DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED: January 10, 2020 3:44 PM CASE NUMBER: 2015CV31037
Petitioner: OWNERS INSURANCE COMPANY, a Michigan corporation. **v.** **Respondent:** DAKOTA STATION II CONDOMINIUM ASSOCIATION, INC., a Colorado nonprofit corporation.	▲ **COURT USE ONLY** ▲ Case No.: 2015CV31037 Div.: 7

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

This matter comes before the Court following a two-day \hearing on remand from the Supreme Court on the issue of appraiser impartiality. At the hearing, the Court heard from witnesses Matthew Friesleben, Gary Stevens, Laura Haber, Scott Benglen, Daniel Cupit, Ron Todd, and Mark Burns and admitted exhibits 100-213, 232, 233, 245, 254, 255, 257, 301-303, 320-322. Having considered the proposed orders, case file, and law, the Court hereby ORDERS:

PROCEDURAL AND FACTUAL BACKGROUND

This matter arose from a storm loss dispute between a homeowners' association and an insurance company. *See generally, Owners Ins. Co. v. Dakota Station II Condominium Assoc., Inc.*, 443 P.3d 47 (Colo. 2019). Respondent Dakota Station II Condominium Association, Inc. ("the HOA") is a homeowners' association that represents the owners of a 49-building multi-family building residential property. Petitioner Owners Insurance Company ("Owners") issued an insurance policy to the HOA, effective from November 1, 2011 to November 1, 2012. *See* Ex. 3, p.1. Concerning loss conditions, the policy includes an appraisal provision requiring that, in the event of property appraisal, "each party will select a competent and impartial appraiser." *Owners*

Ins. Co., 443 P.3d at 48. The parties would then select an umpire, or one would be appointed by the court. *Id.* Any disagreements would be submitted to the umpire, and any agreement as to the values reached by at least two of the three would bind them all. *Id.*

On May 24, 2012, the HOA made a storm-damage claim to Owners and submitted an estimate from Freedom Roofing to re-roof the property for $1,333,735.28. *See* Ex. 11.[1] Because the parties could not agree on the amount of the loss, the HOA invoked the policy's appraisal process. *Owners Ins. Co.*, 443 P.3d at 48. The HOA retained Scott Benglen as its contingent-fee public adjuster to handle the claim as its agent. *See* Ex. 20, p.1. Mr. Benglen initially retained Laura Haber as a policy and damage expert, who inspected the property in May 2013. *See* Ex. 99, p. 3; Ex. 23. Later, Ms. Haber was selected as the HOA's contingent-fee cap appraiser. *See* Ex. 32, p. 1. Ms. Haber appraised the roof loss at $2,553,434.50 and the total replacement cost at nearly $4.3 million. *See* Exs. 303, 232. Owners selected Mark Burns as its appraiser, and he submitted a proposed replacement cost award of approximately $2.3 million of which the roof-estimate totaled $1,865,402.74. *See* Ex. 103. The thrust of the proposed estimate/award dispute largely concerns the scope of roof repairs, and specifically, some 10-12 alleged over-estimates on Appraiser Haber's part totaling nearly $1 million. *See, generally,* Ex. 303.

The parties submitted the conflicting estimates to the umpire, and on September 4, 2014, Umpire-Hon. James Miller adopted Owners' estimates in four of the six categories, awarding $3,007,709.46. *Owners Ins. Co.*, 443 P.3d at 49. Only the umpire and Ms. Haber, the HOA appraiser, signed the award, as Mr. Burns did not agree with the roof-cost estimate adopted by the umpire. *Id.* Owners then paid HOA. *Id.*

[1] The Court notes that HOA submitted to Owners two other weather-related claims, including an August 2013 claim, which fell outside of the relevant policy period.

