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South Florida Lawyers Negotiate \$42 Million Land Settlement With Broward

Attorneys Barry Balmuth and Jack Seiler represented Shaw Farms & Land Co. in a landmark inverse condemnation case.

By Samantha Joseph | May 25, 2018

Palm Beach Gardens attorney Barry Balmuth, a former chairman of the Florida Bar's eminent domain committee, achieved a landmark \$42 million settlement for clients suing Broward County over acreage near the Fort Lauderdale-Hollywood International Airport.

Balmuth first won an [order of taking](https://images.law.com/contrib/content/uploads/documents/392/21404/Order-Of-Taking.pdf) (<https://images.law.com/contrib/content/uploads/documents/392/21404/Order-Of-Taking.pdf>). Broward Circuit Judge Jeffrey

R. Levenson found the county's construction and drainage work caused extensive flooding



Barry Balmuth of Barry S. Balmuth P.A. and Jack Seiler of Seiler, Zaden, Rimes & Wahlbrink

and damage to 38 acres belonging to Shaw Farms & Land Co. of Florida LLC.

At a liability trial in July 2017, Balmuth showed that the county had essentially taken 7 acres on the northern part of the Shaw tree farm in Dania Beach because runway construction work at the adjacent airport caused flooding that ruined hundreds of palms.

Property owners could not access the tree farm for days at a time and lost a crop that was no longer viable for commercial sale. The Shaw family has owned the land east of U.S. Highway 1 since the 1930s and controls about 7 acres along Northeast 10 Street, which extends to Griffin Road, and another 31 acres to the south. The Shaws use the property for Dania Farms, but the acreage is valuable real estate within walking distance of the airport, Port Everglades and the ocean.

The parcel is unique in Broward County because the northern property is platted for a 349-room hotel, while the southern portion is zoned for a 150-room hotel, retail, industrial and other commercial uses.

"It's quite a valuable piece of property," Balmuth said. "Even though it was only used as a tree farm, its potential use could have been quite lucrative."

Family court filings claim the county's construction of a runway extension crossing U.S. Highway 1 caused flooding that pushed under culverts, leading to several feet of overflow on the neighboring Shaw land. Court pleadings show farmworkers with no vehicular access were unable to access the trees. They also argued the construction work contaminated the land when arsenic attached to the silt in the flood waters.

"It was basically awful what they did to these folks," Balmuth said. "The Shaws didn't want to sue the county. They tried to get the county to fix the problems."

Balmuth teamed with Jack Seiler, a partner at Seiler Zaden Rimes & Wahlbrink and former Fort Lauderdale mayor, for the litigation.

The attorneys showed that in addition to damaging trees on the northern parcel, the county had also taken a drainage easement over the southern 31 acres, which Balmuth

argued was worth about 90 percent of the property value.

Once Levenson found the county had taken the property, he set the inverse condemnation case for a jury trial to determine compensation for Shaw Farms.

Broward County could have spent millions of dollars to acquire the parcel through eminent domain proceedings, which give the government the right to pay fair market value to expropriate private property for public use. But even then, it would have purchased only the easement and not the valuable acreage near major roadways, an airport and seaport.

The county chose to avoid trial and instead reached the eight-figure settlement that Balmuth believes is a record for an inverse condemnation case in Florida.

"The settlement was a win-win," Balmuth said.

Broward County is also scheduled to pay about \$600,000 in attorney fees to the plaintiffs and another \$200,000 to cover court costs.

It was hard-fought litigation with about a dozen expert witnesses, including engineering consultant Joseph Roles of Joseph Roles & Associates in Plantation, contamination expert Victor Rossinsky of CRB Geological & Environmental Services Inc. in Miami and real estate consultant Leigh R. Kerr of Leigh Robinson Kerr & Associates in Fort Lauderdale for the plaintiffs.

The defense legal team included Peter J. Oppenheimer and Jennifer A. Hoffman of Marlow Adler Abrams Newman & Lewis in Coral Gables and Andrew J. Meyers, Alexander J. Williams Jr., Tony J. Rodriguez and Michael J. Kerr, of the Broward County attorney's office. They did not respond to requests for comment by deadline.

Balmuth, his team and clients celebrated the outcome of the yearslong fight.

"We got justice for them, and the county needed the land," he said. "I guess it was kind of good for me because I got some attorneys fees, but it could have been resolved a lot sooner."

Case: Shaw Farms & Land and Dania Place v. Broward County et al.

Case no.: 15-011648

Description: Inverse condemnation

Settlement date: April 23, 2018

Judge: Broward Circuit Judge Jeffrey R. Levenson

Plaintiffs attorneys: Barry S. Balmuth, Barry S. Balmuth P.A., Palm Beach Gardens; and John "Jack" P. Seiler, Seiler Zaden Rimes & Wahlbrink, Fort Lauderdale

Defense attorneys: Peter J. Oppenheimer and Jennifer A. Hoffman, Marlow Adler Abrams Newman & Lewis, Coral Gables; and Andrew J. Meyers, Alexander J. Williams Jr., Tony J. Rodriguez and Michael J. Kerr, Broward County attorney's office, Fort Lauderdale

Settlement amount: \$42 million

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