

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL  
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2012-017609-CA-01

SECTION: CA27

JUDGE: Oscar Rodriguez-Fonts

**Haney, Richard**

Plaintiff(s)

vs.

**Plucienkowski, George F**

Defendant(s)

**AMENDED ORDER ON JOINT MOTION FOR PRELIMINARY APPROVAL OF  
STIPULATION OF SETTLEMENT**

**THIS CAUSE** was heard before this Court on October 27, 2020, at 9:30 a.m., via Zoom conferencing with the parties represented by Joshua Goldstein, Esquire, Attorney for the Defendants, and Jon M. Herskowitz, Esquire and Daniel A. Meyer, Esquire, Attorneys for the Plaintiffs.

Before the Court upon the Plaintiffs and Defendants' Joint Motion for Preliminary Approval of Settlement ("Motion for Preliminary Approval"). In accordance with Rule 1.220 of the Florida Rules of Civil Procedure, the Court has considered the Settlement Agreement executed on behalf of the Plaintiffs and Defendants. Upon review of the Settlement Agreement and Parties' Joint Motion for Preliminary Approval, the Joint Motion for Preliminary Approval is hereby GRANTED.

1. Class certification has been previously granted and the terms of the settlement are within the range of reasonableness and accordingly are preliminarily approved. Plaintiffs fairly and adequately represent the interests of the Settlement Class. The Motion for Preliminary Approval of Settlement is therefore GRANTED. This preliminary approval is subject to further consideration at the Final Fairness Hearing.
2. The Court hereby appoints Jon Herskowitz, Esq. of Baron and Herskowitz and Daniel Meyer, Esq. and Joe Bruno, Esq. of Bruno and Bruno, LLP as Settlement Class Counsel.
3. This Order is not admissible as evidence for any purpose against Defendants or any other party in any pending or future litigation. This Order shall not be construed

or used as support for conditional certification or certification of any class or collective action. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability and Defendant specifically denies any such fault, breach, liability, or wrongdoing. This Order shall not be construed or used as an admission, concession, declaration, or waiver by any party of any arguments, defenses, or claims he, she, or it may have. Neither the fact of, nor any provision contained in the Stipulation and Settlement Agreement or its exhibits, nor any actions taken thereunder shall be construed as, offered into evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or admission of any kind as to the truth of any fact alleged or validity of any defense that has been, could have been, or in the future might be asserted.

4. At the Final Fairness Hearing, the Court will consider whether the terms of the Settlement Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class, and whether final orders and judgments in accordance with the terms of the Settlement Agreement should be entered.
5. The Court preliminarily finds that the Settlement Agreement: (1) was reached after arm's-length negotiations before a nationally-recognized mediator, and after substantial factual and legal analyses by the parties; and (2) provides substantial benefits to all class members, especially in light of the evidence and risks associated with this litigation.
6. The Court approves, as to form and content, the Notice submitted by the parties (Exhibit "1") and finds that the procedures described in the Settlement Agreement meet the requirements of Rule 1.220 of the Florida Rules of Civil Procedure as well as due process and provides the best notice practicable under the circumstances.
7. Plaintiffs shall bear all costs related to the Notices and publication. Prior to the Final Fairness Hearing, Plaintiffs shall file proof, by affidavit, of the Notice and publication.
8. Class Members will have sixty-six (66) days from the date of preliminary approval to opt-out of the Settlement. To opt-out, a Class Member must send a letter by mail stating they want to be excluded from the Settlement in *HANEY v. PLUCIENKOWSKI et al.*, or complete a request for exclusion, which will be available through the website managed by the Settlement Administrator. Those opting out with a letter sent by mail must include their name, address, telephone number, and signature. The opt-out exclusion request must be mailed to: The Notice Company, P.O. Box 455, Hingham MA 02043. Any request to opt-out must include the following information: (1) the complete legal name of the Class Member who wishes to be excluded; (2) the mailing address; (3) a statement that the Class Member wishes to be excluded from the Settlement; and (4) the Class Member's (or authorized representative's) signature or, if the person (or authorized

representative) is unable to sign, his/her/its legal representative or guardian's name and signature.