On June 15, 2015, Owners filed its Petition to Vacate Appraisal Award at issue here. *See* Petition to Vacate Appraisal Award, June 15, 2015. In its Petition, Owners argued that the HOA's appraiser was impermissibly partial and failed to disclose material facts. *Id.* On March 10, 2016, Owners filed a clarification of the relief requested, stating that the appraiser's "duties of impartiality stem from the Policy." *See* Petitioner's Clarification of the Relief Requested, March 10, 2019. Specifically, Owners alleged that the HOA's appraiser acted improperly by entering into a contract with the public adjuster that capped her fees at five percent of the insurance award, giving her a financial interest in the outcome. *See id.*

Following a two-day court trial, the Court[2] dismissed the Petition, concluding that the HOA's appraiser did not act improperly or unlawfully. *See* Minute Order, March 9, 2016; *Owners Ins. Co.*, 443 P.3d at 449. The Court rejected Owners' argument that appraisers must act as impartially as an umpire or arbitrator in every instance. *Id.* Relevant here, this Court reasoned that "the law requires appraisers to be impartial in the sense that they must render their decisions based upon experience and not allow their findings to be influenced by the side that hired them or the side for whom they work." *Id.*

Owners appealed this Court's decision, and the Court of Appeals affirmed the judgment of this Court. *See Owners Ins. Co. v. Dakota Station II Condo. Ass'n, Inc.*, 444 P.3d 784 (Colo. App. 2017). The Court of Appeals noted that any ambiguity in the definition of "impartial" is construed against Owners but agreed with the trial court's reading of the impartial appraiser requirement, understanding it "to mean that an impartial appraiser in rendering his or her valuation opinion applies appraisal principles with fairness, good faith, and lack of bias." *Id.* at 788-89. Based on the context of the appraisal provision, the Court of Appeals did not "agree that the impartial

[2] Hon. Christopher Munch (Ret).

appraiser called for in [the] policy may not favor one side more than the other." *Id.* at 789. Because the provision requires the two appraisers to submit any value differences to the umpire, the Court reasoned that "[t]he policy plainly contemplates that the appraisers will put forth a value on behalf of the party that selects them." *Id.* Thus, the Court of Appeals concluded that, "[s]o long as the selected appraiser acts fairly, without bias, and in good faith, he or she meets the policy requirement of an impartial appraiser." *Id.* Ultimately, the Court of Appeals agreed with the trial Court and found that no misconduct occurred. *Id.*

Owners appealed the appellate court's decision, and as relevant here,[3] the Supreme Court granted certiorari on the issue of "impartial" in the context of Owners' policy. *Owners Ins. Co.*, 443 P.3d. 47. The Supreme Court concluded that, based on the plain meaning of **the word "impartial**," **the policy requires appraisers to be "unbiased, disinterested, and unswayed by personal interest.** Appraisers must not favor one side more than another, meaning no advocacy on behalf of either party. *Id.* at 51 (emphasis added). The Colorado High Court found that an individual acting as an "advocate" for one side cannot simultaneously be considered "impartial." *Id.* In the end, the Supreme Court reversed the holding of the Court of Appeals and remanded the case directing this Court to **determine whether the HOA's appraiser's conduct conformed to the impartiality requirement standard set forth in *Owners*.** *Id.* at 53 (emphasis added).

Following the Supreme Court's decision, this Court scheduled a status conference and underscored the narrow nature of the issue—determination of appraiser impartiality—remanded and conducted a case management conference to manage litigation pre-hearing and during the two-day proceeding to make that determination. *See* Notice of Status Conference, Sept. 9, 2019; Minute Order-September 17, 2019 Status Conference, Sept. 17, 2019.

[3] The Court notes that the contingent fee was also at issue in the Supreme Court case, but not here.

A two-day hearing on the remand issue began on November 20, 2019. *See* Minute Order, Nov. 20, 2019. The Court allowed the parties a total of 13 hours (6.5 hours each) to present evidence. *Id.* In its case-in-chief, Owners called an expert in drone operation and photography, Matthew Friesleben, an expert in cost of property damage caused by storms, Gary Stevens, and Laura Haber. *See* Minute Order, Nov. 20, 2019; Minute Order, Nov. 21, 2019. The HOA called public adjuster Scott Benglen, an expert in assessing the cost of property damage caused by storms, Daniel Cupit, Ron Todd, and Mark Burns. *See* Minute Order, Nov. 21, 2019. Though this dispute centers around roof repairs, the HOA has continued to make arguments that ten to twelve other examples of over-estimations by Ms. Haber exist, amounting to nearly $1 million. *See, generally,* Ex. 303. The parties were permitted to file proposed findings by noon on December 4, 2019. *Id.*

