UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

CINNAMON RIDGE CONDOMINIUM ASSOCIATION, INC.,	:	
	:	Case No. 3:22-cv-118
Plaintiff,	:	
	:	Judge Thomas M. Rose
v.	:	
	:	Magistrate Judge Peter B. Silvain, Jr.
STATE FARM FIRE AND CASUALTY COMPANY,	:	
	:	
Defendant.	:	

ENTRY AND ORDER GRANTING MOTION TO CLARIFY ORDER AND TO REMAND BACK TO APPRAISAL (DOC. NO. 27)

This action is before the Court on the Motion to Clarify Order and to Remand Back to Appraisal (the "Motion") (Doc. No. 27), filed by Plaintiff Cinnamon Ridge Condominium Association, Inc. (the "Association"). On the surface, the Association moves for clarification of the Court's Entry and Order Granting, In Part, and Denying, In Part, Motion for Summary Judgment and to Amend the Complaint Plaintiff Requests Oral Argument, and Denying Defendant State Farm Fire and Casualty Company's Motion for Summary Judgment (the "Order" or "Prior Order") (Doc. No. 26). (Doc. No. 27-1 at PageID 448.) Though, more aptly, the Association seeks to resubmit this matter to the appraisal panel for a final factual determination of the full amount of loss at issue in this insurance dispute. (*Id.* at PageID 449-51.) The Association would then have the Court compel appraisal and stay this litigation until such time as the appraisal is complete. (*Id.* at PageID 453.) Defendant State Farm Fire and Casualty Company ("State Farm") opposes the Motion, arguing that proceeding with a trial schedule would be more appropriate here than remanding this case to appraisal. (Doc. No. 28 at PageID 455.)

For the reasons set forth herein, the Court **GRANTS** the Association's Motion to Clarify Order and to Remand Back to Appraisal (Doc. No. 27), with conditions.

I. BACKGROUND

This case stems from an insurance agreement between the Association and State Farm. (Doc. Nos. 1 at PageID 2; 4 at PageID 9; 10-2 at PageID 176-215.) The Association is a common interest community organization responsible for representing the interests associated with a series of properties in Greene County, Ohio. (Doc. No. 1 at PageID 1.) State Farm is an insurance company doing business in Ohio. (Doc. No. 4 at PageID 9.) The Association purchased an insurance policy (the "Policy") from State Farm for the 2020 calendar year. (Doc. Nos. 1 at PageID 2; 4 at PageID 9.) Under the Policy, the Parties agreed that State Farm would insure the Association's properties against various causes of loss, including wind and hail. (Doc. No. 10-2 at PageID 198.) The Policy further provided that if the Association suffered a covered loss, State Farm would pay for replacement costs, but not more than the least of the following amounts:

> 1) The Limit Of Insurance under **SECTION I – PROPERTY** that applies to the lost or damaged property;
> 2) The cost to replace, on the described premises, the lost or damaged property with other property of comparable material, quality, and used for the same purpose; or
> 3) The amount that you actually spend that is necessary to repair or replace the lost or damaged property.

(*Id.* at PageID 194.)

On May 10, 2020, a wind-related weather event caused damage to the sixteen buildings making up the Association's common interest community. (Doc. No. 10-2 at PageID 237.) Specifically, the winds caused some degree of damage to the shingled roof of each building. (Doc. Nos. 10-2 at PageID 217-33, 239-54; 20-3 at PageID 363-64.)

