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OFFICE OF
INSURANCE REGULATION
Decided by: FT

OFFICE OF INSURANCE REGULATION

KEVIN M. McCARTY
COMMISSIONER

IN THE MATTER OF:

THE PALM BEACH WINDSTORM
SELF-INSURANCE TRUST

CASE NO.: 97971-08

ORDER

TO: John A. Vivenzio, Chairman
The Palm Beach Windstorm Self-Insurance Trust
525 Southeast Central Parkway
Stuart, Florida 34994

YOU ARE HEREBY NOTIFIED that pursuant to the applicable provisions of Florida's Insurance Code, the OFFICE OF INSURANCE REGULATION (hereinafter referred to as the "OFFICE") finds:

1. THE PALM BEACH WINDSTORM SELF-INSURANCE TRUST (hereinafter the "TRUST") is a not-for-profit commercial self-insurance fund and is within the jurisdiction and subject to regulation by the OFFICE pursuant to the Florida Insurance Code.

2. The TRUST was issued a Certificate of Authority as a commercial self-insurance fund to write (0200) Allied Lines insurance coverage in this state in Consent Order Number 93100-07-CO on January 16, 2008.

3. Section 624.460, Florida Statutes, provides that Sections 624.460-624.488 may be cited as the "Commercial Self-Insurance Fund Act."

4. Section 624.488, Florida Statutes, provides that Section 624.418, Florida Statutes applies to the regulation of Self-Insurance Funds.

5. Section 624.418(1)(a), Florida Statutes, provides that the OFFICE shall suspend or revoke an insurer's Certificate of Authority if it finds that the insurer is in unsound financial condition.

6. Section 624.468, Florida Statutes, provides that "[a]ny self-insurance fund which holds a certificate of authority on or after January 1, 1998, shall maintain surplus to policyholders in a positive amount."

7. Section 624.468, Florida Statutes, provides that the TRUST shall "have and maintain its principal place of business in this state and shall herein make available to the OFFICE upon reasonable notice complete records of its assets, transactions, and affairs..."

8. Section 624.418(1)(d), Florida Statutes, provides that the OFFICE shall suspend or revoke an insurer's Certificate of Authority if it finds that the insurer no longer meets the requirements for the authority granted.

9. Section 624.418(2)(a), Florida Statutes, provides that the OFFICE may, in its discretion, suspend or revoke the Certificate of Authority of an insurer if it finds that the insurer has violated any lawful order or rule of the office or commission or any provision of the Florida Insurance Code.

10. Consent Order Number 93100-07-CO, paragraph 12, states that "the OFFICE has relied upon the representations in the Plan of Operations and supporting documents that Applicant [the TRUST] submitted with its Application. Written approval must be secured from the OFFICE prior to any material deviation from said Plan of Operations."

11. The original Plan of Operations (hereinafter the "Plan") filed by the TRUST discusses extensively the management and operations of the TRUST. In the Plan, the TRUST

declares that MacNeill Group, Inc., a Florida licensed Managing General Agency and Third Party Administrator will:

- (a) act as the TRUST'S Administrator and provide the daily operations of the TRUST as well as overseeing the marketing functions, policy administration, and the negotiation of reinsurance treaties on behalf of the TRUST;
- (b) be responsible for the expenses associated with the day-to-day operation of the TRUST;
- (c) act as the claims administrator and be responsible for establishing claim-handling procedures, developing claim systems specifications, reviewing all related tasks involving the claims processing, and monitoring external claims environment.
- (d) utilize its staff of highly trained underwriters to "oversee the policy underwriting functions including: developing policy forms, assuring risk premium rate adequacy, compiling underwriting documentation for the policy and rate filings, developing premium system specifications and assuring the accuracy of application information."
- (e) have its underwriting department work closely with the TRUST'S actuary, to determine premium rates and prepare rate filings.
- (f) be responsible for compliance with underwriting requirements.

12. The TRUST is made up of members of multiple condominium boards. These board members in many cases do not have the specific skills and knowledge of the insurance industry needed to effectively operate the TRUST in the short or long-term. Due to the unique nature of this entity and potential exposure of condominium owners, the OFFICE went to great lengths during the application process to assure that the TRUST would have an experienced administrator to oversee all insurance related functions necessary for the TRUST to operate properly with the least risk to Florida residents.

