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
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [redacted]
E-mail:
[redacted]
Fax: 202-493-6937

5890
12/13/2010

VIA EMAIL: [redacted]@comcast.net

[redacted]
Ft Lauderdale, FL 33304

RE: Claim Number: N10036-0020

Dear [redacted]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0020 involving Deepwater Horizon. Compensation is denied because under 33 USC § 2702(b) and 33 CFR § 136, the Claimant bears the burden of proving their loss which has not been established by the Claimants in this case. The NPFC upholds its original denial dated November 12, 2010 and the NPFC has also determined that the Claimants have failed to provide any new information on reconsideration that would prove their loss. Please see the attached Determination Summary as well as the original Determination Summary for the details associated with this denial.

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.

Sincerely,
[redacted]
[redacted] Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/6/2010
Claim Number	: N10036-0020
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [redacted]
Amount Requested	: $59,077.04

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 from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon oil-spill). This area is leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting claims on behalf of BP.

Responsible Party:

BP Exploration & Production, Inc., (BP), as operator of the rig, has been named a responsible party under the Oil Pollution Act (OPA). BP has accepted designation and accordingly is the lead for the advertisement and acceptance of claims.

The Claimants and the Claim:

On October 04, 2010, [redacted] on behalf of herself and her husband [redacted], have submitted a claim to the National Pollution Funds Center (NPFC) for a loss of profits or impairment of earning capacity in the amount of $59,077.04 which they allege resulted from the DEEPWATER HORIZON oil spill.[1] The Claimants report that they have not earned any sales commissions since May 2010 and assert the reason as a down real estate market in the Fort Lauderdale area resulting from the oil spill.

In their October 4, 2010 claim the Claimant explained that she and [redacted] are real estate agents employed by [redacted] in Fort Lauderdale, FL. The Claimants previously worked for another real estate brokerage firm in Fort Lauderdale known as [redacted] Realty. Both [redacted]'s agent agreements with [redacted] were effective June 2010. The [redacted]'s employment compensation is strictly based on sales commissions from real estate sales on behalf of sellers and buyers along with some commissions from leases. The Claimants' property listings have included both condominiums and homes ranging from $400,000.00 to properties in excess of a million dollars. The Claimants have stated that their main clientele are property investors from Europe and "snowbirds" from the United States seeking vacation properties.

[1] *See,* Claim Form signed by [redacted] dated October 3, 2010.

The last transaction dated for commissions earned provided by the Claimants was May 27, 2010. The Claimants stated that this particular transaction was initiated a few months prior to the actual closing. The Claimants have not earned any sales commissions since that transaction which was subsequent to the spill. The Claimant do have active listings but are uncertain of any pending sales. The Claimants have also submitted a claim to the Florida Realtor's Compensation Fund and have received a total amount of $4,000.00. It is unclear to the NPFC what the payment actually covered.

The NPFC denied the claim on November 12, 2010 on the grounds that under 33 USC § 2702(b) and 33 CFR Part 136, the claimants bear the burden of proving their loss. The [redacted]s failure to make any commissions during the period following the oil-spill could be the result of several intervening factors outside the scope of the oil-spill. The list of intervening factors that may have impacted the claimant's earnings include:

1. The [redacted] change from [redacted] Realty to [redacted] during June 2010;
2. Expiration of the first time home buyer's tax credit which expired March 1, 2010;
3. European sovereign debt crisis;
4. Claimant's historical annual earnings showing little or no commissions paid after April or May of each year;
5. Fort Lauderdale's real estate market has historically shown seasonal fluctuations that coincide with their failure to sell any properties.

These factors are further exacerbated by the fact that the high-end real estate market in South Florida appears to have remained stable or even improved over the previous year. The Claimants have not provided enough substantive evidence to establish that their losses were more likely than not the result of the oil-spill and are therefore denied.

Request for Reconsideration:

On November 26, 2010, the Claimants requested reconsideration of their claim based on no new information but rather a desire for the NPFC to look again at three emails submitted in their original claim package which they feel the NPFC may have overlooked the significance of those emails when making the initial denial determination. The Claimants also reiterate the commissions history with a specific focus on the commissions earned in 2009 vice the history they provided for 2007 and 2008.

DETERMINATION OF LOSS:

Analysis and Reconsideration:

The NPFC reviewed the initial documentation provided by [redacted]as well as all documentation provided pursuant to the NPFC's request for additional information dated October 15, 2010. Further, the NPFC reviewed all supplemental documentation provided following a phone interview held on October 20, 2010. However, the information initially provided by the Claimant, the phone interview provided by the Claimant, and the argument presented on reconsideration does not establish that the claimant's loss of income was a result of the discharge of oil-spill.

In accordance with 33 CFR § 136.115(d), the Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim

denied. 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. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after the receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. The Director, NPFC, will provide the claimant seeking reconsideration with written notification of the decision within 90 days after the receipt of the request for reconsideration. The written decision is final.

During the NPFC's adjudication on reconsideration, the NPFC contacted two of the three individuals [redacted] referenced in her request for reconsideration in order to obtain amplifying information. It is important to note that the one individual the NPFC chose not to contact, [redacted], stated in his email to [redacted] dated July 21, 2010 that he was putting his property search on hold for two reasons: (1) the oil spill and (2) the hurricane season. Based on his email, there is no evidence that [redacted] stopped his search solely because of the oil-spill as evidenced by the last sentence in his email which states…"You can keep sending me information, but I probably won't be ready to buy until both of the above have passed" therefore the NPFC has determined that the claimant has failed to establish they lost business from this client solely because of the oil-spill.

Additionally, the NPFC contacted [redacted] and [redacted]. While the NPFC has not yet received a reply from [redacted] the NPFC did receive an email reply from [redacted] dated November 30, 2010. In [redacted]'s reply to the NPFC, [redacted] was able to confirm that his client was looking at 15 properties of which only some of them were associated with the [redacted]s listings. He also stated that his client was looking at properties in other locations around the state of Florida therefore [redacted] stated he could not confirm, on behalf of his client, that the oil-spill was the definitive reason why his client chose not to buy a unit in [redacted] that was being handled by [redacted].[2] Based on the information received and contained within the three emails [redacted] requested we reconsider, the NPFC finds that the claimant has failed to establish that they suffered a loss of income as a result of the oil-spill.

On that basis, the NPFC has determined that the Claimants have failed to provide new information in support of their request for reconsideration and therefore the Claimants continue to fail to establish that their claimed losses were the result of the oil-spill and are therefore denied. In accordance with 33 USC § 2702(b) and 33 CFR § 136, the Claimant bears the burden of proving their loss which has not been established by the Claimants in this case. The NPFC's original denial and rationale still stands.

Claim Supervisor: [redacted]

Date of Supervisor's review: 12/13/10

Supervisor Action: DENIAL ON RECONSIDERATION APPROVED

Supervisor's Comments:

[2] *See,* email from [redacted] to the NPFC dated November 30, 2010.