SCOPE ON REMAND AND LEGAL STANDARD

The Supreme Court directed this Court to determine whether the HOA's appraiser's conduct was unbiased, disinterested, and unswayed by personal interest. *Owners Ins. Co.*, 443 P.3d. at 53. Put another way, did Ms. Haber's actions involve that of an "advocate" acting for or in support of the HOA or did she conform to the "impartial" standard set forth in *Owners* and the plain language of the pertinent Owners' policy. *Id*; *Advocate*, Black's Law Dictionary (10th ed. 2014). The remand directive related not only to the definition of "impartial," as used in the policy, but also as to how the Supreme Court defined the word relying on Black's Law Dictionary, which defines "impartial" as "[n]ot favoring one side more than another; unbiased and disinterested; unswayed by personal interest." *Impartial*, Black's Law Dictionary (10th ed. 2014).

To make this determination, the Court examines whether Owners, on whom the burden of establishing a preponderance of the evidence rests, presented sufficient evidence. *See* C.R.S. §13-25-127(1) ("Any provision of the law to the contrary notwithstanding…the burden of proof in any

civil action shall be by a preponderance of the evidence."); *see also Borer v. Lewis*, 91 P.3d 375, 380 (Colo. 2004) ("…the burden of proof in any civil action shall be by a preponderance of the evidence.").

Should the Court find that Ms. Haber's conduct failed to meet the impartial standard defined in *Owners*, the Court must then determine whether Owners has proved by a preponderance that "the award was made without authority or was made as the result of fraud, accident or mistake," or misconduct, thus necessitating vacation of the appraisal award. *Andres Trucking Co. v United Fire & Cas. Co.*, 2018COA 144 ¶ 49 (citing *Emmons v. Lake States Ins. Co.*, 484 N.W.2d 712, 715 (1992) (judicial review of appraisal award is limited to instances of bad faith, fraud, misconduct, or manifest mistake).

FINDINGS OF FACT

In February 2013, after Owners and the HOA could not agree on the amount of the loss, the HOA invoked the policy's appraisal process. Ex. 20, p. 1. On May 21, 2013, the HOA retained Mr. Benglen as its public adjuster to handle the claim. Ex. 99, pp. 1-7. In that same month, Mr. Benglen retained and began consulting with Ms. Haber secondary to her expertise on insurance policies, knowledge of adjusting losses—namely, how best to maximize damage estimates—and to discern her "assessment" on the scope of the HOA's weather losses. Ex. 23; Ex. 24, p. 1; Ex. 99, p. 3; Day 2 Tr. 144:9-146:1. During this period of time and after being appointed appraiser, Mr. Benglen referred to Ms. Haber as his partner, associate, policy expert, scope expert, and expert. Ex. 28, p. 2; Ex. 36, p. 4; Ex. 37; Day 2 Tr. 155:7-25, 330:20-334:1. Following Ms. Haber's preliminary inspection of the property in May 2013, and, understanding Ms. Haber's assessment would be "favorable" to the HOA, Mr. Benglen retained her as the HOA's appraiser on August

15, 2013. Ex. 32, p. 1; *see also* Ex. 23, Ex. 32, p. 1; Ex. 99, p. 3; Day 2 Tr. 144:13-14:1, 147:14-15, 149:18-23.

Of significance, for three months before being appointed as appraiser, Ms. Haber assisted Mr. Benglen, as his partner, in "building a fully comprehensive claim against Auto Owners." Ex. 28, p. 2. While Mr. Benglen was on vacation, Ms. Haber covered for him as the public adjuster on the claim. Ex. 28, pp. 1-2. Also, before appointing Ms. Haber as appraiser, the HOA's board of directors held a meeting with her and received a preview of her assessment of the loss damage. Day 2 Tr. 38:2-12. Notably, Ms. Haber's pre-appraisal appointment activities square with Mr. Benglen's reasoning that "whoever hires the appraiser would hire an appraiser they thought was going to do an adequate job for them." Day 2 Tr. 149:15.

