pre-existing damage and retained a company, A Master's Touch, to estimate the cost of repairing only damage related

to the move. The Coast Guard did not find the estimates of A Master's Touch to be persuasive and did not alter its determination.

The Coast Guard informs us that it billed Fogarty for $2,201.10 on August 23, 1991. A copy of the Coast Guard's debt collection procedures including information on interest and fees accompanied the demand for payment. In October 1991 Fogarty submitted a check for $901.60 as payment in full, which the Coast Guard returned with another request for the full amount. Two weeks later Fogarty submitted a check for $874.10 as payment in full, which the Coast Guard again returned with another request for full payment. When Fogarty did not respond, the Coast Guard sent demand letters in January and February 1992 and in March 1992 notified Fogarty of its intent to collect by set off. Interest and fees did not begin to accrue until after the January 1992 letter.

The Claims Group allowed reimbursement of $111.25 that the carrier had been charged for repair of a stereo cabinet, two headboards, and a footboard because the damage to those items was substantially the same as the pre-existing damage noted in the inventory. With those exceptions, the Claims Group accepted the Coast Guard's determination regarding damage to the member's household goods and the cost of repairs.

In its appeal Fogarty again raises the issue of pre-existing damage to the items still in dispute. Fogarty also argues that it should not have been charged interest and fees because it agreed within 120 days of demand to pay by set off the damages calculated by the Coast Guard. It blames the Coast Guard for the delay which resulted in the assessment of interest and fees.

Under 4 C.F.R. § 31.7 claims are settled on the basis of the facts as established by the government agency concerned. Concerning pre-existing damage, Fogarty contends that the findings of A Master's Touch must prevail over the member's claim that the damages were caused by Fogarty because the inspector was an unbiased, qualified expert which had inspected the items within 3 months of delivery and had found that the damages were not transit related. While such opinion evidence may be persuasive in some circumstances, the Coast Guard rejected it as determinative because, among other things, the carrier did not note these damages as pre-existing on the origin inventory while it noted similar damages on the inventory for other items or at a different location on the same item. In the absence of clear and convincing contrary evidence from Fogarty, we will not disturb the Coast Guard's reasonably based findings of fact. McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978); Ambassador Van Lines, Inc., B-257025, Apr. 29, 1994.

Regarding the imposition of interest and fees, it appears that the Coast Guard followed its own regulations on debt collection, which are in accord with 4 C.F.R.

part 102. When Fogarty had sent 2 checks to settle the claim, the second less than the first, the Coast Guard acted reasonably after returning the checks in expecting a further reply from Fogarty. Furthermore, Fogarty could have avoided the imposition of interest by responding promptly to the Coast Guard's demand letter of January 8, 1992. However, since the Claims Group authorized a refund of $111.25 in their settlement, an adjustment should be made on the interest and penalties reflecting that payment.

Accordingly, we affirm the Claims Group's settlement of Fogarty's claim with the exception of the adjustment noted above.

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