

AMERICAN ARBITRATION ASSOCIATION
Construction Arbitration Tribunal

AMERICAN ARBITRATION
ASSOCIATION
MAR 31 2009
Atlanta Regional Office

In the Matter of the Arbitration between

Re: 33 110 Y 00224 06

Amelia Island Company (Claimant)
AND
The Auchter Company (Respondent)

AWARD OF ARBITRATOR

I, Geoffrey B. Dobson, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated April 17, 1997, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby, AWARD, as follows:

General Back Ground

The above-entitled Arbitration came on before hearing before the below-signed Arbitrator at Amelia Island, Florida, on February 18 and 19, 2009. Appearing for the Claimant Amelia Island Company was Henry "Chip" G. Bachara, Jr., Bachara Construction Law Group, One Independent Drive, Suite 1800, Jacksonville, FL 32202, and appearing for the Respondent The Auchter Company was Howard M. Allen, Railey & Harding, P.A., 20 N. Eola Drive, Orlando, FL 32801. Post Hearing Briefs were filed by the parties on March 2, 2009. The Parties have requested a "Reasoned Award." Subsequently, the Parties have submitted memoranda relating to whether the Reasoned Award may be limited to exclude certain issues possibly related to insurance coverage. Although the Insurer had a representative to observe the proceedings, the Insurer did not participate and was not a party thereto. No arguments were made or evidence presented as to the terms of any insurance policy. The Arbitrator is required to consider and rule on all disputes between the Claimant and Respondent but not as between the Claimant or Respondent as to parties not included within the present proceeding.

This Action arises out of a Contract, (Joint Exhibit 1, AIA form of agreement A111) between the parties dated April 17, 1997, for the "Lodge Inn, Conference Center (East Addition), Chiller Building, Portal Building, Beach Club and Associated Sitework, Amelia Island Plantation, Amelia Island, Florida." Contract Documents included the General Conditions, AIA Document A201, 1987 Edition, as modified and attached to the contract. Section 4.5.1 of the General Conditions provides in part:

"Any controversy or Claim arising out of or related to the Contract, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. * * *"

By stipulation of the Parties, the matter was heard by the undersigned as sole arbitrator rather than by a panel of three. Pursuant to request, the Arbitrator made a view of a portion of the roof from a lift bucket.

The Claim arises out of alleged defects in the installation of the concrete tile roof on the main hotel building and the conference center. Specifically, the Claimant alleges that the roof was not installed in accordance with the 1994 version of the Standard Building Code. In 2004, three hurricanes crossed the Peninsula of Florida to the south of Amelia Island, without a direct hit, and with winds of substantially

less than hurricane force and substantially less than the design wind speed requirements of the Standard Building Code. It was argued by the Respondent that possibly local tornadic winds were experienced and, therefore, the hotel experienced local winds in excess of the design speed. Testimony was adduced that there was no tornado observed on the property. The argument is speculative without any direct evidence and is therefore rejected.

Notwithstanding the design requirements for the roof, the roofs sustained substantial damage to the eaves, field, hip caps, ridge caps, and the "field." It is alleged that the damage was as a result of the failure to install the roof as required. It is contended that as a result, the entire roof will have to be replaced; that the replacement of the roof will require the partial closure of the hotel during the time reasonably required to replace the various portions of the roof. It is contended that the scaffolding will damage the landscaping which will, in order to maintain consistency of plant size, be required to be replaced. As a result of the partial closure of the hotel, the Amelia Island Company claims, in addition to the cost of the replacements, lost profits as a result of direct lost room rentals and loss of incidental sales to its guests. The claims are founded, in addition to the alleged breach of warranty, on negligent damage to "other property," thus taking the claim out of the so-called "economic loss rule" as recognized by Florida.

The Respondent alleges that the Claimant has failed to meet its burden of proof as to violation of the Standard Building Code; that it complied with a newer and presumably stricter building code that was in the process of adoption. It further contends that if it were to be found that there was a failure to comply with the Standard Building Code that a causal connection has been demonstrated. It is also alleged that the Claimant has failed to prove its damages with the required specificity.

The Amelia Island Plantation Lodge and Conference Center is an ocean-front resort located on Amelia Island south of Fernandina Beach, Florida, and includes a hotel, conference center, tennis, golf, and other amenities. As a resort, it operates on a "cashless" basis; that is guests of the hotel are required to charge meals, purchases, and other amenities to their room or pre-arranged credit cards or other arrangements. In this manner, the resort is able to keep accurate records of receipts from guests not only for their room, but their other expenditures.

