

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

MARBELLA AT SPANISH WELLS
1 CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff,

v.

Case No.: 2:21-cv-641-SPC-KCD

EMPIRE INDEMNITY
INSURANCE COMPANY,

Defendant.

_____ /

OPINION AND ORDER

Before the Court is Defendant's Objection (Doc. 120) to United States Magistrate Judge Kyle C. Dudek's Order regarding the form of the appraisal award (Doc. 116). Plaintiff has responded. (Doc. 121). For the below reasons, the Court overrules Defendant's Objection.

This is a Hurricane Irma insurance case. The Court ordered the parties to appraisal, Defendant appealed, and now the parties are back and disagree about the form of the appraisal award. Judge Dudek decided that the Court would not dictate the form of the appraisal award because doing so would effectively rewrite the insurance policy. Defendant objects.

Non-dispositive orders, like the one here, are reviewed for clear error. The district court must "modify or set aside any part of the order that is clearly

erroneous or is contrary to law.” Fed. R. Civ. P. 72(a). “A finding is clearly erroneous if the reviewing court, after assessing the evidence in its entirety, is left with definite and firm conviction that a mistake has been committed.” *A.R. by and through Root v. Dudek*, 151 F. Supp. 3d 1309, 1312 (S.D. Fla. 2015) (citation omitted). “A magistrate judge’s order is contrary to law when it fails to apply or misapplies relevant statutes, case law, or rules of procedure.” *Id.* (citation omitted).

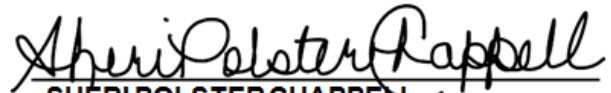
Judge Dudek’s Order is well supported by the parties’ policy and appraisal case law. Defendant does not cite a single policy provision or binding legal authority that requires the Court to dictate the form of an appraisal award. Defendant only points out that other courts have done so and that doing so here would enable Defendant to better challenge elements of the award. But courts have persuasively rejected this approach to appraisal awards. *See, e.g., Creekside Crossing Condo. Ass’n, Inc. v. Empire Indem. Ins. Co.*, No. 2:20-CV-136-JLB-MRM, 2022 WL 962743, at *8 (M.D. Fla. Jan. 31, 2022). In fact, the Court has already rejected this approach in this case, twice. (Doc. 45 at 16-17; Doc. 48 at 5). Like the two before it, Judge Dudek’s ruling is not clearly erroneous or contrary to law.

Accordingly, it is now

ORDERED:

1. Defendant’s Objection (Doc. 120) is **OVERRULED**.

DONE and **ORDERED** in Fort Myers, Florida on May 31, 2024.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record