9. A Class Member who does not properly and timely exclude himself, herself, or itself from the Settlement Class will be bound by the Settlement Agreement and the Releases, as provided for therein, and by any judgments in this action.
10. To object to the Settlement, a Class Member must do so in writing no later than sixty-six (66) days from the date of preliminary approval. The objection must set forth all objections and reasons therefore and state whether the Class Member intends to appear at the Final Fairness Hearing. The objection must identify: (1) a statement of each objection being made; (2) a detailed description, including citation(s), of the legal authorities underlying each objection; (3) a statement of whether the objector will appear at the Fairness Hearing; (4) a list of witnesses whom the objector may call by live testimony, deposition testimony, or affidavit during the Fairness Hearing; (5) a description of the testimony to be offered; and (6) a list of the exhibits that the objector may offer during the Fairness Hearing, along with copies of those exhibits. If the objector fails to comply with this procedure for making objections, any objection will be waived.
11. Subject to the terms for objections set forth above and in the Settlement Agreement and Notice, a Settlement Class Member may appear at the Final Fairness Hearing to show cause on the issue of whether any of the terms of the settlement should be approved as fair, reasonable and adequate, or whether judgment should be entered upon them.
12. Any Settlement Class Member who does not make an objection in the manner provided herein shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the settlement, or Settlement Class Counsel's Motion for Attorneys' Fees and Expenses.
13. All claims shall be emailed or postmarked by no later than sixty-six (66) days from preliminary approval.
14. The Final Fairness Hearing will be held before this Court at the Miami-Dade County Courthouse, on January 28, 2021 at 11:00 A.M., in Courtroom 1502, located at 73 West Flagler St., Miami, FL 33130, to consider the fairness, reasonableness and adequacy of the proposed settlement and to determine whether the settlement should be finally approved.
15. The Court retains jurisdiction of this action for all purposes.

**DONE and ORDERED** in Chambers at Miami-Dade County, Florida on this 16th day of November, 2020.

2012-017609-CA-01 11-16-2020 1:56 PM

2012-017609-CA-01 11-16-2020 1:56 PM

Hon. Oscar Rodriguez-Fonts

**CIRCUIT COURT JUDGE**

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

**Electronically Served:**

Daniel Meyer, dmeyer@brunobrunolaw.com  
Daniel Meyer, danieladammeyer@gmail.com  
Elaine Laflamme, laflamme@litchfieldcavo.com  
Elaine Laflamme, ardit@litchfieldcavo.com  
Jeffrey Earl Streitfeld Esquire, jstreitfeldlaw@gmail.com  
John Catizone, catizone@litchfieldcavo.com  
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Jon M Herskowitz, silvia@bhfloridalaw.com  
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Michael R. Kassower Esq., mkassower@fwblaw.net  
Michael R. Kassower Esq., tfernandez@fwblaw.net

**Physically Served:**

**NOTICE OF CLASS ACTION SETTLEMENT**

**If You Paid an Assessment for the February 3, 2010 Settlement Between  
the Pinnacle Condominium Association and  
Continental Painting, Waterproofing, & Restoration, Inc.,  
You Could Be Eligible to Benefit from a Settlement Fund  
Valued at \$445,000.**

*A Circuit Court Judge approved this notice. This is not a solicitation from a lawyer.*