Concerning the umpire's role in this process, Mr. Benglen, who testified that he has a financial interest in the outcome of this case and a federal court matter involving these parties, advised the HOA that the "key" to the appraisal was to appoint "an umpire that is favorable to the policy holder." Ex. 24; Day 2 Tr.151:1-10, 19-25. As such, before Ms. Haber began preparing her estimates for roof and total replacement, Mr. Benglen prodded her to "go in at $4.5 million" in front of [Judge Jane] Tidball[4] to "get" [Judge] Tidball to award $2-2.5 million, which would be a "huge win" or "very rich deal" for the HOA, Mr. Benglen, and Ms. Haber. Ex. 255; Ex. 72, p. 11; Day 2 Tr. 169:13-22.

Ultimately, Ms. Haber's roof loss estimate of nearly $2.5 million and proposed total replacement loss award of nearly $4.4 million dollars was in Mr. Benglen's targeted range. Exs. 232, 303. Owners' appraiser, Mark Burns, proposed a total replacement loss award close to $2.3 million and placed the roof loss estimate at nearly $1.865 million. *Owners*, 443 P.3d at 49, fn. 2.

[4] Judge Tidball was the parties' first umpire. Later, Judge James Miller was named.

ANALYSIS

The HOA argues that Ms. Haber's statements and conduct do not demonstrate that she lacked impartiality required by the policy and that her conduct did not constitute bias, bad faith, or dishonesty in formulating her appraisal. The Court disagrees. The HOA further urges the Court to find that the focus of an "impartial" evaluation is not on what an appraiser says, but rather on what he or she does during the appraisal. The Court finds that the HOA misapprehends the impartiality requirement in *Owners*.

Here, in determining whether Ms. Haber's conduct was unbiased, disinterested, and unswayed by personal interest—that is, not favoring one side more than the other—the Court necessarily must consider not only Ms. Haber's actions, but also her statements, as both bear on the issue of advocacy. *Owners*, 443 P.3d at 52-53.

As a preliminary matter, the Court notes that Ms. Haber's demeanor while testifying was obstinate, off-putting, and defensive in nature in response to the majority of Owners' attorneys' questions. *See, generally* Day 1 Tr. 281:6-3421:25 and Day 2 Tr. 13:2-134:9. For example, her response to many of Owners' attorney's questions was "I can't recall," "I don't recall," or a flat-out refusal to answer questions. *Id*. In contrast, when testifying in response to the HOA's questions, Ms. Haber rarely indicated an inability to recall, and her demeanor was much more open, accepting, and exhibited a willingness to be complete in her answers. *Id*.

In observing her testimony, the Court was troubled by Ms. Haber's lack of credibility. For example, on a fairly straightforward matter concerning a Pike's Peak Building Department[5] application for a building contractor's license, she answered falsely that she had never had a license suspended or revoked. Day 1 Tr. 294: 16-296:15. Ms. Haber's inability to recall and/or failure to

[5] Colorado Springs, Colorado

disclose prior license suspensions and/or revocations in Utah, Nevada, Kentucky, and Georgia critically undermined her credibility on this and other issues about which she testified. Day 1 Tr. 292:8-294:15. Further, Ms. Haber's later attempt to rationalize her dishonesty reasoning that "I've gone through changes of life," is not persuasive. Day 2 Tr. 23: 18-21.

Turning to the Court's assessment of Ms. Haber's conduct in appraising the loss, the Court finds that there are multiple examples of her advocacy and overall failure to act in an unbiased, disinterested, and unswayed by personal interest matter. The Court now addresses in turn each of the impartiality criteria set forth in the *Owners* standard:

Biased and Acting as an Advocate

- At the time of the appraisal and later, Ms. Haber did not believe that it was important for appraisers to be unbiased. Day 1 Tr. 298:3-5, 13-17.

    - During her testimony here, Ms. Haber changed her testimony—that she did not believe it was important for appraisers to be unbiased—and said that she does not now believe to what she earlier testified. She reasoned that she does not know why that earlier answer came out of her mouth, stating that she apparently "lost my mind." Day 1 Tr. 299: 5-7, 301:10-14.

- Ms. Haber testified that she can be an advocate and be unbiased, and that it is "natural" for an appraiser "to be an advocate for an insured." Day 1 Tr. 302:24-304:4.

- Ms. Haber believes that it is appropriate for her to "favor" the HOA if it is a close call. Day 1 Tr. 305:3-25.

- Ms. Haber could not recall having received direction from Mr. Benglen on what to include in her appraisal, how to handle Judge Tidball (first umpire), and how her proposed award should be arranged before presenting it to Judge Tidball. Ex. 255.

- Here, the Court finds that this is evidence of Ms. Haber being motivated by a desire to help the HOA. This is not consistent with being disinterested or with any type of defense of methodology or explanation of certain data.

- When asked whether it was appropriate for an appraiser to reach a decision on an outcome of a claim before a claim is evaluated, Ms. Haber refused to answer the question. Day 2 Tr. 55:7-20.

    - Here, the Court finds that this was a straightforward question that required a simple answer, yes or no. Ms. Haber's refusal to answer this question underscores the advocacy nature of her role in this case; that is, that she was motivated by a desire to benefit a party—the HOA.

Interested vs. Disinterested

- Ms. Haber denied and/or could not recall that Mr. Benglen urged her to include 2013 storm losses in her estimates and proposed loss award because Owners' policy was the most beneficial. Ex. 52; Day 2 Tr. 111:1-20, 114:15-116:22. Indeed, when queried by the Court, Ms. Haber denied that she was at an August 23, 2013 meeting when Mr. Benglen discussed this. Day 2 Tr. 126:7-19. She also could not recall Mr. Benglen trying to prompt her to include the 2013 losses in Owners' claim. *Id.* at 123:5-134:9.

- When asked whether Owners' policy was the most beneficial, she responded, "to me, it doesn't matter." "I don't remember any of this stuff. Day Tr. 130:17-23.
    - The Court notes that the 2013 storm damage came after the Owners' policy period. There was no evidence that Ms. Haber attempted to distinguish losses from the 2013 storm from that of the events occurring during Owners' policy period. This is troubling and does not

demonstrate evidence of impartiality, but rather advocacy and a desire to benefit the HOA.

- Ms. Haber conceded that the August 2013 storm losses should be part of a separate claim. Day 2 Tr. 125:1-134:9. These actions suggest that she was motivated by a desire to benefit HOA. Ex. 101.

- Mr. Benglen insisted that Ms. Haber was an expert, and considered her to be an expert, on insurance policies. Exs. 23, 24. Yet, Ms. Haber denied that she was an expert on policies. Day 2 Tr. 18:22-20:15.

    - If Ms. Haber were acting as an expert on policies as Mr. Benglen insisted, how Ms. Haber could be a disinterested appraiser?

- Ms. Haber acknowledged suing Owners in another matter and contends that, despite this, she is impartial. Day 1 Tr. 259:4-260:25.

    - The Court notes that the case, 17CA1995, originated after the events leading to this lawsuit. However, the Court cites this as an example of if being interested not disinterested, conflicting with the standard set forth in *Owners*.

- Ms. Haber could not recall advising HOA that she as "very confident" that the claim will have a positive outcome, but stridently denied it was inappropriate to make such a statement. Day 1 Tr. 48:14-17; Ex. 36.

    - It is troubling to the Court that Ms. Haber testified that she does not believe that it is inappropriate to tell a client this. How, then, could she consider herself to be an impartial appraiser?

Considering the totality of all the evidence presented and the examples cited above, the Court finds that Ms. Haber's understanding and outlook on what it means to be unbiased and to avoid being an advocate does not meet the Supreme Court's standard set forth in *Owners*.

Swayed by Personal Interest

- Ms. Haber acted as both a business associate (partner) and as an expert at the same time. Ex. 28, p. 2; Ex. 36, p. 4; Ex. 37; Day 2 Tr. 155:7-25.

    - This conduct indicates that she was swayed by personal interest.

- Mr. Benglen introduced Ms. Haber as an associate of his while Ms. Haber was acting as an appraiser on this case. Day 1 Tr. 392.

    - The Court is troubled that Ms. Haber did not disclose both her business associate and/or partner status with Mr. Benglen to the parties in this case. This conduct is not consistent with lacking personal interest. The Court notes that Mr. Burns testified that she was his associate. Ex. 28, p. 2; Ex. 36, p. 4; Ex. 37; Day 2 Tr. 155:7-25.