Prior to the construction of the hotel, which is the main subject of this arbitration, the resort utilized a rental program involving villas which were privately owned. Part of the motivation for the construction of the hotel was the apparent failure of the owners to update their individual villas to current standards and the greater profit to be derived from complete ownership of the lodging facilities by the Claimant. Rental villas remain available, however. The main hotel building is a multi-storied structure located on top of a primary dune line fronting on the Atlantic Ocean and is thus directly exposed to winds off the ocean. The conference center is behind the hotel and protected from the oceanic winds by the primary dunes, trees and the hotel itself. Because of those protective aspects, its roof did not sustain the damage experienced by the hotel. It is contended, however, that its roof, failed to comply with installation specifications and will, therefore, have to be replaced.

Issues:

During the hearing the following issues were raised:

1. Whether the roof was installed in accordance with the applicable building code or as required by the contract;
2. Whether the action is limited to an action for breach of contract, under the Florida "Economic Loss" doctrine under *Casa Clara Condominium Association v. Toppino*, 620 So. 2d 1244 (Fla. 1993), or whether the action may be maintained as an action in negligence;
3. The damages recoverable for repair or replacement of the roof;

4. Whether damages are recoverable for loss of use of the hotel during the period required for repair or replacement of the roof and, if so, the amount thereof;

5. Whether damages are recoverable to replacement of the landscaping, if necessitated by the repairs to the roof, and, if so, the amount thereof;

6. "Betterment" as a result of the replacement of the roof and the amount thereof as an offset against the cost of repair or replacement of the roof and, if so, the amount thereof.

Other issues have been raised and have been considered and are addressed in the discussion below or *sub silento*

Discussion

The damage to the roof.

The major and first area for consideration is the damage to the roof and the causes for its failure.

The French-men have a military prouerbe, The losse of a nayle, the losse of an army. The want of a nayle looseth the shooe, the losse of shooe troubles the horse, the horse indangereth the rider, the rider breaking his ranke molests the company, so farre as to hazard the whole Army. (1629 T. Adams Works 714)

That ancient proverb expresses the thought that a small event may lead inexorably through a series of consequences to a large catastrophe.

There are four different areas of the roof as to which failures occurred, the eave line, end wall, and ridge and hip caps. Although the parties to a great extent focused on two different versions of the building code relating to the installation of the ridge and hip caps, the Arbitrator finds that the major area of failure was the eave line. In simple terms, the leading edge of the eave line has the greatest exposure to the wind. The leading edge hangs a short distance over the roof decking and is slightly elevated by a line of mortar. The tiles are "S" shaped "barrel tiles" so that a tile on the left will overlap the tile to the right. To preclude wind lift from underneath, a "bird stop" is placed in the exposed arch of the tile. The tiles are fastened to underlying battens with two screws or nails at the upper end of the tile. Care must be taken in the installation of the screws. If they are tightened excessively the tile will crack, if too loose, there can be an upward movement of the tile which will then catch the wind like a sail, break or come loose from roof and form a projectile which will then hit and break tiles further up in the field or at the hip or ridge cap. Those tiles hit by the lower tiles which came loose in turn would then be broken free and cause further damage.

As indicated, the tiles are held in place by the two screws and by the overlap of the tile to the left and the overlap of the tiles in the second course above. The water resistance of the roof is provided by roof felt below. The purpose of the tile is to protect the felt. Testimony was provided that a roof constructed in this manner will have a life expectancy in excess of twenty-five years. It should be noted, however, that the Technical Specifications (Joint Exhibit 3) provide for a 50 years manufacturer's warranty against defects in the tile. The difficulty is that if one tile is lost, the tile to the right no longer has the benefit of the lost tile to help hold it in place. Additionally, the tiles in the next course are placed in jeopardy to the uplifting force of the wind. In other words, there can be a domino effect

The parties have focused on the provisions of two different versions of the Standard Building Code, one in force at the time of the contract and the other in the process of adoption, but not finally adopted until later, at the time of the construction of the roof. The building codes require the roof to meet certain uplift requirements which provide a means of measuring whether the roof will withstand the

wind velocity requirements of the law. By ordinance, Nassau County requires the structure to be constructed to 110 m.p.h. wind velocities. Testing laboratories and roof tile manufacturers have provided specifications for methods of installation which will meet the uplift requirements. In simple explanation, if certain specified nails or screws or mortars are used, testing indicates that the roof tiles will meet the uplift requirements. The Claimant contends that the Respondent failed to install the roof in the manner specified by the 1994 Code, while the Respondent claims that it installed (through a subcontractor) in accordance with a later report which provided a stronger mechanical fastening for the roof tiles.