- Please read this Notice carefully to learn about your rights under the proposed settlement. Your legal rights may be affected whether or not you act.
- This proposed settlement (“Settlement”) resolves litigation concerning the Pinnacle Condominium Association, Inc. regarding the contract cancellation and subsequent negotiations with Continental Painting, Waterproofing, & Restoration, Inc. from August 30, 2006 through February 3, 2010 in the case entitled *Haney, et al. v. Plucienkowski, et al.*, Case No. 12-17609-CA 12 (the “Litigation”). This Settlement will not be effective until finally approved by the Court.
- You may be eligible for payment from the Settlement Class Benefit Fund if you submit a qualified and timely Claim Form.
- The Court has not expressed any opinion concerning the truth of any allegations or defenses asserted in the Litigation. This Notice is solely to advise you of the proposed Settlement of the Litigation and of your rights in connection with the Settlement.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE PROPOSED SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM BY MONTH XX, 2020</b>	You must submit a claim to receive a payment from the Settlement. See Questions 7 and 12 below.
<b>OBJECT BY MONTH XX, 2020</b>	You can file an objection with the Court explaining why you disagree with the Settlement. See Question 18 for more details.
<b>EXCLUDE YOURSELF BY MONTH XX, 2020</b>	You can exclude yourself from the Settlement, which will allow you to retain your rights against the Defendants. See Questions 13 and 14 for more details.
<b>GO TO THE HEARING ON MONTH XX, 2020</b>	You can ask to speak in Court about the Settlement. See Questions 18, 19 and 20 for more details.
<b>DO NOTHING</b>	If you do nothing, then you will not receive payment from the Settlement, and you will give up any rights you currently may have to separately sue the Defendants for the conduct that is the subject of this litigation.

These rights and options – **and the deadlines to exercise them** – are explained in this Notice. A copy of the Settlement and all documents related to the claims process are available online at [www.PinnacleCondoSettlement.com](http://www.PinnacleCondoSettlement.com). You may also call 1-305-670-0101 for more information.

## **BASIC INFORMATION**

### **1. What is this notice about?**

This Notice is to inform you about the Settlement that has been reached which may affect your rights, including your right to object to, or exclude yourself from the Settlement. You have the right to know about the Settlement and about your legal rights and options before the Court decides whether to approve the Settlement.

The Court in charge is the Eleventh Judicial Circuit of Miami-Dade County, Florida ("Court"). The case is entitled *Haney, et al. v. Plucienkowski, et al.*, Case No. 12-17609-CA 12 (the "Litigation"). The people that sued are called the plaintiffs, and the parties they sued are called the defendants (see Question 2).

To be eligible to receive a share of the Settlement Fund, you must follow the steps described in this Notice and submit a valid and timely claim no later than MONTH XX, 2020. If you want to be excluded (opt-out) or to object to the Settlement, you must follow the steps described in this Notice no later than MONTH XX, 2020.

### **2. Who are the parties involved in the Litigation?**

In October of 2012, Richard Haney, Semyon Genis, and Manya Schonfeld, on behalf of themselves and others similarly situated (the "Plaintiffs") sued the Defendants (described below).

The remaining "Defendant" in this Litigation is the Pinnacle Condominium Association, Inc. (the "Association"). The Association is a not-for-profit Corporation organized in Florida, whose membership consists of unit owners in the Pinnacle Condominium Building, and whose principle place of business is in Miami-Dade County, Florida, at 17555 Collins Avenue, Sunny Isles, Florida, 33160.

### **3. What is the Litigation about?**

The Litigation concerns current and former members of the Association's requirement to pay the settlement of a contractual dispute between the Association and Continental Painting, Waterproofing and Restoration, Inc. ("CPWR"). The Litigation alleges that the Association, through its Board of Directors' handling of the CPWR contracts and pursuing litigation, led to increased construction costs, litigation costs, loss of opportunity to obtain release at a more favorable price, adverse judgment, and a subsequent Settlement Agreement between CPWR and the Association. The Plaintiffs are seeking recovery of a portion of the charges assessed to its members arising from the February 3, 2010 CPWR Settlement. On November 9, 2017, the Court certified this Litigation as a class action lawsuit.

### **4. What is a class action?**

In a class action, representatives maintain an action on behalf of a group or class of others with similar claims. Since the Court determined that this matter should proceed as a class action, everyone's claims were combined into a single proceeding, creating efficiencies for the parties and the Court. In a class action, the court resolves the issues for all class members except those who exclude themselves from the Class.

## **WHO IS INCLUDED IN THE SETTLEMENT?**

### **5. Between whom has the Settlement been attained?**

The Settlement has been reached between the Plaintiffs and the Association, as well as their respective past and present parent companies, subsidiaries, inter-related companies, agents, assigns, successors, representatives, employees, servants, officers, directors, members, shareholders, and insurers.

