

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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5890
1/06/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 6456

Robert Barrington
[REDACTED]

RE: Claim Number: N10036-1388

Dear Mr. Barrington:

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 N10036-1388 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.

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

Copy: Gail Taylor
[REDACTED]

USPS Certified Receipt: 7011 1570 0001 4802 6463

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1388
Claimant	: Gail Taylor
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$103,200.00

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 09 September 2011, Robert Barrington, on behalf of Gail Taylor (collectively the Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$103,200.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is the owner of a commercial property located at 5625 Segura Avenue, Pensacola, Florida.¹ The Claimant leases the property to Ronin² Corporation dba Inside Out Furniture (Ronin).³ The Claimant asserted that Ronin has been unable to pay rent due to her as a result of the Deepwater Horizon oil spill.⁴

The Claimant stated that rent for the property is \$12,900 per month and indicated that Ronin did not pay rent for the entire period of May through December of 2010.⁵ Thus, the Claimant's alleged damages are the total of eight months of lost rental earnings for May 2010 through December 2010 ($8 \times \$12,900.00 = \$103,200.00$).⁶

Prior to presenting this claim to the NPFC, the Claimant filed a Full Review Final (FRF) claim with the GCCF on 18 April 2011 in the amount of \$103,200.00 for lost profits and earnings.⁷ The Claimant was assigned Claimant ID # 1622219 and Claim # 9361031. This claim was denied by the GCCF on 20 May 2011.⁸

The NPFC denied the claim originally on November 29, 2011 because the Claimant failed to prove that she suffered a loss of profits due to the Deepwater Horizon oil spill. The Claimant asserted that Ronin Corp. was unable to pay rent because of financial losses caused by the

¹ Letter of claim explanation from Gail Taylor to the GCCF, dated 14 April 2011;

² 2010 Income Report

³ Accountants Fax

⁴ Letter of claim explanation from Gail Taylor to the GCCF, dated 14 April 2011;

⁵ GCCF Full Review Final Payment Claim Form, dated 14 April 2010.

⁶ GCCF Full Review Final Payment Claim Form, dated 14 April 2010.

⁷ Report from the GCCF, dated 21 November 2011.

⁸ Denial letter on Interim Payment/Final Payment Claim, dated 20 May 2011.

Deepwater Horizon oil spill; however, the financial documentation provided to the NPFC indicates that Ronin Corp. had not paid rent to the Claimant since February 2008, well before the Deepwater Horizon oil spill in April 2010. The fact that Claimant did not receive any rent from Ronin in 2010⁹ after the oil spill¹⁰ does not establish that Ronin's failure to pay the rent was due to the Deepwater Horizon oil spill and thus the cause of any lost rental income on the property.

The Claimant argued that, even though Ronin Corp. did not pay any rent to the Claimant after February of 2008, the unpaid rents have continued to accrue and are owed to the Claimant.¹¹ While Claimant may be owed the back rent from Ronin, as claimed, she has not established that the unpaid back rent is due to the Deepwater Horizon oil spill.

Further, the Claims Regulations at 33 C.F.R. § 136.235, provide that the amount of compensation allowable for an OPA claim for loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Therefore, the Claimant can only be compensated for the actual rents that would have been paid if not for damages caused by the Deepwater Horizon oil spill. Since Ronin Corp. was not actually paying the Claimant rent prior to the Deepwater Horizon oil spill, the Claimant has not suffered a loss due to the oil spill and cannot be compensated by the Oil Spill Liability Trust Fund.

Furthermore, in addition to the extended non-payment of rents by Ronin Corp., the Claimant failed to provide a commercial lease between Ronin Corp. and the Claimant and the Claimant's records indicate that her husband, Stuart Kaplan, is the CEO of Ronin Corp.¹² Considering all the above, the NPFC is unable to find that a legally enforceable contract or obligation for Ronin Corp. to pay the Claimant rental income existed at the time of the Deepwater Horizon oil spill. It is also important to note that the NPFC has received a separate claim from another Claimant identified as NPFC claim # N10036-1384 which is also for unpaid rent from Ronin Corp. during the same period in question which raises the issue of whether Ronin Corp. has multiple locations and if not, the validity of the assertions made.

Accordingly, this claim was denied because (1) the Claimant failed to demonstrate a loss in the amount claimed, and (2) the Claimant failed to meet its burden to demonstrate that it experienced a loss 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.

REQUEST FOR RECONSIDERATION and CLAIMANT'S ARGUMENTS:

On December 16, the Claimant's authorized representative, Mr. Barrington, sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider this claim. The NPFC received the request on December 27, 2011.

The Claimant provided a two-page letter on reconsideration accompanied by a copy of the lease agreement in place between the Claimant and Ronin Corporation dba Inside Out Furniture & Design. The lease is for a property located at 5625 Segura Avenue, Pensacola, Florida. The Claimant also provided a copy of an Annual Meeting Memo dated August 31, 2008 removing Mr. Robert S. Duerstock as President and COO of Ronin Corporation and Designer Furniture

⁹ 2010 Joint Income Summary for Gail Taylor and Stuart Kaplan.