Florida Statutes 553.73 (8)(d) contains a limitation on amendments to the Standard Building Code:

Provisions of the Florida Building Code, including those contained in referenced standards and criteria, relating to wind resistance or the prevention of water intrusion may not be amended pursuant to this subsection to diminish those construction requirements; however, the commission may, subject to conditions in this subsection, amend the provisions to enhance those construction requirements.

Accordingly, the Arbitrator finds that the later reports and Code Provisions provide for enhanced construction requirements and that compliance with the later provisions would constitute compliance with contractual or code provisions. Nevertheless, the distinction in this instance is without a difference in light of the finding as discussed below, that the roof, and in particular the leading edges and fields were not installed in a good and workmanlike manner as required by the Contract or as required by the manufacturer or the Code.

In the hearing, several examples of tiles affixed with one screw were adduced. Additional in the inspection of the roof on the Southwest side of the building, the Arbitrator observed one leading edge tile affixed with only one screw. Two screws will preclude a tile from pivoting. A tile subjected to uplift and affixed with only one screw can pivot on that one screw. In fact, that is what brought the particular tile to the attention of the Arbitrator, it had pivoted to the right and had loosened. A missing bird stop was also observed. Within the field several large areas were observed which had excess play upwards of at least six inches so that in the event of strong winds from the southwest, the tiles could move upwards and catch the wind like a sail causing further damage to the roof. Although, the southwest corner of the building was protected from the winds, there were also several tiles missing and damage to the area next to the end wall.

The Respondent has argued that the loosening of the tile may have been caused by the repeated storms of 2004 and a "chattering effect" from uplift rather than a failure to comply with standard installation practices or building code installation procedures. In other words, Respondent also argues that there is no showing of a causal connection between the failure of the roof tiles and any purported failure to comply with installation procedures recommended for the particular tiles; that is the Respondent contends that there is no testimony that any failure to meet recommended specifications for the thread-count for the screws caused the tiles to come loose.

Quite clearly any testimony as to the precise reason for the mechanical failure of the roof tiles is speculation and subject to disagreement between experts. Equally clearly, however, is that the actual winds sustained on Amelia Island were far less than the 110 miles per hour winds which the roof was required to meet and, indeed, less than even hurricane force winds. The winds similar to that actually experienced during the 25 year or 50 years anticipated life of the roof should have reasonably been anticipated or expected. The Arbitrator finds that the requirement of compliance with the 110 mile an hour wind velocity was a condition of the contract and that the failure itself combined with other evidence such as missing screws and excessively loose tiles constitute by a preponderance of evidence that the roof was not installed in accordance with contract requirements. See *Community Television Services, Inc. v. Dresser Industries, Inc.* 586 F. 2d 637 (8th Cir. 1978).

In addition to a contractual claim, the Claimant has requested a determination that damages may be recovered on the basis of negligence and, based on the calculation of draws, that the tiles and roof

became the property of the Claimant at the time of draw payment and, therefore, constituted damage to "other property." See generally, *Comptech International v. Milan Commerce Park*, 753 So. 2d 1219 (Fla. 1999) holding that the "economic loss rule" cannot be used to abrogate a statutory remedy. The Court, therefore, in essence distinguished *East River Steamship Corp. v. Transamerica Lelaval*, 476 U.S. (1986). The court held that Florida Statutes 553.84, as it existed at the time was such a statutory remedy. Florida Statutes 553.84 provided:

553.84 Statutory civil action.--Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of this part or the Florida Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation.

However, the Florida Legislature subsequently amended the statutory remedy to specifically reinstate the law as elucidated by the United States Supreme Court in the area of building construction. Florida Statutes 553.8 was amended to read:

553.84 Statutory civil action.--Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of this part or the Florida Building Code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation; however, if the person or party obtains the required building permits and any local government or public agency with authority to enforce the Florida Building Code approves the plans, if the construction project passes all required inspections under the code, and if there is no personal injury or damage to property other than the property that is the subject of the permits, plans, and inspections, this section does not apply unless the person or party knew or should have known that the violation existed.

