

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2002-000311

06/23/2003

damage payable under the policy. Subsequently a written demand for appraisal was made and the damage was assessed by two appraisers and an umpire pursuant to the policy.

An appraisal award was entered on September 17, 2001, but was not paid by Farmers until December 20, 2002, 459 days later. The policy expressly states that Farmers "will pay within 60 days after . . . an appraisal award."

Shanks now moves for partial summary judgment on the issue of breach of contract.

Farmers argues that since Shanks has now been paid the full appraised amount plus 16 months of interest at 10%, the entire claim has been paid and summary judgment should be entered in its favor.

The essence of Farmers' position is that the award adjudicated issues beyond those submitted to the appraisers and thus was void. Hanson v. Commercial Union Ins. Co., 150 Ariz. 283 (App. 1986). However, in Hanson there was "nothing in the record . . . that indicate[d] that [the insurance company] waived its objections at any time." Id. at 287. Here, by contrast, Farmers failed to utilize the available mechanisms of A.R.S. § 12-1509 or § 12-1513, or any other method, to directly challenge the award. Instead it simply paid the award, albeit tardily. Farmers' actions constituted a waiver.

IT IS ORDERED that Shanks' motion is granted on the issue of contract liability and Farmers' cross-motion is denied. The court notes, however, that the remaining damage issues concerning the structural loss are limited to damages suffered as a result of the delay only (e.g. attorneys' fees). The parties have both waived any challenge to the award's determination of structural damage to the whole home.