In the following three months, the Association submitted an insurance claim to State Farm

for the wind damage caused. (Doc. Nos. 1 at PageID 2; 4 at PageID 10; 10-2 at PageID 237.) After State Farm inspected the Association's property on September 22, 2020, State Farm found that the Association had suffered a covered loss under the Policy. (Doc. No. 10-2 at PageID 237-38.) Additionally, State Farm's insurance adjuster received an industry report ("ITEL") to determine whether there were any shingles available to match the undamaged shingles on the Association's properties. (Doc. Nos. 9-1 at PageID 158-59; 10-2 at PageID 311-12.) That ITEL report found that the Association's current shingles are no longer manufactured, but suggested the closest alternative. (*Id.*) The shingle identified in the report was a perfect match in every way except for color. (*Id.*) Nevertheless, ITEL did suggest that the weathered gray replacement shingles were substantially similar in color to the Association's current roof shingles. (*Id.*) Ultimately, State Farm determined that the replacement shingles were sufficient to repair only the damaged portions of the Association's roofs and valued the Association's loss at $75,273.27. (Doc. No. 10-2 at PageID 237-38.)

Meanwhile, the Association hired a roofing contractor, Feazel, Inc. ("Feazel"), to estimate the replacement cost value of the Association's loss. (*Id.* at PageID 216-34.) Feazel utilized the same information as State Farm's adjuster but seems to have determined that the Association's current roofs could not be repaired. (*Id.*) Instead, Feazel recommended that each of the Association's buildings receive a full roof replacement to accommodate the weathered gray shingles identified by ITEL. (*Id.*) Feazel thus estimated the amount of the Association's loss to be $789,825.65. (*Id.* at PageID 234.)

In light of this disagreement as to the value of the Association's loss, the Association contacted State Farm on May 4, 2022, demanding an appraisal pursuant to the Policy. (Doc. No. 10-2 at PageID 273.) State Farm, however, refused to submit to an appraisal because it contended

that appraisal was not appropriate or otherwise applicable to the Association's claim. (Doc. No. 4 at PageID 10.) Immediately thereafter, on May 5, 2022, the Association filed the instant Complaint alleging causes of action for breach of contract (Count One) and declaratory judgment (Count Two). (Doc. No. 1 at PageID 2-3.)

On August 30, 2022, the Association filed its Motion to Compel Appraisal and Stay Litigation (Doc. No. 7). In briefing the issue, the Parties disagreed as to whether an appraisal was warranted in this case. (Doc. Nos. 7; 8; 9; 10.) In particular, State Farm took issue with the Association's contention that the Parties actually disagreed on the amount of the Association's loss. (Doc. No. 9 at PageID 146.) Rather, State Farm argued that the Association's demand for full roof replacements for purposes of achieving a reasonably comparable appearance demonstrated a disagreement as to the scope of repairs. (*Id.* at PageID 146-53.) In the end, the Court ordered an appraisal whereby the Parties' selected appraisers and a neutral umpire would:

> [S]eparately calculate and identify disputed costs—including damaged property as well as undamaged property whose replacement Plaintiff may claim if necessary for appearance purposes—so that the Court can either include or exclude them once it has determined whether the policy provides coverage for them.

(Doc. No. 11 at PageID 315.)

The ordered appraisal was completed on January 3, 2024, and an appraisal award was issued. (Doc. No. 18 at PageID 331.) The appraisal valued the cost to repair the Association's roofs at $162,700.00. (Doc. No. 20-3 at PageID 365.) The appraisal further valued the replacement cost of the Association's roofs, for purposes of uniformity, at $227,200.00. (*Id.*) Though, notably, the appraisal made no finding that full roof replacements were necessary to result in a reasonably comparable appearance. State Farm has since paid the Association the cost to repair its damaged roofs in accordance with the binding appraisal award. (Doc. No. 24 at PageID 417.) Further, the Association has since replaced all sixteen of its roofs in their entirety. (Doc.

No. 29 at PageID 466.)

The Association and State Farm filed their respective motions for summary judgment on March 15, 2024, and March 22, 2024. (Doc. Nos. 20; 21.) After briefing by the Parties, the Court issued its Order ruling on the cross-motions. (Doc. No. 26.) In its Order, the Court found that the Policy provides coverage for the replacement of as much of the Association's property, following a covered loss, as necessary to result in a reasonably comparable appearance. (*See* Doc. No. 26 at PageID 439-40.) However, the Court found a genuine dispute of material fact regarding whether full roof replacements for the Association were in-fact necessary to result in such a reasonably comparable appearance. (*Id.* at PageID 442-43.) Upon issuing its Order, the Court set this matter for a pretrial scheduling conference. (*See* Notice, 5/17/2024.)

