

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

UNITED STATES OF AMERICA, et al.,
Plaintiffs

Case No. 1:02-cv-107
Spiegel, J.
Litkovitz, M.J.

vs

BOARD OF HAMILTON COUNTY
COMMISSIONERS, et al.,
Defendants

**ORDER RE: REQUEST
FOR REVIEW BY
DENNIS AND MARGARET
ODER**

This matter is before the Court on the Request for Review of the denial of a Sewer Back Up (“SBU”) claim by Dennis and Margaret Oder. (Doc. 529). Mr. and Mrs. Oder seek compensatory damages from the Metropolitan Sewer District of Greater Cincinnati (“MSD”) for sewer backup into their basement on June 10, 2011.

The Oders’ request for review is filed under the Sewer Back Up¹ program (formerly known as the Water-in-Basement Claims Process Plan) (Doc. 131, Consent Decree, Exhibit 8).

The Plan states in relevant part:

Subject to the requirements of this Plan, occupants who incur damages as a result of the backup of wastewater into buildings due to inadequate capacity in MSD’s Sewer System (both the combined and the sanitary portions) can recover those damages. This plan also provides a means for occupants to recover damages arising from backups that are the result of MSD’s negligent maintenance, destruction, operation or upkeep of the Sewer System. The Claims Process is not intended to address water in buildings caused by overland flooding not emanating from MSD’s Sewer Systems or caused by blockages in occupants’ own lateral sewer lines.

(Doc. 131, Consent Decree, Exhibit 8 at 1). In determining the cause of SBU, MSD must exercise its good faith reasonable engineering judgment and consider the following non-

¹The “Water-In-Basement” program has been renamed the “Sewer Back Up” program to more accurately reflect MSD’s responsibility for sewage backups caused by inadequate capacity in MSD’s sewer system. *See* Doc. 452 at 4; Doc. 454 at 16.

exclusive factors: amount of precipitation, property SBU history, condition of the sewer system in the neighborhood, results of a visual inspection of the neighborhood to look for signs of overland flooding, neighborhood SBU history, capacity of nearby public sewer lines, and topography. (Doc. 131, Consent Decree, Exhibit 8 at 2). Damages arising from basement backups for which MSD is responsible are limited to documented real and personal property. *Id.*

As an initial matter, the Court notes that there is no dispute that the cause of damage to the Oders' property was the combination of an MSD sewer backup and overland flooding. (Doc. 543 at 1). The only issue in this case is the amount of compensation for personal property damage.

The Oders are the owners of the property located at 5374 Rapid Run Road, Cincinnati, Ohio. On or about June 10, 2011, sewage backed up into the Oders' basement resulting in damage to their personal property. The Oders made a claim for damages for the June 2011 sewer backup under the SBU program, seeking compensation in the amount of \$9,500.00 for the loss of personal property. MSD agreed to reimburse the Oders for damages resulting from sewer backup in the amount of \$6,145.00. As MSD and the Oders have been unable to agree on an amount that will fairly compensate the Oders for their personal property loss, the Oders filed the instant request for review before the undersigned magistrate judge.

Damages for SBU claims are determined based on the market value of personal property as of the date of loss and not on the original purchase price or cost of replacement. After careful review, the Court awards damages for the loss of personal property as follows:

| | |
|----------------------------|----------|
| Snow blower | \$200.00 |
| Lawn Boy lawn mower | \$150.00 |
| Craftsman lawn mower | \$125.00 |
| Bissell Steam Vac | \$100.00 |
| Grasshog Weedeater | \$75.00 |
| Comforter | \$50.00 |
| Fluorescent lights | \$10.00 |
| Pioneer turntable | \$125.00 |
| Cassette deck | \$100.00 |
| SAE Equalizer | \$75.00 |
| Box of 45 records | \$20.00 |
| Mickey Mouse cookie jar | \$10.00 |
| Craftsman drill | \$25.00 |
| Buddy child toy | \$10.00 |
| White 2-drawer night stand | \$20.00 |
| Walkers (2) | \$50.00 |
| Folding crate | \$30.00 |
| Wooden chest | \$20.00 |
| Wooden Armoire | \$50.00 |
| Baby stroller | \$200.00 |
| White crib | \$150.00 |
| Bag of books | \$50.00 |

| | |
|-----------------------------------|------------|
| Pioneer VSX-3600 Stereo | \$200.00 |
| Kitchen cabinet | \$100.00 |
| Baby car seat | \$150.00 |
| Washer - safety clean | \$75.00 |
| Magazine rack | \$50.00 |
| Donald Duck costume | \$25.00 |
| Whirlpool washer & dryer | \$500.00 |
| Dehumidifier | \$50.00 |
| Shelves (34) | \$150.00 |
| Hospital bed and mattress | \$550.00 |
| Maytag washer | \$200.00 |
| Microwave | \$30.00 |
| Christmas reindeer (new) | \$60.00 |
| File cabinet 4-drawer | \$125.00 |
| Metal desk | \$50.00 |
| Wooden crate | \$10.00 |
| Cabinet doors (12) | \$120.00 |
| Kitchen cart | \$10.00 |
| High chair | \$75.00 |
| Water heater, furnace, AC coil | \$2,200.00 |
| Drywall repair, etc. | \$1,580.00 |


1952 Chevrolet Car

\$500.00

In conclusion, the Court awards \$8,455.00 to the Oders for the damages sustained in this case.

IT IS SO ORDERED.

Date: 3/2/2012


Karen L. Litkovitz, Magistrate Judge
United States District Court