13. Because of the unique nature of the TRUST and the power and influence that MacNeill had over the TRUST'S operations, the OFFICE, as part of its due diligence completed

background checks and investigations of several MacNeill officers. The results of those investigations as well as the experience and assurances by MacNeill's officers were integral in making the decision to license the TRUST.

14. On March 27, 2008, approximately two months after receiving its Certificate of Authority to engage in business as a Self-Insurance Fund, the TRUST'S Board of Trustees voted to terminate the services of MacNeill, effective May 1, 2008.

15. On or about May 2, 2008, over one month after the board voted to terminate MacNeill, Counsel for the TRUST notified the OFFICE that MacNeill was "not a good fit with the TRUST'S activities" and they mutually decided to terminate the Trust Administrator Agreement with MacNeill. In this same correspondence, the OFFICE was informed that the TRUST was looking at alternative service providers, but had yet to hire a replacement.

16. The OFFICE has since learned that the TRUST entered into a new Trust Administration Agreement with TARGA INSURANCE INC. (hereinafter referred to as "TARGA") on April 1, 2008, approximately one month prior to terminating its agreement with MacNeill. At the time it entered into its agreement with the TRUST, TARGA was not a licensed Managing General Agent. TARGA did not become eligible to act as a Managing General Agent until June 9, 2008, when a company employee, Luis Soto-Rivera, was licensed by the Department of Financial Services to function as a Managing General Agent.

17. While attempting to complete its obligations as the TRUST'S administrator, MacNeill discovered that at least five policies had been underwritten by persons other than MacNeill during a time when MacNeill was obligated by contract to undertake such activities. Ultimately, MacNeill provided no services to the TRUST and upon its termination returned its retainer as well as other funds it received from the TRUST.

18. During the time between licensure and the termination of MacNeill, TARGA, certain other independent contractors and/or employees of the TRUST, all of which were unknown to the OFFICE and were not disclosed by the TRUST during the licensing process, provided administrative services to the TRUST. The OFFICE has no information on these people or entities and knows nothing of their qualifications or background for running such an operation. The OFFICE recently learned that these entities or persons include, Richard Duer, Josh Duer, Tim Renfro, Edwin Millette, Luis Soto-Rivera, and TARGA.

19. Office records indicate that both Mr. Renfro and Mr. Duer were either officers or directors of American Superior Insurance Company. This company, after struggling with financial issues, was ultimately liquidated by the Office and the Department of Financial Services (hereinafter referred to as "DFS") in 2004. On or about July 20, 2007, the DFS acting as Receiver for American Superior Insurance Company, filed a complaint in Broward County Circuit Court alleging that the corporate officers and directors, including Messrs Renfro and Duer, engaged in gross mismanagement of corporate assets and breach of fiduciary duty.

20. Section 624.4073, Florida Statutes, states that:

Any person who was an officer or director of an insurer doing business in this state and who served in that capacity within the 2-year period prior to the date the insurer became insolvent...may not thereafter serve as an officer or director of an insurer authorized in this state unless the officer or director demonstrates that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

21. Documents discovered by the OFFICE indicate that Tim Renfro, a person associated with TARGA as well as being referred to as Chief Financial Officer of the TRUST was engaging in underwriting and other functions that MacNeill was obligated to perform and

for which the OFFICE expected MacNeill to perform on behalf of the TRUST. Such underwriting activities were taking place in March 2008, well before the termination of MacNeill.

22. The Producer on all the policies issued by the TRUST to its condominium members is listed as Eastover Management Company, LLC. A review of state corporate records indicates that Mr. Renfro is listed as the managing member.

23. Such changes in its previously approved and vetted administrator are a material deviation from the TRUST'S PLAN and the conditions agreed to during the licensing process. The TRUST has violated the provisions of the Consent Order authorizing it to engage in business by failing to obtain prior written approval from the OFFICE to sever its relationship with MacNeill. Additionally, pursuant to the provisions of the consent order any new officers, Trustees, administrators or other key personnel responsible for administering the affairs of the TRUST in conjunction with a contractual relationship shall submit complete biographical information to the OFFICE for its approval.