History.--s. 15, ch. 74-167; s. 88, ch. 2000-141; ss. 28, 34, ch. 2001-186.

The roof was subject to building permits from Nassau County and subject to inspection by the Nassau County Building Department. The roof was installed by a subcontractor. There is no evidence that the Respondent knew or should have known that the violation existed. Accordingly, the Arbitrator finds that the roof and roof tiles did not constitute "other property" within the meaning of the exception to the Economic Loss Rules. Arguments that the separate components of the building were separately owned and thus constituted "other property" under the economic loss doctrine have been rejected by various courts. See *East River Steamship*, supra; *Mars, Incorporated v. Heritage Builders of Effingham*, 463 N.E. 2d 428 (Ill App. 2002); *Pro Conn v. J & B Drywall*, 20 Mass L. Rep. 466 (Mass Super. 2006).

Damages

1. Temporary Repairs. The uncontradicted evidence is that the Claimant expended \$78,007.56 in temporary repairs to the roof. The Claimant is entitled to prejudgment interest on this amount in the sum of \$27,031.11 as of April 1, 2009.

2. Repairs or replacement of roof. The uncontradicted evidence is that the roof has to be replaced due to the unavailability of the same tiles as currently on the roofs. Evidence was adduced that the same tile may be available from Arizona but the cost of shipping would be excessive. Replacement of individual tiles is not possible, since in order to determine whether all tiles have been properly nailed or screwed down, it would be required to remove the tiles in the next tier, in essence requiring the removal of the entire roof. See in this regard, *Nichols Construction Corporation v. Virginia Machine Tool Company*, 661 S.E. 2d 467 (Va. 2008), where the court noted:

While a plaintiff has the burden to establish its damages with reasonable certainty, *id.* at 415. 448 S.E.2d at 416, "[d]amages need not be established with mathematical certainty. Rather, a plaintiff is required only to furnish evidence of sufficient facts to permit the trier of fact to make an intelligent and probable estimate of the damages sustained." *Id.* at

414, 448 S.E.2d at 416. Accordingly, the determination of damages for a breach of contract will always be fact specific, and no single method exists for calculating the amount necessary to place the plaintiff in the position he would have occupied had the breach not occurred. See *Appalachian Power Co. v. John Stewart Walker, Inc.*, 214 Va. 524, 535, 201 S.E.2d 758, 767 (1974).

This Court has long recognized two methods of determining monetary damages in breach of construction contract cases, which were potentially implicated in the present case. These have come to be commonly designated as the "cost rule" which is "the cost of correcting the defects in the [construction] and making it conform to the terms of the contract" and [*13] the "value rule" which is "the difference between the value of the [structure] properly completed according to the contract and the value of the defective structure." *Mann v. Clowser*, 190 Va. 887, 903, 59 S.E.2d 78, 85-86 (1950).

We have also observed that "cost of correction or completion rather than loss in property value ordinarily affords the proper basis for measuring the damages which result to the owner from the breach of a building or construction contract, or other contract to change the condition of real property. The propriety of applying such measure of damages is especially clear where correction or completion would not involve unreasonable destruction of work done by the contractor and the cost thereof would not be grossly disproportionate to the results to be obtained." *Green v. Burkholder*, 208 Va. 768, 773, 160 S.E.2d 765, 768 (1968). In this context, we have further observed that "[t]he cost measure [of damages] is appropriate unless the cost to repair . . . would involve unreasonable economic waste." *Lochaven Co. v. Master Pools by Schertle, Inc.*, 233 Va. 537, 543, 357 S.E.2d 534, 538, 3 Va. Law Rep. 2811 (1987); see also *Klaiber v. Freemason Assocs.*, 266 Va. 478, 488, 587 S.E.2d 555, 560 (2003); [*14] *Kirk Reid Co.*, 205 Va. at 789, 139 S.E.2d at 837.

On appeal, the thrust of Nichols Construction's assertions, consistent with its post-trial memorandum, is that the award of damages in this case places Virginia Machine Tool in a better position than it would have enjoyed had the contract been performed as expected. Nichols Construction maintains that under either the cost measure of damages or the value measure of damages the award of damages in this case is excessive as a matter of law. In support of this contention, Nichols Construction first points out that the contract called for the installation of a \$ 140,000 roof and excluded the recovery of consequential damages. Second, Nichols Construction maintains that the contract specifically provided for the installation of a "Varco Pruden" roof and Virginia Machine Tool was not awarded damages for a Varco Pruden roof but, rather, damages for a different roof system. Lastly, Nichols Construction contends that Virginia Machine Tool was awarded the cost of replacement of the defective roof rather than the cost of repair and the amount so awarded was more than two times the value of the building, including land and equipment, purchased just [*15] five years earlier.

