

IN THE SUPREME COURT OF FLORIDA

Supreme Court Case No. SC17-738

Lower Tribunal Case No(s):
3D16-1367; 132011CA012182000001

ORLANDO NOA,

Petitioner,

v.

FLORIDA INSURANCE GUARANTY ASSOCIATION,

Respondent.

_____ /

APPENDIX TO INITIAL BRIEF OF ORLANDO NOA

Appendix	Description
Tab 1	Appraisal Award
Tab 2	Affidavit of Public Adjuster Jason Pyle in Opposition to Defendant's Motion for Summary Judgment
Tab 3	Affidavit of Orlando Noa in Opposition to Defendant's Motion for Summary Judgment
Tab 4	Affidavit of Billy Turner in Opposition to Defendant's Motion for Summary Judgment
Tab 5	November 4, 2009 letter from Old Havana Tile Company
Tab 6	Letter from First Home Insurance Company, Inc.
Tab 7	Defendant's Answer Affirmative Defenses and Incorporated Motion to Dismiss Count II of Plaintiff's Second Amended Complaint
Tab 8	Defendant's Notice of Serving Verified Answers to Plaintiff's Second Set of Interrogatories
Tab 9	Defendant Florida Insurance Guarantee Association's Motion to Re-Open Appraisal

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Tab 10	Plaintiff's Motion to Compel Appraisal and to Abate the Action, and/or for Evidentiary Hearing on the Pleadings and Evidence
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Tab 12	Case law <i>Jossfolk v. United Property</i> 110 So. 3d 110
Tab 13	March 22, 2017 Third District Court of Appeal Opinion

Respectfully submitted,

/s/ Paul B. Feltman

PAUL B. FELTMAN, ESQ.

Fla. Bar No.: 992046

Alvarez, Carbonell, Feltman,
& DaSilva, PL.

75 Valencia Avenue- 8th Floor

Coral Gables, FL 33134

Phone 305/444-5885

Facsimile 305/444-8986

Counsel for Plaintiffs/Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via Electronic Correspondence: hklein@conroysimberg.com and eservicehwdappl@conroysimberg.com to: Hinda Klein, Esq., on this 9th day of November, 2017.

Respectfully submitted,

/s/ Paul B. Feltman

PAUL B. FELTMAN, ESQ.

ALVAREZ, CARBONELL,

FELTMAN & DASILVA, PL.

Fla. Bar. No.: 992046

APPRAISAL AWARD

Name of Insured : Orlando Nea
 Loss Location : 9221 SW 122 Avenue
 Miami, FL 33186
 Policy Number : FH0016324
 Claim Number : PDFH009433
 Date of Loss : 10/24/2005

We, the undersigned, pursuant to the within appointment, DO HEREBY CERTIFY that we have truly and conscientiously performed the duties assigned to us, agreeably to the foregoing stipulations, and we have appraised and determined and do hereby award as the amount of loss the following sums to wit:

COVERAGE	RCV	ACV
Building	\$17,602.10	\$17,602.10
Law & Ordinance	not appraised	
APS	not appraised	
Contents	not appraised	
ALE	not appraised	

This award is subject to all terms and conditions of the insurance policy. This award is made without consideration for any prior partial payments or deductible(s). Prior payments, if any, will be subtracted from the gross award amount listed above.

Witness our hands:

Jason Pyle
 Appraiser for Insured

Date

Glenn Carlson
 Appraiser for Insurer

Date

David Gale
 Umpire

Date

[Handwritten Signature] 4/19/10 4/19/10
[Handwritten Signature] 4/12/10

EXHIBIT
[Handwritten Mark]

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ORLANDO NOA,

GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO.: 11-12182 CA 15

v.

FLORIDA INSURANCE GUARANTY
ASSOCIATION,

Defendant.
_____ /

**AFFIDAVIT OF PUBLIC ADJUSTER JASON PYLE IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

JASON PYLE, before the undersigned authority, duly authorized to administer oaths in the State of Florida, and after being duly sworn, deposes and says:

1. My name is Jason Pyle.
2. I am over the age of 18 and competent to make this affidavit. I make this affidavit based on personal knowledge.
3. I am a licensed public adjuster. #P173625. I have been a licensed public adjuster in the State of Florida since 2008.
4. My office address is 1640 West Oakland Park Blvd., Suite 202, Oakland Park, FL 33311.
5. I achieved my license by fulfilling the educational requirements as set out by Florida Statute. Further, as required, I completed all continuing education courses on a bi-yearly basis.

6. I have inspected and adjusted many different insurance claims in my capacity as a public adjuster.
7. Of the many claims I have adjusted, many have included the removal and replacement of roofing systems.
8. Due to my extensive training, education and experience I am qualified as an expert in my field.
9. On or about June 29, 2009 I inspected the damages to Plaintiff's property.
10. I have inspected over 100 roofs that have been damaged by Hurricane Wilma. Based on my experience, knowledge, and training, it is my professional opinion that Orlando Noa's roof, was in fact damaged by Hurricane Wilma.
11. Subsequent to the inspection of Orlando Noa's residence, I presented an estimate outlining my findings with regards to the extent of damages caused by Hurricane Wilma to the subject property and the costs to perform the necessary repairs.
12. Based upon said estimate Orlando Noa submitted a Sworn Statement in Proof of Loss to First Home Insurance Company Inc.
13. First Home Insurance Company Inc. rejected Orlando Noa's Sworn Statement in Proof of Loss and invoked appraisal under the policy. See Exhibit A attached.
14. I participated and represented Orlando Noa as his appraiser in the appraisal process related to the subject claim.
15. At appraisal, an award was entered with an allowance of \$9,810.85 for roof damage. However, as clearly seen in the appraisal award, this appraisal did not consider Law & Ordinance coverage at the time it was conducted. See Exhibit B attached.

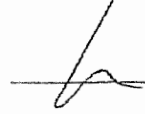
16. A copy of the appraisal award is kept by me in my ordinary course of regularly conducted business. See Exhibit B attached.
17. It is the regular practice of our business to participate in such appraisal as part of our representation of our clients.
18. Subsequent to appraisal Orlando Noa attempted to obtain a county permit to make repairs to his roof as is required by Florida Building Code for any repairs to exceed \$1,500.00. See Exhibit C attached.
19. The Miami-Dade Building Department denied Orlando Noa's application for a permit to fix his roof; indicating that when repairs to a roof exceed 25% of the existing roof that the entire roof should be replaced in order to meet the requirements of the current code. See Exhibit D attached.
20. As can be seen in the attached appraisal award, Ordinance and Law coverage was not considered as part of the appraisal conducted in this instance. Indeed, appraisal of Ordinance and Law coverage was left open for consideration at a later date if it became necessary. See Exhibit B attached. See also Exhibit F attached.
21. As it is a Florida Building Code requirement that the roof be replaced in its entirety in order to be up to code, First Home Insurance Company Inc. is required to pay the difference between the cost to repair Orlando Noa's roof and the cost to replace his roof at the subject property under its Ordinance and Law coverage provisions.

FURTHER AFFIANT SAYETH NOT.

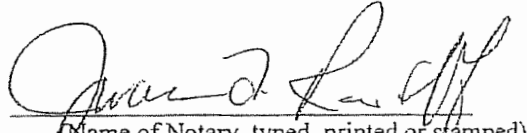
[Verification Page To Follow]

FLA. STA. 92.525 VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing Affidavit and that the facts state in it are true to the best of my knowledge and belief.


Jason Pyle

Sworn to and subscribed before me this 30th day of August, 2013, by AFFIANT who is personally known to me or who produced identification _____.


(Name of Notary, typed, printed or stamped)
Commission No. _____
My Commission Expires _____



SWORN STATEMENT IN PROOF OF LOSS

\$ 230,580 AMOUNT OF POLICY AT TIME OF LOSS
3/30/05 DATE ISSUED 3/30/06 DATE EXPIRES
PDF#009433 POLICY NUMBER
 AGENT

To the Insurance Company
 of First Home
 At the time of loss, by the above indicated policy of insurance you insured Orlando No 7 et
9221 SW 122 Ave, Miam, FL 33186
 against loss by wind storm to the property described under Schedule "A", according to the
 terms and conditions of the said policy and all forms, endorsements, transfers, and assignments attached thereto.

1. Time and Origin: A wind storm loss occurred about the hour of 12 o'clock A M on the 24 day of October, 2005. The cause and origin of the said loss were: Hurricane Wilma
2. Occupancy: The building described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatsoever: Residence
3. Title and Interest: At the time of the loss the interest of your insured in the property described herein was ownership. No other person or persons had any interest therein or encumbrance thereon, except:
4. Changes: Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location, or exposure of the property described, except:
5. Total Insurance: The total amount of insurance upon the property described by this policy was, at the time of the loss, \$ 230,580 as more particularly specified in the apportionment attached under Schedule "C", besides which there was no policy or other contract of insurance, written or oral, valid or invalid.
6. The Actual Cash Value of said property at the time of the loss was..... \$ 219,600
7. The Whole Loss and Damage was \$ 71,682.47
8. Less Amount of Deductible..... \$ 4,392
9. The Amount Claimed under the above numbered policy is..... \$ 67,290.47

The said loss did not originate by any act, design, or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

SIGNATURE: [Signature]
 SIGNATURE: [Signature]

NOTARY: State of FLORIDA; County of MIAMI DADE; SS

On this 24 day of AUGUST, 2009, before me appeared ORLANDO E. NOA
AND ERMILA L. NOA

who is known to be the person(s) named herein and who voluntarily executed this release.
[Signature]
 Notary Signature 9-11-2012
 Date Commission Expires



Form 2150F
 Nationwide Publishing Company, Inc.
 http://www.claim-pages.com

Subject To Addendum
 As New Information Becomes Available

EXHIBIT
A

APPRAISAL AWARD

Name of Insured : Orlando Noa
 Loss Location : 9221 SW 122 Avenue
 Miami, FL 33186
 Policy Number : FH0016324
 Claim Number : PDFH009433
 Date of Loss : 10/24/2005

We, the undersigned, pursuant to the within appointment, DO HEREBY CERTIFY that we have truly and conscientiously performed the duties assigned to us, agreeably to the foregoing stipulations, and we have appraised and determined and do hereby award as the amount of loss the following sums to wit:

COVERAGE	RCV	ACV
Building	\$17,602.10	\$17,602.10
Law & Ordinance	not appraised	
APS	not appraised	
Contents	not appraised	
ALE	not appraised	

This award is subject to all terms and conditions of the insurance policy. This award is made without consideration for any prior partial payments or deductible(s). Prior payments, if any, will be subtracted from the gross award amount listed above.

Witness our hands:

 Jason Pyle
 Appraiser for Insured

 Date

Glenn Carlson 4/19/10

 Glenn Carlson
 Appraiser for Insurer

 Date

David Gale

 David Gale
 Umpire

 4/12/10
 Date

FV
 B

MIAMI-DADE COUNTY BUILDING AND NEIGHBORHOOD COMPLIANCE DEPARTMENT
Herbert S. Saffir Permitting and Inspection Center
 11805 SW 26th Street (Coral Way), • Miami, Florida 33175-2474 • (786) 315-2100

PERMIT APPLICATION

121.01-02 PAGE 1 2/10

LOCATION OF IMPROVEMENTS		CONTRACTOR INFORMATION	
Job Address <u>9221 SW 122 AVE</u> Folio <u>30-5901-D10-D140</u> Lot _____ Block _____ Subdivision _____ PBpg _____ Metes and bounds _____		Contractor No. <u>CCE 1325929</u> Last four (4) digits of Qualifier No. <u>8223</u> Contractor Name <u>Perfect Roofing & Services</u> Qualifier Name <u>Billy Turner</u> Address <u>284 NE 116 St.</u> City <u>Miami</u> State <u>FL</u> Zip _____	
TYPE OF IMPROVEMENTS		OWNER'S NAME	
<input type="checkbox"/> New Construction on Vacant Land <input type="checkbox"/> Alteration-Interior <input type="checkbox"/> Alteration Exterior <input type="checkbox"/> Relocation of Structure <input type="checkbox"/> Short Term Event <input type="checkbox"/> New Roof <input type="checkbox"/> Recovery (Roof) <input type="checkbox"/> Permit by Affidavit <input type="checkbox"/> Enclosure <input checked="" type="checkbox"/> Repair <input type="checkbox"/> Repair Due to Fire <input type="checkbox"/> Demolish <input type="checkbox"/> Shell Only <input type="checkbox"/> Addition Attached <input type="checkbox"/> Addition Detached <input type="checkbox"/> Re-Roof <input type="checkbox"/> Foundation Only		Owner <u>ORLANDO NOA</u> Address <u>9221 SW 122 AVE</u> City <u>Miami</u> State <u>FL</u> Zip <u>33186</u> Phone <u>305 5916 6363</u> Last four (4) digits of Owner's Social Security No. _____	
PERMIT TYPE		PERSON TO PICK UP PLANS	
<input checked="" type="checkbox"/> Building* Category _____ <input type="checkbox"/> Electrical _____ <input type="checkbox"/> Mechanical _____ <input type="checkbox"/> Plumbing _____ <input type="checkbox"/> LPGX _____ CHANGE TO AN EXISTING PERMIT <input type="checkbox"/> Chg. Contractor <input type="checkbox"/> Re-Issue <input type="checkbox"/> Extension <input type="checkbox"/> Supplement <input type="checkbox"/> Reinspection		Name <u>BILLY TURNER / CHELSTRE FAIRBANK</u> Address <u>284 NE 116 ST</u> City <u>Miami</u> State <u>FL</u> Zip <u>33161</u> Phone <u>786 412 0510</u>	
BONDING		ARCHITECT/ENGINEER	
Name _____ Address _____ City _____ State _____ Zip _____ Phone _____		Name _____ Address _____ City _____ State _____ Zip _____ Phone _____	
		MORTGAGE LENDER	
		Name _____ Address _____ City _____ State _____ Zip _____ Phone _____	

*See reverse side for Building Category
 Application is hereby made to obtain a permit to do work and installation as indicated. I certify that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that separate permits are required for ELECTRICAL, PLUMBING, SIGNS, POOLS, MECHANICAL, WINDOW, SHUTTERS and ROOFING WORK and there may be additional permits required for other governmental entities.

OWNER'S/PERMIT APPLICANT AFFIDAVIT: I certify that all of the foregoing information is accurate and that I have no unpaid civil penalties, administrative hearing cost investigative, enforcement, hearing or monitoring costs or unpaid liens which are owed to Miami-Dade County.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOU PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR ATTORNEY OR LENDER BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

"The issuance of the permit does not relieve the property owner from obtaining homeowner's association approval (if required) prior to beginning any work and in no way authorizes work that is in violation of any association rules or regulations."

Signature of Owner or Owner's Agent [Signature]
 PRINT NAME Orlando Noa
 STATE OF FLORIDA COUNTY OF MIAMI-DADE

Signature of Qualifier [Signature]
 PRINT NAME Billy Turner
 STATE OF FLORIDA COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this 6th
 day of May, 2010
 by Orlando Noa

Sworn to and subscribed before me this _____
 day of _____, 20____,
 by _____

Signature of Notary Public [Signature]
 Print Name [Name]
 My Commission # 00000000

Signature of Notary Public _____
 Print Name _____

EXHIBIT
C

MIAMI-DADE COUNTY BUILDING AND NEIGHBORHOOD COMPLIANCE DEPARTMENT
H. Art Saffir Permitting and Inspection Center
 11805 SW 26th Street (Coral Way), • Miami, Florida 33175-2474 • (786) 315-2100

PERMIT APPLICATION

12301-62 PAGE 1 3/10

IF SUBSIDIARY PROVIDE MASTER PERMIT NUMBER HERE																			
LOCATION OF IMPROVEMENTS	Job Address <u>9221 NW 122 Ave.</u> Folio <u>30-5901-010-0140</u> Lot <u>14</u> Block <u>1</u> Subdivision <u>RENOVAL PLACE</u> Page <u>103-83</u> Metes and bounds _____																		
CONTRACTOR INFORMATION	Contractor No. <u>CCC1225929</u> Last four (4) digits of Qualifier No. <u>8223</u> Contractor Name <u>PERFECT ROOFING</u> Qualifier Name <u>BLUZ TURNER</u> Address <u>284 NE 116 ST.</u> City <u>MIAMI</u> State <u>FL</u> Zip <u>33161</u>																		
TYPE OF IMPROVEMENTS	<table style="width:100%; border: none;"> <tr> <td style="border: none;"><input type="checkbox"/> New Construction on Vacant Land</td> <td style="border: none;"><input type="checkbox"/> Enclosure</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Alteration Interior</td> <td style="border: none;"><input type="checkbox"/> Repair</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Alteration Exterior</td> <td style="border: none;"><input type="checkbox"/> Repair Due to Fire</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Relocation of Structure</td> <td style="border: none;"><input type="checkbox"/> Demolish</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Short Term Event</td> <td style="border: none;"><input type="checkbox"/> Shell Only</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> New Roof</td> <td style="border: none;"><input type="checkbox"/> Addition Attached</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Recovery (Roof)</td> <td style="border: none;"><input type="checkbox"/> Addition Detached</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Permit by Affidavit</td> <td style="border: none;"><input type="checkbox"/> Re-Roof</td> </tr> <tr> <td style="border: none;"></td> <td style="border: none;"><input type="checkbox"/> Foundation Only</td> </tr> </table> Current use of property <u>RESIDENTIAL</u> Description of Work <u>REDOOF W/ HANSON ROLL TILES</u> Sq. Ft. <u>34</u> Units _____ Floors _____ Value of Work <u>\$26,000-</u>	<input type="checkbox"/> New Construction on Vacant Land	<input type="checkbox"/> Enclosure	<input type="checkbox"/> Alteration Interior	<input type="checkbox"/> Repair	<input type="checkbox"/> Alteration Exterior	<input type="checkbox"/> Repair Due to Fire	<input type="checkbox"/> Relocation of Structure	<input type="checkbox"/> Demolish	<input type="checkbox"/> Short Term Event	<input type="checkbox"/> Shell Only	<input type="checkbox"/> New Roof	<input type="checkbox"/> Addition Attached	<input type="checkbox"/> Recovery (Roof)	<input type="checkbox"/> Addition Detached	<input type="checkbox"/> Permit by Affidavit	<input type="checkbox"/> Re-Roof		<input type="checkbox"/> Foundation Only
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OWNER'S NAME	Owner <u>ORLANDO NOA</u> Address <u>9221 NW 122 Ave</u> City <u>MIAMI</u> State <u>FL</u> Zip <u>33147</u> Phone <u>305 596 6363</u> Last four (4) digits of Owner's Social Security No. _____																		
PERSON TO PICK UP PLANS	Name <u>BLUZ TURNER/CHRISTIE FAZELL</u> Address <u>284 NE 116 ST.</u> City <u>MIAMI</u> State <u>FL</u> Zip <u>33161</u> Phone _____																		
ARCHITECT/ENGINEER	Name _____ Address _____ City _____ State _____ Zip _____ Phone _____																		
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MORTGAGE LENDER	Name _____ Address _____ City _____ State _____ Zip _____ Phone _____																		

*See reverse side for Building Category
 Application is hereby made to obtain a permit to do work and installation as indicated. I certify that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that separate permits are required for ELECTRICAL, PLUMBING, SIGNS, POOLS, MECHANICAL, WINDOW, SHUTTERS and ROOFING WORK and there may be additional permits required for other governmental entities.

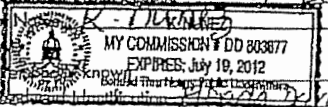
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WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOU PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR ATTORNEY OR LENDER BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

The issuance of the permit does not relieve the property owner from obtaining homeowner's association approval (if required) prior to beginning any work and in no way authorizes work that is in violation of any association rule or regulation.

Signature of Owner or Owner's Agent [Signature]
 PRINT NAME ORLANDO NOA
 STATE OF FLORIDA COUNTY OF MIAMI-DADE
 Sworn to and subscribed before me this 27th
 day of May, 2010
 by Orlando Noa

Signature of Qualifier [Signature]
 PRINT NAME Bluz Turner
 STATE OF FLORIDA COUNTY OF MIAMI-DADE
 Sworn to and subscribed before me this _____
 day of _____, 20____
 by _____

Signature of Notary Public [Signature]
 Print Name [Name]
 (SEAL) 
 or Produced Identification _____

Signature of Notary Public _____
 Print Name _____
 (SEAL) _____
 Personally known _____
 or Produced Identification _____

e-Permitting

Search:

miamidade.gov



Disapproval Remarks

Process Number: C2010081740 Review Type: BLDG BUILDING

Disapproval Remarks
- ENTERED 05/10/2010 SKY
1. ROOF PLAN AND SCOPE OF WORK IS NOT CLEAR. THE REPAIRS APPEAR TO BE MORE THAN 25% OF THE EXISTING TILE ROOF.
2. WHEN REPAIRS EXCEDE 25% OF THE EXISTING ROOF THEN THE ENTIRE ROOF SHALL BE REPLACED TO MEET THE REQUIREMENTS OF THE CURRENT CODE.
3. IF LESS THAN 25% CLEARLY MARK ON THE ROOF PLAN THE PROPOSED REPAIRS.

Page: 1

REVIEW DISAPPROVAL INQUIRY SUCCESSFUL (NO MORE ENTRIES)

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 This page was last edited on: February 23, 2004

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EXHIBIT
 D



VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED & U.S. MAIL

Jason Pyle
Five Star Claims Adjusting
14505 Commerce Way, #220
Miami Lakes, FL 33016

RE:	Insured:	Orlando Noa
	Claim Number:	PDFH009433
	Date of Loss:	10/24/2005
	Policy Number:	RJH0281706
	Property Address:	9221 SW 122 nd Ave-Miami, FL

Dear Mr. Pyle:

In reference to the above captioned loss, we are in receipt of your letter dated June 30, 2010, in which you have requested a claim for Ordinance and Law coverage be considered.

This claim was settled in the Appraisal process with the award being prepared by Umpire David Gale. After the award was signed you submitted documentation to show a failed roof repair permit. The permit application stated an 1100 square foot roof repair which is in excess of what was allowed by the Umpire. In his award, Mr. Gale allowed \$3780.00 as the actual roof repair. It was for replacement of 120 broken roof tiles. This calculates to less than 3% of the total roof area. Due to the fact that only 3% of the roof was being repaired it does not trigger Ordinance and Law coverage.

Pursuant to the above, First Home Insurance Company Inc, will not consider or change its position regarding your request.

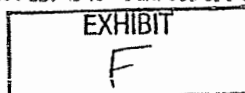
Any action that First Home took in the investigation and/or defense of this occurrence is not to be construed as a waiver of any policy terms and conditions. By sending this reservation, First Home expressly reserves the right to rely on those terms and conditions in deciding whether or not coverage is afforded under the policy.

Sincerely,

Nicole A. Wilson, PCLA, FCLS
Senior Property Examiner
Direct: 407.215.6116
Fax: 866.408.4094
Email: nicole.wilson@claims-ins.com

Any person who knowingly and with intent to injure, defraud, or deceive any Insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree. Florida Statute 817.234

2300 Maitland Center Pkwy • Suite 250 • Maitland, FL 32751
Phone: 800 220-4540 • Fax: 866 851-1421



IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ORLANDO NOA,

Plaintiff,

GENERAL JURISDICTION DIVISION

CASE NO.: 11-12182 CA 15

v.

FLORIDA INSURANCE GUARANTY
ASSOCIATION,

Defendant.

AFFIDAVIT OF ORLANDO NOA IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

ORLANDO NOA, before the undersigned authority, duly authorized to administer oaths in the State of Florida, and after being duly sworn, deposes and says:

1. My name is ORLANDO NOA, I am over the age of 18 and competent to make this Affidavit.
2. I am a Plaintiff in this lawsuit and I have personal knowledge of the facts set forth in this Affidavit.
3. I am the owner of the home located at 9221 SW 122nd Avenue Miami, FL 33186, which is the subject of this Affidavit and the lawsuit I filed against the Defendant.
4. My Property suffered a loss which was covered by the Defendant, First Home Insurance Company Inc. as my insurance carrier through policy number RJH0281706.
5. First Home Insurance Company invoked the appraisal clause under the policy it issued me regarding my claim for damages caused by Hurricane Wilma.
6. After receiving payment for my insurance claim I attempted to get my roof repaired. I hired Perfect Roofing & Services, Inc. to repair my roof.

8/29/13

7. When Perfect Roofing & Services, Inc. inspected my roof in preparation of repairs they advised me that the extent of the damages to my roof exceeded the amount I originally believed to have been damaged.

8. I applied for a permit to have my roof repaired with Miami Dade Building Department. See Exhibit A attached.

9. My application for a permit to repair my roof was denied by Miami Dade Building Department. The basis for the denial of my building permit was that it required repairs to more than 25% of the roof and the Florida Building Code requires that it be replaced. See Exhibit B attached.

10. I was not aware that my entire roof needed to be replaced until Perfect Roofing & Services inspected my roof and prepared its proposal and my application for a permit to repair my roof was denied.

11. I have replaced my roof as is required by the Florida State building codes.

12. I have yet to be reimbursed for the difference between the amount previously paid by the Insurance Company and the amount of the replacement of my entire roof as required by the State of Florida Building Code.

FURTHER AFFIANT SAYETH NOT.

[Verification Page To Follow]

FLA. STA. 92.525 VERIFICATION

Under penalty of perjury, I declare that I have read the foregoing Affidavit and that the facts state in it are true to the best of my knowledge and belief.

Orlando Noa
Orlando Noa

Sworn to and subscribed before me this 29 day of August, 2013, by AFFIANT who is personally known to me or who produced identification DMUTILREAL N.000-645-34-182-0

[Signature]
(Name of Notary, typed, printed or stamped) John A Caballero
Commission No. _____
My Commission Expires _____



MIAMI-DADE COUNTY BUILDING AND NEIGHBORHOOD COMPLIANCE DEPARTMENT
Herbert S. Saffir Permitting and Inspection Center
 11805 SW 26th Street (Coral Way), Miami, Florida 33175-2474 • (786) 315-2100

PERMIT APPLICATION

12.01-02 PAGE 1 3/10

IF SUBSIDIARY PROVIDE MASTER PERMIT NUMBER HERE	
LOCATION OF IMPROVEMENTS Job Address <u>9221 SW 122 AVE</u> Folio <u>30-5901-010-0140</u> Lot _____ Block _____ Subdivision _____ PBpg _____ Metes and bounds _____	CONTRACTOR INFORMATION Contractor No. <u>CC 1325929</u> Last four (4) digits of Qualifier No. <u>8223</u> Contractor Name <u>Perfect Roofing & Services</u> Qualifier Name <u>Billy Turner</u> Address <u>284 AVE 116 St.</u> City <u>Miami</u> State <u>FL</u> Zip _____
TYPE OF IMPROVEMENTS <input type="checkbox"/> New Construction on Vacant Land <input type="checkbox"/> Alteration Interior <input type="checkbox"/> Alteration Exterior <input type="checkbox"/> Relocation of Structure <input type="checkbox"/> Short Term Event <input type="checkbox"/> New Roof <input type="checkbox"/> Recovery (Roof) <input type="checkbox"/> Permit by Affidavit <input type="checkbox"/> Enclosure <input checked="" type="checkbox"/> Repair <input type="checkbox"/> Repair Due to Fire <input type="checkbox"/> Demolish <input type="checkbox"/> Shell Only <input type="checkbox"/> Addition Attached <input type="checkbox"/> Addition Detached <input type="checkbox"/> Re-Roof <input type="checkbox"/> Foundation Only	Current use of property <u>Single family Home</u> Description of Work <u>Repair 30% percent of roof were current Leaking</u> Sq. Ft. <u>30% of 3572</u> Units _____ Floors _____ Value of Work <u>\$ 8,700.00</u>
PERMIT TYPE <input checked="" type="checkbox"/> Building* Category _____ <input type="checkbox"/> Electrical _____ <input type="checkbox"/> Mechanical _____ <input type="checkbox"/> Plumbing _____ <input type="checkbox"/> LPGX _____ CHANGE TO AN EXISTING PERMIT <input type="checkbox"/> Chg. Contractor <input type="checkbox"/> Re-issue <input type="checkbox"/> Extension <input type="checkbox"/> Supplement <input type="checkbox"/> Reinspection	OWNER'S NAME Owner <u>ORLANDO NOA</u> Address <u>9221 SW 122 AVE</u> City <u>Miami</u> State <u>FL</u> Zip <u>33186</u> Phone <u>305 990 6363</u> Last four (4) digits of Owner's Social Security No. _____
PERSON TO PICK UP PLANS Name <u>BILLY TURNER / CHRISTIE FANCO</u> Address <u>284 NE 116 ST</u> City <u>Miami</u> State <u>FL</u> Zip <u>33161</u> Phone <u>786 412 0510</u>	ARCHITECT/ENGINEER Name _____ Address _____ City _____ State _____ Zip _____ Phone _____
BONDING Name _____ Address _____ City _____ State _____ Zip _____ Phone _____	MORTGAGE LENDER Name _____ Address _____ City _____ State _____ Zip _____ Phone _____

*See reverse side for Building Category

Application is hereby made to obtain a permit to do work and installation as indicated. I certify that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that separate permits are required for ELECTRICAL, PLUMBING, SIGNS, POOLS, MECHANICAL, WINDOW, SHUTTERS and ROOFING WORK and there may be additional permits required for other governmental entities.

OWNER'S/PERMIT APPLICANT AFFIDAVIT: I certify that all of the foregoing information is accurate and that I have no unpaid civil penalties, administrative hearing cost investigative, enforcement, listing or monitoring costs or unpaid liens which are owed to Miami-Dade County.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOU PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR ATTORNEY OR LENDER BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

"The issuance of the permit does not relieve the property owner from obtaining homeowner's association approval (if required) prior to beginning any work and in no way authorizes work that is in violation of any association rule of regulation."

Signature of Owner or Owner's Agent [Signature]
 PRINT NAME Orlando Noa

STATE OF FLORIDA COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this 6th

day of May, 2010

by Orlando Noa

Signature of Notary Public [Signature]

PRINT NAME [Name]

STATE OF FLORIDA COUNTY OF MIAMI-DADE

Signature of Qualifier [Signature]
 PRINT NAME Billy Turner

STATE OF FLORIDA COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this _____

day of _____, 20____

by _____

Signature of Notary Public _____

PRINT NAME _____

STATE OF FLORIDA COUNTY OF MIAMI-DADE

Exhibit

A

e-Permitting

Search:

miamidade.gov



Disapproval Remarks

Process Number: C2010081740 Review Type: BLDG BUILDING

Disapproval Remarks
- ENTERED 05/10/2010 SKY
1. ROOF PLAN AND SCOPE OF WORK IS NOT CLEAR. THE REPAIRS APPEAR TO BE MORE THAN 25% OF THE EXISTING TILE ROOF.
2. WHEN REPAIRS EXCEED 25% OF THE EXISTING ROOF THEN THE ENTIRE ROOF SHALL BE REPLACED TO MEET THE REQUIREMENTS OF THE CURRENT CODE.
3. IF LESS THAN 25% CLEARLY MARK ON THE ROOF PLAN THE PROPOSED REPAIRS.

Page: 1

REVIEW DISAPPROVAL INQUIRY SUCCESSFUL (NO MORE ENTRIES)

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Exhibit B

1
IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ORLANDO NOA,

Plaintiff,

GENERAL JURISDICTION DIVISION

CASE NO.: 11-12182 CA 15

v.

FLORIDA INSURANCE GUARANTY
ASSOCIATION,

Defendant.

**AFFIDAVIT OF BILLY TURNER IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Billy Turner, before the undersigned authority duly authorized to administer oaths in the State of Florida, and after being duly sworn, deposes and says:

1. My name is Billy Turner, I am over the age of 18 and competent to make this Affidavit.

2. I am a certified roofer with over ten (10) years of experience in the industry.

3. I am the owner of Perfect Roofing & Services, Inc., as well as the records custodian of Perfect Roofing & Services, Inc., and have personal knowledge of all business activities that Perfect Roofing & Services, Inc. engages in.

4. I was contracted by Mr. Noa, the Plaintiff in this lawsuit, in order to conduct the repairs to his roof that were caused by Hurricane Wilma.¹

5. Upon my inspection, I noticed a number of cracked roof tiles that needed replacement; damage of which was indicative of hurricane damage.

6. A typical repair of a single cracked tile requires making repairs not only to the single cracked tile but also to the surrounding areas.

¹ See Roofing Contract between Mr. Noa and my company, Perfect Roofing & Services, Inc. attached hereto as Exhibit A.

7. As a result of one-hundred and twenty (120) cracked tiles, the standard repair methodology required repairs to over 1,100 square feet of the roof.

8. I applied for a permit based upon the areas of the roof that were damaged due to the cracked tiles.²

9. I attempted to obtain this permit in order to make the repairs for those roof tiles; however, my application for the permit was rejected by Miami-Dade County Building Department because of the Florida Building Code which required a full replacement of the roof due to the percentage of the roof that we were seeking to repair as a result of the cracked tiles.³

10. The Florida Building Code requires a full roof replacement if your repairs exceed 25% of the roof.

11. Subsequently, I expanded the repair to a full roof replacement as required by the Miami-Dade County Building Department. As such, I submitted a second permit application to replace the entire roof in compliance with the Florida Building Code.⁴

12. The exhibits that are attached to my Affidavit were made and kept in the regular course of the business activities of my company, Perfect Roofing & Services, Inc.

13. It is a customary practice for Perfect Roofing & Services, Inc. to make and keep such records.

14. The attached records were made at or near the time I inspected Mr. Noa's property and submitted the applications for the repair work.

FURTHER AFFIANT SAYETH NOT.

² See Permit Application dated May 6, 2010 attached hereto as Exhibit B.

³ See Miami-Dade County Building Department denial of my first permit attached as Exhibit C.

⁴ See Permit Application dated May 27, 2010 attached hereto as Exhibit D.

By: *Billy Turner*
BILLY TURNER

STATE OF FLORIDA)
COUNTY OF Dade) ss

SWORN TO and SUBSCRIBED before me by *Billy Turner*, who is personally known to me or has produced (_____) as identification.

DATED this *August* day of *25*, 2015.

Leittia Howell
NOTARY PUBLIC

Leittia Howell
(TYPE OR WRITE NAME OF NOTARY)

Commission Expires:





PROPOSAL/CONTRACT
Perfect Roofing & Services, Inc



Licensed: CCC1325929 / Insured
 284 Northeast 116th Street
 Miami, Florida 33161-6620
 Ofc: 305.895-9237
 Fax: 305.403.4994

Permit #:		Building Department: City of Miami	
Customer Name	Orlando & Ermila Noa	Date: 05/24/10	Phone: 305.596.6363/786.280.5352
Street Address	9221 Southwest 122 Avenue	Job Address: SAME	
City: Miami	FL	Zip: 33147	City: SAME FL Zip: SAME
Folio Number:	30-5901-010-0140	Email Address	

We hereby submit specification and estimate for: New Roof, New Construction Roof Repair Roof Replacement

Complete this section for New Roof/Roof Replacements ONLY

Complete this section for Roof Repairs ONLY

PREP WORK

- Remove existing roof to a clean workable surface and dispose of debris.
- Replace rotten sheathing at \$3.00 per lineal ft. Includes carpentry and max of 150 lineal ft.
- Install new lead flashing to all plumbing vent stacks.
- Install new 26 gauge 16" galvanized metal to all valleys and tie-ins.
- Exposed/Not Exposed (**NOT EXPOSED**)
- Type of roof to be removed (**FLAT TILE ROOF**)

SHINGLES

- Install # 30 ASTM base sheet.
- Install 3 x 3 EZ inch eave drip metal.
- Install 3TAB fiberglass fungus resistant shingles.
- Mfg. **GAF/3 - TABS/ELK** Color: _____
- Mfg. Warranty 25 years.

FIBERGLASS/MODIFIED

SCOPE OF WORK

- REPLACING 200 FEET OF PLYWOOD
- DUE TO DAMAGED AND ROTTEN WOOD.
- _____
- _____
- _____
- _____
- _____
- _____
- _____

MATERIALS REQUIRED

- _____
- _____

EXHIBIT
A

_____ complete in accordance with the above specifications for the sum of :
Twenty Six Thousand Dollars and no cents.- (\$ 26,000.00)

Payment should be made as follows:

Upon Dry-In Inspection & Labor Completion : (\$ 6,500.00) ; Upon Mop-In Inspection & Labor Completion (\$ 6,500.00)
Upon 100 % Completion of Labor and Clean-Up : (\$ 6,500.00)

NOTE TO BUYER, GC OR OWNER: Perfect Roofing & Services, Inc. hereby proposes to furnish the above labor and materials in accordance with the above specifications. A deposit of \$ 6,500.00 is required upon acceptance and signing of proposal. There will be no deposit required upon acceptance and signing of proposal. The balance to be paid as work progresses in direct ratio to work completed. Payment must be made in full upon completion of labor of the job. MAKE ALL CHECKS PAYABLE TO: Perfect Roofing & Services, Inc.

WARRANTY TO ORIGINAL OWNER: Perfect Roofing & Services, Inc. warrants workmanship for a period of 10 years, but reserves the right to supervise or inspect all work subsequently performed by other parties to the roof, for a reasonable fee. Without this supervision or inspection, all warranties are null and void. Warranty is to original owner and is only transferable if a written request is submitted and approved by Perfect Roofing & Services, Inc. and payment of 15% of contract price. All materials furnished will be as specified and work is to be completed in a workmanlike manner according to standard practices. Any alterations or deviation from above specifications will become an extra charge over and above the estimate of labor and usual costs of our agreement.

Perfect Roofing & Services, Inc. will exercise reasonable care when performing work, but cannot be held responsible in any manner for damage to sidewalks, foliage, shrubbery, screening, septic tanks, gutters, pipes or cables, A/C units/Piping, above or below ground. We will not be held responsible for water damage to the exterior or interior of premises. CUSTOMER IS URGED TO COVER FURNITURE AND PERSONAL PROPERTY. We cannot assume responsibility for any damages done to the roof by other tradesmen or parties. Perfect Roofing & Services, Inc. cannot be held responsible for damages done to any lumber by termites, carpenter ants, or any wood boring insects. Such wood will be replaced at an additional charge.

THIS CONTRACT IS SUBJECT TO OFFICE APPROVAL

AUTHORIZED SIGNATURE: *D. L. ...*

ACCEPTANCE OF PROPOSAL / CONTRACT

The above prices, specifications, and conditions are satisfactory and are hereby accepted. Perfect Roofing & Services, Inc. is authorized to do work as specified. Payment will be made as outlined above. This proposal has the power of a contract when signed and accepted. I have read and agreed to the terms and conditions as stated on the front and back of this contract.

ACCEPTED

Signature: *A. ...*

Date: 5-27-2010

PLEASE TURN OVER AND READ THE OTHER SIDE OF THIS CONTRACT/PROPOSAL!!!!



MIAMI-DADE COUNTY BUILDING AND NEIGHBORHOOD COMPLIANCE DEPARTMENT

Herbert S. Saffir Permitting and Inspection Center

11805 SW 26th Street (Coral Way), Miami, Florida 33175-2474 • (786) 315-2100

PERMIT APPLICATION

12.01-02 PAGE 1 3/10

IF SUBSIDIARY PROVIDE MASTER PERMIT NUMBER HERE

LOCATION OF IMPROVEMENTS	Job Address <u>9221 SW 122 AVE</u>		CONTRACTOR INFORMATION	Contractor No. <u>CC 1325929</u>	
	Folio <u>30-5901-D10-D140</u>			Last four (4) digits of Qualifier No. <u>8223</u>	
TYPE OF IMPROVEMENTS	<input type="checkbox"/> New Construction on Vacant Land <input type="checkbox"/> Alteration Interior <input type="checkbox"/> Alteration Exterior <input type="checkbox"/> Relocation of Structure <input type="checkbox"/> Short Term Event <input type="checkbox"/> New Roof <input type="checkbox"/> Recovery (Roof) <input type="checkbox"/> Permit by Affidavit		<input type="checkbox"/> Enclosure <input checked="" type="checkbox"/> Repair <input type="checkbox"/> Repair Due to Fire <input type="checkbox"/> Demolish <input type="checkbox"/> Shell Only <input type="checkbox"/> Addition Attached <input type="checkbox"/> Addition Detached <input type="checkbox"/> Re-Roof <input type="checkbox"/> Foundation Only		Current use of property <u>Single family Home</u>
	Lot _____ Block _____ Subdivision _____ PBpg _____ Metes and bounds _____		Contractor Name <u>Perfect Roofing & Services</u> Qualifier Name <u>Billy Turner</u> Address <u>284 NE 116 St.</u> City <u>Miami</u> State <u>FL</u> Zip _____		Description of Work <u>Repair 30% percent of roof were current leaking</u> Sq. Ft. <u>30% of 3718</u> Units _____ Floors _____ Value of Work <u>\$ 8,700.00</u>
PERMIT TYPE	<input checked="" type="checkbox"/> Building* <input type="checkbox"/> Electrical <input type="checkbox"/> Mechanical <input type="checkbox"/> Plumbing <input type="checkbox"/> LPGX	CHANGE TO AN EXISTING PERMIT	<input type="checkbox"/> Chg. Contractor <input type="checkbox"/> Re-Issue <input type="checkbox"/> Extension <input type="checkbox"/> Supplement <input type="checkbox"/> Reinspection	OWNER'S NAME	
PERSON TO PICK UP PLANS	Name <u>BILLY TURNER / CHRISTIE FARROW</u> Address <u>284 NE 116 ST</u> City <u>Miami</u> State <u>FL</u> Zip <u>33161</u> Phone <u>786 412 0510</u>		ARCHITECT/ENGINEER		Owner <u>ORLANDO NOA</u> Address <u>9221 SW 122 AVE</u> City <u>Miami</u> State <u>FL</u> Zip <u>33186</u> Phone <u>305 5916 6363</u> Last four (4) digits of Owner's Social Security No. _____
BONDING	Name _____ Address _____ City _____ State _____ Zip _____ Phone _____		MORTGAGE LENDER		Name _____ Address _____ City _____ State _____ Zip _____ Phone _____

*See reverse side for Building Category

Application is hereby made to obtain a permit to do work and installation as indicated. I certify that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that separate permits are required for ELECTRICAL, PLUMBING, SIGNS, POOLS, MECHANICAL, WINDOW, SHUTTERS and ROOFING WORK and there may be additional permits required for other governmental entities.

OWNER'S/PERMIT APPLICANT AFFIDAVIT: I certify that all of the foregoing information is accurate and that I have no unpaid civil penalties, administrative hearing cost investigative, enforcement, testing or monitoring costs or unpaid liens which are owed to Miami-Dade County.

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOU PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR ATTORNEY OR LENDER BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT.

The issuance of the permit does not relieve the property owner from obtaining homeowner's association approval (if required) prior to beginning any work and in no way authorizes work that is in violation of any association rule of regulation.

Signature of Owner or Owner's Agent [Signature]
PRINT NAME Orlando Noa

STATE OF FLORIDA COUNTY OF MIAMI-DADE
Sworn to and subscribed before me this 6th

day of May, 20 10
by Orlando Noa

Signature of Notary Public [Signature]
PRINT NAME RICHARD NUNEZ
MY COMMISSION # DU 003877

Signature of Qualifier [Signature]
PRINT NAME BILLY TURNER

STATE OF FLORIDA COUNTY OF MIAMI-DADE
Sworn to and subscribed before me this _____

day of _____, 20 _____
by _____

Signature of Notary Public _____
Print Name _____
MY COMMISSION # _____

EXHIBIT B

e-Permitting

Search:



Disapproval Remarks

Process Number: C2010081740 Review Type: BLDG BUILDING

Disapproval Remarks
-- ENTERED 05/10/2010 SKY
1. ROOF PLAN AND SCOPE OF WORK IS NOT CLEAR. THE REPAIRS APPEAR TO BE MORE THAN 25% OF THE EXISTING TILE ROOF.
2. WHEN REPAIRS EXCEED 25% OF THE EXISTING ROOF THEN THE ENTIRE ROOF SHALL BE REPLACED TO MEET THE REQUIREMENTS OF THE CURRENT CODE.
3. IF LESS THAN 25% CLEARLY MARK ON THE ROOF PLAN THE PROPOSED REPAIRS.

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EXHIBIT
C

MIAMI-DADE COUNTY BUILDING AND NEIGHBORHOOD COMPLIANCE DEPARTMENT

H. Art S. Saffir Permitting and Inspection Center
 11805 SW 26th Street (Coral Way), Miami, Florida 33175-2474 • (786) 315-2100

PERMIT APPLICATION

123.01-62 PAGE 1 3/10

LOCATION OF IMPROVEMENTS		IF SUBSIDIARY PROVIDE MASTER PERMIT NUMBER HERE		CONTRACTOR INFORMATION	
Job Address <u>9221 SW 122 Ave.</u>		Contractor No. <u>CCC1325929</u>		Last four (4) digits of Qualifier No. <u>8223</u>	
Folio <u>30-3901-010-0140</u>		Contractor Name <u>PERFECT ROOFING</u>		Qualifier Name <u>BILLY TURNER</u>	
Lot <u>14</u> Block <u>1</u>		Address <u>284 NE 116 ST.</u>		City <u>MIAMI</u> State <u>FL</u> Zip <u>33161</u>	
Subdivision <u>KENNELL PLACE</u> Page <u>103-83</u>		Metes and bounds _____		Current use of property <u>RESIDENTIAL</u>	
<input type="checkbox"/> New Construction on Vacant Land <input type="checkbox"/> Alteration Interior <input type="checkbox"/> Alteration Exterior <input type="checkbox"/> Relocation of Structure <input type="checkbox"/> Short Term Event <input type="checkbox"/> New Roof <input type="checkbox"/> Recovery (Roof) <input type="checkbox"/> Permit by Affidavit		<input type="checkbox"/> Enclosure <input type="checkbox"/> Repair <input type="checkbox"/> Repair Due to Fire <input type="checkbox"/> Demolish <input type="checkbox"/> Shell Only <input type="checkbox"/> Addition Attached <input type="checkbox"/> Addition Detached <input checked="" type="checkbox"/> Re-Roof <input type="checkbox"/> Foundation Only		Description of Work <u>REROOF W/ HANSON ROLL TILES</u>	
<input checked="" type="checkbox"/> Building* Category <u>0107</u> <input type="checkbox"/> Electrical <input type="checkbox"/> Mechanical <input type="checkbox"/> Plumbing <input type="checkbox"/> LPGX		<input type="checkbox"/> Chg. Contractor <input type="checkbox"/> Re-Issue <input type="checkbox"/> Extension <input type="checkbox"/> Supplement <input type="checkbox"/> Reinspection		Sq. Ft. <u>34</u> Units _____ Floors _____ Value of Work <u>\$26,000-</u>	
<input checked="" type="checkbox"/> Building* Category <u>0107</u> <input type="checkbox"/> Electrical <input type="checkbox"/> Mechanical <input type="checkbox"/> Plumbing <input type="checkbox"/> LPGX		<input type="checkbox"/> Chg. Contractor <input type="checkbox"/> Re-Issue <input type="checkbox"/> Extension <input type="checkbox"/> Supplement <input type="checkbox"/> Reinspection		Owner <u>ORLANDO NOA</u> Address <u>9221 SW 122 Ave.</u> City <u>MIAMI</u> State <u>FL</u> Zip <u>33147</u> Phone <u>305 596 6363</u> Last four (4) digits of Owner's Social Security No. _____	
PERSON TO PICK UP PLANS Name <u>BILLY TURNER / CHRISTIE</u> Address <u>284 NE 116 ST.</u> City <u>MIAMI</u> State <u>FL</u> Zip <u>33161</u> Phone _____		ARCHITECT ENGINEER Name _____ Address _____ City _____ State _____ Zip _____ Phone _____		OWNER'S NAME Name _____ Address _____ City _____ State _____ Zip _____ Phone _____ Last four (4) digits of Owner's Social Security No. _____	
BONDING Name _____ Address _____ City _____ State _____ Zip _____ Phone _____		MORTGAGE LENDER Name _____ Address _____ City _____ State _____ Zip _____ Phone _____		Name _____ Address _____ City _____ State _____ Zip _____ Phone _____	

*See reverse side for Building Category

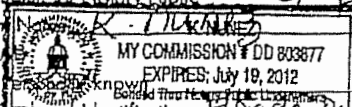
Application is hereby made to obtain a permit to do work and installation as indicated. I certify that all work will be performed to meet the standards of all laws regulating construction in this jurisdiction. I understand that separate permits are required for ELECTRICAL, PLUMBING, SIGNS, POOLS, MECHANICAL, WINDOW, SHUTTERS and ROOFING WORK and there may be additional permits required for other governmental entities.

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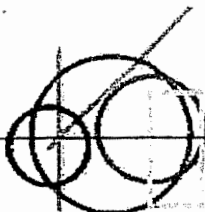
Signature of Owner or Owner's Agent [Signature]
 PRINT NAME ORLANDO NOA
 STATE OF FLORIDA COUNTY OF MIAMI-DADE
 Sworn to and subscribed before me this 27th
 day of May, 2010
 by Orlando Noa

Signature of Notary Public [Signature]
 Print Name R. [Name]
 (SEAL) 
 Personally known _____
 or Produced Identification Florida Driver License

Signature of Qualifier [Signature]
 PRINT NAME BILLY TURNER
 STATE OF FLORIDA COUNTY OF MIAMI-DADE
 Sworn to and subscribed before me this _____
 day of _____, 20____
 by _____

Signature of Notary Public _____
 Print Name _____
 (SEAL) _____
 Personally known _____
 or Produced Identification _____





**STEADFAST ENGINEERING GROUP
CONSULTING ENGINEERS**

201 Osage Drive
Indian Harbour Beach, Florida 32937
Office Phone: (321) 733-2706, (561) 506-5784
Fax: (321) 773-7814

The Old Havana Tile Company

1065 East 31 St, Hialeah FL 33013

November 4, 2009

To whom it may concern,

In reference to the pictures of the 9"-10" Concrete broom swept tile, The Old Havana Tile Company does not have any in stock. The tiles in the pictures have been out of circulation for a considerable time now. Any broom swept tile without identifying marks on them found in the market place are most probably reclaimed tile and getting a color match would be difficult.

If any further information is needed, please don't hesitate to contact me.

Regards,

Fred Perdomo
786-346-0532

EXHIBIT
C



VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED & U.S. MAIL

Jason Pyle
Five Star Claims Adjusting
14505 Commerce Way, #220
Miami Lakes, FL 33016

RE:	Insured:	Orlando Noa
	Claim Number:	PDFH009433
	Date of Loss:	10/24/2005
	Policy Number:	RJH0281706
	Property Address:	9221 SW 122 nd Ave-Miami, FL

Dear Mr. Pyle:

In reference to the above captioned loss, we are in receipt of your letter dated June 30, 2010, in which you have requested a claim for Ordinance and Law coverage be considered.

This claim was settled in the Appraisal process with the award being prepared by Umpire David Gale. After the award was signed you submitted documentation to show a failed roof repair permit. The permit application stated an 1100 square foot roof repair which is in excess of what was allowed by the Umpire. In his award, Mr. Gale allowed \$3780.00 as the actual roof repair. It was for replacement of 120 broken roof tiles. This calculates to less than 3% of the total roof area. Due to the fact that only 3% of the roof was being repaired it does not trigger Ordinance and Law coverage.

Pursuant to the above, First Home Insurance Company Inc, will not consider or change its position regarding your request.

Any action that First Home took in the investigation and/or defense of this occurrence is not to be construed as a waiver of any policy terms and conditions. By sending this reservation, First Home expressly reserves the right to rely on those terms and conditions in deciding whether or not coverage is afforded under the policy.

Sincerely,

Nicole A. Wilson, PCLA, FCLS
Senior Property Examiner
Direct: 407.215.6116
Fax: 866.408.4094
Email: nicole.wilson@claims-ins.com

Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree. Florida Statute 817.234

2300 Maitland Center Pkwy • Suite 250 • Maitland, FL 32751
Phone: 800 220-4540 • Fax: 866 851-1421



120368/4
IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 11-12182 CA 15

ORLANDO NOA,

Plaintiff,

v.

FLORIDA INSURANCE GUARANTEE
ASSOCIATION,

Defendant.

**DEFENDANT'S ANSWER AFFIRMATIVE DEFENSES AND INCORPORATED
MOTION TO DISMISS COUNT II OF PLAINTIFF'S SECOND AMENDED COMPLAINT**

The Third Party Defendant, FLORIDA INSURANCE GUARANTEE ASSOCIATION, by and through its undersigned counsel hereby files this, its Answer, Affirmative Defenses and Incorporated Motion to Dismiss Count II of Plaintiff ORLANDO NOA's Second Amended Complaint as follows:

1. That this Defendant denies each and every allegation set forth in Paragraphs 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 and demands strict proof thereof.
2. That this Defendant admits Paragraph 3 for venue purposes only. In all other respects the allegations of Paragraph 3 are denied and strict proof is demanded thereof.
3. That the Defendant denies each and every allegation set forth in Plaintiff's Second Amended Complaint which is not specifically admitted.

4. The Defendant demands trial by jury on all issues triable as of right by jury.

5. The Defendant denies each and every allegation of breach, causation in fact, proximate cause, and damages, and demands strict proof thereof.

AFFIRMATIVE DEFENSES

1. That no breach of contract occurred because a Neutral Umpire issued an appraisal award which is a valid and binding determination of the extent of damages and the amount of loss pursuant to the policy of insurance and Florida case law. The Neutral Umpire's publication of the appraisal award and First Home Insurance Company's payment of the same precludes the actions set forth in the Amended Complaint.

2. That the cause of action is barred because the Plaintiff and First Home Insurance Company entered into the contractual alternative dispute resolution of appraisal, invoked by Plaintiff. Specifically, Plaintiff and First Home Insurance Company agreed to follow the provision of the policy, which states:

SECTION I – CONDITIONS

* * *

6. ***Appraisal*** is deleted and replace by the following:

6. ***Mediation or Appraisal.*** If you and we fail to agree on the amount of loss, either may:

* * *

b. *Demand an appraisal of the loss. In this event, each party will choose a competent appraiser within twenty (20) days after the receipt of a written request from the other. The two appraisers will choose an umpire. If they cannot*

agree upon an umpire within (15) days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of the loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of the loss.

The appraisal process was duly demanded by Plaintiff and the appraisal was completed with the issuance of a binding award which was paid by First Home Insurance Company. Pursuant to the policy provisions above, the appraisal process was invoked and was completed in accordance of the policy. The appraisal process determined the extent of the roof damages, determined the total amount of loss and an appraisal award was issued accordingly, which was properly paid by the carrier First Home Insurance Company. Therefore, there can be no breach of contract as the contract was fully performed by First Home Insurance Company.

3. That this cause of action is barred due to the doctrine of satisfaction and accord. The cause of action is barred due to that Plaintiff's claim for damages at issue in this litigation went to appraisal pursuant to the insurance contract and the insurer, First Home Insurance Company paid an appraisal award of \$17,602.10 less prior payments and the policy's deductible pursuant to First Home Insurance Company's obligations under the policy.

4. That the cause of action is barred due to the doctrine of payment. Specifically, First Home Insurance Company made payment in the amount of \$17,602.10, less prior payment and policy's deductible, to Plaintiff for the appraisal award, thereby precluding the instant action set forth in the Amended Complaint.

5. The Plaintiff's Amended Complaint seeking damages is precluded by the election of remedies. Plaintiff elected to pursue the remedy of "appraisal," which determined the extent of the roof damages and determined the total amount of loss. Following the mutual agreement between Plaintiff and First Home Insurance Company to participate in appraisal and the execution of a binding appraisal award and payment of same, Plaintiff filed its Complaint seeking damages for breach of contract for the alleged failure to comply with the policy provisions. Plaintiff's election of the two remedies is co-existent, in that they relate to the same set of facts, however, are inconsistent, as each remedy would result in a different resolution. Pursuant to the doctrine of the election of remedies, Plaintiff is estopped from seeking damages for breach of contract where the elected remedy was to engage in alternative dispute resolution, which First Home Insurance Company has participated in, as provided by the contract.

6. That the Defendant states that the liability to the Plaintiff, if any, is limited by the terms and conditions of the policy including all exclusions, limitations, conditions and deductive provisions contained therein.

7. That the Defendant states that the Plaintiff has failed to mitigate his damages.

8. That the Defendant is entitled to a set off for all amounts previously paid to the Plaintiff with regard to the subject claim and/or related alleged damages as well as from any other sources, or collateral source.

MOTION TO DISMISS

Defendant, FLORIDA INSURANCE GUARANTY ASSOCIATION ("FIGA") by and through its undersigned counsel hereby files this Motion to Dismiss in response to Count II of Plaintiff ORLANDO NOA ("NOA") Second Amended Complaint, and as grounds therefore states as follows:

1. In this case, Plaintiff has filed this lawsuit seeking payment of Ordinance and Law benefits for a loss which occurred on or about October 24, 2005. The Defendant has denied said claim for Ordinance and Law benefits stating that the extent of the damages and the amount of the October 24, 2005 loss were set in an April 2010 Appraisal Award which was properly paid by the Plaintiff's carrier and is therefore binding upon the parties.

2. Plaintiff NOA filed a two-count Complaint against Defendant FIGA. Count I - Breach of Contract and Count II - Declaratory Judgment. (See Second Amended Complaint, attached hereto as "Exhibit A.").

3. Count II of the Second Amended Complaint should be dismissed for failure to state a cause of action.

4. The Plaintiff has not cited anywhere within the four corners of the Second Amended Complaint any true ambiguities which are necessary for policy interpretation. If fact, there is no dispute at all as to the content nor interpretation of the policy's language. This is simply a breach of contract action where there is a dispute concerning the extent of roof damages and their application to the subject policy.