**6. Who are the Class Representatives?**

The Court has appointed the Estate of Richard Haney, Semyon Genis, and Manya Schonfeld as “Class Representatives”.

**7. How do I know if I am in the Settlement Class?**

As certified by, the Court the “Class” or “Settlement Class” consists of:

All condominium unit owners of the Pinnacle Condominium who suffered financial damage from the obligations imputed upon them under the February 3, 2010 Settlement Agreement for the matter of “Continental Painting, Waterproofing & Restoration, Inc. v. The Pinnacle Condominium Association, Circuit Court of the Eleventh District of Florida, Case No. 07-09196 CA 06”, who were not members of the Board of Directors from August 30, 2006 through February 3, 2010.

**THE SETTLEMENT’S BENEFITS**

**8. What does the Settlement provide?**

The proposed Settlement establishes a “Settlement Fund” of \$445,000.00 (four hundred and forty-five thousand dollars) to pay eligible claimants, compensate Class Representatives, pay attorneys’ fees, litigation costs and Settlement Administrative Costs. The allocated portion of the Settlement Fund for eligible claimants shall be equal to \$237,000.00 (two hundred and thirty-seven thousand dollars). The recovery obtained will be funded by the Association’s Insurance Policy Under no circumstances will the Association members be paying themselves. The full Settlement agreement is available for review at [www.PinnacleCondoSettlement.com](http://www.PinnacleCondoSettlement.com).

**9. How is the Settlement Fund being allocated?**

Details of the proposed distribution of the Settlement Fund is set forth in the Settlement Agreement, which is available online. In summary, the Settlement Agreement provides for distribution of the Settlement Fund as follows:

- a. \$240,000.00 shall be allocated to the “Settlement Class Benefit Fund”;
  - i. From the Settlement Class Benefit Fund, \$3,000.00 shall be allocated to pay the Class Representative Awards of \$1,000.00 for each of the three Class Representative (listed in Question 6).
  - ii. The remaining Settlement Class Benefit Fund of \$237,000.00 shall be allocated per qualifying claimed Association Ownership Share, as described below (in Question 10);
- b. \$178,000.00 (40%) shall be allocated to Attorneys’ Fees for Class Counsel;
- c. \$14,500.00 shall be allocated to cover Held Litigation Costs;
- d. \$12,500.00 shall be allocated to fund Settlement Administrative Costs.

**10. How much will I be paid?**

Upon the Court's final approval of the Settlement, a "Settlement Share" will be calculated per qualifying claimant based on the qualifying claimants proportional ownership share in Pinnacle Condominium Association, Inc. at the time of the February 3, 2010 CPWR Settlement ("Association Ownership Share"), with such shares to be proportionally adjusted by the percentage of ownership interests represented by all timely-submitted claims. For example, if a claim is submitted by "Owner A" with an Association Ownership Share of 1% and 100% of all qualifying owners submit claims, then Owner A would be awarded  $0.01 \times \$237,000 = \$2,370.00$ . However, if Class claims are submitted for only 90% of all qualifying Association Ownership Shares, then Owner A would be awarded  $(0.01/0.9) \times \$237,000 = \$2,633.33$ .

All payments will be made per Association Ownership Share, not per person. If multiple Class Members file qualified claims for the same Association Ownership Share (i.e. two or more claims are filed by co-owners of a single condominium unit located in the Pinnacle Condominium Building), then only one (1) Settlement Share shall be paid. This Settlement Share will be made payable to the First Named co-owner listed in the Association's records.

**11. When will I get a payment?**

Payments will be distributed once the Court grants final approval to the Settlement and after appeals, if any, are resolved.

**HOW TO GET A PAYMENT CHECK**

**12. How can I get a payment check?**

If you are eligible for payment under this Settlement, you must submit a completed and signed Claim Form. Claim Forms are available at **www.PinnacleCondoSettlement.com** or you can obtain a copy by calling Class Counsel, 1-305-670-0101. Claim Forms are also available by writing to The Notice Company, Inc., the "Claim Administrator", at the address below.

Return your completed claim by mail or email to the Claim Administrator so that it is **emailed or postmarked no later than MONTH XX, 2020**. To return your claim by email, send your signed and scanned document to Claim Administrator at: **claims@PinnacleCondoSettlement.com**.

The mailing address of the Claim Administrator is:

Pinnacle Condominium Settlement  
c/o The Notice Company  
P.O. Box 455  
Hingham, MA 02043

You must complete and submit one claim form for each Association Ownership Share.

**FAILURE TO SUBMIT A VALID AND TIMELY CLAIM FORM SO THAT IT IS RECEIVED BY MONTH XX, 2020 WILL BAR YOU FROM RECEIVING PAYMENT FROM THE SETTLEMENT.**

## RIGHT TO EXCLUDE YOURSELF

### 13. May I exclude myself from the Settlement?

If you are a member of the Class and you wish to keep your rights, if any, to sue the Defendants about the claims, judgment and settlement in this case, you must exclude yourself. If you exclude yourself, you will not get any money from this Settlement. You may not submit a Claim Form if you exclude yourself from this Settlement.

### 14. How do I Exclude myself from the Settlement Class?

In order to exclude yourself (opt-out) from the Settlement and Class and keep your individual rights, if any, to sue the Defendant(s), you must send a letter to the Claim Administrator that includes the following:

1. Your full name, current mailing address and telephone number;
2. A statement saying that you request exclusion from the Pinnacle Condominium Settlement Class in the case entitled "*Haney, et al. v. Plucienkowski, et al.*, Case No. 12-17609-CA 12";
3. State the dates during which you owned unit(s) at 17555 Collins Avenue, Sunny Isles, Florida, 33160, and the unit number (if you recall this information); and
4. Your signature and the date of the letter.

To be valid, all exclusion requests must be **postmarked no later than MONTH XX, 2020** and mailed to:

Exclusions - Pinnacle Condominium Settlement  
c/o The Notice Company  
P.O. Box 455  
Hingham, MA 02043

No request for exclusion will be considered valid unless all of the information described above is included. No further opportunity to request exclusion will be given in this Litigation unless ordered by the Court. If you choose to be excluded from the Settlement, you will **not** be: (a) entitled to share in the proceeds of this Settlement described herein; (b) bound by any judgment entered in the litigation; and (c) precluded by the Settlement from otherwise prosecuting an individual claim against Defendants, based on the matters that were the subject of this litigation.

## REMAINING IN THE SETTLEMENT CLASS

### 15. What am I giving up if I stay in the Settlement Class?

If you do not exclude yourself from the Settlement Class, you will have given up your right to sue the Defendants on your own for the claims raised, the decisions issued, and the Settlement in this case, and you will be bound by the Settlement and all subsequent proceedings, orders and judgments in the Litigation.

The Settlement Agreement describes the released claims in detail, so read it carefully. If you have any questions, you may contact Class Counsel. You may also consult your own lawyer at your own expense. The Settlement Agreement is available at **[www. PinnacleCondoSettlement.com](http://www.PinnacleCondoSettlement.com)**.

## THE LAWYERS REPRESENTING YOU

### 16. Do I have a lawyer representing me?

The Court has appointed three attorneys, Joseph M. Bruno, Sr., Esquire, Daniel A. Meyer, Esquire, and Jon Herskowitz, Esquire, to represent you as "Class Counsel". If you have any questions for Class Counsel, you may write to them at the following addresses:

1. Joseph M. Bruno, Sr., Esq.  
Bruno & Bruno, LLP  
855 Baronne Street  
New Orleans, LA 70113

2. Daniel A. Meyer, Esq.  
Bruno & Bruno, LLP  
855 Baronne Street  
New Orleans, LA 70113

3. Jon Herskowitz, Esq.  
BARON & HERSKOWITZ  
9100 S. Dadeland Blvd.  
PH-1, Suite 1704  
Miami, FL 33156

If you exclude yourself from the Settlement, then the attorneys for the Class will not represent you.

### 17. How will the lawyers be paid?

Class Counsel will ask the Court for \$178,000.00 in full settlement of all claims for an award of attorneys' fees in the Litigation. Any requests for attorneys' fees or litigation expenses, plus the costs to administer the Settlement, are subject to Court approval.