24. In addition to these issues with the TRUST'S Administrator, the TRUST has suffered ongoing financial issues and has routinely failed to timely make required filings since receiving its license.

25. Consent Order Number 93100-07-CO, provides that within twenty-one (21) days of issuance of a policy to an initial member, copies of properly-executed evergreen letters of credit, issued by a financial institution, for each initial member in an amount equal to at least one-half percent (0.5%) of the total insured value of each condominium association to be insured by the TRUST. These documents were not received timely and were ultimately filed with the OFFICE on August 6, 2008, only after the filing of a Cease and Desist Order by the OFFICE.

26. Consent Order Number 93100-07-CO, paragraph 19.1) requires the TRUST members to at all times maintain letters of credit in an amount at least equal to one-half percent (.5%) of the total insured value for each condominium. As of August 29, 2008, five of the condominium association members had failed to obtain the appropriate letter of credit, thereby placing the commercial self-insurance fund in an unsound financial condition.

27. On or about May 15, 2008, the TRUST failed to timely file its first quarter financial statement with the OFFICE as required by the Insurance Code and the consent order licensing the TRUST. The statement was ultimately received on or about June 27, 2008.

28. On or about August 29, 2008, the OFFICE received verbal notification from the TRUST'S counsel that Richard Duer, a paid consultant responsible for the formation and licensure of the TRUST, had absconded with approximately sixty seven thousand dollars (\$67,000.00) of the TRUST'S money. It was subsequently reported to the OFFICE that Tim Renfro, another consultant and one associated with Targa had repaid the funds on behalf of Mr. Duer. The location of Mr. Duer or his continued involvement with the TRUST is unknown by the OFFICE.

29. On or about August 19, 2008, an OFFICE financial examiner began a target financial examination of the TRUST due to the ongoing issues arising from the TRUST'S operation. OFFICE records indicated that the principal place of business was located at 525 Central Parkway, Stuart, Florida. Upon his arrival, the examiner found an empty building with no indication of a forwarding address.

30. Subsequent contact with TRUST Representatives indicated that the records and offices had been moved to the home of Edwin Millette, a principle of TARGA. As field examiners are prohibited from entering private dwellings for safety reasons, the examiner was

unable to complete his examination of the TRUST'S financial records. On or about September 2, 2008, the records were made available to the OFFICE at the Tallahassee offices of Carr & Allison.

31. A review of the quarterly financial statement dated June 30, 2008, indicated gross paid in and contributed surplus of one hundred dollars (\$100.00). As part of the financial review, the Examiner compared the June 30, 2008 quarterly statement with the TRUST'S bank account statements. This comparison showed that the quarterly statement overstated the company's cash balance by sixty-seven thousand seven hundred seventy-five dollars and thirty seven cents (\$67,775.34). A restatement of the accurate cash balance would change the gross paid in and contributed surplus to a negative number rendering the company insolvent at the end of the second quarter.

32. The quarterly financial statement dated June 30, 2008, includes as an asset one hundred fifty two thousand five hundred eighty three dollars (\$152,583.00) entitled deferred expenses. TRUST documents confirm that this is a deferred acquisition cost which is a nonadmissible asset pursuant to Section 625.031(7), Florida Statutes. [part of the insurance code addressing accounting, investments and deposits]

33. The quarterly financial statement dated June 30, 2008, indicates that the TRUST reduced its liability for unearned premium by sixty thousand nine hundred thirty eight dollars (\$60,938.00) because of an overpayment to its reinsurer. This overpayment is not eligible to be reduced from the amount of unearned premium. A correction to the financial statement renders the TRUST insolvent.

34. TRUST records indicate that the TRUST owes its reinsurer a total of two million one hundred twenty one thousand four hundred eighty eight dollars and eight cents

(\$2,121,488.08) for the balance of its annual reinsurance treaty. The quarterly financial statement dated June 30, 2008, indicates that the TRUST failed to record this amount as a liability. A correction to the financial statement renders the TRUST insolvent.

