

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00825-MSK-MJW

LISA DAWN GOLD,

Plaintiff,

v.

STATE FARM FIRE & CASUALTY COMPANY,

Defendant.

**ORDER REGARDING
DEFENDANT'S MOTION TO COMPEL PLAINTIFF TO COMPLY WITH STIPULATED
MOTION TO SUBMIT UNDERLYING INSURANCE CLAIM TO APPRAISAL
PROCESS AND ORDER DATED SEPTEMBER 10, 2010 AND ORDER DATED
SEPTEMBER 30, 2010 (DOCKET NO. 38)**

MICHAEL J. WATANABE
United States Magistrate Judge

This matter is before the court on Defendant's Motion to Compel Plaintiff to Comply with Stipulated Motion to Submit Underlying Insurance Claim to Appraisal Process and Order Dated September 10, 2010 and Order Dated September 30, 2010 (docket no. 38). The court has reviewed the subject motion (docket no. 38) and the response (docket no. 40). In addition, the court has taken judicial notice of the court's file and has considered applicable Federal Rules of Civil Procedure and case law. The court now being fully informed makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The court will initially incorporate by reference all of my findings on the record

during the telephonic hearing on motions on September 10, 2010 (docket no. 26), and all of my findings in docket no. 34, my Order Regarding: (1) Plaintiff's Submission to Magistrate Judge Re: Challenge [Motion] to State Farm's Appraiser (docket no. 27) and (2) Defendant State Farm's Challenge [Motion] of Plaintiff's Selected Appraiser Maynard Elliott, Inc. (docket no. 29).

The court further finds:

1. That both Paul Zadok and Fine Arts Claims Consultants as well as Maynard Elliott and Maynard Elliott, Inc., have previously been disqualified as appraisers in this case by this court. See paragraph 3 in the Order section of docket no. 34;
2. That any "umpire" who may have been selected by Mr. Zakok and Mr. Elliott is also disqualified;
3. That per this court's September 30, 2010 Order (docket no. 34), the parties were ordered to select new appraisers who met the standards of impartiality as outlined in DORA Bulletin NO. B-5-26 and C.R.S. § 13-22-212. See paragraph 4 in the Order section of docket no. 34;
4. That pursuant to this Order (docket no. 34), the Plaintiff Lisa Dawn Gold and Defendant State Farm Fire & Casualty Company have selected new appraisers, Nancy Pettee and Carol O'Brien English, and no objections have been filed; and
5. That the market value of Plaintiff Gold's damaged artwork should be objectively determined by the current appraisers, Nancy Pettee

and Carol O'Brien English, without review of prior appraisals by Paul Zadok, Fines Arts Claims Consultants, Inc., Dr. J. Darragh, M. Elliott, Maynard Elliott, Inc., Daniel Buck-Soules, and Jeannette Erin McNertney. That Ms. Pettee and Ms. O'Brien English can make an independent and objective appraisal of the subject artwork in question by reviewing the available materials, including photographs of the subject artwork and supporting sales and professional documentation, as well as any additional resources they choose to use as art appraisers.

ORDER

WHEREFORE, based upon these findings of fact and conclusions of law, this court **ORDERS**:

1. That Defendant's Motion to Compel Plaintiff to Comply with Stipulated Motion to Submit Underlying Insurance Claim to Appraisal Process and Order Dated September 10, 2010 and Order Dated September 30, 2010 (docket no. 38) is **GRANTED**;
2. That the appraisals of Paul Zadok, Fine Arts Claims Consultants, Inc., Dr. J. Darragh, M. Elliott, Maynard Elliott, Inc., Daniel Buck-Soules, and Jeannette Erin McNertney **shall not** be provided to the current new appraisers Ms. Pettee and Ms. O'Brien English;
3. That the undisputed documents identified in the letter dated December 7, 2010, from Mr. Sands to Mr. Frankl (docket no. 38-1),

specifically the documents located in Tab 5 - 18 of Plaintiff's proposed package of documents, the photographs of the subject artwork (SFCR0029 - SFCR0033, SFCR0034 - SFCR0037) and the additional supporting documentation provided by Plaintiff Gold (SF 0336 - SF 0380; SF 0253; and GOLD00254 - GOLD00306), be jointly submitted **on or before January 20, 2011**, by the parties to the current new appraisers Ms. Pettee and Ms. O'Brien English for their use in determining the value of the subject artwork pursuant to the Appraisal Provision of the Homeowners Policy;

4. That the parties and counsel shall be precluded from advising the current new appraisers, Ms. Pettee and Ms. O'Brien English, of their opinions as to the relevance or significance of the documents and/or photographs that were jointly submitted or otherwise advocating the parties' positions with respect to the value of the subject artwork; and
5. That each party shall pay their own attorney fees and costs for this motion.

Done this 4th day of January 2011.

BY THE COURT

s/ Michael J. Watanabe
MICHAEL J. WATANABE
U.S. MAGISTRATE JUDGE