That scheduling conference never came to pass. Instead, on June 21, 2024, the Association filed the instant Motion. (Doc. No. 27.) State Farm lodged its response in opposition to the Association's Motion on July 15, 2024 (Doc. No. 28), and the Association submitted its reply brief on July 29, 2024 (Doc. No. 29). The Association's Motion is now ripe for the Court's review and decision.

II. ANALYSIS

To begin, the Court will clarify its Prior Order. Incorporating the analysis of that Order here, the Court reiterates that the Policy at issue provides coverage for the repair or replacement of as much of the Association's roofs, following a covered loss, as is necessary to result in a reasonably comparable appearance. (Doc. No. 26 at PageID 437-40.) Yet, the question of whether the full roof replacements the Association seeks are necessary to result in a reasonably comparable appearance remains. (*Id.* at PageID 440-43.) Accordingly, the only issue to be resolved in this regard is whether the extent of the Association's loss is such that full roof replacements are necessary.

Having clarified its Prior Order to narrow the Parties' dispute to the extent of the Association's loss, the Court must decide whether the extent of loss under the Policy may be properly submitted to an appraisal panel. In essence, the Association argues that this dispute is part-and-parcel of any determination relating to the amount of the Association's loss. (Doc. No. 27-1 at PageID 450-51.) Although, the Association does argue its point more broadly, to state that appraisal panels should resolve all factual disputes in insurance cases like the one at bar. (*Id.* at PageID 451 ("if a jury ***could*** answer the question, then an appraisal panel ***should*** answer the question . . .) (emphasis in original).) State Farm's most salient argument in response claims that an appraisal panel cannot possibly determine whether the Association requires full roof replacements to result in a reasonably comparable appearance because the Association has already replaced all sixteen of its roofs. (Doc. No. 28 at PageID 458-59.) Instead, says State Farm, the only remedy potentially available to the Association under the Policy now is payment for the cost of actually replacing the roofs. (*Id.* at PageID 459.)

"Generally, appraisals are 'binding as to the amount of loss'" in insurance disputes. *Stonebridge at Golf Vill. Squares Condo. Ass'n. v. Phoenix Ins. Co.*, No 2:21-cv-4950, 2022 U.S. Dist. LEXIS 172255, at *6, 2022 WL 7178548, at *2 (S.D. Ohio Sept. 22, 2022) (quoting *Westview Vill. v. State Farm Fire & Cas. Co.*, No 1:22-cv-0549, 2022 U.S. Dist. LEXIS 150500, at *3-4, 2022 WL 3584263, at *2 (N.D. Ohio Aug. 22, 2022)). The amount of a loss is thus a factual issue "distinct from a coverage determination, which, by all accounts, is a legal question that a court must decide." *Stonebridge*, 2022 U.S. Dist. LEXIS 172255, at *6, 2022 WL 7178548, at *2 (citing *Westview*, 2022 U.S. Dist. LEXIS 150500, at *3-4, 2022 WL 3584263, at *2). Although it is difficult to separate factual issues relating to the amount of a loss from coverage issues for courts to decide, there can be no mistaking that the extent of a covered loss is best left to an appraisal

panel tasked with figuring the amount of a loss. *Saba v. Homeland Ins. Co. of Am.*, 112 N.E.2d 1, 3 (Ohio 1953) (quoting 45 C.J.S., Insurance, § 1110, p. 1353) (the purpose of appraisal "is to provide a plain, speedy, inexpensive and just determination of the *extent of the loss* . . .") (*emphasis added*); *see also Stonebridge*, 2022 U.S. Dist. LEXIS 172255, at *6, 2022 WL 7178548, at *2 (citations omitted).

As stated above, the Court finds here that the issue of whether full replacements of the Association's roofs is (or was) necessary to result in a reasonably comparable appearance relates to the extent to the Association's loss. As such, the Court also finds that this issue is appropriately resolved by appraisal. *Am. Storage Ctrs. v. Safeco Ins. Co. of Am.*, 651 F. Supp. 2d 718, 721 (N.D. Ohio 2009) (describing the court's instructions regarding appraisal process to include consideration of reasonably comparable appearance). Indeed, the total amount of the Association's loss cannot be known without a determination respecting what repairs and replacements to the roofs, if any, are necessary to afford the Parties the full value of their bargain. To be clear, the Court does not accept the naked assertion that, in insurance disputes, appraisers are the sole deciders of all facts; only that appraisal is an appropriate mechanism for deciding the extent of an insured's covered loss.

This mandate does not call for a fresh appraisal of the Association's loss. Rather, it seeks to clarify or otherwise narrow the appraisal panel's previous determination based on what roof replacements, if any, would be necessary for the Association's roofs to ultimately take on a reasonably comparable appearance.[1] The Association represents that, going forward, the appraisal panel in this case can rely on their notes, impressions, and analyses already compiled to make a

[1] The Court notes that the appraisal report submitted with the Association's motion for summary judgment referred to replacements for purposes of uniformity. (*See* Doc. No. 20-3.) The correct standard for determining the extent of the Association's loss is "necessary to result in a reasonably comparable appearance." (*See* Doc. No. 26 at PageID 437-43.)

finding as to what repairs are necessary to result in a reasonably comparable appearance here. (Doc. No. 29 at PageID 473.) The Court agrees, and, for this reason, the Court expects that the previously utilized appraisal panel can and shall issue its decision on the matter in no more than sixty days from the date of this Entry and Order. As a practical matter, this shall require the appraisal panel to do no more than analyze their prior findings pertaining to the Association's eligibility for full roof replacements consistent with the correct standard (i.e., reasonably comparable appearance).

It is currently of no consequence that State Farm believes that the only remedy available to the Association is the reimbursement for the cost to actually replace its roofs. State Farm's argument in this vein is rooted in interpretation of the Policy. To be sure, the Policy states that State Farm will be liable for either the cost to replace the Association's "lost or damaged property with other property of comparable material, quality, and used for the same purpose," or the amount actually spent to make necessary repairs or replacements, whichever is less. (Doc. No. 10-2 at PageID 194.) However, the Court cannot interpret this Policy requirement or decide which option presents the lesser amount unless the Court knows the full extent of the Association's loss.

Thus, the Court **COMPELS** the Parties to resubmit their dispute to their previously selected appraisal panel, but for the limited purpose of ascertaining what full roof replacements, if any, are necessary to result in a reasonably comparable appearance.

III. CONCLUSION

Based on the foregoing, the Court conditionally **GRANTS** the Motion to Clarify Order and to Remand Back to Appraisal (Doc. No. 27), and finds as follows:

1. This matter is to be resubmitted to the Parties' previously selected appraisal panel—including the appraisers' previously selected umpire—for the limited

purpose of determining what repairs or replacements, if any, with respect to the Association's roofs are **necessary to result in a reasonably comparable appearance** and the Parties are hereby **COMPELLED** to proceed accordingly. To achieve this, the appraisal panel shall clarify or otherwise narrow its previous findings to conform with the proper standard, as articulated herein;

2. The instant litigation is **STAYED** for a limited period of **sixty (60) days** from the date that this Entry and Order is issued; and,
3. The Parties are **ORDERED** to submit the findings of the appraisal panel to the Court no later than **fourteen (14) days** from the date that the appraisal panel issues its determination.

DONE and **ORDERED** in Dayton, Ohio, this Tuesday, August 13, 2024.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE