



Unclaimed Compensation

What happens when a property owner just won't take the money

BY MICHAEL F. YOSHIBA, ESQ.

On occasion, public agencies trying to acquire property for public projects encounter property owners that are less than enamored with the eminent domain process. One such acquisition took place a few years ago in Yucaipa, California.

The City was acquiring permanent easements for a road-widening project. One of the affected property owners was an elderly couple that owned a single-family residential house that they leased for rental income. The City's project required a 2,600 square foot permanent easement over a portion of the existing front yard area. The easement would be used by the City to install a new curb, gutter, sidewalk and driveway.

The Process Breaks Down

The appraisal of the partial take was completed, an offer of just compensation was made for \$16,900 and negotiations began in earnest and with great hope. However almost immediately, the process stalled after the property owners insisted on compensation of no less than \$100,000.

With such disparate expectations, the negotiation process reached an impasse, and the City proceeded with a Resolution of Necessity hearing, followed by a Complaint in Condemnation filing with the Superior Court. The City's project required pre-judgment possession of the permanent easement area so the City made the requisite Deposit of Probable Compensation with Clerk of the Superior Court. The property owners retained legal counsel to assist them, and the case proceeded uneventfully until about 60 days before the trial was scheduled to begin. An apparent dispute arose between the property owners and their attorney, resulting in the attorney withdrawing from representation and the property owners electing to represent themselves "in pro per" going forward.

Even after a lengthy and pointed discussion with the trial court judge, the property owners were insistent that they could and would represent themselves in the valuation trial proceedings. However, the property owners had a very apparent and significant problem. The now-departed attorney had retained an appraiser for the property owners to value the part taken, but the property owners refused to pay the appraiser for his work (they later conceded that they thought his valuation opinion was too low), so the appraiser refused to voluntarily appear to testify at trial. With no one to testify on their behalf, what's a "pro per" property owner and the court to do? Over the City's objections, the court allowed the property owners to testify concerning their opinions of value even though they were not properly designated as valuation witnesses nor did the City have an opportunity to depose them concerning their valuation opinions.

The Trial Proceeds

At the start of trial, the court asked the City to present their case first. After the City presented the testimony of its valuation expert, the property owners attempted a few mostly insignificant cross-examination style questions. Surprisingly, the judge then took it upon herself to cross-examine the City expert witness on behalf of the property owners. The judge asked the property owners to testify on what they believed to be the value of the part taken and even inquired about possible severance damages. The property owners had much difficulty articulating the factual and legal bases for their opinions even with the judge prompting them with leading questions. At the trial's end, the court issued a judgment based upon City's expert testimony at \$23,700, ultimately completely disregarding the testimony of the property owners.



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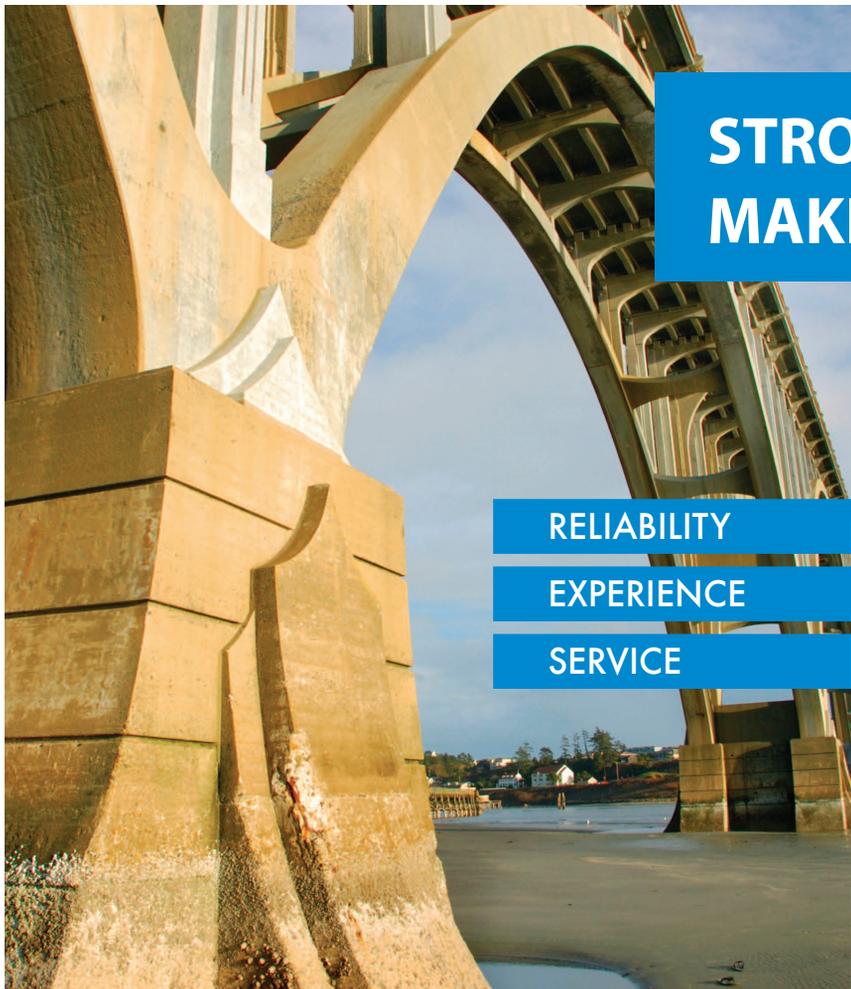
Compensation Refused

The City tendered a check to the property owners pursuant to the judgment, but the check remained uncashed for several months. Upon further inquiry, the City learned that the

property owners refused to cash the check in protest of the eminent domain process and the judgment in condemnation.

About a year after the case completion, the City's accounting department contacted the City's trial attorneys and informed them that the property owners had still not cashed the check nor had they withdrawn any funds on deposit with the court. What process did the City need to follow for handling the property owners' funds? In California, there is a specific statutory scheme for handling these unclaimed fund situations in Code of Civil Procedure Sec. 1520. To summarize the statute, any funds that are designated as "unclaimed" after three years of inaction are to be forwarded to the State of California Treasurer's Office and are then held—with no time limit—by the State of California until a claim for the funds is made and approved.

Luckily, this story ended on a good note, as we learned that the property owners in this matter recently claimed and withdrew the just compensation funds that were transferred by the City to the State Treasurer's Office. ✪



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