5. "Florida law is clear that declaratory relief is not usually available to settle coverage questions under an insurance contract that is clear and unambiguous, because such instances present no need for contract construction." Tobon, supra, quoting Traveler's Ins. Co. v. Emery, 579 So. 2d 798 (Fla. 1st DCA 1991); Accord, New Amsterdam Cas. Co. v. Inner City Supply Corp., 212 So. 2d 110 (Fla. 4th DCA 1968).

6. In order to state a proper cause of action for a complaint for declaratory relief, the Plaintiff must plead and show the following:

i. There is a bona fide, actual, present practical need for the declaration;

- ii. That the declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts;
- iii. That some immunity, power, privilege or right to the complaining party is dependent upon the facts or the law applicable to the facts;
- iv. That there is some person or persons who have, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law;
- v. That the antagonistic and adverse interests are all before the Court by proper process or class representation; AND,
- vi. That the relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity. Coal. for Adequacy & Fairness in Sch. Funding Inc. v. Chiles, 680 So. 2d 400, 404 (Fla. 1996).

7. Although Plaintiff states he is in doubt as to his rights, duties and obligations under the subject contract, he has not set forth any ambiguity in the terms of the insurance contract in need of true construction. To the contrary, Plaintiff alleges that Defendant improperly denied coverage for Ordinance and Law which Plaintiff claims he is entitled to. From a plain reading of the proposed Second Amended Complaint and staying strictly within the four corners of the Complaint for Declaratory Relief, there is no doubt that the real dispute is one concerning whether a breach of the contract occurred, not a doubt as to the meaning, interpretation and or applicability of the policy. See Swayne v. Reliable Ins. Co., 200 So. 2d 862 (Fla. 3d DCA 1967) (although the insured alleges in her Complaint she was in doubt as to her rights under the policy, she presented no facts or circumstances reflecting a doubt as to the meaning, interpretation and or applicability of the policy or coverage thereunder).

8. While the court typically grants leave to amend freely, in cases where an amendment would be futile, such as this case, amendment is not appropriate. Leave to

amend is properly denied when amendment would be futile. Thompson v. Bank of New York, 862 So.2d 768, 770 (Fla. 4th DCA 2003).

WHEREFORE, Defendant FLORIDA INSURANCE GUARANTEE ASSOCIATION respectfully requests that the Court deny Plaintiff's Motion for Leave to Amend for the reasons set forth above, or provide any other relief the Court deems necessary and just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Leonardo H. DaSilva, II, Esquire, Attorney for Plaintiff, Alvarez Carbonell Feltman & Da Silva, PL, 75 Valencia Avenue, 8th Floor, Coral Gables, FL 33145, ldasilva@acfdlaw.com; aruiz@acfdlaw.com, NGrandal@acfdlaw.com, SGuerrero@acfdlaw.com; service@acfdlaw.com by electronic mail on February 10, 2015.

CONROY SIMBERG
3440 Hollywood Boulevard, Second Floor
Hollywood, FL 33021
Telephone: (954) 961-1400 Broward
Facsimile: 954-518-8743
Primary Email: eservicehwd@conroysimberg.com
Secondary Email: mortiz@conroysimberg.com

By: /s/ Maria D. Ortiz
Maria D. Ortiz, Esquire
Florida Bar No. 051360

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ORLANDO NOA,

Plaintiff,

GENERAL JURISDICTION DIVISION

CASE NO.: 11-12182 CA 15

v.

FLORIDA INSURANCE GUARANTY
ASSOCIATION,

Defendant.

_____ /

SECOND AMENDED COMPLAINT

ORLANDO NOA ("Plaintiff"), hereby sues Defendant, FLORIDA INSURANCE GUARANTY ASSOCIATION ("FIGA"), and alleges as follows:

PARTIES, JURISDICTION & VENUE

1. This is an action for damages that exceed fifteen thousand dollars (\$15,000.00) exclusive of interest, costs and fees.
2. Plaintiff is an individual who at all times material hereto has resided in Miami-Dade County, Florida.
3. Venue is proper in Miami-Dade County, Florida because the contract, which forms the subject matter of this lawsuit, was executed in Miami-Dade County, Florida and the subject property is located in Miami-Dade County.
4. First Home Insurance Company, ("First Home"), was adjudicated to be insolvent by the Second Judicial Circuit of Leon County, Florida.

EXHIBIT
A

5. FIGA is a statutorily created not-for-profit entity that is a mechanism for paying covered claims as defined under Section 631.54, Florida Statutes, filed against First Home.

6. Due to First Home's insolvency, FIGA has assumed the liabilities and obligations of the subject claim.

7. All conditions precedent to the filing of this lawsuit have occurred, have been waived, or have been performed.

GENERAL ALLEGATIONS

8. At all times material hereto, in consideration of a premium paid by Plaintiff, there was in full force and effect a certain homeowners insurance policy issued by Citizens Property Insurance Corporation with a policy number of FRJH0281706 (the "Policy").¹

9. First Home assumed the Policy.

10. FIGA therefore is responsible for the terms, conditions and obligations under the Policy.

11. Accordingly, under the terms of the Policy, FIGA is obligated to provide insurance coverage to Plaintiff's property against certain losses.

12. The damaged property is located at 9221 SW 122ND Avenue, Miami, Florida 33186 ("Property").

13. On or about October 24, 2005, while the Policy was in full force and effect, the Property sustained a covered loss as a result of hurricane damage (the "Loss").

14. First Home assigned claim number PDFH009433 and an insurance adjuster to adjust the Loss.

¹ See Declarations Page of Policy attached as Exhibit A.

15. Accordingly, First Home inspected the Property and tendered a payment of insurance proceeds to Plaintiff.

16. Thereafter, the claim went through the appraisal process and an appraisal award was entered for Coverage A.

17. The appraisal award was paid by First Home, however, Ordinance and Law coverage was triggered when the application for the permit was attempted and Plaintiff requested additional funds.

18. First Home denied Plaintiff's request for Ordinance and Law.

19. Additionally, upon FIGA stepping into the shoes of First Home, FIGA thereafter denied Plaintiff's request for Ordinance and Law coverage.

20. Therefore, Plaintiff has suffered and continues to suffer damages resulting from FIGA's breach of the Policy.

21. Plaintiff has become obligated to retain the undersigned attorneys for the prosecution of this action and is entitled to reasonable attorneys' fees pursuant to Section 627.428, Florida Statutes.

COUNT I **BREACH OF CONTRACT**

Plaintiff reincorporates paragraphs 1 through 21 as if fully set forth herein.

22. It is undisputed that Plaintiff and FIGA are bound by a contract, the Policy, wherein Plaintiff agreed to pay a premium and FIGA agreed to provide coverage for Plaintiff's Property and must insure Plaintiff's Property against certain losses.

23. Plaintiff has paid all premiums due and owing as contemplated by the Policy, thus fully performing his obligations under the Policy.

24. Further, at all times material hereto, Plaintiff has satisfied all post-loss obligations accorded in the Policy.

25. In contrast, FIGA has failed to indemnify Plaintiff as required under the Policy for his Ordinance and Law coverage.

26. As a result of the foregoing, FIGA has breached the Policy.

27. As a direct and proximate result of FIGA's breach of the Policy, Plaintiff has sustained damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against FIGA for damages for failure to pay the Ordinance and Law coverage, plus interest, court costs and reasonable attorneys' fees pursuant to Section 627.428, Florida Statutes, and that drafts for insurance proceeds comply with Section 627.70121, Florida Statutes.

COUNT II
DECLARATORY JUDGMENT

Plaintiff reincorporates paragraphs 1 through 21 as if fully set forth herein.

28. It is undisputed that Plaintiff and FIGA are bound by a contract, the Policy, wherein Plaintiff agreed to pay a premium and FIGA stepped into the shoes of First Home and must insure Plaintiff's Property against certain losses.

29. Plaintiff has paid all premiums due and owing as contemplated by the Policy, thus fully performing his obligations under the Policy.

30. Further, at all times material hereto, Plaintiff has satisfied all post-loss obligations accorded in the Policy.

31. In contrast, FIGA has failed to make any additional payments of insurance proceeds to Plaintiff and therefore, FIGA has failed to properly indemnify Plaintiff.

32. Pursuant to Section 86.021, Florida Statutes, Plaintiff seeks declaratory judgment with respect to whether Ordinance and Law coverage was properly triggered by the subject loss.

33. There is a bona fide, actual, present, and practical need for this declaration, as Plaintiff needs to determine whether Ordinance and Law is triggered and therefore must be paid by FIGA or whether Ordinance and Law was not triggered by the subject loss.

34. It is FIGA's position that Ordinance and Law coverage was not triggered by the subject loss.

35. It is Plaintiff's position that Ordinance and Law coverage was triggered by the subject loss.

36. Accordingly, there is an actual and present dispute as to coverage under the Policy that this Court has jurisdiction to determine.

37. All antagonistic and adverse interests are before the Court and the relief sought is not merely the giving of legal advice or answers to questions propounded by curiosity.

WHEREFORE, Plaintiff, ORLANDO NOA, respectfully requests that this Honorable Court enter an Order declaring that:

- a. Ordinance and Law was triggered by the subject loss;
- b. Plaintiff is entitled to payment from FIGA for the Ordinance and Law coverage;
- c. Plaintiff is entitled to fees and costs under section 627.428, Florida Statutes.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues triable as a matter of right.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was furnished via electronic correspondence to: SGoldberg@conroysimberg.com and eservicehwd@conroysimberg.com on this ____ day of October 2014.

**ALVAREZ CARBONELL FELTMAN
& DA SILVA P.L.**

Counsel for Plaintiff

75 Valencia Avenue, 8th Floor
Coral Gables, Florida 33134
Telephone No. (305) 444-5885
Facsimile No. (305) 444-8986

By: _____
Leonardo H. Da Silva II, Esq.
Florida Bar No. 63259
LDaSilva@acfdlaw.com
Amy E. Ruiz, Esq.
Florida Bar No. 99129
ARuiz@acfdlaw.com
Nicholas A. Grandal, Esq.
Florida Bar No. 103534
NGrandal@acfdlaw.com



Citizens Property Insurance Corporation

Citizens Service Center
 7077 Bonneval Road, Suite 500
 Jacksonville, FL 32216-6064

Homeowners HO-3 Special Form Policy - Renewal Declarations

Policy Number: FRJH0281706-04-0000

Policy Period: From 03/30/05 To 03/30/06

12:01 A.M. Eastern time at the location of the Residence Premises

Named Insured and Mailing Address: ORLANDO NOA ERMILA NOA 9221 SW 122ND AVE MIAMI, FL 33186-2053	Location of Residence Premises: 9221 SW 122ND AVE MIAMI, FL 33186-2053	Agent: Phone (305) 558-2062 Centurion Insurance Agency Inc Paulino Antonio Nunez 3902 W 12th Ave Hialeah, FL 33012-4105 FL License: A193961 Citizens ID: 007618
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Coverage is only provided where a premium and a limit of liability is shown.

Flood coverage is not provided in this policy.

DEDUCTIBLES:	ALL OTHER PERILS: \$500	HURRICANE: \$4,392 (2%)	
SECTION I - PROPERTY COVERAGES		LIMIT OF LIABILITY	ANNUAL PREMIUM
A - Dwelling		\$219,600	\$3,492
B - Other Structures		\$21,960	INCLUDED
C - Personal Property		\$105,800	INCLUDED
D - Loss of Use		\$21,960	INCLUDED
SECTION II - LIABILITY COVERAGES			
E - Personal Liability (Basic Limit \$100,000)		\$300,000	\$18
F - Medical Payments		\$2,000	INCLUDED
OPTIONAL COVERAGES			

MANDATORY ADDITIONAL CHARGES

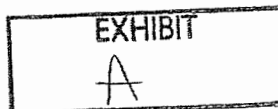
Florida Insurance Guaranty Association	\$0
Emergency Management Preparedness and Assistance Trust Fund	\$2
Citizens Market Equalization Surcharge	\$0
Citizens Emergency Assessment	\$0
Citizens Wind Market Equalization Surcharge	\$0
Tax Exempt Surcharge	\$61

TOTAL POLICY PREMIUM INCLUDING ASSESSMENTS AND ALL SURCHARGES \$3,573

IF PAYMENT IS NOT RECEIVED BY 3/30/05, COVERAGE IS NOT IN EFFECT.

Insured Note: The portion of your premium for Hurricane Coverage is: \$2,159

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Policy Number: FRJH0281706-04-0000

Policy Period: From 03/30/05 To 03/30/06
 12:01 A.M. Eastern time at the location of the Residence Premises

PAGE 2

Forms and Endorsements applicable to this policy:

HO 00 03 04 91 CIT 13 05 93 CIT 16 09 95 CIT 23 07 04* CIT 24 01 98 CIT 30 05 02
 HO 04 16 04 91 HO 04 96 04 91 HO 23 70 07 01

Rating Information:

Form Type HO3	Year Built / Verified 1979/No	Town/Row House No	Construction Type Masonry	BCEGS 99	Territory 034	Wind / Hail Exclusion No	Mun Code Fire / Police 999 / 999
County MIAMI-DADE	Occupancy Owner	Use Primary	No. Of Families 1	Protection Class 04	Dist To Hydrant 1,000 feet	Dist To Fire Station 5 miles	
Protective Device Credits				No Dec Or Prior Insurance Surcharge No	Seasonal Surcharge No	Updates Surcharge No	
Burglar Alarm Yes	Fire Alarm Yes	Sprinkler No					
Terrain C	Building Type 1-4 Units	Roof Cover Non FBC Equivalent	Roof Deck Attachment A - 6d @ 6" / 12"	Roof-Wall Connection Toe Nails			
Secondary Water Resistance No	Roof Shape Flat	Opening Protection None	FBC Wind Speed N/A	FBC Wind Design N/A			

A premium adjustment of \$0 is included to reflect the building's wind loss mitigation features or construction techniques that exists.
 Credits range from 0% to 45%

A premium adjustment of \$0 is included to reflect the building code grade for your area. Adjustments range from a 5% surcharge to a 46% credit.

Agent Note: The portion of premium for CAT Protection Surcharge is: \$1,088.

Property coverage limit increased due to inflation measured by the MSB Index.

THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE LOSSES, WHICH MAY RESULT IN HIGH OUT OF POCKET EXPENSES TO YOU.

INFORMATION ABOUT YOUR POLICY MAY BE MADE AVAILABLE TO INSURANCE COMPANIES AND/OR AGENTS TO ASSIST THEM IN FINDING OTHER AVAILABLE INSURANCE MARKETS.

PLEASE CONTACT YOUR AGENT IF THERE ARE ANY QUESTIONS PERTAINING TO YOUR POLICY. IF YOU ARE UNABLE TO CONTACT YOUR AGENT, YOU MAY REACH YOUR SERVICER AT (888) 685-1555.

Authorized By: Pauline Antonio

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APPRAISAL AWARD

Name of Insured : Orlando Noa
 Loss Location : 9221 SW 122 Avenue
 Miami, FL 33186
 Policy Number : FH0016324
 Claim Number : PDFH009433
 Date of Loss : 10/24/2005

We, the undersigned, pursuant to the within appointment, DO HEREBY CERTIFY that we have truly and conscientiously performed the duties assigned to us, agreeably to the foregoing stipulations, and we have appraised and determined and do hereby award as the amount of loss the following sums to wit:

COVERAGE	RCV	ACV
Building	\$17,602.10	\$17,602.10
Law & Ordinance	not appraised	
APS	not appraised	
Contents	not appraised	
ALE	not appraised	

This award is subject to all terms and conditions of the insurance policy. This award is made without consideration for any prior partial payments or deductible(s). Prior payments, if any, will be subtracted from the gross award amount listed above.

Witness our hands:

 Jason Pyle
 Appraiser for Insured

 Date

Glenn Carlson 4/19/10

4/19/10

 Date

 Glenn Carlson
 Appraiser for Insurer

David Gale

 David Gale
 Umpire

4/12/10

 Date

EXHIBIT
B

120368
IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

CASE NO. 11-12182 CA 15

ORLANDO NOA,

Plaintiff,

v.

FLORIDA INSURANCE GUARANTEE
ASSOCIATION,

Defendant.

**DEFENDANT'S NOTICE OF SERVING VERIFIED ANSWERS TO
PLAINTIFF'S SECOND SET OF INTERROGATORIES**

The Defendant, FLORIDA INSURANCE GUARANTEE ASSOCIATION, by
and through undersigned counsel hereby files its Verified Answers to Plaintiff's Second
Set of Interrogatories propounded under certificate of service of September 15, 2014.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Leonardo H. Da Silva, II, Esquire, Attorney for Plaintiff, Alvarez Carbonell Feltman & Da Silva, PL, 75 Valencia Avenue, 8th Floor, Coral Gables, FL 33145, ldasilva@acfdlaw.com; aruiz@acfdlaw.com, NGrandal@acfdlaw.com, SGuerrero@acfdlaw.com; service@acfdlaw.com by electronic mail on December 2, 2014.

CONROY SIMBERG
3440 Hollywood Boulevard, Second Floor
Hollywood, FL 33021
Telephone: (954) 961-1400 Broward
Facsimile: 954-518-8660
Primary Email: eservicehwd@conroysimberg.com
Secondary Email: sgoldberg@conroysimberg.com

By: /s/ Maria D. Ortiz
Maria D. Ortiz, Esquire
Florida Bar No. 51360
Seth R. Goldberg, Esquire
Florida Bar No. 032204

SECOND SET OF INTERROGATORIES

1. Did Plaintiff comply with all post-loss obligations under the Policy? If your answer is no, please specify each and every post-loss obligation Plaintiff allegedly failed to comply with, and what prejudice his alleged failure to comply caused on Defendant.

Yes.

2. Please explain why Defendant is refusing to pay for Plaintiff's Law and Ordinance claim.

Defendant has denied Plaintiff's claim for Ordinance and Law benefits because the damages for the October 24, 2005 loss were set in an April 2010 Appraisal Award which is binding upon the parties and did not warrant the triggering of Ordinance and Law coverage. Also, please see Defendant's Motion for Summary Judgment filed and served on May 7, 2013.

STATE OF FLORIDA)
) SS:
COUNTY OF)

Cheryl A. May, being duly sworn, deposes and says that the attached are true and correct to the best of her knowledge, information and belief.

[Signature]
Representative of Florida Guaranty Association, Inc.

SWORN TO AND SUBSCRIBED before me this 2ND day of DECEMBER, 2014.

Bonnie H Smith
NOTARY PUBLIC

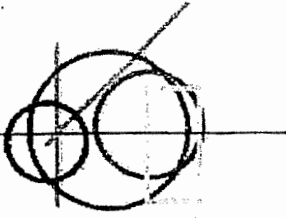
My Commission Expires:
6/9/2018



(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known or Produced Identification

Type of Identification Produced: _____



**STEADFAST ENGINEERING GROUP
CONSULTING ENGINEERS**

201 Osage Drive
Indian Harbour Beach, Florida 32937
Office Phone: (321) 733-2706, (561) 506-5784
Fax: (321) 773-7814

The Old Havana Tile Company

1065 East 31 St, Hialeah FL 33013

November 4, 2009

To whom it may concern,

In reference to the pictures of the 9"-10" Concrete broom swept tile, The Old Havana Tile Company does not have any in stock. The tiles in the pictures have been out of circulation for a considerable time now. Any broom swept tile without identifying marks on them found in the market place are most probably reclaimed tile and getting a color match would be difficult.

If any further information is needed, please don't hesitate to contact me.

Regards,

Fred Perdomo
786-346-0532

120368
IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO. 11-12182 CA 15

ORLANDO NOA,

Plaintiff,

v.

FLORIDA INSURANCE GUARANTEE
ASSOCIATION,

Defendant.

**DEFENDANT FLORIDA INSURANCE GUARANTEE ASSOCIATION'S MOTION TO
RE-OPEN APPRAISAL**

COMES NOW Defendant, FLORIDA INSURANCE GUARANTY ASSOCIATION (hereinafter "FIGA"), through its undersigned counsel, and hereby files this, its Motion to Re-Open Appraisal and states as follows:

1. Plaintiff has filed suit for breach of contract and declaratory judgment, seeking monetary damages against Defendant.

2. Citizens Property Insurance Corporation issued a homeowners' policy insurance to Plaintiff, Policy Number FRJH0281706-04. First Home Insurance Company, Inc. ("First Home") assumed the policy. Due to First Home's insolvency, FIGA assumed the liabilities and obligations of First Home, subject to the FIGA Act.

3. On or about October 24, 2005, the Property sustained a covered loss as a result of Hurricane Wilma.

4. First Home and Plaintiff participated in an appraisal and an appraisal award was entered in 2010.

5. The appraisal award provided in pertinent part as follows:

COVERAGE	RCV	ACV
Building	\$17,602.10	\$17,602.10
Law & Ordinance	not appraised...	

6. First Home paid the appraisal award.

7. With regard to the roof on the Property, the appraisal determined that a total of 120 roof tiles out of approximately 3960 needed to be repaired as well as the underlayment. (Affidavit of Glenn Carlson, ¶ 7; Estimate prepared by neutral umpire attached to Affidavit of Glenn Carlson).

8. The total amount of roof tile and underlayment repair awarded in the appraisal award amounted to less than 3% of the total roof area, approximately 96 square feet. (Affidavit of Glenn Carlson, ¶¶ 8, 11)

9. Due to the fact that only less than 3% of the total roof area needed repair, which is considerably less than the 25% of total area which would trigger the City's requirement that the entire roof be replaced to current ordinance standards, Ordinance and Law coverage was not implicated in the appraisal process. (Affidavit of Glenn Carlson, ¶ 10).

10. The appraisal award is signed by Mr. Carlson and by the neutral umpire, but not by Plaintiff's appraiser, Jason Pyle.

11. Subsequent to the appraisal award, Plaintiff sought a permit from the Miami-Dade County Building Department to make repairs to 30% of the roof.

12. The permit was rejected since, to meet the requirements of the current code, when repairs to a roof exceed 25%, a new roof is required.

13. Plaintiff's claim for a new roof was denied and this suit followed.

14. On September 25, 2015, a hearing took place on Defendant's Amended Motion for Summary Judgment wherein Defendant argued that the total amount of Plaintiff's loss from Hurricane Wilma was set by the appraisal award and that under Florida law, an appraisal clause, such as the one currently at issue, sets the amount of loss and is **binding**. See *State Farm Fire & Casualty Co. v. Middleton*, 648 So. 2d 1200, 1202 (Fla. 3d DCA 1995)

15. The Court, without opinion, denied Defendant's motion.

16. Defendant presumes that outstanding questions of fact remain and therefore, the Court was unable to grant summary judgment.

17. As such, Defendant seeks an Order from the Court to re-open the prior appraisal and send the Hurricane Wilma roof damage claim back to the original appraisal panel to clarify its appraisal award as to the roof damage claim in order to clarify whether the amount of loss to the roof is 3% or 30%.

18. No prejudice will result to the Plaintiff in the granting of this motion and in fact, the Plaintiff is in agreement with sending the claim back to appraisal based on its recent filing of a Motion to Compel Appraisal and Abate the Action.

WHEREFORE, for the foregoing reasons and other reasons to be argued at a hearing on this motion, Defendant, FLORIDA INSURANCE GUARANTY ASSOCIATION, respectfully requests that this Honorable Court grant its Motion to Re-Open Appraisal and any other relief that this Honorable Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by service through the eportal to Leonardo H. DaSilva, II, Esquire, Attorney for Plaintiff, Alvarez Carbonell

Feltman & Da Silva, PL, 75 Valencia Avenue, 8th Floor, Coral Gables, FL 33145,
ldasilva@acfdlaw.com;aruiz@acfdlaw.com, NGrandal@acfdlaw.com,
SGuerrero@acfdlaw.com;service@acfdlaw.com on November 16, 2015.

CONROY SIMBERG
Attorney for Defendant
3440 Hollywood Boulevard, Second Floor
Hollywood, FL 33021
Telephone: (954) 961-1400 Broward
Facsimile: 954-518-8743
Primary Email: eservicehwd@conroysimberg.com
Secondary Email: mortiz@conroysimberg.com

By: /s/ Maria D. Ortiz
Maria D. Ortiz, Esquire
Florida Bar No. 051360

120368
IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

CASE NO. 11-12182 CA 15

ORLANDO NOA,

Plaintiff,

v.

FLORIDA INSURANCE GUARANTEE
ASSOCIATION,

Defendant.

AFFIDAVIT OF GLENN CARLSON

STATE OF FLORIDA)

COUNTY OF BROWARD)

BEFORE ME, this date personally appeared Glenn Carlson, who after being first
duly sworn hereby states, as follows:

1. I am over the age of 21 years and not laboring under any disabilities.
2. I have personal knowledge of the facts set forth in this Affidavit.
3. I was selected to act as an appraiser in the valuation of a loss to a property
located at 9221 Southwest 122 Avenue, Miami, Florida 33147.
4. Following an inspection of the property and numerous conferences with the
insured's appraiser, Jason Pyle and the neutral umpire, David Gale, an appraisal award
was issued.

5. A copy of the executed appraisal awarded is attached hereto as **Exhibit "A"**.

6. A copy of the estimate upon which the appraisal award is based and sets forth the damages observed at the property is attached hereto as **Exhibit "A"**.

7. With regards to the roof, a total of 120 roof tiles out of approximately 3960 needed to be repaired as well as the underlayment.

8. The total amount of roof tile and underlayment repair awarded in the appraisal award amounted to less than 3% of the total roof area.

9. The total amount of damage to the roof caused by Hurricane Wilma was also less than 3% of the total roof area.

10. Due to the fact that only less than 3% of the total roof area needed repair, which is considerably less than the 25% of total area which would trigger the City's requirement that the entire roof be replaced to current ordinance standards, Ordinance and Law coverage was not implicated in the appraisal process.

11. The total amount of square footage allocated for roof repairs was approximately 96

12. If the insured pulled a permit to repair the amount of square footage allocated in the appraisal award, the permit would not have been rejected by the City.

Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

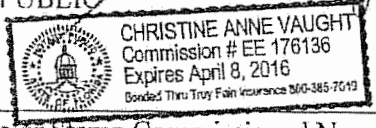
FURTHER AFFIANT SAYETH NAUGHT.

Glenn Carlson

GLENN CARLSON

SWORN TO AND SUBSCRIBED before me this 12 day of August, 2014.

Christine Anne Vaught
NOTARY PUBLIC



(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced: _____

SWORN TO AND SUBSCRIBED

before me this 12 day of

August, 2014.

MY COMMISSION EXPIRES:

APPRAISAL AWARD

Name of Insured : Orlando Noa
 Loss Location : 9221 SW 122 Avenue
 Miami, FL 33186
 Policy Number : FH0016324
 Claim Number : PDFH009433
 Date of Loss : 10/24/2005

We, the undersigned, pursuant to the within appointment, DO HEREBY CERTIFY that we have truly and conscientiously performed the duties assigned to us, agreeably to the foregoing stipulations, and we have appraised and determined and do hereby award as the amount of loss the following sums to wit:

COVERAGE	RCV	ACV
Building	\$17,602.10	\$17,602.10
Law & Ordinance	not appraised	
APS	not appraised	
Contents	not appraised	
ALE	not appraised	

This award is subject to all terms and conditions of the insurance policy. This award is made without consideration for any prior partial payments or deductible(s). Prior payments, if any, will be subtracted from the gross award amount listed above.

Witness our hands:

 Jason Pyle
 Appraiser for Insured

 Date

 Glenn Carlson
 Appraiser for Insurer

 Date

 David Gale
 Umpire

 Date

EXHIBIT "A"

GALE CLAIMS SERVICE, INC.

13762 W. State Road 84
Suite #412
Davie, FL 33325

Insured: Orlando Noa
Property: 9221 SW 122nd Ave.,
Miami, FL 33186

Claim Rep.: Dave Gale

Business: (954) 328-7880

Estimator: Dave Gale

Business: (954) 328-7880

Claim Number: PDFH009433

Policy Number: FRJH0281706

Type of Loss: Hurricane

Date of Loss: 10/24/2005

Date Received: 2/23/2010

Date Inspected:

Date Entered: 3/10/2010 12:55 PM

Price List: FLMI5B_JAN10
Restoration/Service/Remodel
Estimate: U10-2854

GALE CLAIMS SERVICE, INC.

13762 W. State Road 84
 Suite #412
 Davie, FL 33325

U10-2854
 DWELLING

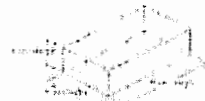
Roof



DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
R&R Tile roofing - Clay - 'S' or flat (per TILE)	120.00 EA	31.50	3,780.00	<0.00>	3,780.00
Roofing repair - underlayment*	1.00 EA	1,200.00	1,200.00	<0.00>	1,200.00
Hydrasheen roof to obtain color match*	3,488.00 SF	1.25	4,360.00	<0.00>	4,360.00 ✓
Taxes, insurance, permits & fees†	1.00 EA	350.00	350.00	<0.00>	350.00
Haul debris - per pickup truck load - including dump fees	1.00 EA	120.85	120.85	<0.00>	120.85
Totals: Roof			9,810.85	0.00	9,810.85

W Bedroom

LxWxH 11' 10" x 9' 11" x 8'



330.20 SF Walls	117.33 SF Ceiling
447.53 SF Walls & Ceiling	117.33 SF Floor
13.04 SY Flooring	40.83 LF Floor Perimeter
94.66 SF Long Wall	79.33 SF Short Wall
43.50 LF Ceil. Perimeter	

Missing Wall: 1 - 2'8" X 6'8"

Opens into Exterior

Goes to Floor

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Contents - move out then reset	1.00 EA	38.02	38.02	<0.00>	38.02
Floor protection - self-adhesive plastic film	117.33 SF	0.47	55.15	<0.00>	55.15
Detach & Reset Ceiling fan - Detach & reset	1.00 EA	0.00	0.00	<0.00>	0.00
Detach & Reset Heat/AC register - Mechanically attached - Detach & reset	1.00 EA	0.00	0.00	<0.00>	0.00

GALE CLAIMS SERVICE, INC.

13762 W. State Road 84
Suite #412
Davie, FL 33325

CONTINUED - W Bedroom

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Detach & Reset Window blind - horizontal or vertical - Detach & reset	1.00 EA	0.00	0.00	<0.00>	0.00
Detach & Reset Bifold door set - (4 slabs only) - Double Detach & reset	1.00 EA	0.00	0.00	<0.00>	0.00
R&R 5/8" drywall - hung, taped, floated, ready for paint	32.00 SF	2.20	70.40	<0.00>	70.40
R&R Batt insulation - 10" - R30	32.00 SF	1.53	48.96	<0.00>	48.96
Remove Acoustic ceiling (popcorn) texture	85.33 SF	0.38	32.43	<0.00>	32.43
Seal/prime the ceiling - one coat	117.33 SF	0.35	41.07	<0.00>	41.07
Acoustic ceiling (popcorn) texture	117.33 SF	0.88	103.25	<0.00>	103.25
Seal/prime the walls - one coat	330.20 SF	0.35	115.57	<0.00>	115.57
Paint the walls - two coats	330.20 SF	0.63	208.03	<0.00>	208.03
Clean floor*	117.33 SF	0.19	22.29	<0.00>	22.29
Totals: W Bedroom			735.17	0.00	735.17

Living Room

LxWxH 15' 8" x 13' 10" x 8'



233.98 SF Walls	216.70 SF Ceiling
450.68 SF Walls & Ceiling	216.70 SF Floor
24.08 SY Flooring	29.25 LF Floor Perimeter
125.33 SF Long Wall	110.66 SF Short Wall
29.25 LF Ceil. Perimeter	

Missing Wall: 1 - 13'10" X 8'0" Opens into Exterior Goes to Floor/Ceiling

Subroom 1: Offset

LxWxH 12' 6" x 7' 10" x 8'



225.32 SF Walls	97.91 SF Ceiling
323.23 SF Walls & Ceiling	97.91 SF Floor
10.88 SY Flooring	28.17 LF Floor Perimeter
100.00 SF Long Wall	62.66 SF Short Wall
28.17 LF Ceil. Perimeter	

Missing Wall: 1 - 12'6" X 8'0" Opens into Living Room Goes to Floor/Ceiling

GALE CLAIMS SERVICE, INC.

13762 W. State Road 84
Suite #412
Davie, FL 33325

Subroom 2: Offset

LxWxH 6' 5" x 3' 6" x 8'

131.32 SF Walls	22.46 SF Ceiling
153.78 SF Walls & Ceiling	22.46 SF Floor
2.50 SY Flooring	16.42 LF Floor Perimeter
51.33 SF Long Wall	28.00 SF Short Wall
16.42 LF Ceil Perimeter	

Missing Wall: 1 - 3'5" X 8'0"

Opens into Living Room

Goes to Floor/Ceiling

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Contents - move out then reset - Large room	1.00 EA	57.03	57.03	<0.00>	57.03
Floor protection - self-adhesive plastic film	337.07 SF	0.47	158.42	<0.00>	158.42
Detach & Reset Light fixture - Detach & reset	2.00 EA	0.00	0.00	<0.00>	0.00
Door chime - Detach & reset	1.00 EA	32.11	32.11	<0.00>	32.11
Detach & Reset Heat/AC register - Mechanically attached - Detach & reset	1.00 EA	0.00	0.00	<0.00>	0.00
Detach & Reset Window blind - drape - Detach & reset	1.00 EA	0.00	0.00	<0.00>	0.00
R&R 5/8" drywall - hung, taped, floated, ready for paint	64.00 SF	2.20	140.80	<0.00>	140.80
R&R Batt insulation - 10" - R30	64.00 SF	1.53	97.92	<0.00>	97.92
Remove Acoustic ceiling (popcorn) texture	273.07 SF	0.38	103.77	<0.00>	103.77
Seal/prime the ceiling - one coat	337.07 SF	0.35	117.97	<0.00>	117.97
Acoustic ceiling (popcorn) texture	337.07 SF	0.88	296.62	<0.00>	296.62
Seal/prime the walls - one coat	590.62 SF	0.35	206.72	<0.00>	206.72
Paint the walls - two coats	590.62 SF	0.63	372.09	<0.00>	372.09
Clean floor*	337.07 SF	0.19	64.04	<0.00>	64.04
Totals: Living Room			1,647.49	0.00	1,647.49

Garage

LxWxH 19'7" x 18'3" x 8'0"

605.33 SF Walls	357.40 SF Ceiling
962.73 SF Walls & Ceiling	357.40 SF Floor
39.71 SY Flooring	75.67 LF Floor Perimeter
156.67 SF Long Wall	146.00 SF Short Wall
75.67 LF Ceil Perimeter	

GALE CLAIMS SERVICE, INC.

13762 W. State Road 84
 Suite #412
 Davie, FL 33325

Subroom 1: Offset

LxWxH 9'3" x 2'7" x 8'0"



189.33 SF Walls	23.90 SF Ceiling
213.23 SF Walls & Ceiling	23.90 SF Floor
2.66 SY Flooring	23.67 LF Floor Perimeter
74.00 SF Long Wall	20.67 SF Short Wall
23.67 LF Ceil. Perimeter	

DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Per All Claims Insurance Repairs, Inc. estimate dated 12/10/2009.*	1.00 EA	1,721.80	1,721.80	<0.00>	1,721.80
Totals: Garage			1,721.80	0.00	1,721.80

Exterior/General



DESCRIPTION	QUANTITY	UNIT COST	RCV	DEPREC.	ACV
Apply anti-microbial agent	1.00 EA	140.00	140.00	<0.00>	140.00
Debris removal*	1.00 EA	364.27	364.27	<0.00>	364.27
Progressive and post construction clean up*	8.00 HR	23.29	186.32	<0.00>	186.32
Totals: Exterior/General			690.59	0.00	690.59
Total: DWELLING			14,605.90	0.00	14,605.90
Line Item Totals: U10-2854			14,605.90	0.00	14,605.90

GALE CLAIMS SERVICE, INC.

13762 W. State Road 84
Suite #412
Davie, FL 33325

Grand Total Areas:

1,715.49 SF Walls	835.69 SF Ceiling	2,551.18 SF Walls and Ceiling
835.69 SF Floor	92.85 SY Flooring	213.99 LF Floor Perimeter
601.98 SF Long Wall	447.32 SF Short Wall	216.66 LF Ceil. Perimeter
0.00 Floor Area	0.00 Total Area	0.00 Interior Wall Area
0.00 Exterior Wall Area	0.00 Exterior Perimeter of Walls	
0.00 Surface Area	0.00 Number of Squares	0.00 Total Perimeter Length
0.00 Total Ridge Length	0.00 Total Hip Length	

GALE CLAIMS SERVICE, INC.

13762 W. State Road 84
Suite #412
Davie, FL 33325

Summary for Dwelling

Line Item Total				14,605.90
Material Sales Tax	@	6.000% x	1,042.04	62.52
Subtotal				14,668.42
Overhead	@	10.0% x	14,668.42	1,466.84
Profit	@	10.0% x	14,668.42	1,466.84
Replacement Cost Value				\$17,602.10
Net Claim				\$17,602.10

Dave Gale

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ORLANDO NOA,

Plaintiff,

GENERAL JURISDICTION DIVISION

CASE NO.: 11-12182 CA 15

v.

FLORIDA INSURANCE GUARANTY
ASSOCIATION,

Defendant.

**PLAINTIFF'S MOTION TO COMPEL APPRAISAL AND TO ABATE THE ACTION,
AND/OR FOR EVIDENTIARY HEARING ON THE PLEADINGS AND EVIDENCE**

Plaintiff, ORLANDO NOA ("Plaintiff"), pursuant to the applicable Florida Rules of Civil Procedure, hereby files this Motion to Compel Appraisal and to Abate the Action, and/or for Evidentiary Hearing on the Pleadings and Evidence and in support thereof states as follows:

1. At all times material hereto, in consideration of a premium paid by Plaintiff, there was in full force and effect a certain homeowners insurance policy issued by Citizens Property Insurance Corporation, ("Citizens"), with a policy number of FRJH0281706 (the "Policy").
2. On or about June 29, 2005, First Home Insurance Company, ("First Home"), assumed coverage under the Citizens policy.
3. First Home then issued policy number RJH02817069 in place of the policy originally issued by Citizens.
4. While this policy was in full force and effect, the property sustained a covered loss as a result of Hurricane Wilma.

