U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center
United States Coast Guard

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5890/DWHZ
23 May 2012

Mr. Taylor Rider
[redacted]

Re: Claim Number: N10036-1770

Dear Mr. Rider:

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 the claim number N10036-1770 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-1770.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

[redacted]

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1770
Claimant	Mr. Taylor Rider
Type of Claimant	Private (US)
Type of Claim	Loss of Profits & Impairment of Earning Capacity
Amount Requested	$45,000.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 19 April 2012, Mr. Taylor Rider (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $45,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.[1]

In March of 2004, the Claimant purchased six lots in East Orange Beach, in Baldwin County, Alabama for approximately $115,000.00.[2] In 2006, the property appraised for $625,000.00 and was listed for sale at $1,500,000.00.[3] The Claimant was unable to sell the property and lowered the list price to $480,000.00 in 2009, and then to $325,000.00 in January of 2010.[4]

In December of 2010, the Claimant became unable to continue making payments on the property and opted to enter into a short sale in order to avoid foreclosure proceedings.[5] The parties entered into a short sale of the property for $70,000.00 in July of 2011.[6]

The Claimant alleged that the short sale generated approximately $45,000.00 less than it would have, had the oil spill not taken place, thereby increasing the deficiency payment owed by the Claimant following the sale. The Claimant therefore seeks $45,000.00, which he alleges is the drop in the value of the property from 2009 to 2010, attributable to effects of the oil spill.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims

[1] Optional OSLTF Claim Form signed on 10 April 2012.
[2] Memo from the Claimant to the GCCF, 13 September 2011.
[3] Memo from the Claimant to the GCCF, 13 September 2011; *See also*, Listing agreement, 21 March 2006.
[4] Response to NPFC request for additional information, 11 May 2012.
[5] *See*, Letter from the Claimant to Wells Fargo Bank, 15 December 2010.
[6] Memo from the Claimant to the GCCF, 13 September 2011.

for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

(a) That real or personal property or natural resources have been injured, destroyed, or lost.

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 C.F.R. § 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 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for—

(a) All income resulting from the incident;
(b) All income from alternative employment or business undertaken;
(c) Potential income from alternative employment or business not undertake, but reasonably available;
(d) Any saved overhead or normal expenses not incurred as a result of the incident; and
(e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, signed on 10 April 2012;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 5 January 2012;
- Letter from the Claimant to the GCCF regarding losses, 24 October 2011;
- GCCF Deficiency Letter on Interim Payment/Final payment Claim, 8 October 2011;
- Letter from the Claimant to the GCCF, re: short sale on property, 13 September 2011;
- Response to NPFC request for additional information, received on 21 May 2012, including the following:
    - Cover letter, 11 May 2012;
    - Property appraisal, 10/12/2006;
    - Boundary Survey;
    - Memo from the Claimant to "Interested Parties," 23 January 2009;

- Map showing location of the Claimant's lots;
- Listing agreement, signed on 10 September 2007;
- Listing agreement, signed on 21 March 2006;
- 2011 Form 1099-S;
- Baldwin County Revenue Department, Appraisal/True Value Report, 2009;
- Baldwin County Revenue Department, Appraisal/True Value Report, 2010;
- Baldwin County Revenue Department, Appraisal/True Value Report, 2011;
- Letter from the Claimant to Wells Fargo, 15 December 2010.

On 17 September 2011, the Claimant presented two Third Quarter Interim Claims (ICQ32011) to the RP/GCCF, seeking either real or personal property damage, or lost profits and earnings damages in the amount of $45,000.00.[7] The Claimant was assigned Claimant ID 3513851 and the ICQ32011s were collectively assigned claim # 9504149.[8] The RP/GCCF denied payment on these claims in a letter dated 5 January 2012.[9]

On 19 April 2012, the Claimant presented this claim to the NPFC, seeking $45,000.00 in loss of profits and impairment of earning capacity damages.[10] Because this claim has been presented to and denied by the GCCF prior to its presentment to the NPFC, the NPFC may fully adjudicate this claim for $45,000.00, stemming from the diminution of the Claimant's property value, allegedly resulting from effects of the Deepwater Horizon oil spill.[11]

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that any loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 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 this claim. The NPFC reviewed all information and documentation provided by the Claimant.

In order to prove a claim for loss of profits damages, a claimant must provide evidence sufficient to prove (1) that the claimant sustained an actual financial loss within the meaning of OPA, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

1. <u>Insufficient documentation to prove a financial loss</u>.

In this case, the Claimant alleged that the short sale price of a property in Gulf Shores, Alabama, was lower than it would have been, had the oil spill not taken place. However, the Claimant has not provided documentation sufficient to prove that any loss incurred on the short sale resulted in an actual loss to the Claimant.

According to OPA, in order to prove a claim for loss of profits damages, a claimant must provide evidence sufficient to prove "that *the claimant's* income was reduced" [emphasis added][12] as a result of the oil spill. Because proceeds from the short sale would have been transferred to the interest holder, any loss on the short sale would have been incurred by that party, and not by the

[7] Transition Program, United States Coast Guard Report, 13 May 2012.
[8] Transition Program, United States Coast Guard Report, 13 May 2012.
[9] GCCF Denial Letter on Interim Payment/Final Payment Claim, 5 January 2012.
[10] Optional OSLTF Claim Form, signed on 10 April 2012.
[11] 33 C.F.R. § 136.103(a).
[12] 33 C.F.R. § 136.233(b).

Claimant. However, the Claimant asserts that as a consequence of the low sales price, he owes a greater deficiency on the loan than he would otherwise owe, had the property sold at a higher price. The Claimant has not, however, provided proof that he is in fact making deficiency payments on the loan, other than to state that he "still owe[s] [the bank] $81,900.00 in settlement charges regarding the overall note on the property."[13] Without proof that the bank is actually collecting payment from the Claimant following the short sale, the Claimant has not proven that he has actually incurred a loss of income following the oil spill.

2. Failure to prove that the oil spill caused diminution in property value.

Secondly, the Claimant has failed to provide evidence sufficient to prove that the oil spill caused a reduction in the sales price of the property in July of 2011. The Claimant provided county revenue reports for 2009, 2010 and 2011, which show that the assessed value of the property decreased from $101,400.00 in 2009 to $66,600.00 in 2010, and then to $51,900.00 in 2011.[14] The months during which assessments were conducted are not indicated in the revenue reports, making it unclear whether the 2010 assessment was conducted prior to or following the oil spill in 2010.

Furthermore, evidence provided by the Claimant indicates that the value of the property had been consistently decreasing since at least 2006. Since the property was first listed for sale, the asking price had been reduced from approximately 1.3 million dollars in 2004 to $325,000.00 in January of 2010, indicating that the Claimant had been unable to sell the property for at least four years prior to the oil spill. The Claimant has not provided evidence to prove that the particular devaluation as reflected in the short sale of the property was caused by the oil spill and not by generally declining market conditions and other factors which have affected the property's value and marketability in years prior to and following the oil spill.

Furthermore, in estimating that the short sale could have garnered an additional $45,000.00, the Claimant is failing to account for the fact that distressed properties often sell at prices that can be significantly lower than their market value.

Consequently, the Claimant has failed to prove that the Deepwater Horizon oil spill was the cause of the alleged decrease in the sales price of the property in July of 2011.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of $45,000.00, and (2) that the alleged loss is 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.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***5/23/12***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

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[13] Letter from the Claimant to the GCCF, 24 October 2011.

[14] Baldwin County Revenue Reports, 2009, 2010, and 2011.