

[Fake Engineer Feeds \\$1.1M Award on Concrete Balcony Contract](#)

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AM Holt

Body

A Deerfield Beach construction firm facing a breach-of-contract lawsuit turned the case around by arguing the project's designated engineer wasn't an engineer at all.

Custom Group Inc. won a \$1.1 million verdict Feb. 1 on counterclaims against Winston Towers 200 Association Inc., which hired the construction company to do concrete restoration on a Sunny Isles Beach condominium building's balconies.

"This was a particularly gratifying victory for a client who was duped into a contract that would have cost him his business," said Custom Group attorney Joy Spillis Lundeen of Stearns Weaver Miller Weissler Alhadeff & Sitterson in Miami.

Winston Towers contracted with Custom Group in March 2013 for the \$3 million project. The designated engineer told the construction company he had inspected all 390 balconies and gave the firm a binder showing what needed to be done, according to Custom Group's filings in Miami-Dade Circuit Court.

Workers started to fall behind on concrete restoration after a few months, telling Winston Towers they found more concrete damage once they opened up the balconies, according to the condo association's May 2014 complaint.

About a year after signing the 15-month contract, Custom Group walked off the project without finishing it and filed a \$502,000 lien against Winston Towers for the balance of the contract. The association claimed the lien was "improper, exaggerated [and] negligently prepared" and that Custom Group breached the contract by not finishing the work.

The construction firm filed a breach-of-contract and fraud counterclaim, arguing the delay in construction was solely Winston Towers' fault and seeking the amount of the lien and compensatory damages.

Custom Group was following orders given by the man designated as the engineer on the project but who the company learned six months in was a real estate broker with no engineering license, Lundeen argued along with colleagues Felix Rodriguez and Johnathan Ayers.

"It was a really awful fixed-price contract that the association had induced our client to sign by knowingly misrepresenting the scope of the work and the qualifications of the 'engineer' who performed the survey," she said.

Custom Group raised red flags about the engineering qualifications, but Winston Towers "refused to acknowledge" the company's pleas, Lundeen said.

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The condo association also told another Custom Group clients that the construction firm was "in over its head." That statement caused the client to cut ties with Custom Group, the construction company alleged in a claim of tortious interference with a business relationship.

Trial before Miami-Dade Circuit Judge Jose Rodriguez lasted four weeks. Custom Group called four witnesses, including the chief building inspector for Sunny Isles Beach.

"He verified our client's claims that this unlicensed, unqualified individual was holding himself out as an engineer to everyone involved, including the city, and that the engineer of record did not have any authorized representatives designated to perform work on his behalf," Lundeen said.

Custom Group spent much of the trial cross-examining the purported engineer and the engineer of record. Lundeen said a turning point for the construction company came when members of Winston Towers' board of directors took the stand.

"The president admitted that she knew the individual was not an engineer, that it was not important to her and that if she had to do it all over again, she would hire him again," Lundeen said.

Winston Towers argued Custom Group fell behind on the project due to its own inefficiency. Workers created problems by taking off balcony railings before they needed to, preventing residents from using the balconies, the association argued. Custom Group also allegedly didn't label hurricane shutters properly when it stored them.

Joseph Lawrence of Vezina, Lawrence & Piscitelli in Fort Lauderdale represented Winston Towers. He did not respond to a request for comment by deadline.

After deliberating for about a day and a half, the jury returned a verdict for Custom Group, awarding the full amount of the lien and about \$680,000 in compensatory damages on the construction company's breach-of-contract claim.

Winston Towers also must pay Custom Group's attorney fees and costs, an important victory for a small construction company that could have gone under if the jury's decision went the other way, Lundeen said.

Custom Group president Alan Mosher "is very grateful and so are we that the jury not only exonerated him of all wrongdoing but awarded him the full contract balance," she said.

Final judgment has not been entered.

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