

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
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Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
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5890
4/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

VIA EMAIL: [REDACTED]@gmail.com

[REDACTED]
Coral Gables, FL 33134

RE: Claim Number: N10036-0041

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0041 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[REDACTED]
Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/18/2011
Claim Number	: N10036-0041
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$77,000.00

FACTS:

On or about April 20, 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 06 October 2010, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC)¹ seeking \$27,000.00 in lost profits and earnings capacity allegedly resulting from the Deepwater Horizon oil spill and \$50,000.00 in real or personal property damage for loss of equity in her rental home, bringing the Claimant's full requested amount to \$77,000.00.

Claimant owns and rents a single family home located in Placida, Florida. Claimant manages the property and handles reservations directly through the telephone and email. The rental property is advertised as the [REDACTED] on [REDACTED] island.² Claimant asserted that she has been unable to rent the beach house since April 20, 2010 due to the Deepwater Horizon oil spill.³

Claimant further asserted that she has not been able to sell the house as a result of the Deepwater Horizon oil spill.

On 23 August 2010, the Claimant filed a six-month Emergency Advance Payment claim of \$25,000 with the GCCF for lost profits and earnings. She was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. Claimant was paid \$21,500 by the GCCF on 26 November 2010.⁴

The NPFC denied the claim on March 14, 2011, on the basis that (1) the documentation provided associated with the Claimant's alleged depreciation in value of her real property, there is no

¹ Optional OSLTF Claim Form dated 06 October 2010 was received at the NPFC on 19 October 2010. The claim form indicates \$27,000.00 in lost profits and \$50,000.00 in property damages. Because the claim clearly describes the property damage as value depreciation, these two amounts have been joined under lost profits.

² [http://www.\[REDACTED\].house.com](http://www.[REDACTED].house.com) (last visited 10 March 2011).

³ Claim cover letter, dated 06 October 2010.

⁴ GCCF notice of determination emergency advance payment, dated 26 November 2010.

indication that the Claimant actually sold the property for an amount less than the original purchase price, either before or since the submission of her claim, to realize such a claimed loss. Therefore, the claimed loss of property value is prospective and not compensable under OPA and the associated regulations at 33 C.F.R. Part 136,⁵ and (2) the Claimant's alleged loss based on a decrease in rental earnings, the Claimant has not provide documentation to prove a financial loss greater than the \$21,500.00 she has already received from the GCCF. Based upon her provided reservation contracts from 2009, Claimant had gross earnings of \$25,150.00 for the corresponding six-month period (May-October) upon which she has claimed her 2010 loss.

The Claimant provided no rental contracts or cancellations from May 2010. Claimant's 2009 reservation records indicate that all the reservations for May 2009 were made prior to 10 April 2009. Assuming the same reservation dates for 2010, the Claimant should have been able to produce rental reservations for May 2010. The absence of rental reservations for May 2010 indicates that losses in that month may have resulted from factors other than the Deepwater Horizon oil spill although without sufficient information, the NPFC can only assume. Subtracting losses from May 2010 reduces the Claimant's total damages below her GCCF award of \$21,150.00.⁶ Therefore, this component of the claim is denied because the NPFC could not verify through evidence presented that the Claimant suffered an uncompensated economic loss as a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

REQUEST FOR RECONSIDERATION:

On March 27, 2011, the Claimant sent a request for reconsideration via email dated March 27, 2010 to [REDACTED] stating she would like the NPFC to reconsider her claim. The Claimant argued on reconsideration for the depreciation of value in her home only. The Claimant amended her amount requested on reconsideration via typed letter dated March 30, 2011, that she has provided new information that the property has sold at public auction and her mortgage holder, [REDACTED] obtained the home for a bid of \$286,100.00. Claimant further asserted that she bought the home originally for \$749,000.00 and is therefore seeking compensation in the amount of \$462,900.00 which is the difference of the purchase price less the amount the home was sold for at public auction.⁷ Claimant presented no evidence that she had presented this sum certain to the GCCF.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via email on March 27, 2011. To support her request for reconsideration, the claimant provided a copy of the "Notice of Foreclosure Sale" that was advertised in the [REDACTED] Newspaper dated September 4, 2011 and the Claimant also provided a copy of the Certificate of Sale dated September 20, 2010 from the Circuit Court of the 20th Judicial Circuit in, and for [REDACTED] Florida that shows Bank [REDACTED] bought the home for the total sum of \$286,100.00.⁸

⁵ 33 CFR § 136.235 limits compensation to the actual net reduction or loss of earnings suffered (emphasis added). Similarly, although Claimant alleges that she has not been able sell her property as a result of the Deepwater Horizon oil spill, it is unclear how she realized a loss from failed sales negotiations because she retained her property after the negotiations fell through and she failed to subsequently sell it at a lower price.

⁶ For a detailed breakdown of Claimant's losses, refer to Enclosure 3 of original denial determination dated March 14, 2011.

⁷ See, letter from Claimant dated March 30, 2011.

⁸ See, Certificate of Sale dated September 20, 2010.

NPFC Determination on Reconsideration

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Under 33 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. A request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The NPFC considered all the documentation submitted by the Claimant.

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. The NPFC will first discuss the Claimant's increased sum certain request for the amount associated with the depreciation of value of her home. The Claimant initially requested \$50,000.00 although the sale of the home had not taken place at the time her original claim was received by the NPFC. On reconsideration, the Claimant provided evidence that the home had sold at Public Action on or about September 20, 2010 for which she has now increased her amount requested to \$462,900.00.

The NPFC has confirmed with the GCCF that the Claimant has only presented a claim for lost rents. The Claimant has never presented a claim to the GCCF associated with the depreciation of value of her home in any amount therefore the NPFC must deny this request for reconsideration based upon the fact that the Claimant has not made proper presentment of costs to the Responsible Party (RP) as required by regulation in accordance with 33 C.F.R. § 136.103(a), which states that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor.

While this claim on reconsideration is denied due to failure of the Claimant to make proper presentment to the RP, the NPFC did obtain information on the validity of the Claimant's assertions both in her initial claim submission and on reconsideration and will discuss those findings below.

In the Claimant's original submission to the NPFC, the Claimant stated in a typed letter dated October 6, 2010 that..."I had to put the house up for sale, I did get an offer but the buyers backed out as they saw the oil spill issue not resolved." Then again on reconsideration, the Claimant asserted in her email dated March 27, 2011 to [REDACTED] that..."It seems they saw we tried to see and [c]ontracts got canceled as buyers got scared with the Oil Spill."

The NPFC contacted the Intended Buyers who entered into a sales contract with the Claimant for purchase of the subject property. The NPFC obtained a written statement from Mr. [REDACTED] the Intended Buyer for the sales contract dated February 11, 2011 in the purchase amount of \$400,000.00 that was subsequently terminated on May 25, 2011. Mr. [REDACTED] provided a written statement on April 7, 2011 stating that they ..." did not purchase that home because they (the sellers) rejected our offer and we purchased another on the island. It had nothing to do with the oil spill."⁹

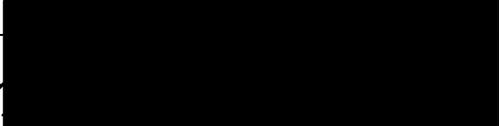
The NPFC again denies the claim because (1) the Claimant has failed to make proper presentment of costs to the RP in accordance with 33 C.F.R. § 136.103(a), which states that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor and (2) the Claimant has made false statements in connection with her claim

⁹ See, Email from [REDACTED] to [REDACTED] dated April 7, 2011.

submissions to the NPFC in order to obtain funds for an alleged loss of profits as a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. The NPFC considered all of the documentation submitted by the Claimant.

This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: *4/18/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: