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Preferred Nat. Ins. Co. v. Miami Springs Golf Villas, Inc.

Fla.App. 3 Dist.,2001.

District Court of Appeal of Florida,Third District.
PREFERRED NATIONAL INSURANCE COM-
PANY, Appellant,

v.


MIAMI SPRINGS GOLF VILLAS, INC., Appellee.
No. 3D00-2845.

July 5, 2001.

Insurer appealed from judgment of the Circuit Court, Dade County, [Gerald D. Hubbard](#), J., which affirmed appraisal award of \$340,320 to insured for lost business income resulting from windstorm damage. The District Court of Appeal, [Fletcher](#), J., held that: (1) umpire did not impermissibly compromise his neutrality by requesting the parties' respective positions, and engaging in ex parte communications with insured, during appraisal, and (2) appraisal award was supported by evidence.

Affirmed.

West Headnotes

[\[1\]](#) **T**  **501**


[25T](#) Alternative Dispute Resolution

[25TIV](#) Other Dispute Resolution Methods

[25Tk501](#) k. Appraisal. [Most Cited Cases](#)

(Formerly 33k1 Arbitration)

Unlike arbitration procedures, appraisals are less formal proceedings, where the umpire independently attempts to resolve any differences in the appraisals offered by both sides.

[\[2\]](#) **Insurance 217**  **3256**

[217](#) Insurance

[217XXVII](#) Claims and Settlement Practices

[217XXVII\(B\)](#) Claim Procedures


[217XXVII\(B\)6](#) Appraisal

[217k3256](#) k. Appraisers. [Most Cited](#)

[Cases](#)

Umpire appointed to resolve dispute regarding

amount of claim for business income loss under commercial general liability (CGL) policy did not impermissibly compromise his neutrality by requesting the parties' respective positions, and engaging in ex parte communications with insured, in order to aid him in resolving dispute.

[\[3\]](#) **Insurance 217**  **3261**

[217](#) Insurance

[217XXVII](#) Claims and Settlement Practices

[217XXVII\(B\)](#) Claim Procedures

[217XXVII\(B\)6](#) Appraisal

[217k3260](#) Award

[217k3261](#) k. In General. [Most Cited](#)

[Cases](#)

Evidence supported umpire's award of \$340,320 in lost business income in appraisal held to resolve dispute regarding insured's claim under policy for damage caused by windstorm.

Conroy, Simberg, Ganon, Krevans & Abel and [Hinda Klein](#) and [Mara Shlackman](#) and Paul Milberg (Hollywood), for appellant.

McLuskey, McDonald & Payne and [Roberto M. Ureta](#); [Lauri Waldman Ross](#), Miami, for appellee.

Before [GERSTEN](#), [FLETCHER](#), and [SHEVIN](#), JJ.

[FLETCHER](#), Judge.

Preferred National Insurance Company [Preferred] appeals a final judgment confirming an appraisal award in favor of Miami Springs Golf Villas, Inc. [Miami Springs]. We affirm.

This case arose out of a claim for windstorm damage sustained on February 2, 1998. At the time, Miami Springs was insured by Preferred under a comprehensive general commercial liability policy, which included coverage for business income loss on its declaration page, but did not list or attach an endorsement which, according to Preferred, provided the sole method for calculating such loss.

Preferred's refusal to pay a portion of the claimed business loss led to the filing of this action in which Preferred stipulated to the existence of coverage but moved to compel an appraisal on the amount of the

loss. The trial court subsequently appointed Robert Steinberg to serve as umpire after the parties' respective appraisers were unable to reach agreement on the *1157 amount of the business loss. On June 20, 2000, the umpire filed his report awarding Miami Springs \$340,320.00 in lost business income which was later confirmed by the trial court in the final judgment here appealed.

[1][2] Preferred raises two issues on appeal. First, Preferred argues that the umpire's neutrality was tainted by ex parte communications with counsel for Miami Springs and that the trial court erred in denying its motion to either interview or replace the umpire. Unlike arbitration procedures, appraisals are less formal proceedings, where the umpire independently attempts to resolve any differences in the appraisals offered by both sides. *See, e.g., Allstate Ins. Co. v. Suarez*, 786 So.2d 645 (Fla. 3d DCA 2001); *Liberty Mutual Fire Ins. Co. v. Hernandez*, 735 So.2d 587 (Fla. 3d DCA 1999); *Preferred Ins. Co. v. Richard Parks Trucking Co.*, 158 So.2d 817 (Fla. 2d DCA 1963). We therefore see no impropriety in the umpire requesting the parties' respective positions to aid him in resolving these differences.

[3] Under the circumstances herein, we also can find no error in the award for business income loss. Implicit in the court's confirmation of the umpire's award was its determination that an endorsement which was neither listed nor attached to the insurance policy could not form part of the policy.

Accordingly, we affirm the judgment below, grant Miami Springs' motion for attorney's fees in the appellate proceedings, and remand with instructions to the trial court to determine the proper amount.

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789 So.2d 1156, 26 Fla. L. Weekly D1637

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