

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
11/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6302

James L Arnett Jr.


RE: Claim Number: N10036-1293

Dear Mr. and Mrs. Arnett.:

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 N10036-1293 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Per your request, the NPFC is attaching your original photographs that were provided.

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.


Thomas S. Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1293
Claimant	: James L Arnett Jr.
Type of Claimant	: Private (US)
Type of Claim	: Real or Personal Property
Amount Requested	: \$16,900.00

FACTS:

On or about 20 April 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 23 August 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 1 August 2011, Mr. and Mrs. James and Sandra Arnett (collectively Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$16,900.00 in damage to real or personal property resulting from the Deepwater Horizon oil spill.¹

At the time of the oil spill, the Claimant owned a home in Robertsdale, AL. On 21 May 2010, Claimant listed the home for sale, with an asking price of \$144,900.00.² On 14 June 2010, Claimant reduced the asking price to \$134,000.00, and on 23 August 2010, sold the home for \$128,000.00.³ Claimant alleged that the difference between the first listing price (\$144,900) and the actual sales price (\$128,000) represents a decrease in the value of the home in the amount of \$16,900.00 caused by the Deepwater Horizon oil spill.⁴

Claimant indicated that the home was not damaged by oil or oil pollution, and that this claim is for losses related to "property depreciation."⁵ The NPFC has reclassified this claim as a claim for loss of profits and impairment of earnings capacity in the amount of \$16,900.00 based on diminution in property value, as explained below.

Claimant asserted that the 21 May 2010 asking price of \$144,000.00 represents the fair market value of the home before the effects of the oil spill.⁶ Research conducted by the NPFC indicates that the value of the home at the time of the original listing was significantly less than the Claimant's \$144,000.00 asking price.⁷ Furthermore, according to the NPFC research, which was later confirmed by the Claimant in a phone conversation, the Claimant agreed that he had been attempting to sell the property since March 2009, and had been continually reducing the asking

¹ Optional OSLTF Claim Form dated 1 August 2011.

² GCCF Claim Form at 5.

³ Timeline created by Claimant.

⁴ Letter from Claimant to NPFC, 1 August 2011; GCCF Claim Form, 14 September 2010.

⁵ Letter from Claimant to NPFC, 1 August 2011.

⁶ GCCF Claim Form at 5.

⁷ Analysis of 21843 Mahan Ct, Robertsdale, AL, available via zillow.com, Accessed on 24 August 2011.

price up until the point that the home was sold in August of 2010.⁸ Thus, the Claimant has not provided evidence that would indicate that the final reduction in the home price was due to the oil spill, and not due to generally declining market conditions or other factors, which had caused the Claimant to reduce their asking price several times before the oil spill.⁹

The NPFC denied the claim originally on August 26, 2011 because in order to prove a claim for loss of profits and impairment of earnings capacity based on diminution in property value after a property has been sold, the Claimant must provide evidence to indicate (1) the value of the home before the effects of the oil spill, (2) the value of the home after the effects oil spill, and (3) that the reduction in property value was caused by the oil spill. Claimant failed to demonstrate that the alleged loss in the amount of \$16,900.00 was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

On 15 September 2010, the Claimant presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF in a claim for damages to real or personal property in the amount of \$16,900.00.¹⁰ Claimant was assigned ID# 1151840. This claim was denied by the RP/GCCF on 29 April 2011.¹¹

REQUEST FOR RECONSIDERATION:

On October 20, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The Claimant requested an extension of time to submit additional information in support of his request for reconsideration. The NPFC granted his request for extension on October 24, 2011 until November 21, 2011.

In its original denial the NPFC advised the Claimant that should he decide to pursue this claim on reconsideration, and in order to increase its likelihood of meeting its burden of proof, the Claimant would need to provide documentation which would more accurately demonstrate the value of the home before the effects of the oil spill (pre-spill certified appraisal) as well as documentation that demonstrated the value of the property post-spill (post-spill certified appraisal), as well as documentation to show that the drop in the value of the home after the spill was a consequence of the discharge or substantial threat of discharge of oil. Because home prices were decreasing in value in the period leading up to the oil spill, the Claimant would also need to demonstrate that the depreciation in the value of the subject home was due to the oil spill, and not due to other factors such as generally declining market conditions.