¹⁰ 2009 Joint Income Summary for Gail Taylor and Stuart Kaplan.

¹¹ 2008/2009/2010 Joint Income Summaries for Gail Taylor and Stuart Kaplan.

¹² 2010 Joint Income Summary for Gail Taylor and Stuart Kaplan.

Outlets Corporation for financial mismanagement. The Claimant also provided an excel spreadsheet of financials for Tax Year 2008, a copy of a letter dated September 15, 2008 to the Internal Revenue Service regarding back payroll taxes owed, a copy of Florida Department of Revenue notice effective August 1, 2010 for sales tax not paid, a copy of three emails between Stuart Kaplan and Mr. Duerstock, and a copy of letter dated June 1, 2010 with a subject line entitled "Business Impact of the BP Oil Disaster, April 20, 2010" from Stuart Kaplan to various company employees advising them that they should file claims for lost wages with the GCCF.

The Claimant made the following arguments on reconsideration in support of the request for eight months of unpaid rent in the amount of \$12,900.00 per month for May 2010 through December 2010:

1. Claimant asserts that the BP Disaster caused economic stress, not only on Ronin Corp. (tenant), but everyone in the area;
2. The Claimant argues that this claim is separate from NPFC claim # N10036-1384 which is a claim also for the same eight month time period of unpaid rent from May 2010 through December 2010 but associated with a different property location where this Claimant is also joint owner. That claim is from Gulf Beach & Kingsport (owned by Stuart Kaplan and this Claimant) for a lease with Ronin Corporation dba Inside Out Furniture & Design, Designer Furniture Outlets.com and its dba DesignerHomeAccents.com located at 8655 Gulf Beach Highway, Pensacola, Florida;
3. The Claimant explains on reconsideration that rents were not paid for two years preceding the BP oil spill because of financial mismanagement by the former President and COO of Ronin Corp. (tenant). As a result of this, the Claimant states that the company, Ronin Corp., was put into dire financial straits in mid-2008 for over \$1 million. Further, in a letter dated September 15, 2008 to the IRS Mr. Kaplan notes that "[T]his is the worst economic environment we have experienced in our lifetimes. Our retail businesses are tied to the housing industry. Our business is off 55% this year." The Claimant states that the additional documentation presented on reconsideration demonstrates Ronin Corp. was able to pay rent until mid-2008 when the collective owners (which the Claimant is also part owner) had to stop making rent payments.

The Claimant further asserts that after surviving the economic recession of 2008 and 2009, the company was finally in a position to start paying the accrued past due rents after the first quarter of 2010 but on April 20, 2010, the Deepwater Horizon incident occurred causing an immediate economic impact on the entire geographic area, especially the housing and condo markets so no payment of rents was ever reinitiated. The Claimant argues that since the company is a home furnishing business dealing primarily with condo home furnishings and annual replacement condo rental furnishings and with May being their alleged big month, no one showed in May 2010 and business dropped immediately by 50% and continued to deteriorate.

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, including the documentation presented with the initial claim and the documentation submitted with the request for reconsideration.

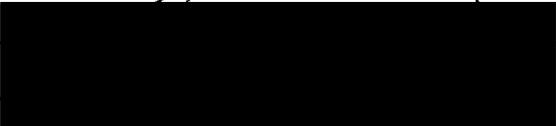
The NPFC reviewed the lease between Ronin Corporation, lessee, and Gail M. Kaplan and Stuart R. Kaplan, lessors. The lease was executed in April 2005. Under the terms of the lease the lessee, Ronin Corporation, was responsible for late charges if the rent was not timely paid and for payment of utilities. Further, any failure of the lessee to comply with any provision of the lease constituted a breach of the lease. Records submitted by the Claimant establish that Ronin has not paid rent since 2008; therefore, under the terms of the lease it is no longer in effect and is void. Claimant argues that she is owed past rents from Ronin. While this may be true if the lease is still in effect, it is questionable that the terms of the lease are enforceable.

The claim was initially denied on the grounds that Ronin Corp. had not paid rent to the Claimant since well before the Deepwater Horizon oil spill. While the Claimant argued it was going to start receiving rent in 2010 had the Deepwater Horizon incident not occurred, the Claimant has failed to produce evidence to support such an assertion. Claimant has not provided any historical sales, customer contact information and/or client data from 2008 through 2010 that would establish that business improved after 2008. Thus, the Claimant has failed to establish that the loss of profits from unpaid rental income was due to the oil spill.

It should be noted that the information submitted with the request for reconsideration does not support Claimant's allegation that Ronin's failure to pay rent was due to the Deepwater Horizon incident but in fact further evidences that Ronin's financial woes were due to (1) the COO's mismanagement of the company from at least 2008, and (2) general economic conditions related to the housing market from 2008 because furniture revenues for Ronin were derived from the housing industry.

Finally, the Claimant produced the lease agreement for this claim with the reconsideration submittals and the NPFC now acknowledges that Claim # N10036-1384 is for separate corporate entities at a different property location.

Based on the above information, this claim is denied upon reconsideration.

Claim Supervisor 

Date of Supervisor's review: *1/06/12*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments: