

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA
CIVIL DIVISION**

**TOWER HILL PRIME INSURANCE
COMPANY**

Petitioner,

v.

Case No. 2020-CA-006212

**SFR SERVICES, LLC a/a/o Rookery
Pointe Homeowners Association, Inc.,**

Defendant(s).

_____ /

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL JUDGMENT

I. FACTUAL BACKGROUND

This case involves the appraisal of a covered property insurance claim for damages caused by Hurricane Irma. The Petitioner, TOWER HILL PRIME INSURANCE COMPANY (the "Petitioner" or "Tower Hill") insured the property at issue on the date of loss. The Respondent, SFR SERVICES, L.L.C. (the "Respondent" or "SFR Services") was assigned the rights, benefits, and proceeds of the subject insurance claim by the Insured, Rookery Pointe Homeowners' Association Inc. (the "Insured" or "Rookery Pointe"). After the insurance claim was assigned to SFR Services, the two parties engaged in the appraisal process and an appraisal award was entered in favor of SFR Services. Tower Hill asserts three counts in the operative complaint: Count I for vacatur of the appraisal award on the grounds that the award was procured by fraud, corruption, or undue means (Fla. Stat. § 682.13); Count II for modification of the appraisal award on the grounds that the appraisal panel exceeded its authority under the policy by appraising items not in dispute (Fla. Stat. § 682.14), and Count III to declare the previously-afforded

coverage void due to SFR Services' violation of the Concealment, Fraud or Misrepresentation provision of the subject policy.

This matter came before the Court for a nonjury trial on March 30-31, 2023. During trial, the Court heard live testimony from Sam Winkel (Tower Hill's Appraiser), Carl "Blane" Hartzog (Corporate Representative of Tower Hill), Debbie Kiel (Former President of Rookery Pointe), and Freddie Jaramillo (Corporate Representative of Castilla Roofing). In addition, the entirety of the deposition of Ricky Lynn McGraw Jr. (Corporate Representative of SFR Services) was presented during Tower Hill's case, as well as portions of the deposition of Aaron Penn (SFR Services' Appraiser) by both parties. Based on the testimony presented and documents admitted into evidence, the Court makes the following findings of fact and conclusions of law:

Courts favor the use of alternative dispute resolution, particularly where its use was contracted for by the parties. *Miele v. Prudential-Bache Sec., Inc.*, 656 So. 2d 470, 473 (Fla. 1995) (superseded on other grounds by statute). Generally, appraisal awards should not be overturned. *Id.* "This high degree of conclusiveness attaches to an [] award because the parties themselves have chosen to go this route in order to avoid the expense and delay of litigation." *Id.* (citing *Applewhite v. Sheen Fin. Resources, Inc.*, 608 So. 2d 80, 83 (Fla. 4th DCA 1992)). Like arbitration, the purpose of the appraisal process is to provide finality for the parties.

Exceptions to this general rule exist in §§ 682.13 and 682.14, Florida Statutes, which govern the modification and vacatur of arbitration awards. At the outset, the Court finds that these statutes, while found in Florida's Arbitration Code, apply to appraisals under a policy of insurance. *See, e.g., American Reliance Ins. Co. v. Devecht*, 820 So.

2d 378, 379 (Fla. 3d DCA 2002) (citing Fla. Stat. § 682.13 while confirming an appraisal award); *Allstate Ins. Co. v. Martinez*, 790 So. 2d 1151 (Fla. 3d DCA 2001) (affirming confirmation of an appraisal award); *Preferred Nat'l Ins. Co. v. Miami Springs Golf Villas, Inc.*, 789 So. 2d 1156 (Fla. 3d DCA 2001) (same); *Wilson v. Federated Nat'l Ins. Co.*, 969 So. 2d 1133 (2d DCA 2007) (finding error in the trial court's denial of a motion to confirm an appraisal award). While the Court recognizes that other district courts of appeal have reached a different conclusion, those opinions are largely based on a misapprehension of *Allstate Ins. Co. v. Suarez*, 833 So. 2d 762 (Fla. 2002) ("*Suarez*"), which held that appraisals did not need to be conducted with the level of formality contemplated by Florida's Arbitration Code. *Suarez* did not discuss the application of the provisions of Florida's Arbitration Code that bear on post-arbitration and/or post-appraisal proceedings, which are at issue here, and necessarily contemplate involvement by the courts under limited circumstances.

The Respondent has argued that the only available remedy is found in § 627.70151, Florida Statutes, titled "Appraisal; conflicts of interest." The Respondent argued that because it is a more specific statute, it should govern over the more general statutes identified in the operative petition. To be sure, that statute sets forth grounds to "challenge an umpire's impartiality and disqualify [a] proposed umpire". Fla. Stat. § 627.70151. It does not discuss or contemplate a procedure for an aggrieved party to challenge the award itself. *Id.* Tower Hill has not challenged the impartiality of the umpire in this case and thus, § 627.70151, Florida Statutes, is inapplicable. Further, because it does not bear on the issue of modification or vacatur of appraisal awards, it does not

otherwise foreclose Tower Hill from seeking relief under §§ 682.13 or 682.14, Florida Statutes.

The appraisal provision in the subject policy states:

If you and we disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we still retain our right to deny the claim.

"In matters of appraisal, the contract language controls." *Certain Underwriters at Lloyd's v. Lago Grande 5-D Condo. Ass'n*, 337 So. 3d 1277 (3d DCA 2022) (citing *Citizens Prop. Ins. Corp. v. Zunjic*, 126 So. 3d 355, 356 (Fla. 3d DCA 2013) ("What is appraised and whether a party can be compelled to appraisal depend on the contract provisions.") and *Citizens Prop. Ins. Corp. v. Casar*, 104 So. 3d 384, 385 (Fla. 3d DCA 2013) ("Appraisals are creatures of contract.")).

A substantially similar provision was interpreted by the Third District Court of Appeal in *United States Fid. & Guar. Co. v. Romay*, 744 So. 2d 467 (3d DCA 1999) ("*Romay*"):

The appraisal clause in the parties' agreement provides: "If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. . . ." By these terms, the disagreement necessary to trigger appraisal cannot be

unilateral. As expressly indicated in the parties' agreement, the failure to agree must be between the "you" and the "we." In other words, by the terms of the contract, ***it was contemplated that the parties would engage in some meaningful exchange of information sufficient for each party to arrive at a conclusion before a disagreement could exist.***

Romay, 744 So. 2d at 469-70 (emphasis added). Whether such a "meaningful exchange of information" occurred here is a central issue in this case. In or around August of 2019, Rookery Pointe signed an assignment of benefits contract ("AOB") with SFR Services, the Respondent in this case. SFR Services prepared an estimate in the amount of \$355,758.59 for the complete replacement of all three common element roofs at the property (clubhouse and two gatehouses) as well as a fourth unidentified building (the "SFR Estimate"). The SFR Estimate did not identify any interior damage to any of the buildings nor did it include any of the other structures/appurtenances comprising the common elements. The SFR Estimate included a lengthy disclaimer at the end of the estimate, which stated that it was simply an estimate and a lump sum "market rate offer."

SFR Services retained Elite Claims Consulting, LLC ("Elite Claims") to act as its public adjuster in connection with the claim. All correspondence admitted into evidence from that point forward was addressed to Rookery Pointe but sent to Elite Claims via email with open copy to Rookery Pointe and SFR Services. The Court finds that the correspondence sent to Elite Claims via email is deemed to have been received by SFR Services as Elite Claims was the public adjuster for SFR Services and SFR Services was the assignee of Rookery Pointe's rights under the subject policy.

On March 19, 2020, Elite Claims submitted its own estimate of damages to Tower Hill in the amount of \$314,828.94 (the "Elite Claims Estimate"). The Elite Claims Estimate included a complete replacement for all three roofs as well as an unidentified fourth building for approximately \$250,000. The Elite Claims Estimate includes line items for several other structures/appurtenances comprising the common elements including: the pool area, tennis court, irrigation system, perimeter walls, wrought iron fence, chain link fence, and additional debris removal. All these items contain a disclaimer that states "carryover from carrier estimate" and customized line item in the same amount as the CRU Estimate plus 10% overhead and 10% profit. The Elite Claims Estimate did not include any amount for interior damage to the clubhouse. The Elite Claims Estimate had a virtually identical disclaimer as the SFR Estimate. On behalf of SFR Services, Elite Claims demanded full payment of its estimate less the deductible, and in doing so, failed to account for the previously issued payments.

The following day, at the latest, SFR Services contracted with Castilla Roofing, Inc. ("Castilla Roofing") to replace the roofs of the clubhouse and two gatehouses for \$99,000. The Court finds this to be the case based upon the testimony of Castilla Roofing's representative, Freddy Jaramillo, and the invoices from Castilla Roofing to SFR Services admitted into evidence. Additionally, Ricky McGraw confirmed this fact as well in his testimony.

As of at least March 20, 2020, SFR Services was aware that the cost of the aforementioned scope of work was \$99,000, plus \$875.00 for the replacement of some plywood roof sheathing. Despite knowing this information, SFR Services continued to rely upon the Elite Claims Estimate representing that the value of this same work was just

under \$250,000, while simultaneously indicating an industry standard 10% overhead and 10% profit calculation. To that end, SFR Services' principal, Ricky Lynn McGraw Jr., signed a Sworn Statement in Proof of Loss on April 9, 2020, under penalty of perjury based on the Elite Claims Estimate while having knowledge of the actual cost of the roof replacements. Additionally, as early as April 2, 2020, SFR Services directed Castilla Roofing to submit a permit application for the roofing work with a declared value of \$233,525.00. This was done despite Castilla Roofing's representative, Freddy Jaramillo, having testified at trial that Castilla Roofing would have set the declared value at \$99,875 if they had done the work for Rookery Point. It was undisputed in the record that SFR Services only paid \$99,875.00 for the full replacement of the roofs at issue.

In response to Elite Claims' estimate and demand based on same, Tower Hill requested that the parties submit their dispute over the amount of loss to an appraisal panel on March 31, 2023. The same day, Tower Hill emailed a letter to Elite Claims requesting certain documentation including, but not limited to, bids from any contractor or subcontractors. Without question, the Castilla Roofing bid submitted to SFR Services would have been responsive to this request. Yet, SFR Services did not produce it, nor did it provide the documentation to Rookery Pointe or Elite Claims to produce to Tower Hill.

A. SFR Services Was Obligated to Provide the Castilla Roofing Invoice to Tower Hill Pursuant to Fla. Stat. § 627.7152

Tower Hill has taken the position that SFR Services was required to provide it with the Castilla Roofing invoices under the subject policy and Florida law, more broadly. SFR Services has taken the position that it was not obligated to provide the bid because as an assignee, it was assigned the rights and benefits under the policies, but not the duties or

obligations. To be sure, there is case law which supports SFR Services' position as it relates to certain "duties after loss" such as proofs of loss, examinations under oath, recorded statements, etc. The Court notes that at least in part, this line of case law has been superseded by statute where the AOB, as it was here, was signed after the enactment of Florida Statute § 627.7152, Florida Statutes. Subsection (3) of that statutory section provides that an assignee has the burden to demonstrate that the insurer is not prejudiced by the assignee's failure to, *inter alia*, maintain records of all services provided under the assignment agreement, cooperate with the insurer in the claim investigation, and ***provide the insurer with requested records and documents related to the services provided***, and permit the insurer to make copies of such records and documents. § 627.7152(3).

Additionally, SFR Services was obligated to provide the bid from Castilla Roofing pursuant to § 627.7152(4)(a), Florida Statutes, which as of July 1, 2019, required assignees to "provide the assignor with ***accurate and up-to-date revised estimates*** of the scope of work to be performed as supplemental or additional repairs are required." *Id.* (Emphasis added). As written, the statute imparts that duty upon assignees regardless of whether the carrier requested it.¹ Therefore, SFR Services' argument that the request was not directed to it (because the letter – like all other correspondence admitted into evidence – was addressed to Rookery Pointe) is irrelevant.

Based on the foregoing, it is clear that SFR Services had the obligation to provide Tower Hill with all records and documents related to the services provided as requested

¹ For example, subsection (4)(d), which speaks to assignees' obligation to submit to an examination under oath, includes the caveat "if required by the insurer". No such language appears in subsection (4)(a).

by Tower Hill. Moreover, because the Court finds that Tower Hill's March 31, 2020, letter requesting such documentation was received by SFR Services, SFR Services was required to produce the Castilla Roofing invoices and records to Tower Hill and it failed to do so.

B. SFR Services Was Obligated to Provide the Castilla Roofing Information to the Appraisal Panel

Regardless of its obligation to produce the records to Tower Hill pursuant to Florida Statute § 627.7152, SFR Services was also obligated to submit the records during the appraisal process. Assignees have always been beholden to appraisal provisions in insurance policies.² *Webb Roofing & Constr., LLC v. FedNat Ins. Co.*, 320 So. 3d 803 (Fla. 2d DCA 2021) (holding that an assignee is subject to the appraisal provision of a property insurance policy, and holding—pre-enactment of § 627.70152—that the only conditions that an assignee is not required to comply with are the “Duties After Loss”). See *supra herein*, Fla. Stat. § 627.7152(3) (requiring, for all AOBs entered into after July 1, 2019, the assignee to produce records requested and to cooperate in the investigation of the insurance claim by the insurer). The Court finds that SFR Services was obligated to provide Castilla Roofing's bid to Tower Hill in response to this letter under the appraisal provision of the subject insurance policy.

Interpreting a nearly identical appraisal provision as the operative one here, the Third District Court of Appeals observed that there must be a "meaningful exchange of information" to determine whether an appraisable dispute even exists. *Romay*, 744 So.

² The Court likewise finds that SFR Services, as the assignee, is subject to the Concealment, Misrepresentation or Fraud provision.

2d 467 (Fla. 3d DCA 1999) at 469-70. “In other words, by the terms of the contract, it was contemplated that the parties would engage in some meaningful exchange of information sufficient for each party to arrive at a conclusion before a disagreement could exist.” *Id.* See also *Certain Underwriters at Lloyd’s v. Lago Grande 5-D Condo. Ass’n*, 337 So.3d 1277 (Fla. 3d DCA 2022) (holding that appraisal was premature when one party has not provided a *meaningful* exchange of information sufficient to substantiate the existence of a genuine disagreement.”); *Pando v. United States*, 1998 U.S. Dist. LEXIS 11941, *8-9 (S.D. Fla. 1998) (finding that there was no basis for an appraisal to take place until the information requested by the insurance carrier’s request for documents and information was complied with because the information was necessary to determine if there was even a disagreement as to the amount of loss ripe for appraisal); *Ferrer v. Fidelity & Guar. Ins. Co.*, 10 F.Supp.2d 1324, 1326 (S.D. Fla. 1998). Thus, it is clear that if an appraisal is premature before a meaningful exchange of information vis-à-vis post loss condition compliance is complete, then it goes without saying that the appraisal in this case was not proper when the information that should have been subject to the “meaningful exchange” was intentionally withheld and concealed by SFR Services. Moreover, SFR Services’ own appraiser testified that he relied upon the inflated permit value because that was the best information that he had at his disposal to determine the value of the roof repairs.

With respect to what the appraisal panel is tasked with doing in an appraisal, it is undoubtedly clear that the Castilla Roofing invoices and costs were something that needed to be provided to the appraisal panel. First and foremost, the Court finds that both SFR Services’ appraiser, Aaron Penn, and Tower Hill’s appraiser, Sam Winkel,

testified that the Castilla Roofing invoices were something they would have wanted to consider in presenting their respective positions to the umpire. Second, the Second District Court of Appeal has stated as follows regarding the roles of the appraisers in an appraisal:

Notably, in evaluating the amount of loss, an appraiser is necessarily tasked with determining both the *extent* of covered damage and the amount to be paid for repairs. Thus, the question of what repairs are needed to restore a piece of covered property is a question relating to the amount of “loss” and not coverage. *Ipsa facto*, the scope of damage to a property would necessarily dictate the amount and type of repairs needed to return the property to its original state, and an estimate on the value to be paid for those repairs would depend on the repair method to be utilized. The method of repair required to return the covered property to its original state is thus an integral part of the appraisal, separate and apart from any *coverage* question.

Cincinnati Ins. Co. v. Cannon Ranch Partners, Inc., 162 So.3d 140, 143 (Fla. 2d DCA 2014).

In the instant case, the information surrounding the actual repair of the roof was withheld from the appraisal panel by SFR Services when it failed to provide the invoices and information related to the actual work performed by Castilla Roofing. This information was necessary, as SFR was not entitled to what its estimate says, or even what Tower Hill’s estimate says, but rather is only entitled to the actual cost of repair or replacement. *State Farm Fire & Cas. Co. v. Patrick*, 647 So.2d 983 (Fla. 3d DCA 1994). The actual cost of repair was the amount of the Castilla Roofing invoice, plus, maybe, standard overhead and profit. Without the Castilla Roofing invoices and information, there was never a meaningful exchange of information necessary for a proper appraisal. The lack of meaningful exchange was due solely to the intentional concealment and

misrepresentation by SFR Services of information related to the work performed by Castilla Roofing.

As a result of the foregoing, Tower Hill and the appraisal panel believed that a dispute existed based on the competing invoices, not the Castilla invoices. More importantly, Tower Hill's representative testified that had SFR Services provided the Castilla Roofing bid, Tower Hill would have paid it, and would have agreed to an additional payment for overhead and profit consistent with industry standards regarding the appropriate amount of same. The Court found the testimony by Tower Hill's representative credible on this point. The Court also notes the CRU Estimate relied upon by Tower Hill estimated the replacement cost of the three roofs at \$86,328.28, just \$12,671.72 less than Castilla Roofing's bid. The Court doubts that Tower Hill would have sought appraisal of such a nominal dispute.

C. The Appraisal

The next event in the lifecycle of this claim was the appointment of the appraisers by both parties: Tower Hill appointed Sam Winkel and SFR Services appointed Aaron Penn. Mr. Winkel and Mr. Penn agreed that Anthony Proffitt would serve as the umpire to the extent they were unable to come to an agreement.

Mr. Winkel and Mr. Penn met at Rookery Pointe to discuss the damage and conduct an inspection on or about April 21, 2020. The inspection was limited to the clubhouse and the appurtenances thereto. At that time, the roof of the clubhouse was in the process of being replaced. Mr. Winkel requested information as to the company doing the work as well as the cost of the work but did not receive it.

Mr. Winkel testified that he believed the cost to replace the three roofs was the only dispute. Mr. Penn testified that he was under the impression the entire claim was being appraised. The Court finds Mr. Winkel's testimony on this point credible and it is consistent with other testimonial and documentary evidence. In this regard, both appraisers' testimony supports that several of the other items (such as the perimeter walls and fencing) were not inspected. With respect to the documentary evidence, SFR Services' estimate only includes entries for the replacement of the roofs and does not include entries for any other area of the property. Further, the Elite Claims Estimate adopts the valuation of all "non-roof" items from CRU's Estimate upon which Tower Hill's coverage determination and payment(s) were based. If SFR Services disputed CRU/Tower Hill's valuation of these items, it should have proffered alternative amounts in either its own estimate or that prepared by its public adjuster.³

Consistent with his understanding as to the scope of the dispute, Mr. Winkel prepared an estimate that, for all "non-roof" items, carried over the figures from CRU/Tower Hill's valuation. Mr. Winkel received from Tower Hill a package of documents that Mr. Winkel believed to be evidence that SFR Services would replace all three roofs for approximately \$79,000.

Mr. Winkel provided his estimate to Mr. Penn, who did not provide him with a competing estimate. Instead, the Umpire was asked to intervene. This procedure was not in accordance with the appraisal provision of the subject policy, which requires each

³ The only possible basis for SFR Services to maintain its position that the "non-roof" items were in dispute is Elite Claims' inclusion of overhead and profit. As to all items other than the chain link fence, adding the customary 20% for overhead and profit to CRU/Tower Hill's valuation does not result in an amount that exceeds the applicable deductible.

appraiser to "state separately the amount of loss." The policy instructs that the umpire is to become involved only after each appraiser states their proposed amount of loss and the appraisers fail to agree. That did not happen here.

During the appraisal process, Mr. Winkel expressed concern over the accuracy of the permit value for the roof as relied upon by SFR Services' appraiser, Aaron Penn. Mr. Winkel reiterated that the actual invoice for the work performed would be the appropriate documentation from which to determine the value of the work. Critically, both appraisers testified that they would have wanted, and would have relied upon, Castilla Roofing's bid/invoice in lieu of the permit value were it available to them. SFR Services' appraiser, Mr. Penn, went so far as to say that were he the umpire, he would have set the amount of loss at the invoiced price. He also testified that Tower Hill would only owe the actual cost of the work. See *State Farm Fire & Cas. Co. v. Patrick*, 647 So.2d 983 (Fla. 3d DCA 1994). Accordingly, the Court finds that SFR Services should have provided the Castilla Roofing invoice to its appraiser and that by failing to do so, SFR Services concealed material information from not only Tower Hill, but the appraisal panel as well. This, coupled with the intentionally inaccurate permit valuation, leads the Court to conclude that this was done with the intent to deceive and mislead Tower Hill and the appraisal panel before, during and after the appraisal process.

Ultimately, Mr. Proffitt drafted an Appraisal Award and supporting estimate in the amount of \$414,136.29 without deduction for the applicable deductible(s) and prior payment(s). The Appraisal Award was signed by Mr. Penn. Tower Hill, through its counsel, timely requested that the panel reconsider the award. After the panel failed to modify the award as requested, Tower Hill timely filed this lawsuit.

II. COURT'S FINDINGS OF FACTS

Common to all counts, the Court specifically makes the following pertinent findings of fact:

1. The appraisal provision in the policy contemplates that the parties will engage in an open, honest, and meaningful exchange of information leading up to, and during, the appraisal process.

2. This open, honest, and meaningful exchange of information is central to the validity of the appraisal process itself, because it is the only way to even know if a dispute actually exists between the parties that will be ripe for appraisal. If parties are permitted to conceal or misrepresent material information leading up to and during appraisal, the appraisal process is delegitimized, and parties will be dissuaded from utilizing it to resolve their disputes in the future.

3. Prior to the invocation of appraisal, SFR Services never presented an alternative valuation for the non-roof items.

4. Prior to the invocation of appraisal, SFR Services was under contract with Castilla Roofing to replace the roofs of the clubhouse and both gatehouses.

5. SFR Services was aware that the cost for the scope of roof work was \$99,000, at least as of March 20, 2020.

6. Despite knowing this information, SFR Services continued to present an estimate generated by Elite Claims and continued to represent that the value of the roof replacements for the clubhouse and both gatehouses was more than \$230,000, while simultaneously indicating that its overhead and profit fell in line with the industry standard

of 20%. This constituted a misrepresentation of material fact (i.e., as to the value of the claim).

7. On March 31, 2020, Tower Hill sent a letter to Elite Claims Consultants, LLC (“Elite Claims”), the public adjuster for SFR Services, requesting information including, but not limited to, bids prepared by contractors and/or roofers.

8. SFR Services’ contract with Castilla Roofing would have been responsive to Tower Hill’s request for information as would the invoices dated March 20, 2020.

9. As the assignee, SFR Services was obligated to provide Castilla Roofing’s bid and invoice to Tower Hill in response to its request for information pursuant to the appraisal process as well as § 627.7152(3) and (4)(a), Florida Statutes.

10. Even if SFR Services was not obligated to provide Castilla Roofing’s bid to Tower Hill, it was obligated under the concealment, misrepresentation, and fraud provision to abstain from providing false information to Tower Hill.

11. Pursuant to the express language of insurance policy’s Loss Payment provision, SFR Services was not entitled to more than the least of the following:

- a. The Limit of Insurance under Section I – Property that applies to the lost or damaged property;
- b. The reasonable cost to replace, on the same premises, the lost or damaged property with other property:
 - i. Of comparable material and quality; and
 - ii. Used for the same purpose; or
- c. The reasonable amount that you should have spent that is necessary to repair or replace the lost or damaged property.

12. Based on the evidence presented, that amount was \$99,875.00, plus 20% overhead and profit. See *State Farm Fire & Cas. Co. v. Patrick*, 647 So. 2d 983 (Fla. 3d DCA 1994) (an insured is only entitled to the actual amount spent to make repairs, not the amount of an estimate presented by either the insured or the insurance carrier).

13. SFR Services submitted a Sworn Statement in Proof of Loss by way of its principal, Ricky McGraw, on April 9, 2020, which represented that the price to replace the roofs was over \$230,000.

14. As early as April 2, 2020, SFR Services instructed Castilla Roofing to list the value of the roof replacements as \$233,525.00 on the permit application, which was clearly done with the intent to misrepresent and conceal the true value of the work from Tower Hill and the appraisal panel. This was demonstrated by the fact that SFR Services' own appraiser testified that he relied upon the permit value.

15. SFR Services' continued reliance on the Elite Claim estimate throughout the appraisal, as well as its submission of the Sworn Statement in Proof of Loss, constituted an intentional misrepresentation and concealment of material fact from Tower Hill.

16. Further, even if SFR Services was not obligated to provide Castilla Roofing's bid to Tower Hill, it should have provided the invoice to its appraiser.

17. In the context of this appraisal, Tower Hill could have obtained different estimates from other roofing companies and presented them to the appraisal panel.

18. However, even if Tower Hill did so, this would not have affected the fact that the amount of loss was set once SFR Services contracted with Castilla Roofing to replace the roofs for \$99,000.

NOW, THEREFORE, having made the foregoing findings of fact and conclusions of law, the Court enters judgment as follows:

As to **Count I – Petition to Vacate the Appraisal Award (F.S. § 682.13)**, the Court enters judgment in favor of the Petitioner.

The Petitioner is primarily relying upon § 682.13(1)(a) and (d). With respect to subsection (1)(a), the Court is required to, upon timely motion, vacate the appraisal award if it is established that the award was procured by corruption, fraud, or other undue means. In the instant case, the Court finds that the Appraisal Award was procured by fraud. As discussed above, SFR Services intentionally concealed the true, fixed value of the roof replacements by (1) failing to provide Castilla Roofing's invoice in derogation of its obligations under the appraisal provision and § 627.7152(3) and (4)(a), Florida Statutes, to Tower Hill or the appraisal panel; (2) continuing to rely upon the Elite Claims Estimate despite the fact that it grossly exceeded the true value of the work (including signing a Sworn Statement in Proof of Loss based on same); and (3) requiring Castilla Roofing to misrepresent the value of the roof replacement in its submission to the Village of Estero Building Department. Taken together, SFR Services' actions resulted in an appraisal proceeding and an appraisal award tainted by fraud.

With respect to subsection (1)(d), the Court is required to, upon timely motion, vacate the appraisal award if it is established that an arbitrator exceeded their powers. As discussed above, the appraisal provision authorizes the appraisers and umpire to resolve disputes over the amount of loss. If there is no dispute over the amount of loss, i.e., the amount of loss is already set, there is nothing to be appraised. The Court finds that as of March 20, 2020, when Castilla Roofing contracted to perform the roof

replacements for \$99,000.00, or at the latest, June 10, 2022, when the work was completed at Rookery Pointe by Castilla Roofing for \$99,875.00, the amount of loss was set. This occurred before the panel meeting, meaning there was nothing for the panel to appraise. Once the work was completed, the appraisal panel could have, and should have, entered an award based on the Castilla Roofing invoice plus, potentially, an allocation for contractor overhead and profit consistent with industry standards. By setting the amount of loss to 2.5 times the fixed value, the appraisal panel exceeded the scope of its authority under the policy. The appraisal panel likewise exceeded the scope of its authority under the policy by appraising the nonroof items which, until Mr. Penn prepared his estimate without conducting a thorough inspection, were not disputed. If anything, the appraisal panel could have added the industry standard overhead and profit to the undisputed valuation of the non-roof items. However, by choosing totally new values for items not previously in dispute, the appraisal panel exceeded its authority in the policy.

Consistent with the foregoing, and pursuant to § 628.13, Florida Statutes, the Appraisal Award is vacated. This statute gives the Court discretion to order a re-appraisal; however, because of the Court's findings as to Count III, *infra*, as well as the fact that the amount of the loss is fixed, the Court is not ordering this matter to be appraised again.

As to **Count II – Petition to Modify the Appraisal Award (F.S. § 682.14)**, the Court enters judgment in favor of the Petitioner.

Section 682.14, Florida Statutes, requires the Court to modify or correct an award if, among other enumerated reasons, the panel "awarded upon a matter not submitted in the arbitration and the award may be corrected without affecting the merits of the decision upon the issues submitted." Fla. Stat. § 682.14(1)(b). Here, the appraisal panel issued an

award that included items not identified by the parties as being in dispute prior to the invocation of appraisal. Specifically, prior to the start of the appraisal, SFR Services did not dispute Tower Hill's valuation of the non-roof items. If anything, SFR Services only sought the additional 20% overhead and profit on these items, as reflected in the Elite Claims Estimate. It appears as though the panel was in agreement as to the entitlement to overhead and profit and therefore, the Court would modify the award for all non-roof items to be in line with the values identified in the Elite Claims Estimate (i.e., Tower Hill's valuation + industry standard overhead and profit). Tower Hill would then be able to further reduce the modified award by the applicable deductible(s), prior payments, and otherwise remove items for which there is no coverage under the policy. Given the Court's findings as to Counts I and III, this proposed modification is only included in an abundance of caution.

As to **Count III – Declaratory Relief Under the Policy's Concealment, Misrepresentation, or Fraud Provision**, the Court enters judgment in favor of the Petitioner.

The relevant provision states:

(APPLICABLE TO SECTION – PROPERTY AND SECTION II – LIABILITY)

...

C. Concealment, Misrepresentation or Fraud

This policy is void in any case of fraud by you as it relates to this policy at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This policy;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this policy.

The Court finds that SFR Services violated the Concealment, Misrepresentation or Fraud provision by intentionally concealing and misrepresenting material facts regarding the subject claim. As discussed above, SFR Services intentionally concealed the true, fixed value of the roof replacements by (1) failing to provide Castilla Roofing's invoice in derogation of its obligations under the appraisal provision and § 627.7152(4)(a), Florida Statutes, to Tower Hill or the appraisal panel; (2) continuing to rely upon the Elite Claims Estimate despite the fact that it grossly exceeded the true value of the work; (3) requiring Castilla Roofing to misrepresent the value of the roof replacement in its submission to the Village of Estero Building Department. Most notably, SFR Services submitted a Sworn Statement in Proof of Loss that contained false and inaccurate information regarding the value of the claim. SFR Services' concealment continued through this litigation as it refused to produce the Castilla Roofing invoice after multiple orders. Taken together, SFR Services' actions demonstrate intentional misrepresentation and concealment of material facts tantamount to fraud.

WHEREFORE, the Court, having made its findings of fact and conclusions of law detailed above, enters judgment in favor of the Petitioner, TOWER HILL PRIME INSURANCE COMPANY, and against the Respondent, SFR SERVICES, L.L.C. The Court reserves ruling to determine entitlement to prevailing party costs and fees.

DONE AND ORDERED in Fort Myers, Lee County, Florida



eSigned by Michael McHugh 04/21/2023 10:41:51 vE0543dD

Electronic Service List

Aaron B Thalwitzer <aaron@brevardlegal.com>
Aaron B Thalwitzer <eservice@brevardlegal.com>
Justin R Falatek <jfalatek@brevardlegal.com>
Ross Leonardi <Ross@zinoberdiana.com>
Ross Leonardi <Karla@zinoberdiana.com>
Ross Leonardi <Cynthia@zinoberdiana.com>
Christopher E. Hewitt <cehewitt@brevardlegal.com>
Andrew P Thompson <apt@thompsonjaglal.com>
Andrew P Thompson <ajaglal@thompsonjaglal.com>
Curtright C. Truitt <mail@ctruiitpa.com>
Curtright C. Truitt <ctruiitpa@aol.com>
Jonathan Glen Drake <jdrake@drakelawpa.com>
Jonathan Glen Drake <info@drakelawpa.com>
Kali Lauren Wechsler <kali@zinoberdiana.com>
Kali Lauren Wechsler <cynthia@zinoberdiana.com>
Kali Lauren Wechsler <karla@zinoberdiana.com>
Melissa A Giasi <melissa@giasilaw.com>
Melissa A Giasi <ahill@giasilaw.com>
Melissa A Giasi <eberger@giasilaw.com>
Michael A. Monteverde <Michael@zinoberdiana.com>
Michael A. Monteverde <Karla@zinoberdiana.com>
Michael A. Monteverde <Daniela@zinoberdiana.com>
Kali Lauren Wechsler <kali@zinoberdiana.com>
Kali Lauren Wechsler <cynthia@zinoberdiana.com>
Kali Lauren Wechsler <karla@zinoberdiana.com>
Michael J. Pike <pleadings@pikelustig.com>

Michael J. Pike <pike@pikelustig.com>

Talina Bidwell <tbidwell@pikelustig.com>

Talina Bidwell <pleadings@pikelustig.com>