While the considerable disparity between the contract price for the roof and the amount of damages awarded to Virginia Machine Tool is, initially at least, facially compelling evidence in support of Nichols Construction's position that the award results in a betterment or windfall to Virginia Machine Tool, we are not persuaded that such is actually the case. The record clearly supports the circuit court's conclusion that the defective roof would need to be removed and replaced with a new roof. Repair of the defective roof was not established as a reasonable option to replacement with a new roof.

At trial, Nichols Construction offered no evidence to rebut the accuracy or reasonableness of Howard's testimony regarding the cost to remedy Nichols Construction's breach of the contract. The new roof was not shown to be a different or superior roof system than that of the contracted-for Varco Pruden standing seam roof. Moreover, no evidence was presented as to what the reasonable cost for a Varco Pruden standing seam roof would have been in 2007 when the circuit court was called upon to determine the amount of the damage award.

At the hearing, it was argued that there was an earlier lower estimate for the cost of replacement of the roof. That, however, was prior to the full extent of the damage to the roof being determined. Accordingly, in the absence of other credible evidence as to the cost of the replacement of the roof, the Arbitrator is required to award the full estimated cost of the replacement in the sum of \$1,529,000.00, less betterment as discussed below.

Betterment

At the hearing, the Claimant acknowledged that it received the benefit of the roof from 1998 through 2002 or 2004, and therefore, received approximately 25% of the useful life of the roof. As noted, above, there is some indication in the record that the useful life may actually be longer. Additionally, the water tightness of the roof is derived from the asphaltic underlayment beneath the tiles. The tiles protect that underlayment from deterioration from the Sun. Since the roof has undergone temporary repairs and is being awarded the cost of the temporary repairs, a new roof will extend the useful life from the date of installation for another 25 or more years, possible as long as 50. If the shorter more conservative life expectancy is used, the Claimant will receive a betterment equal to an extension of the life expectancy in the amount of $11/25^{\text{th}}$ of the life expectancy. If, on the other hand, the life expectancy is 50 years, the extension is only $11/50^{\text{th}}$ of life expectancy. Under the circumstances, the Claimant's proposed 25% reduction in the cost of the roof provides a reasonable estimate. Accordingly, the amount awarded for the replacement of the roof is in the amount of the claim, \$1,146,750.00.

Landscaping.

Claimant claims that scaffolding and lifts will require the destruction of landscaping and its complete replacement in order that the landscape plants will be consistent. Repairs to the roof were previously made without the necessity of replacing the landscaping. Presumably the replacement tiles taken from the back of the Conference Center Building, were lifted to the roof in some manner as were the roofers making the repairs without the destruction of the existing landscaping. It is also possible to include within the contract a provision for the protection of the landscaping. Indeed, see General Comments Page 01010-2, Document 01010 (Exhibit 22-2):

All work will be performed continuously until completion. Appropriate protection for all surrounding landscape is expected. Similarly no radios or other noise making apparatus will be allowed on the job site.

The Arbitrator does not find the testimony as to the requirement of the replacement of the landscaping to be credible and, therefore, the claim as to the landscaping is denied.

Loss of use of portions of the Hotel Building.

During the period required for the replacement of the roof, the Claimant proposes to use stages so that the entire hotel will not have to be closed down at once; that is, each section of the building together with a small section adjacent will be closed during the replacement period, so as to not disturb guests from the noise and activities associated with the roof replacement.

The Respondent argues that the Claimant has not proven the quantum of damage from this with the certainty required by Florida Law. The Claimant contends that the average vacancy rate is higher than the number of rooms which will be out of use and that, therefore, there is no loss. Undoubtedly, there are times that the hotel is completely full. Therefore, there will be an undoubted loss of business as a result of the construction.

In *W.F. Gay Mechanical Contractor v. Wharfside Two*, 545 So. 2d 1348 (Fla. 1989), the Florida Supreme Court dealt with this issue with regard to a new hotel with stinky water and with no proven track record:

The trial court refused to allow expert testimony concerning lost profits predicated on a claim of realizing less than projected occupancy rates as being too speculative, and the jury subsequently ruled against Wharfside on this issue. The two seminal Florida cases on recovery of prospective profits are *Twyman v. Roell*, 123 Fla. 2, 166 So. 215 (1936), and *New Amsterdam Casualty Co. v. Utility Battery Manufacturing Co.*, 122 Fla. 718, 166 So. 856 (1935). In *New Amsterdam* this Court held that prospective business profits are generally too speculative and dependent on changing circumstances to be recovered. *New Amsterdam* provided an exception allowing the plaintiff to show the amount of his loss by competent proof. However, this exception only applied to the interruption of an established business. *Twyman*, on the other hand, did not limit recovery to established businesses. There, the Court stated that, if there is a "yardstick" by which prospective profits can be measured, they will be allowed if proven. 123 Fla. at 6, 166 So. at 217. The Court provided further that the "uncertainty which defeats recovery in such cases" is the cause of the damage rather than the amount. "If from proximate estimates of witnesses a satisfactory conclusion can be reached, it is sufficient if there is such certainty as satisfies the mind of a prudent and impartial person." *Id.* at 7-8, 166 So. at 218. *Conner v. Atlas Aircraft Corp.*, 310 So.2d 352 (Fla. 3d DCA), cert. denied, 322 So.2d 913 (Fla.1975).

We follow the holding in *Twyman*. A business can recover lost prospective profits regardless of whether it is established or has any "track record." The party must prove that 1) the defendant's action caused the damage and 2) there is some standard by which the amount of damages may be adequately determined. We reject the contention that the causal connection between foul-smelling water and lost revenues was too tenuous. There was competent and substantial evidence that the odor was a cause of reduced occupancy. This evidence was supported by studies prepared by reputable economic analysts and provided a sufficient standard to support the experts' testimony concerning lost profits. The expert testimony, when combined with the economic studies, was clearly sufficient to raise a jury question. Accordingly, the trial court erred by excluding testimony on lost profits.

The testimony and evidence as to lost profits was two-fold (1) loss of room rentals and (2) loss of incidental sales. Testimony was adduced that the same staffing and overhead would be required for the rental of the hotel rooms. Thus, the only testimony adduced was that the loss of revenue from the rental would equal a reduction in the total net profit of the hotel. As to the reduction in occupancy rates, testimony was provided that some groups will not book if any construction is going on so, so that actual reduction in occupancy rates would be greater than the loss of the number of rooms.

With regard, however to the incidental sales an accurate determination for the losses of profits would require an analysis of the nature of the sales; that is what portion comes from food, beverage, tennis, golf, pro-shop, etc. With regard to some of those items there will be a cost of goods sold incorporated within the total sales. The cost of goods sold would not be a compensable item since it would not be incurred; that is, cost of sales would be reduced proportionately to the reduction in sales. General and Administrative Overhead, on the other hand, would not be reduced. No testimony was adduced from an accounting viewpoint as to the breakout of those items or the proper allocation. The Arbitrator therefore finds that the amounts attributable to the recapture of money from collateral sources is speculative as providing only a loss of gross revenues and not net profit and is not allowable.

Accordingly, the only testimony adduced was that there will be a reduction in profits for the hotel in the sum of \$915,525.00

Award

The Claimant is awarded:

Temporary repairs	\$78,007.56
Replacement of Roof	\$1,146,750.00.
Loss of Use during time for repair	\$915,525.00
Prejudgment interest	<u>\$27,031.11</u>
TOTAL	\$2,167,313.67

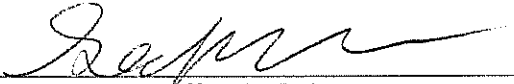
As and for total resolution of all claims by the Claimant, The Amelia Island Company against The Auchter Company, together with prejudgment interest from April 1, 2009, at the statutory rate and the Administrative Costs of the American Arbitration Association and the fees of the Arbitrator as specified herein.

The administrative fees and expenses of the American Arbitration Association totaling \$11,250.00 shall be borne entirely by The Auchter Company, and the compensation and expenses of the arbitrators totaling \$7,776.20 shall be borne entirely by The Auchter Company. Therefore, The Auchter Company shall reimburse Amelia Island Company the sum of \$15,138.11, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Amelia Island Company, **upon demonstration by The Auchter Company that these incurred costs have been paid.**

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

I, Geoffrey B. Dobson, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

March 28, 2009
Date



Geoffrey B. Dobson