35. The TRUST contracted with the State Board of Administration of Florida, which administers the Florida Hurricane Catastrophe Fund (hereinafter "Cat Fund") to provide an additional layer of reinsurance. For this protection, the TRUST pays to the Cat Fund a Reimbursement Premium in accordance with Section 215.555, Florida Statutes. At June 30, 2008 the Reimbursement Premium was estimated to be \$600,000. The TRUST failed to include this amount as a liability on its June 30, 2008 Quarterly Statement. A correction to the financial statement renders the TRUST insolvent.

36. Consent Order 93100-07-CO, requires the TRUST to maintain a fidelity bond or insurance policy providing coverage for the Trustees, employees, administrator, or other individuals managing or handling the funds and/or assets of the TRUST. The fidelity bond in place as of June 1, 2008, insured only against employee dishonesty.

37. Based on this pattern of ongoing financial issues as well as the TRUST'S decision to hire persons or entities unknown to the Office to manage its affairs, the Office has little confidence in the TRUST'S ability to move forward as a going concern.

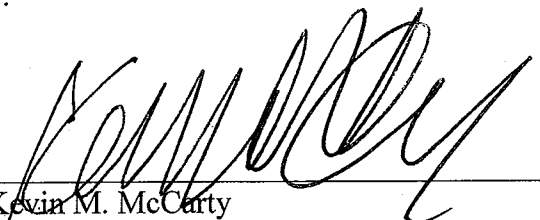
38. Based on the foregoing, the TRUST is in violation of Consent Order 93100-07-CO and the Florida Insurance Code. By doing so, the TRUST has endangered the safety and welfare of the condominium associations and the individual condominium owners.

IT IS THEREFORE CHARGED that the TRUST, for the reasons set forth hereinabove, is in violation of Sections 624.418 and 624.468, of the Florida Insurance Code and

is no longer eligible for the authority originally granted in Consent Order Number 93100-07-CO. Further, the OFFICE finds that the TRUST has violated a lawful order of the OFFICE, to wit, it has failed to comply with Consent Order Number 93100-07-CO, providing grounds for the revocation or suspension of its Certificate of Authority as an authorized commercial self-insurance fund.

DONE and ORDERED this 24 day of November, 2008.





Kevin M. McCarty
Commissioner
Office of Insurance Regulation

NOTICE OF RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes and Rule Chapter 28-106, Florida Administrative Code (F.A.C.), you may have a right to request a proceeding to contest this action by the Office of Insurance Regulation (hereinafter the "Office"). You may request a proceeding by filing a Petition. Your Petition for a proceeding must be in writing and must be filed with the General Counsel acting as the Agency Clerk, Office of Insurance Regulation. If served by U.S. Mail the Petition should be addressed to the Florida Office of Insurance Regulation at 612 Larson Building, Tallahassee, Florida 32399-4206. If Express Mail or hand-delivery is utilized, the Petition should be delivered to 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0300. The written Petition must be received by, and filed in the Office no later than 5:00 p.m. on the twenty-first (21) day after your receipt of this notice. Unless your Petition challenging this action is received by the Office within twenty-one (21) days from the date of the receipt of this notice, the right to a proceeding shall be deemed waived. Mailing the response on the twenty-first day will not preserve your right to a hearing.

If a proceeding is requested and there is no dispute of material fact the provisions of Section 120.57(2), Florida Statutes may apply. In this regard you may submit oral or written evidence in opposition to the action taken by this agency or a written statement challenging the grounds upon which the agency has relied. While a hearing is normally not required in the absence of a dispute of fact, if you feel that a hearing is necessary one may be conducted in Tallahassee, Florida or by telephonic conference call upon your request.

If you dispute material facts which are the basis for this agency's action you may request a formal adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. If you request this type of proceeding, the request must comply with all of the requirements of Rule Chapter 28-106.2015, F.A.C., including but not limited to:

- a) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so state; and
- b) A statement of when the respondent received notice of the agency's action.

These proceedings are held before a State Administrative Law Judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Office will request that the hearing be conducted in Tallahassee.

In some instances, you may have additional statutory rights than the ones described herein.

Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. Any request for administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this ORDER was sent by Certified Mail to William Graham, Carr Allison, 305 South Gadsden, Tallahassee, Florida 32301; and John A. Vivenzio, Chairman, The Palm Beach Windstorm Self-Insurance Trust, 525 Southeast Central Parkway, Stuart, Florida 34994 this 24 day of November, 2008.



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