    - Also concerning is that Ms. Haber never acted to correct Mr. Benglen's reference to her as an associate and/or partner. Given Mr. Benglen's references to her as a partner and/or associate, how could Haber reasonably be expected to be an impartial appraiser?

    - The HOA argues that Ms. Haber did not have a duty under DORA to disclose her business relationship as an associate or partner with Mr. Benglen. Here, the Court need not address DORA requirements but only whether Mr. Benglen's descriptions of his business relationship with Ms. Haber conformed to the standard set forth in *Owners*.

- This evidence suggests that there is a cozy relationship between the two, undermining any sense of impartiality.

- Owners argues that Ms. Haber's award proposal represents $1.2 million in improper overcharges. *See* Exs. 303, 232. Owners argues that this is evidence of the overreaching nature of the HOA's proposal and Ms. Haber's aim to maximize the award for her personal interest under the contingent-fee agreement with the HOA. *See id.* To be clear, the Supreme Court in *Owners* held that the mere presence of a contingent fee agreement does not, alone, make an appraiser partial. *Owners*, at 53-54.

- However, the Court finds that the appraiser's conduct under the contingent fee agreement is subject to review in terms of the impartiality requirement. Here, the Court finds that Ms. Haber listing of the following four-line items, at a minimum, represents overreaching to gain personal interest:

  - **Ridge caps** Ms. Haber admitted that no ridge caps existed on the HOA's buildings before the storm. Day 2 Tr. 106:12-107:11. This line item is nearly $68,000.

  - **Re-nailing of roof sheathing**. Ms. Haber admitted that Jefferson County does not require re-nailing of sheathing and that she has no proof that this line item is required or needed. Haber incredulously countered that she did not need proof to list this line item. Day 2 Tr. 72:8-17. This line item is nearly $48,000.

  - **Undamaged skylights**. This line item is nearly $273,000, yet Ms. Haber testified there is no picture of any damaged skylight. Day 2 Tr. 73:18-75-17. Ms. Haber argued that she "averaged" the number of skylights to be replaced because replacement was necessary secondary to their age, and because hail impact was "evident." *Id.* The Court is not persuaded. Listing

this item on the proposed award is evidence of Ms. Haber's personal interest and motivation to advocate on behalf of Owners.

- Also, Mr. Cupit, the HOA's expert, testified that he was not aware of any damaged skylights. Day 2 Tr. 298:7-300:24.

- **Satellite**-Detach/re-set dishes. This line item is nearly $46,000. The Court was provided with one picture of a satellite dish that was mounted on the side of a building. Day 2 Tr. 70:8-18. The Court was not presented with any evidence that any satellite dish was mounted on a roof. Even the HOA's expert Mr. Cupit, whom the Court found to be direct, although difficult to understand given the mumbled nature of his speech, noted that satellites would only need to be replaced if they were somehow damaged by the tear-off of the roof. Day 2 Tr. 297:1-299:7. Mr. Cupit had no information that there were any satellites on any of the roofs. *Id.*

All told, these 4-line items total approximately $434,000. Including these items without offering credible evidence to substantiate the need for removal and/or replacement further underscores the advocacy nature of Ms. Haber's conduct and that her actions were not consistent with an appraiser, who sought to avoid being swayed by personal interest, and therefore, her conduct does not meet the Supreme Court's standard set forth in *Owners*.

Overall, in examining the evidence to evaluate whether Ms. Haber's conduct meets the standard qualities set forth in *Owners* that define impartiality, the Court concludes that Ms. Haber's conduct in estimating this loss smacks of unabashed advocacy, lacking any sense of a moral barometer to meet the standard. The Court finds that Ms. Haber's conduct in appraising the subject loss is the antithesis of that of an impartial appraiser.

Considering the totality of the evidence, the Court is unable to conclude that Ms. Haber's conduct meets the impartiality standard set forth by the Supreme Court in *Owners*.

VACATION OF APPRAISAL AWARD

Having found that Ms. Haber's conduct did not conform to the impartiality requirement standard set forth by the Supreme Court in *Owners*, the Court turns to the issue of whether the award should be set aside. The HOA argues that even if the Court determines that Ms. Haber's conduct failed to conform to the *Owners* standard, Owners, nonetheless, failed to meet its burden under *Andres Trucking,* and this Court should not substitute its judgment for that of umpire-Judge Miller. The Court disagrees.

Here, the Court finds that Owners has proved by a preponderance of the evidence that the appraiser Ms. Haber did not perform the duties required of her in the Owner's policy because she failed to meet the impartiality standard set forth in *Owners*, and therefore, misconduct resulted. *Andres Trucking*, 2018COA 144 ¶ 49. As discussed above, Ms. Haber's conduct was replete with numerous examples of acting as an advocate motivated by a desire to benefit the HOA. Ms. Haber's failure to act as an unbiased, disinterested, and professional appraiser unswayed by personal interest amounts to troubling misconduct necessitating the setting aside of the award. *Id.*; *Emmons*, 484 N.W.2d at 715.

CONCLUSION

Ms. Haber's conduct did not conform to that of an impartial appraiser standard set forth in *Owners* and thus, the pertinent Owners' policy. Therefore, the Court vacates the appraisal award. **SO ORDERED** this 10th day of January 2020 ***Nunc Pro Tunc*** to the 8th day of January 2020.

BY THE COURT:

Laura A. Tighe
District Court Judge

FILING ID BASIC INFORMATION

Case Number: 2015CV031037
Case Caption: Owners Insurance Company v. Dakota Station II Condominium Associatio
Court Location: Jefferson County

Filing Party(ies): N/A
Filing Authorized By: Laura Ann Tighe
Filing Date: 01/10/2020

ORDER

Document Title: Findings of Fact, Conclusions of Law, and Final Order
Document Security: Public

SERVICE INFORMATION

View E-Service Transaction History

Total Service Fees: $0.00

Party: Owners Insurance Company **Party Type:** Petitioner **Address:** 61411 SUNBROOK DRIVE BEND, OR, United States 97702	**Attorney:** Charles Christopher Hall **Organization:** N/A	**Service Method:** Regular Mail **Date Service Requested:** 01/10/2020 **Date Mailed:** Pending
Party: Scott Benglen **Party Type:** Intervenor **Address:** N/A	**Attorney:** Keith Evan Frankl **Organization:** The Frankl Law Firm PC	**Service Method:** E-Service **Date Sent:** 01/10/2020
Party: Claim Solutions Llc **Party Type:** Intervenor **Address:** N/A	**Attorney:** Keith Evan Frankl **Organization:** The Frankl Law Firm PC	**Service Method:** E-Service **Date Sent:** 01/10/2020
Party: Dakota Station Ii Condominium Associatio **Party Type:** Respondent **Address:** N/A	**Attorney:** Jonah Galen Hunt **Organization:** Orten Cavanagh and Holmes LLC	**Service Method:** E-Service **Date Sent:** 01/10/2020
Party: Owners Insurance Company **Party Type:** Petitioner **Address:** N/A	**Attorney:** Terence M Ridley **Organization:** Wheeler Trigg O Donnell LLP	**Service Method:** E-Service **Date Sent:** 01/10/2020
Party: Owners Insurance Company **Party Type:** Petitioner **Address:** N/A	**Attorney:** Karen Hannah Wheeler **Organization:** Wheeler Law PC	**Service Method:** E-Service **Date Sent:** 01/10/2020
Party: Owners Insurance Company **Party Type:** Petitioner **Address:** N/A	**Attorney:** Evan B Stephenson **Organization:** Wheeler Trigg O Donnell LLP	**Service Method:** E-Service **Date Sent:** 01/10/2020
Party: Owners Insurance Company **Party Type:** Petitioner **Address:** N/A	**Attorney:** Matthew W Hall **Organization:** Levy Law PC	**Service Method:** E-Service **Date Sent:** 01/10/2020
Party: Owners Insurance Company **Party Type:** Petitioner **Address:** N/A	**Attorney:** Ryan E Nichols **Organization:** Levy Law PC	**Service Method:** E-Service **Date Sent:** 01/10/2020
Party: Owners Insurance Company **Party Type:** Petitioner **Address:** N/A	**Attorney:** Kayla Leigh Scroggins-Uptigrove **Organization:** Wheeler Trigg O Donnell LLP	**Service Method:** E-Service **Date Sent:** 01/10/2020