If you want to be represented by your own lawyer, or have that lawyer appear in court for you in this case, you may hire one at your own expense.

## OBJECTING TO OR COMMENTING ON THE SETTLEMENT, PLAN OF DISTRIBUTION, ATTORNEYS' FEES AND LITIGATION EXPENSES, AND AWARDS TO CLASS REPRESENTATIVES

### 18. How do I object or comment on the Settlement?

You may ask the Court to deny final approval by filing an objection to the Settlement Agreement. If the Court denies approval, no settlement payments will be sent out and the Litigation will continue.

You may object to the Settlement Agreement in writing. Written objections should include the following:

- Your full name, current mailing address, email address (if any), telephone number, and if you are being assisted by a lawyer, the lawyer's name, address and telephone number;
- The case name and number (*Haney, et al. v. Plucienkowski, et al.*, Case No. 12-17609-CA 12);
- A statement establishing your membership in the Settlement Class;
- An explanation of all objections and the reasons therefore, and a statement whether the Class Member intends to appear at the Fairness Hearing either with or without the objector's counsel. The objection must identify any witnesses' testimony, and all documents to be used or offered into evidence, at the Certification Hearing or Fairness Hearing; and
- Signed by you and your counsel (if being represented).

An objection must be mailed to the Court and filed in this litigation. The Court's address is below. **To be valid, objections must be filed with the Court on or before MONTH XX, 2020:**

**Court:**  
Clerk of Court  
Correspondence Unit  
73 W. Flagler Street, Room 137  
Miami, Florida 33130.

**Copies of the objection must also be mailed, postmarked on or before MONTH XX, 2020, to the attorneys for the parties as follows:**

<b>Class Counsel:</b>	<b>Defendants' Attorneys:</b>
Joseph M. Bruno, Sr., Esquire	Joshua Goldstein, Esquire
Bruno & Bruno, LLP	Cole Scott & Kissane, P.A.
855 Baronne Street	222 Lakeview Avenue, Ste. 120
New Orleans, LA 70113	West Palm Beach, FL 33401

### **THE FAIRNESS HEARING**

**19. When and where will the Court consider the Settlement?**

The Court will consider all aspects of this agreement at a Fairness Hearing which will be held on **MONTH XX, 2020** at **XX:XX** a.m./p.m. before the Honorable Oscar Rodriguez-Fonts Circuit Court Judge, at the Miami-Dade County Eleventh Circuit Court, 73 W. Flagler St., Room 1502, Miami, Florida 33130. The Court may adjourn or continue the Fairness Hearing to additional dates without further notice, so you should check the website, [www.PinnacleCondoSettlement.com](http://www.PinnacleCondoSettlement.com), for current information.

The purpose of the Fairness Hearing will be to determine: (1) whether the proposed settlement, as set forth in the Settlement Agreement, should be approved as fair, reasonable and adequate to the Members of the Settlement Class; and (2) whether the proposed plan to distribute the Settlement Funds is fair, reasonable, and adequate; (3) whether the application by Plaintiffs' attorneys for an award of attorneys' fees and expenses should be approved; and, if so, in what amounts; and (4) whether the Court should approve the proposed Settlement as a Judgment of the Court.

**20. Do I have to come to the hearing?**

No. Plaintiffs' attorneys will answer any questions the Court may have. You, or another attorney of your own choosing, are welcome to come to the Fairness Hearing at your own expense, but you are not required to attend. If you file an objection or comment, you don't have to come to Court to talk about it. As long as you filed your written objection on time, it will be presented to the Court for its consideration.

### **MORE INFORMATION**

**21. Where can I get more information about this case?**

This Notice summarizes the Settlement. For the most up-to-date information and for precise terms and conditions of the Settlement, please visit [www.PinnacleCondoSettlement.com](http://www.PinnacleCondoSettlement.com).

**ALL INQUIRIES CONCERNING THIS NOTICE SHOULD BE MADE TO  
THE CLAIM ADMINISTRATOR OR TO CLASS COUNSEL.**

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE.**