5. Accordingly, under the terms of the assumption and new issuance of a policy, First Home acknowledged coverage for the Hurricane Wilma loss as claim number PDFH009433 and assigned an insurance adjuster to adjust the Wilma loss.

6. On December 6, 2005, First Home wrongfully advised Plaintiff that the damages caused by Hurricane Wilma to his home did not exceed the policy deductible of \$4,392.00.

7. Subsequently, as is required by the First Home policy, Plaintiff submitted his Sworn Proof of Loss to First Home.¹

8. First Home rejected said Sworn Proof of Loss and invoked the appraisal provision contained in the First Home policy as there was clearly a dispute in the amount of damaged caused by Hurricane Wilma.

9. The appraisal process resulted in an award to Plaintiff and Plaintiff was paid the additional amount.² At appraisal it was determined that the property's roof needed to be repaired more than First Home had originally estimated.³

10. At the time of this appraisal, Ordinance and Law coverage was not considered.⁴ Subsequent to the appraisal proceedings, Plaintiff attempted to make the necessary allowed repairs to his roof and hired a licensed roofer in order to make said repairs.⁵

11. The Miami-Dade County Building Department denied Plaintiff's application for a permit to make the necessary repairs to his roof, indicating the Florida Building Code

¹ See Plaintiff's Sworn Statement in Proof of Loss attached as **Exhibit A**.

² See Affidavit of Orlando Noa, ¶6, filed under separate cover.

³ See Affidavit of Jason Pyle, ¶15, filed under separate cover.

⁴ See Appraisal Award attached hereto as **Exhibit B**.

⁵ See Affidavit of Billy Turner, ¶4, filed under separate cover.

requires Plaintiff to replace his entire roof because a repair that exceeds 25% requires a full replacement.⁶

12. As such, Plaintiff then made a supplemental claim to First Home under his Ordinance & Law provision, which First Home then denied.

13. Plaintiff was forced to initiate the instant lawsuit in an attempt to recover his additional damages against First Home.

14. During the court of litigation, on October 23, 2010, First Home was adjudicated to be insolvent by the Second Judicial Circuit Court of Leon County, Florida.

15. Florida Insurance Guaranty Association, ("FIGA"), is a statutorily created not-for-profit entity that is a mechanism for paying covered claims and "standing in the shoes of the insolvent carrier."

16. This Court granted Plaintiff's Motion to Substitute FIGA as a party defendant due to said insolvency and the receivership.

17. FIGA has since affirmatively denied Plaintiff's Ordinance & Law coverage.⁷

18. The facts of this case are nearly identical to the facts considered in *Josfolk v. United Prop. & Cas. Ins. Co.*, 110 So. 3d 110 (Fla. 4th DCA 2013). In *Josfolk*, the Plaintiff's appraiser objected to the appraisal award upon the belief that the building department would not allow for any repair of the roof without the meeting of the current building code, the appraisal award allowed for removal and replacement of two squares of concrete tile roof (220 square feet). *Id.* at 112. The appraisal award indicated that Ordinance and Law was not appraised, and the roofing repair permit was rejected by the

⁶ See Affidavit of Billy Turner, ¶¶9-10

⁷ See FIGA's Verified Answers to Interrogatory #2 of Plaintiff's Second Set of Interrogatories, attached hereto as **Exhibit C**.

City because the required repairs exceeded the area allowed by the building code of 25% of the total roof area which could not be repaired without requiring replacement of the entire roof system to conform to the current building code. *Id.* The roofer's application to the City indicated the roof needed repairs greater than the amount contemplated in the appraisal award. After the City rejected the permit for repairs of the roof, Plaintiff's representative requested the insurance carrier, United, to pay for the entire roof replacement under Plaintiff's Ordinance & Law coverage. *Id.* United denied the request basing its denial on the fact that the claim had already settled at appraisal and moved for summary judgment. *Id.* The trial court granted summary judgment in favor of United, the insurance carrier. *Id.* However, the Fourth District Court of Appeals reversed the trial court, finding that (1) the appraisal award clearly indicated that Ordinance & Law coverage was not included in the original appraisal, and (2) Ordinance & Law had correctly been excluded from the original appraisal proceeding as it had not yet become an issue at that point. *Id.* at 113.

19. Similarly in the subject case, Plaintiff's claim was submitted to the appraisal process, the appraisal did not consider Ordinance & Law coverage, Plaintiff's representative(s) did not agree or sign the appraisal decision knowing that the roof needed to be replaced, Plaintiff was denied a permit to make the necessary repairs to his roof by the City, Plaintiff's representative requested the insurance carrier to pay Plaintiff for a roof replacement under his additional Ordinance & Law coverage and the carrier denied Plaintiff's Ordinance & Law request basing its denial on the fact that the claim had been concluded at appraisal.⁸

⁸ Another factual issue that is the same in the subject case as in the *Jossfolk* case is that the original roof tiles on the home were no longer made and could not be replaced. *Jossfolk*, 110 So. 3d at 113. See letter from Steadfast Engineering Group Consulting Experts confirming that Plaintiff's 9'-10' concrete broom swept tile have been out of circulation attached as **Exhibit D**.

20. To date, FIGA has yet to comply with Plaintiff's demand for the appraisal process to determine his Ordinance & Law coverage.

21. The Policy's appraisal clause states in relevant part that:

If you and we fail to agree on the amount of the loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 days after receiving a written request from the other.

22. Plaintiff has complied with all post-loss obligations and any and all pre-requisites to the filing of this lawsuit.

23. There is a clear and obvious dispute as to the amount of damages present at the Property as a result of the Loss.

24. Accordingly, it is undisputed that FIGA and Plaintiff have a disagreement as to the amount of the Loss.

25. By its failure to properly appraise the property and compensate Plaintiff, FIGA has taken the position that it has no duty to participate in the appraisal process for the entire Loss, including the Ordinance & Law coverage.

26. In the alternative, if this Court deems that an evidentiary hearing is necessary, Plaintiff requests that this Court set same in an expedited manner, and that same be considered only on the pleadings and evidence submitted in relation to same.

WHEREFORE, Plaintiff, Orlando Noa, respectfully requests this Court to compel FIGA to comply with the policy's appraisal clause, to abate the action, and to require payment pursuant to the appraisal award on the Ordinance & Law coverage, plus interest, court costs and reasonable attorneys' fees pursuant to Section 627.428, Florida Statutes; or, in the alternative, for an evidentiary hearing only on the pleadings and evidence, and any other relief this Honorable Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was furnished via email to Maria Ortiz, Esq. at: SGoldberg@conroysimberg.com and EServiceHWD@conroysimberg.com on this 12th day of November 2015.

**ALVAREZ, CARBONELL, FELTMAN
& DASILVA, P.L.**

Counsel for Plaintiff

75 Valencia Avenue - 8th Floor

Coral Gables, Florida 33134

Telephone No. (305) 444-5885

Facsimile No. (305) 444-8986

By: 

Leonardo H. Da Silva, Esq.

Florida Bar No.: 63259

LDaSilva@ACFDLaw.com

Amy Ruiz, Esq.

Florida Bar No.: 99129

ARuiz@ACFDLaw.com

SWORN STATEMENT IN PROOF OF LOSS

\$ 230,580 PDFHO09433
 AMOUNT OF POLICY AT TIME OF LOSS POLICY NUMBER
3/30/05 3/30/06
 DATE ISSUED DATE EXPIRES
 AGENT

To the Insurance Company
 of First Home
 At the time of loss, by the above indicated policy of insurance you insured Orlando Noa et
9221 SW 122 Ave, Miami, FL 33186
 against loss by wind storm to the property described under Schedule "A", according to the
 terms and conditions of the said policy and all forms, endorsements, transfers, and assignments attached thereto.

1. **Time and Origin:** A wind storm loss occurred about the hour of 12 o'clock A M on
 the 27 day of October, 2009. The cause and origin of the said loss were: Hurricane Wilma

2. **Occupancy:** The building described, or containing the property described, was occupied at the time of the loss as follows,
 and for no other purpose whatsoever: Residence

3. **Title and Interest:** At the time of the loss the interest of your insured in the property described herein was
Ownership. No other person or persons had any interest therein or encumbrance thereon, except:

4. **Changes:** Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy,
 possession, location, or exposure of the property described, except:

5. **Total Insurance:** The total amount of insurance upon the property described by this policy was, at the time of the loss,
 \$ 230,580 as more particularly specified in the apportionment attached under Schedule "C", besides
 which there was no policy or other contract of insurance, written or oral, valid or invalid.

6. The Actual Cash Value of said property at the time of the loss was.....	\$ <u>219,600.</u>
7. The Whole Loss and Damage was	\$ <u>71,682.47</u>
8. Less Amount of Deductible	\$ <u>4,392</u>
9. The Amount Claimed under the above numbered policy is.....	\$ <u>67,290.47</u>

The said loss did not originate by any act, design, or procurement on the part of your insured, or this affiant; nothing has been
 done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void;
 no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no
 property saved has in any manner been concealed, and no attempt to deceive the said company, as to the extent of said loss,
 has in any manner been made. Any other information that may be required will be furnished and considered a part of this
 proof.

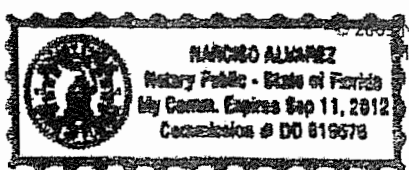
The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver
 of any of its rights.

SIGNATURE: [Signature]
 SIGNATURE: [Signature]

NOTARY: State of Florida; County of Miami Dade; SS

On this 21 day of August, 2009, before me appeared ORLANDO E. NOA
AND ERMILA L. NOA

who is known to be the person(s) named herein and who voluntarily executed this release.
[Signature] 9-11-2012
 Notary Signature Date Commission Expires



Form 2150F
 Nationwide Publishing Company, Inc.
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Subject To Addendum
 As New Information Becomes Available

APPRAISAL AWARD

Name of Insured : Orlando Noa
 Loss Location : 9221 SW 122 Avenue
 Miami, Fl 33186
 Policy Number : FH0016324
 Claim Number : PDFH009433
 Date of Loss : 10/24/2005

We, the undersigned, pursuant to the within appointment, DO HEREBY CERTIFY that we have truly and conscientiously performed the duties assigned to us, agreeably to the foregoing stipulations, and we have appraised and determined and do hereby award as the amount of loss the following sums to wit:

COVERAGE	RCV	ACV
Building	\$17,602.10	\$17,602.10
Law & Ordinance	not appraised	
APS	not appraised	
Contents	not appraised	
ALE	not appraised	

This award is subject to all terms and conditions of the insurance policy. This award is made without consideration for any prior partial payments or deductible(s). Prior payments, if any, will be subtracted from the gross award amount listed above.

Witness our hands:

Jason Pyle
 Appraiser for Insured

 Date

Glenn Carlson
 Appraiser for Insurer

Glenn Carlson 4/17/10

4/17/10

 Date

David Gale
 Umpire

4/12/10

 Date

EXHIBIT
B

120368
IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY,
FLORIDA

CASE NO. 11-12182 CA 15

ORLANDO NOA,

Plaintiff,

v.

FLORIDA INSURANCE GUARANTEE
ASSOCIATION,

Defendant.

**DEFENDANT'S NOTICE OF SERVING VERIFIED ANSWERS TO
PLAINTIFF'S SECOND SET OF INTERROGATORIES**

The Defendant, FLORIDA INSURANCE GUARANTEE ASSOCIATION, by
and through undersigned counsel hereby files its Verified Answers to Plaintiff's Second
Set of Interrogatories propounded under certificate of service of September 15, 2014.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Leonardo H. Da Silva, II, Esquire, Attorney for Plaintiff, Alvarez Carbonell Feltman & Da Silva, PL, 75 Valencia Avenue, 8th Floor, Coral Gables, FL 33145, ldasilva@acfdlaw.com;aruiz@acfdlaw.com, NGrandal@acfdlaw.com, SGuerrero@acfdlaw.com;service@acfdlaw.com by electronic mail on December 2, 2014.

CONROY SIMBERG
3440 Hollywood Boulevard, Second Floor
Hollywood, FL 33021
Telephone: (954) 961-1400 Broward
Facsimile: 954-518-8660
Primary Email: eservicehwd@conroysimberg.com
Secondary Email: sgoldberg@conroysimberg.com

By: /s/ Maria D. Ortiz
Maria D. Ortiz, Esquire
Florida Bar No. 51360
Seth R. Goldberg, Esquire
Florida Bar No. 032204

SECOND SET OF INTERROGATORIES

1. Did Plaintiff comply with all post-loss obligations under the Policy? If your answer is no, please specify each and every post-loss obligation Plaintiff allegedly failed to comply with, and what prejudice his alleged failure to comply caused on Defendant.

Yes.

2. Please explain why Defendant is refusing to pay for Plaintiff's Law and Ordinance claim.

Defendant has denied Plaintiff's claim for Ordinance and Law benefits because the damages for the October 24, 2005 loss were set in an April 2010 Appraisal Award which is binding upon the parties and did not warrant the triggering of Ordinance and Law coverage. Also, please see Defendant's Motion for Summary Judgment filed and served on May 7, 2013.

STATE OF FLORIDA)
) SS:
COUNTY OF)

Cheryl A. May, being duly sworn, deposes and says that the attached are true and correct to the best of her knowledge, information and belief.

[Signature]
Representative of Florida Guaranty Association, Inc.

SWORN TO AND SUBSCRIBED before me this 2ND day of DECEMBER, 2014.

Bonnie H Smith
NOTARY PUBLIC

My Commission Expires:

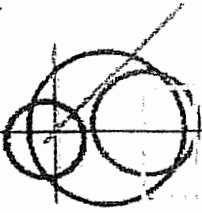
6/9/2018



(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known or Produced Identification

Type of Identification Produced: _____



STEADFAST ENGINEERING GROUP
CONSULTING ENGINEERS

201 Osage Drive
Indian Harbour Beach, Florida 32937
Office Phone: (321) 733-2706, (561) 506-5784
Fax: (321) 773-7814

The Old Havana Tile Company
1065 East 31 St, Hialeah Fl 33013

November 4, 2009

To whom it may concern,

In reference to the pictures of the 9"-10" Concrete broom swept tile, The Old Havana Tile Company does not have any in stock. The tiles in the pictures have been out of circulation for a considerable time now. Any broom swept tile without identifying marks on them found in the market place are most probably reclaimed tile and getting a color match would be difficult.

If any further information is needed, please don't hesitate to contact me.

Regards,

Fred Perdomo
786-346-0532

16

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IN THE CIRCUIT COURT OF THE 11TH
JUDICIALCIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 11-12182 CA 15

ORLANDO NOA,

Plaintiff,

V.

FLORIDA INSURANCE GUARANTEE
ASSOCIATION,

Defendant.

HEARING BEFORE THE HONORABLE
JOSE M. RODRIGUEZ
Volume I of I, Pages 1 through 27

May 23, 2016
Monday, 11:00 a.m. to 11:40 a.m.
73 West Flagler Street
Miami, Florida

Stenographically Reported By:
PATRICIA SAUCEDO
Florida Professional Reporter

Page 2

1 APPEARANCES:
2
3 On Behalf of the Plaintiff:
4 ALVAREZ CARBONELL FELTMAN & DASILVA, PL,
5 75 Valencia Avenue
6 8th Floor,
7 Coral Gables, Florida 33145,
8 BY: LEONARDO DASILVA, ESQUIRE
9 On Behalf of the Defendant:
10 CONROY SIMBERG
11 3440 Hollywood Boulevard
12 Second Floor
13 Hollywood, Florida 33021
14 Telephone: (954) 961-1400
15 BY: ROBERT HOROWITZ, ESQUIRE and
16 ADRIANA KISCYNSKI, ESQUIRE
17
18
19
20
21
22
23
24
25

Page 3

1 THE COURT: Good morning.
2 MR. DASILVA: Ready to go, Judge?
3 THE COURT: No, but I have to go any way.
4 MR. HOROWITZ: Good morning, your Honor,
5 Robert Horowitz on behalf of FIGA.
6 THE COURT: Okay. FIGA.
7 MR. DASILVA: Good morning, Judge.
8 Leo DaSilva on behalf of the Plaintiff.
9 MR. HOROWITZ: We are here on two different
10 motions.
11 The first motion is --
12 MR. DASILVA: I believe first is my motion,
13 your Honor.
14 THE COURT: If you are going to start with
15 that now I'm just leaving the bench and you guys
16 can just --
17 MR. DASILVA: We certainly don't want to --
18 it's that it's my motion --
19 THE COURT: I have a motion to reopen
20 appraisal and you have a motion to -- I understand
21 what the motions are --
22 MR. DASILVA: I just want to make sure --
23 THE COURT: -- I need to hear his motion first
24 because he's moving to go back to arbitration
25 instead of appraisal so --

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1 MR. HOROWITZ: Good morning, your Honor.
2 As background in this case, this is a case
3 where the insureds own a home in Miami, Florida.
4 THE COURT: I hope so, otherwise there is no
5 jurisdiction.
6 MR. HOROWITZ: Yes. There are a lot of cases
7 that the houses are not in Miami but the case is in
8 Miami.
9 At all relevant times, the insureds had a
10 policy of insurance with Citizens.
11 Your Honor, can I approach real quick? It
12 will be easier for you if the --
13 THE COURT: Not really.
14 MR. HOROWITZ: At all relevant
15 times, the insureds had a policy of
16 insurance with Citizens.
17 At some point, that policy is then
18 taken out and assumed by First Home.
19 That policy contained a very specific
20 appraisal provision. On page 7 of 12 under
21 Citizens' CI-230704, it specifically delineates
22 how the appraisal process works.
23 Essentially, the insured picks an appraiser,
24 the insurer picks an appraiser, they try to agree
25 on the method of repair, the scope of repair and

Page 5

1 the amount of loss.
2 If they can't agree, there is an umpire
3 afforded and then there is a decision between two
4 of the appraisers, between the umpire and the
5 appraisers. That becomes binding.
6 Plaintiff's Counsel and Defendant's both
7 agree that that appraisal is binding on both
8 parties and cannot be disturbed.
9 THE COURT: Unless --
10 MR. HOROWITZ: In the absence of fraud; that's
11 the only exception that I --
12 THE COURT: What if building law and ordinance
13 issue come up?
14 MR. HOROWITZ: Well, the distinction with the
15 law and ordinance, the main issue with law and
16 ordinance is -- two things can happen.
17 Number one, if you have an appraisal award and
18 those repairs that are outlined in the appraisal
19 award would trigger the law and ordinance, then you
20 can have a separate appraisal for law and
21 ordinance.
22 The issue in this specific case was addressed
23 earlier in Defendant's motion for summary
24 judgement, was that the underlying appraisal award
25 never triggers law and ordinance.

Page 6

1 What's being asked of this Court is for you to
2 read into the decisions of the appraisers, which is
3 improper.

4 The Court is not permitted to go in and look
5 at the rationale, the methods or the means of the
6 appraisers. What is being asked of this Court is
7 that the Court should have some sort of evidentiary
8 hearing and make a determination of whether law and
9 ordinance should now go back to appraisal.

10 If that was true, you would look at the
11 appraisal award. If the damage scope within the
12 appraisal award would trigger law and ordinance,
13 you could go back because it's an incurred expense.

14 In this specific case, the Court has already
15 been provided by one of the decision makers in the
16 original award that was never triggered because
17 only three percent of the roof would be repaired.

18 Our appraiser was one of the ones that signed
19 off on the appraisal award, so he has the ability
20 to describe for the Court exactly what the
21 appraisal was, what it meant and what it outlined.

22 We've already provided the Court a copy of
23 that affidavit. We already know that the appraisal
24 simply said three percent of this roof needs
25 repair.

Page 7

1 What Plaintiff is suggesting this Court to
2 look outside of that appraisal, determine how the
3 appraisers made their decisions on what percentage
4 of the roof needs to be repaired and should then
5 make a decision that we should go back to
6 appraisal.

7 THE COURT: I got you; I read your motion.

8 MR. HOROWITZ: And what we are suggesting to
9 the Court is this: We have filed a motion to go
10 back to ask for clarification of the appraisal
11 award, which is one option.

12 I've provided Plaintiff's Counsel a case and I
13 apologize to the Court, I discovered it over the
14 weekend. There is one case in Florida that is
15 directly on point. This case of First Protection
16 Insurance v. Hess.

17 At the end of that case says this: "First
18 Protection's failure to request clarification of
19 the award, the trial Court is prohibited from
20 holding a hearing to determine the basis of the
21 appraisal."

22 Basically, in that case the appraisers go and
23 make a determination in the form of contents. The
24 carrier then decides how it wants to pay the
25 contents. The insured sues because they didn't pay

Page 8

1 enough. The carrier then asks the Court to have an
2 evidentiary hearing to determine how that money
3 should be disbursed.

4 The Court in this specific case holds there is
5 no jurisdiction for the trial court to have any
6 type of evidentiary hearing. Simply ask for
7 clarification from the appraiser if you need
8 clarification.

9 We've already done that, but if the Court
10 wants us to get that clarification, we can provide
11 the court at summary judgement hearing. We can get
12 further clarification. Our appraiser was one of
13 the ones that signed off on the award, so we
14 already know as per the affidavit, three percent of
15 the roof is implicated and there is no entitlement
16 to go back to appraisal to have a determination as
17 to whether or not law and ordinance should be
18 issued.

19 What Plaintiff's Counsel is now asking you to
20 do is we want a full-blown evidentiary hearing. We
21 want you to go back and look at evidence. We want
22 to hear from the roofer, the repair person; but
23 that's done.

24 We already had an appraisal and it doesn't
25 invoke the law and ordinance provision of the

Page 9

1 policy.

2 What is being suggested here is we should have
3 someone get on the stand and say, "Here is how we
4 should do the methodology of repair" because if you
5 look at their affidavits, their affidavits say,
6 your Honor, we have a different way to repair this
7 roof and now it's 30 percent of the roof, we think
8 law and ordinance should apply.

9 It's too late. We already have an award that
10 is three percent of the roof. You can't go back
11 and say we want to change the method of repair,
12 because that was already argued in the underlying
13 appraisal which was how much of the roof do we have
14 to fix.

15 If they thought the method or repair or to fix
16 30 percent of the roof, they would have awarded
17 that. There is no dispute in this case that the
18 estimate provided in the affidavits provided say
19 it's 120 roof shingles.

20 This is a roof that is 3,300 square feet or
21 3,400 square feet. Because you already 120
22 shingles that are being replaced, you have less
23 than three and a half percent of the roof being
24 fixed.

25 What they are suggesting is, well, Judge, you

Page 10

1 have to look at the method of repair. They did
 2 that. Now they want you to have a whole
 3 evidentiary hearing on the method --
 4 THE COURT: Okay; I'm done.
 5 I want to hear rebuttal.
 6 MR. DASILVA: Judge, the ordinance -- I just
 7 want you to know that we set it first and it was --
 8 we were requesting an evidentiary hearing, they are
 9 moving to reopen.
 10 THE COURT: I understand, but I don't know --
 11 I have to rule on his motion first in order to go
 12 to yours.
 13 MR. DASILVA: We read the -- I just wanted to
 14 let you know I didn't have that fact when I started
 15 my recitation.
 16 Despite that, I don't know if Counsel maybe
 17 hasn't -- I don't want to speculate, but I'm not
 18 sure that the Court understands what the argument
 19 is.
 20 I'm specifically not asking the Court to
 21 reopen the appraisal here because that would make
 22 me insane, because there is so much Florida case
 23 law on the fact that arbitration, the arbitration
 24 codes can't be used on appraisal, which your Honor
 25 knows like the back of your Honor's hand, over

Page 11

1 Hess, Hess is bad law so I'm surprised it was
 2 presented today, a 2012 case overturned in 2013 --
 3 THE COURT: I'm past that --
 4 MR. DASILVA: -- and as we know, you can't use
 5 arbitration code in the appraisal. We also know
 6 that you can't reopen the appraisal provision;
 7 that's why that's not at all what I've asked for,
 8 that's not at all what I've asked for and it's not
 9 at all what my case is premised on.
 10 If I may approach with the Jossfolk case,
 11 Judge.
 12 THE COURT: Make sure you give him a copy.
 13 MR. DASILVA: When I was in law school, they
 14 were teaching about cases that were on all fours or
 15 threes or twos, et cetera. I've never seen a case
 16 more on all fours used to teach in comparing the
 17 facts of our case to the Jossfolk case.
 18 If I can direct your Honor attention to the
 19 second page, please, on the left hand-side, middle
 20 paragraph.
 21 On the middle paragraph it says the appellant
 22 Jossfolk submitted a claim. It gives a little
 23 details on a Hurricane Wilma claim. Towards the
 24 middle on Page 11, neutral appraisal proposed
 25 appraisal for damages but excluded the roof repair.

Page 12

1 Jossfolk objected to the proposal award because it
 2 did not include ordinance and law coverage for the
 3 replacement of the roof.
 4 So we know tat when it went to appraisal, the
 5 panel was arguing about law and ordinance and
 6 whether or not the whole roof will be repaired.
 7 Jossfolk appraiser believed it was necessary
 8 based upon his belief that the building department
 9 would not allow for the repair, just like our case.
 10 The awards stated that ordinance of law was
 11 not appraised.
 12 If I hand the Court a copy of the appraisal
 13 award, there is no question that we are on all
 14 fours. Law and ordinance specifically --
 15 THE COURT: I remember this argument from
 16 before --
 17 MR. DASILVA: Yeah, I don't understand why we
 18 are rehearing this. Counsel says -- they filed a
 19 motion that says they want to reopen the whole
 20 thing; that's what I prepared for today, but really
 21 what they argue was it shouldn't be done at all; it
 22 should go away on summary judgment.
 23 It shouldn't be reopened because the law says,
 24 I mean, your Honor can do whatever you want, but
 25 the law suggests the Court should not look into the

Page 13

1 face of the award.
 2 I'm not asking you to look into the face of
 3 the award. I'm asking to say what was not made
 4 part of that award, is the law and ordinance, so
 5 what --
 6 THE COURT: Assume you are correct. Why
 7 should I send them back to the appraisal for that
 8 to be appraised?
 9 MR. DASILVA: Because that's what they did in
 10 the Jossfolk. In the Jossfolk case, that portion
 11 of it that wasn't done, let's go back and do that
 12 portion not withstanding -- remember --
 13 THE COURT: Why can't I do that --
 14 MR. DASILVA: -- you could -- no, I'm asking
 15 that you send it back for the law and ordinance.
 16 THE COURT: That's my question; I didn't get
 17 that clear from you.
 18 MR. DASILVA: I misheard you, I'm sorry.
 19 That's what we want. We want to go back and
 20 appraise the law and ordinance roof portion now
 21 that it's been incurred, I wish I had my --
 22 THE COURT: -- the appraiser --
 23 MR. DASILVA: I'm sorry?
 24 THE COURT: I'm not the appraiser.
 25 MR. DASILVA: I understand, we send it back to

Page 14

1 an appraisal panel of three, I would suggest it
 2 can't be the same appraisal panel as before.
 3 Your Honor will remember that Counsel, we
 4 wanted to depose the original umpire. The original
 5 umpire brought his counsel and said no we are done,
 6 this is closed. Your Honor agreed and didn't allow
 7 any depositions of that panel.
 8 So to the extent that we are talking about an
 9 affidavit, an affidavit from their appraiser,
 10 that's inappropriate.
 11 We need a new panel, a new umpire, whatever
 12 your Honor wants, or we should go back to appraise
 13 only that one issue, not reopen the other items;
 14 that's it.
 15 MR. HOROWITZ: Your Honor, what Counsel, what
 16 Plaintiff has not brought to your attention in the
 17 Jossfolk case is this: In the original Jossfolk
 18 case, there was no argument brought by the carrier
 19 at the trial court level to say that the underlying
 20 appraisal award specified the amount that needed to
 21 be replaced and that the law and ordinance wasn't
 22 triggered.
 23 That's the grounds under Jossfolk when they
 24 say that they could go back because the attorney
 25 for the carrier never raised the issue that the

Page 15

1 underlying appraisal award already made that
 2 determination. In our case, that determination has
 3 already been made.
 4 In our case the determination has already been
 5 made that 120 shingles need to be replaced.
 6 If you look at the last section of the
 7 Jossfolk case, if you look at the affidavit I know
 8 counsel --
 9 He provided to you part of the appraisal; he
 10 didn't provide this section.
 11 Look at the highlighted section of that. We
 12 have 120 shingles --
 13 THE COURT: I understand, I understand --
 14 MR. HOROWITZ: And the distinction is why
 15 Jossfolk is not applicable in terms of requiring
 16 this Court to send it back for appraisal, is that
 17 in the Jossfolk case they said two things: One,
 18 carrier never made the argument that it doesn't
 19 reach the level of law and ordinance, and number
 20 two, there was an affidavit submitted that the roof
 21 tiles couldn't be found to replace.
 22 Neither one of those things have occurred in
 23 this case. Two things that -- the only part of
 24 this specific case was that the appraisal award
 25 specified the percentage, which never invoked the

Page 16

1 law and ordinance.
 2 So, if the Court follows the reasoning in
 3 Jossfolk, then it never goes back to appraisal.
 4 What Counsel wants to do is to send it back to
 5 appraisal, let them figure it out.
 6 Well, if there is no binding effect for
 7 appraisal, that means every time I get a judgment,
 8 I can go have more repairs done in my house and
 9 come back and go "I found more damage. I want to
 10 have a new appraisal."
 11 Or if I don't like what they came back with
 12 the appraisal, I'll change however I do my
 13 methodology of repair, because if you look at the
 14 affidavit that they provided to this Court, what
 15 they said is our method of doing the repairs can go
 16 to 30 percent. Not that they could, they don't
 17 meet the grounds that are in Jossfolk.
 18 We met the grounds. Number one, only three
 19 percent of the roof needs replacement.
 20 Number two, and that was raised, in number
 21 two, that there is no indication they can't fix the
 22 roof as per the methodology as identified in the
 23 appraisal.
 24 So on those two grounds, the Court should deny
 25 their motion and the Court certainly has the option

Page 17

1 of saying, "I want you to go back and get an
 2 explanation of the appraisal." We certainly
 3 respect that from the Court and understand the
 4 Court's prior order on the motion for protective
 5 order, but at a minimum, when you ruled on a motion
 6 for summary judgment, you said well there are fact
 7 issues.
 8 Well, if we need to go have a trial in this
 9 case, we can do that, but certainly saying this
 10 case go back to appraisal is not appropriate under
 11 the Jossfolk case. Thank you.
 12 MR. DASILVA: Brief rebuttal for the record,
 13 Judge.
 14 Maybe Counsel didn't see the November 4, 2009
 15 letter that was made part of the summary judgement
 16 evidence previously before this Court speaking
 17 about from the old tile company in Hialeah and it's
 18 part of the adjustment.
 19 Part of the adjustment during the process of
 20 the case where they said that that was the tile
 21 they couldn't find, it was out of production. It's
 22 a nine by -- nine to ten inch tile that aren't in
 23 production anymore just like in Jossfolk case
 24 wherein it was stated that, here in paragraph --
 25 headnote 4.

Page 18

1 "United also argued the law an ordinance
2 coverage is implicated because the appraisers
3 allowed for only two square feet, which is
4 considerably less than 25 percent."
5 So there, they made the two percent argument;
6 here they are making a three percent argument.
7 Three percent, Judge. Let me tell you, I have
8 the report in my hand, I have the engineer, the
9 umpire'S report in my hand. He didn't give a
10 percentage.
11 They keep telling your Honor it's three
12 percent. Let me tell you, I don't think it's an
13 appropriate argument to the Court because it was
14 120 shingles and I don't think you could have it
15 any clearer in any of the affidavits or any
16 information, each shingle requires a number of
17 square feet around it to be replacéd, yet they keep
18 quoting three percent here as if to invite error.
19 120 shingles for part of a particular repair,
20 it was considered, nobody put the square footage on
21 this report. Unlike in the Jossfolk case, my facts
22 are a little better, and I also have an affidavit.
23 I also have a letter which was used by the adjuster
24 discussing the fact they don't make this tile any
25 more, just like in Jossfolk.

Page 19

1 When I say it's on all fours, you know, I have
2 a duty to be candid to this Court, I mean it; it's
3 on all fours.
4 Every piece of evidence piece by piece.
5 Judge, the appropriate remedy in this case is
6 to follow, you know, the appraisal process in the
7 Jossfolk case. Let's go have an appraisal on --
8 set the damages on the law and ordinance issue.
9 If it comes back that, I mean, I don't see how
10 it can when we actually have the money spent. I'll
11 advise the Court my client spent in excess of
12 \$25,000 to replace that roof to get it done to
13 code.
14 So the appraiser is going to be doing an
15 inspection and a paper appraisal.
16 If somehow it manages to come back to zero,
17 then I'm going not going to trial. If it comes
18 back for more and they have some sort of fraud
19 defense and miss rep defense and we also want to
20 have a trial, your Honor, knows I love trials.
21 Let's fill the jury box and see let's see what
22 happens, but at least let's set the damages in the
23 appropriate way based on the Jossfolk case and the
24 appraisal case. Thank you, sir.
25 MR. HOROWITZ: Your Honor, what I think

Page 20

1 Counsel is referring, if you look at the '09
2 letter, he just said that I was misrepresenting to
3 the Court, that says they don't have a color match;
4 that's the last sentence, so I did read that, and
5 what that says, if you look at the appraisal award
6 that's in front of you, if you look at the third
7 line, the fourth line, it specifically says that
8 they countered for that.
9 If you look, they recolored the entire roof,
10 so they have accounted for all of these things.
11 The appraisers already knew, look, we are
12 going to put a new color on this roof; they've
13 already appraised all that.
14 Again, you are being asked to pun it and let
15 them go figure it out and then bring it back.
16 They haven't met their requirements. We've
17 already said to you the appraisal award
18 specifically sets the method and means of repair,
19 120 tiles.
20 What Counsel is now suggesting to you is, "we
21 think it should be a different method of repair and
22 it's now to take the whole roof." Well, that
23 argument left and sailed when they went to
24 appraisal.
25 They could have gone to appraisal and said in

Page 21

1 order to fix this roof, it's going to require
2 1,100 square feet and therefore, we need a new
3 roof." They could have made that argument, but
4 they didn't. The appraisers said this is what has
5 to be fixed.
6 What they are telling you is we think there
7 should be a different part of this roof fixed.
8 That's no different than saying, "I think,
9 Judge, we need to do ten square feet instead of 20
10 square feet and then they come back after they fix
11 100 square feet and say "it should have been
12 different."
13 That's not proper to say that's what triggered
14 the law and ordinance.
15 What's proper here, Judge, is, the case has
16 already been decided by the appraisers. The means,
17 methods of repair is 120 shingles, period.
18 They want you to say "it's 1,100 square feet
19 to fix this roof." They are too late. We
20 appraised it.
21 So every time someone comes in and says "I
22 have a different method of repair" we should come
23 back to the Court? How does that make any binding
24 appraisal? The appraisals are binding; it should
25 stay that way.

Page 22

1 THE COURT: What if there is newer damage that
2 the appraisers didn't look at?
3 MR. HOROWITZ: It doesn't matter; that's the
4 whole point.
5 When you go to appraisal, and if you look at
6 Counsel's argument they make in opposition to our
7 motion, an appraisal award is binding.
8 You can't go disturb it. You can go back to
9 the house and find a million dollars worth of new
10 damages, it's over otherwise or why else would
11 anybody go to appraisal if they knew that every
12 time they go to appraisal it can be reopened.
13 So our suggestion to the Court is two options:
14 Deny their motion, deny our motion and we proceed
15 forward. I suspect there will be some sort of
16 competing motions in the future or trial on the
17 issue of whether or not -- I guess if there's been
18 a breach of the policy, but what's interesting is
19 if you look at their complaint, they don't talk
20 about appraisals. If you look at their second
21 amended complaint that was filed May 2, 2015, they
22 don't discuss it, and we are almost two years down
23 the road on this and now they are asking for
24 appraisal after discovery.
25 I think that the Court, I'll be candid with

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1 the Court, denied both motions and let us proceed
2 to the --
3 THE COURT: That's what I'm planning to do --
4 MR. HOROWITZ: I think it should be because I
5 think that's the proper method, your Honor.
6 Thank you for your time.
7 MR. DASILVA: It wasn't my client that
8 complained, it was the Miami-Dade County Building
9 Department that said that the request to repair,
10 which is \$8,500. My clients tried to make the
11 repair less than the amount the carrier paid. The
12 carrier paid them \$9,700 to make this alleged
13 repair.
14 He applied for an amount smaller. In other
15 words, according to the building code, less than
16 the 25 percent issue. Less money was being
17 requested and they said no.
18 The Jossfolk case is clear. Counsel -- it's a
19 very disturbing argument to hear distinctions made
20 that aren't really there. The roof, they didn't
21 appraise it.
22 I'm not asking to go back and reopen that
23 portion or look at it again. I'm saying let's go
24 appraise a law and ordinance which on the face of
25 all the documents, wasn't appraised.

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1 What's the bid deal? They get a number back
2 and figure out whether it was required or not and
3 then set that damage and we go forward on any other
4 argument they may have. That's what should happen.
5 Let's finish the law an ordinance just like
6 the Jossfolk case says.
7 THE COURT: Counsel was arguing that the law
8 and ordinance was included.
9 MR. DASILVA: It wasn't. On the face of the
10 document, it wasn't.
11 MR. HOROWITZ: Your Honor --
12 MR. DASILVA: Your Honor, if Counsel would
13 stop interrupting me. He's popping up. Every time
14 I stand up he pops up, I'd like to finish my --
15 THE COURT: Why does this always happen?
16 MR. DASILVA: I don't know. They send me
17 people that invoke my ire, I guess.
18 THE COURT: Well, you are easy to provoke.
19 MR. DASILVA: Yeah, I am, I am, I do. I feel
20 the --
21 THE COURT: And I --
22 MR. DASILVA: -- I can't wrap my head around
23 this argument --
24 THE COURT: But --
25 MR. DASILVA: -- they have a document which

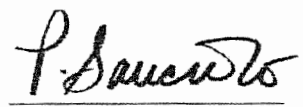
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1 says that it wasn't appraised --
2 COURT REPORTER: One at a time, please. I
3 can't hear both speaking at the same time.
4 MR. DASILVA: What else is accurate, Judge on
5 this issue is, Counsel said to you that the
6 methodology was laid out on the appraisal award.
7 Judge, there wasn't a report. There wasn't
8 anything -- that's Counsel's recap of what he
9 thinks the appraisers did or didn't do, which is
10 specifically, your Honor, you can't look -- you
11 can't look at what we're telling you, the advocates
12 are telling you occurred or what we think happened
13 during that appraisal process. He's recapping it
14 for you. He's saying what we think that the
15 methodology --
16 THE COURT: The appraisal process covered
17 everything and --
18 MR. DASILVA: -- but it didn't and they chose
19 not to cover it --
20 THE COURT: -- and the fact that there is no
21 law and ordinance appraised doesn't mean anything.
22 It means that they looked at the roof and they came
23 up with whatever they believed was the repairs.
24 MR. DASILVA: That analysis and going into
25 what your Honor thinks and going into what Counsel

1 argued --
 2 THE COURT: No, the --
 3 MR. DASILVA: -- that's exactly why we are
 4 not -- that's why I'm asking let them go appraise
 5 law and ordinance, because it wasn't appraised. It
 6 says it right -- that verbiage, the verbiage in
 7 that document is identical to the verbiage in
 8 Jossfolk. I can't get any closer.
 9 It's the same language. They specifically
 10 carved it out, I yet to go back on that; that's the
 11 entire case and all it does is come up with an
 12 amount. If Counsel --
 13 MR. HOROWITZ: One last thing, your Honor.
 14 One thing I want to make clear for the record, what
 15 was represented to the Court was the insureds
 16 applied for a permit for what was on the appraisal.
 17 I provide you their permit, their first one. They
 18 asked for 1,100 square feet, the 33 percent that --
 19 MR. DASILVA: They didn't apply for what was
 20 on the appraisal. The appraisal wasn't a
 21 percentage or square footage. It's not there so
 22 how could they?
 23 THE COURT: Okay. Plaintiff's motion is
 24 denied. Defendant's motion is denied. I want to
 25 hear testimony at trial.

1 MR. HOROWITZ: Yes, your Honor. Thank you.
 2 (The hearing concluded at 11:40 a.m.)
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1 CERTIFICATE OF STENOGRAPHIC REPORTER
 2
 3 STATE OF FLORIDA)
 4) SS.
 5 COUNTY OF MIAMI-DADE)
 6
 7 I, PATRICIA SAUCEDO, Stenographic Reporter,
 8 Notary Public, do hereby certify that I was
 9 authorized to and did stenographically report the
 10 foregoing proceedings and that the transcript is a
 11 true and correct transcription of my stenotype notes
 12 of the proceedings.
 13
 14 Dated this 30th day of August, 2016.
 15
 16
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 25



PATRICIA SAUCEDO
 Stenographic Reporter

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110 So.3d 110
District Court of Appeal of Florida,
Fourth District.

Roy JOSSFOLK, Appellant,
v.
UNITED PROPERTY & CASUALTY INSURANCE
COMPANY, Appellee.

No. 4D12-443.

March 20, 2013.

Synopsis

Background: Insured brought declaratory-judgment action against property insurer, asserting that insurer was required to participate in appraisal for ordinance and law coverage concerning insured’s roof, which was damaged during hurricane. The Circuit Court, Seventeenth Judicial Circuit, Broward County, Carol-Lisa Phillips, J., granted insurer’s motion for summary judgment. Insured appealed.

Holdings: The District Court of Appeal, Warner, J., held that:

^[1] formal procedures of Arbitration Code did not apply to property insurance policy’s appraisal process;

^[2] insured had right to appraisal regarding ordinance and law coverage once city required compliance with current ordinances to complete repairs; and

^[3] genuine issue of material fact as to how much of roof would need to be replaced precluded summary judgment.

Reversed and remanded.

West Headnotes (4)

^[1] **Insurance**
⇒ Ordinance or law

For purposes of ordinance and law coverage under a property insurance policy, “ordinance

and law” is the cost of bringing any structure into compliance with applicable ordinances or laws.

1 Cases that cite this headnote

^[2] **Insurance**
⇒ Proceedings on Appraisal

Formal procedures of Arbitration Code did not apply to property insurance policy’s appraisal process. West’s F.S.A. § 682.13(1).

Cases that cite this headnote

^[3] **Insurance**
⇒ Appraisal

Insured had right to appraisal under property insurance policy regarding ordinance and law coverage concerning insured’s roof, which was damaged during hurricane, once city required compliance with current ordinances to complete repairs.

1 Cases that cite this headnote

^[4] **Judgment**
⇒ Insurance cases

Genuine issue of material fact as to how much of insured’s roof would need to be replaced precluded summary judgment in favor of property insurer in insured’s declaratory-judgment action asserting that insurer was required to participate in appraisal for ordinance and law coverage concerning roof.

Cases that cite this headnote

Attorneys and Law Firms

*111 Michael R. Seward of Ligman Martin, P.L., Miami, for appellant.

Michelle Diverio, Anthony J. Tinelli and Evelyn Cobos of Lyndecker Diaz, Miami, for appellee.

Opinion

WARNER, J.

¹¹¹ The appellant challenges a final summary judgment in favor of his insurance company in a declaratory judgment action in which he contended that he was entitled to an appraisal of “Ordinance and Law” coverage based on roof damage caused by a hurricane. “Ordinance and Law” is the cost of bringing any structure (here, the roof) into compliance with applicable ordinances or laws.¹ The insurance company contended that in a prior proceeding all of the appellant’s damages had been appraised. We reverse the trial court’s summary judgment, because the prior proceeding had not appraised Ordinance and Law coverage, nor could it because none had been incurred at the time of the appraisal.

Appellant Jossfolk submitted a claim to his insurance company, appellee, United Property & Casualty Insurance Company (“United”), alleging that his insured property was damaged in Hurricane Wilma. United found no wind related damages but paid for other damages. Jossfolk disputed the amount and requested that the claim be submitted to appraisal. Each party appointed an appraiser, and the two selected a neutral appraiser. The neutral appraiser submitted a proposed appraisal for *112 damages but excluded roof repair. Jossfolk’s appraiser objected to the proposed award because it did not include Ordinance and Law coverage for replacement of the roof, which Jossfolk’s appraiser believed was necessary, based upon his belief that the building department would not allow for any repair of the roof without meeting the current code. The neutral appraiser ultimately increased the award on other damages and allowed for the removal and replacement of two squares of concrete tile roof (220 square feet). The award stated that “Ordinance and Law” was “**not appraised.**” United made payment to Jossfolk for the amount of the award.

Jossfolk’s contractor then applied to the City of Weston (“the City”) for a roofing repair permit in which he claimed 1359 square feet or about 34% of the roof area needed repair. The roofing repair permit was rejected by

the City because the repair exceeded the area allowed by the building code of 25% of the total roof area which could be repaired without requiring replacement of the entire roof system to conform to the current code.

Thereafter, Jossfolk’s representative requested United to pay for the entire roof repair under Ordinance and Law coverage. United responded that “this claim was settled in appraisal on April 27, 2009 in which the *umpire rejected your request for law and ordinance.*” (Emphasis supplied). As a result, Jossfolk filed a Declaratory Judgment action, seeking a ruling that United must participate in an appraisal for Ordinance and Law coverage. United answered and moved for summary judgment arguing in its motion that the prior appraisal did not include loss for Ordinance and Law coverage; therefore, Jossfolk was not entitled to an appraisal. The trial court granted the motion for summary judgment without making a declaration of Jossfolk’s rights. He appeals.

Summary judgment is proper if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. The standard of review is *de novo*. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So.2d 126, 130 (Fla.2000).

¹²¹ Although United argued that the arbitration code should apply to this appraisal process, *Allstate Insurance Co. v. Suarez*, 833 So.2d 762 (Fla.2002), holds that appraisal clause was not an agreement to arbitrate, and the formal procedures of the Arbitration Code are inapplicable. Thus, we reject United’s contention that the only way Jossfolk can challenge the arbitration award is through section 682.13(1), Florida Statutes,² within the Arbitration Code. See also *Citizens Prop. Ins. Corp. v. Cuban-Hebrew Congregation *113 of Miami, Inc.*, 5 So.3d 709, 712 (Fla. 3d DCA 2009) (citing *Suarez*, 833 So.2d at 763–66) (“The Florida Supreme Court has held that the Florida Arbitration Code is not applicable to appraisal cases.”).

¹³¹ While United argued that the appraisers denied Ordinance and Law coverage, we conclude that it is clear from the award, as the appraisers stated, Ordinance and Law coverage was “not appraised.” This is consistent with *Ceballos v. Citizens Property Insurance Corp.*, 967 So.2d 811 (Fla.2007), which is determinative of this issue. The Ceballos lost their home to a fire, and Citizens paid the face value of the policy. The Ceballos then sought payment under a supplemental coverage for Ordinance and Law. The parties agreed that the Ceballos were entitled to recover under this supplemental coverage but disagreed as to whether they had to first show an actual

loss in order to recover under that provision. The Third District found that there had to be actually incurred expenses in order for them to recover. The Supreme Court agreed: the Ceballos had received the face value for the loss of their home, but that loss did not affect their obligation to show that they incurred an additional loss in order to recover under the supplemental coverage. As the supreme court noted, “ ‘to incur’ means to become liable for the expense, but not necessarily to have actually expended it.” 967 So.2d at 815.

Ceballo supports Jossfolk’s contention that Ordinance and Law is not recoverable until it is incurred and thus could not have been appraised at the time of the original appraisal. Here, at the time of the original appraisal, Jossfolk had not applied for repairs of the roof. Thus, he had not incurred or become liable for any additional expense until the City had required compliance with current ordinances in order to complete repairs. It was at that point, according to *Ceballo* that Jossfolk incurred additional loss, for which he had the right to an appraisal.

¹⁴¹ United also argues that Ordinance and Law coverage is not implicated, because the appraisers allowed for only two square feet of tile replacement, which was

considerably less than the 25% of total area which would trigger the City’s requirement that the entire roof be replaced to current ordinance standards. This was not a ground argued by United in its motion for summary judgment. Nevertheless, Jossfolk offered an affidavit from its general contractor stating that the City would require replacement because the original roof tiles were no longer made and could not be replaced. Thus, the evidence did not conclusively refute the factual issues in this case.

For these reasons, we reverse the final summary judgment and remand for further proceedings.

CIKLIN, J., and BLANC, PETER, Associate Judge, concur.

All Citations

110 So.3d 110, 38 Fla. L. Weekly D649

Footnotes

1 “Ordinance and Law” coverage was explained in *Citizens Property Insurance Corp. v. Mallett*, 7 So.3d 552, 554 n. 1 (Fla. 1st DCA 2009):

[L]aw and ordinance coverage under the policy provides reimbursement for up to 25% of dwelling policy limits for increased repairs and replacement costs incurred by the insured to comply with the requirements of the applicable laws and ordinances regulating construction or repair of property. See, e.g., § 627.7011(1)(b), Fla. Stat. (2004).

2 Section 682.13(1) provides:

- (1) Upon application of a party, the court shall vacate an award when:
 - (a) The award was procured by corruption, fraud or other undue means.
 - (b) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party.
 - (c) The arbitrators or the umpire in the course of her or his jurisdiction exceeded their powers.
 - (d) The arbitrators or the umpire in the course of her or his jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of s. 682.06, as to prejudice substantially the rights of a party.
 - (e) There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under s. 682.03 and unless the party participated in the arbitration hearing without raising the objection.

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

Third District Court of Appeal

State of Florida

Opinion filed March 22, 2017.

Not final until disposition of timely filed motion for rehearing.

No. 3D16-1367
Lower Tribunal No. 11-12182

Orlando Noa,
Appellant,

vs.

Florida Insurance Guaranty Association,
Appellee.

An Appeal from a non-final order from the Circuit Court for Miami-Dade County, Jose M. Rodriguez, Judge.

Alvarez, Carbonell, Feltman, & DaSilva and Paul B. Feltman, for appellant.

Conroy Simberg and Hinda Klein (Hollywood), for appellee.

Before SALTER, EMAS and FERNANDEZ, JJ.

SALTER, J.

Orlando Noa appeals a non-final order denying his motion to compel a second appraisal of an insured windstorm loss claim under a policy insuring his home. The

issue presented is whether any effects of “Ordinance and Law” costs were subsumed in the initial appraisal conducted as provided by the policy. We affirm the order below, concluding that Mr. Noa’s post-appraisal submission of increased costs is not a legally sufficient basis for re-opening the existing appraisal or conducting a new one.

Loss and Appraisal

Mr. Noa obtained residential insurance coverage through First Home Insurance Company (“First Home”). In October 2005, with the policy in full force and effect, Hurricane Wilma damaged the residence. Mr. Noa submitted a claim to First Home, which assigned an adjuster to evaluate the loss. In December 2005, First Home advised Mr. Noa that the damages did not exceed the policy deductible of \$4,392.00.

Over three years later, in August 2009, Mr. Noa submitted a second claim to First Home relating to the same residence, policy, and windstorm. This claim, detailed in a sworn statement and proof of loss form, was for \$71,682.97, exceeding the deductible by \$67,290.47. First Home rejected the claim and invoked the appraisal clause in the policy. As part of his second claim, Mr. Noa submitted a letter from a tile company reporting that the Old Havana tiles originally installed on the roof were no longer in stock and “have been out of circulation for a considerable time now,” making a color match difficult.

Mr. Noa's appraiser, the insurer's appraiser, and an umpire selected by the party appraisers, each evaluated the loss. The umpire and the insurer's appraiser agreed on an actual cash value of the claim in April 2010, of \$17,602.10.¹ That computation allowed \$3,780.00 for the replacement of 120 roof tiles, \$1,200.00 for repair of the underlayment beneath the affected area, and \$4,360.00 for treatment of the entire roof after installation of the new tiles to provide a color match. The 120 tiles comprised approximately 3% of the 3,200 square foot roof. The appraisal stated that it did not appraise any allowance for the effects of law and ordinances. The insurer paid the appraisal amount, less any deductible and any prior payment.

Less than a month after the appraisal award was entered and First Home paid the award amount (less the deductible) to Mr. Noa, a roofing contractor selected by Mr. Noa submitted a permit application to repair 30% of the roof with "current leaking," reflecting a price of \$8,700.00. The permit application was rejected by the building and zoning authority,² as Miami-Dade County's building code requires that not more than 25% of the total roof area can be repaired, replaced, or recovered in any twelve month period unless the entire roofing system or roof section complies

¹ Although the insured's appraiser disagreed with the appraisal award and declined to sign it, the appraisal clause in the insurance policy specified that the award would become effective if signed by any two of the party appraisers and the umpire.

² In submitting that permit application, the Miami-based, licensed roofer must have known, or in any event, should have known, that the application would be rejected based on longstanding Miami-Dade County building code requirements.

with the current code. Fla. Bldg. Code § 611.1.1 (2007); Miami-Dade County, Fla., Code § 8-2 (2001). The contractor then prepared, and Mr. Noa signed, a contract for the full roof for \$26,000.00. Mr. Noa submitted the contract to First Home with a request to fund the additional amount required as a result of the ordinance requirement.

First Home denied the full-roof additional claim, and in 2011 Mr. Noa filed a circuit court lawsuit in an effort to recover the differential amount of that post-appraisal claim. Thereafter, First Home became insolvent, and the Florida Insurance Guaranty Association (“FIGA”) was substituted as defendant in 2012. After various pretrial proceedings, the trial court denied FIGA’s motion to re-open the existing appraisal (to demonstrate that the award included under 25% of the total roof area for repair), and the court denied Mr. Noa’s motion for a new appraisal regarding his additional claim for an ordinance and law award. Mr. Noa’s appeal followed.

Analysis

“Ordinance and Law” coverage provides additional reimbursement to the insured, in amounts and on other terms specified in the insurance policy, to cover “costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris.” § 627.7011(1)(b), Fla. Stat. (2011). The

question before us is subject to de novo review, as it involves the interpretation of the appraisal and “Ordinance and Law” provisions of the policy.

While issues concerning coverage challenges are exclusively for the courts, the appraisers are charged with determining the amount of the loss when an insurer admits there is a covered loss and there is a disagreement regarding the amount of the loss. See Citizens Prop. Ins. Corp. v. Mango Hill Condo. Ass'n 12, Inc., 54 So. 3d 578, 581 (Fla. 3d DCA 2011). In order to perform competently as an appraiser for this purpose, and to be designated by a party or by other appraisers or the court (as an umpire), logic and common sense require that an appraiser must have experience in the estimation of materials and labor costs for the repair and replacement of damaged property. In the case of roof work, appraisers must consider the requirements of the applicable building codes in order to estimate the cost of repair or replacement. This is an area for professional construction industry expertise and should be “baked into” the appraisers’ and umpire’s computations, and not left open for a re-appraisal or for a determination by the court.

Whether a building code provision requires a particular standard for plywood decking, or the use of specified thicknesses of felt or shingles, or (as here) replacement of an entire roof if over 25% of the roof must be replaced, such provisions are established regulatory requirements known to, or knowable by, construction professionals and to be taken into account in computing the cost of the

work when they conduct their appraisal.³ The appraisal provision in the present case sufficed to leave these issues to the appraisal panel, not the court.

This explains the notation on the appraisal award that “Law & Ordinance” was not appraised—the majority of the appraisal panel concluded that current building code requirements did not require replacement of the whole roof, and their estimation line items confirm an estimate of 3% of the roof area to be replaced, not 25% or more. The notation surely cannot mean that the appraisal is subject to circumvention a month later if the insured can just find a roofing contractor to sign a proposal stating that 30%, not 3%, of the roof needs replacement. If the appraisal award had concluded that the entire roof had to be replaced because the necessary re-roofing exceeded 25% of the area of the roof, then this additional cost would have been shown and the appraisal panel would have reported that ordinance and law costs were appraised and included.

To hold otherwise would allow the insured’s post-appraisal roofing contractor to step into the adjustment process as a super-umpire whose opinion supersedes the appraisal and requires a new round of valuation estimates. In this case, such a process would occur against the backdrop that the original appraisal award was issued almost five years after the windstorm damage, primarily due to the delay by

³ A different analysis could apply if a new, more onerous (i.e., more expensive) building code requirement was imposed after the appraisal but before the commencement of the repair work. That did not occur in the present case.

the homeowner in filing a supplemental claim (nearly four years after the damage occurred). If the insured intends to offer a roofer's professional opinion that the applicable building code will require replacement of the entire roof, not just 3% of the area of the roof, the appraisal process must surely be the time to offer that evidence—not as an afterthought on the heels of the appraisal.

The present case is distinguishable from Jossfolk v. United Property & Casualty Co., 110 So. 3d 110 (Fla. 4th DCA 2013), because in that case the insurer had not raised its “under 25%” roof replacement argument in its motion for summary judgment. Id. at 113. The present case only involves the denial of the insured's request for a second appraisal—not a summary judgment in favor of the insurer—on the grounds that the appraisal panel had previously considered and determined the percentage of replacement required. The present case is also distinguishable from Ceballo v. Citizens Property Insurance Corp., 967 So. 2d 811 (Fla. 2007), relied upon as “determinative” in Jossfolk, 110 So. 3d at 113. In Ceballo, the issue was whether Florida's Valued Policy Law (VPL)⁴ required the insured to demonstrate an actual (incurred) loss before payment could be required for ordinance and laws coverage. The present case does not involve a total loss or the VPL, and Mr. Noa

⁴ The VPL, section 627.702, Florida Statutes (2016), requires an insurer to pay the face amount for which a covered property was insured if the property is a total loss as a result of a covered peril (with additional provisions not applicable here).

and his appraiser had already submitted the costs of the full-roof repair they proposed to the first appraisal panel.

Affirmed.