RECONSIDERATION CLAIM ANALYSIS:

The Claimant's additional information was sent to the NPFC on November 21, 2011 thereby meeting the deadline to produce all new information in support of the reconsideration. The Claimant provided a two-page letter requesting reconsideration and attached to the letter was copy of the following documents:

⁸ *Id.*; See also, PHONECON: Claimant and NPFC Staff, 24 August 2011.

⁹ *Id.*

¹⁰ GCCF Claim Form at 4.

¹¹ Denial Letter on Interim Payment/Final Payment Claim, 29 April 2011.

- Copy of a letter from RE/MAX of Orange Beach dated November 24, 2009 whereby Karen Harrison, Realtor, was soliciting Claimant for their business;
- Copy of an undated property assessment screen print;
- Duplicate copy of a letter from RE/MAX of Orange Beach dated September 9, 2010 whereby listing agent stated property prices have dropped about 15% in the past 4 months and the Claimant had to reduce the price of their property;
- Copies of (2) Press Register newspaper articles on the BP oil spill.

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 and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The 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. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant.

The Claimant requested reconsideration and provided the above referenced documentation to support the claim. No new arguments or assertions are presented on reconsideration. Nor did the Claimant provide either pre-spill or post-spill certified property appraisals for the property with the request for reconsideration.

The Claimant originally asserted that the 21 May 2010 asking price of \$144,000.00 represented the fair market value of the home before the effects of the oil spill.¹² However, a listing price is not necessarily the appraised value of the property but a price at which the seller wishes to sell the property. Further, research conducted by the NPFC indicated that the value of the home at the time of the original listing was significantly less than the Claimant's \$144,000.00 asking price.¹³ Claimant later confirmed in a teleconference with the NPFC that he had been attempting to sell the property since March 2009, and had been continually reducing the asking price up until the point that the home was sold in August of 2010.¹⁴

With his reconsideration request the Claimant provided a copy of a letter from RE/MAX dated November 24, 2009 whereby the realtor was soliciting the Claimant to list their property with RE/MAX. The letter stated properties were selling although nothing specific to the Claimant, the suggested selling price, or the subject property was mentioned in the letter for solicitation. The Claimant also provided a screen print that the Claimant asserts is a property assessment for the subject property although the effective date of the screen print has not been provided; therefore, the NPFC is unable to determine its relevance to the claim. The screen print does indicate the suggested market price to be \$121,900.00, which is comparable with the research performed by the NPFC. (At the time of the initial determination the property value was estimated to be in the

¹² GCCF Claim Form at 5.

¹³ Analysis of 21843 Mahan Ct, Robertsdale, AL, available via zillow.com, Accessed on 24 August 2011.

¹⁴ *Id.*; See also, PHONECON: Claimant and NPFC Staff, 24 August 2011.

range of \$120,200.00 vice what the Claimant asserted was the fair market value prior to the spill in the amount of \$144,000.00.)

With respect to the sales contract and settlement documents presented, the home was sold as a cash sale; therefore, no appraisal was required post-spill. The contract stated that the Buyer's offer is not subject to an appraisal and the contract indicates that the subject sale is a cash sale to the Seller (Claimant). Thus, no appraisal was conducted in 2010 that would value the property at that time. Further, Claimant did not provide a certified appraisal of the property that reflected the value of the property just prior to the oil spill.

In light of all the facts presented, the Claimant has not provided any certified appraisals pre or post oil spill that would provide an indication of the value of the home on the date of the 2010 sale. The Claimant has arrived at the sum certain by taking the May 2010 list price of \$144,900.00 and subtracted the 2010 sale price of \$128,000.00 arriving at the amount requested of \$16,900.00.

Because there are no appraisal records provided to the NPFC, it is impossible for the NPFC to determine what the actual value of the property was prior to the oil spill and if the post spill offer was actually an appropriate selling price for the home. The Claimant did not provide any comparable values for other residences in the area and the sales prices realized for any of these homes. Further, the Claimant has not established that the alleged diminution in value was due to the oil spill. The Claimant acknowledges that the alleged \$16,900.00 diminution in value is not necessarily all the result of the oil spill.

Based on the foregoing, the NPFC has determined that the Claimant has again failed to demonstrate (1) that they have suffered a loss in the amount claimed, and (2) that the alleged loss was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied upon reconsideration.

Claim Supervisor:

Date of Supervisor's review: *11/28/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: