

IN THE CIRCUIT COURT OF THE 13TH
JUDICIAL CIRCUIT, IN AND FOR
HILLSBOROUGH COUNTY, FLORIDA

CASE NO. 25-CA-006626

MARTIN A. ALVAREZ,

Plaintiff,

vs.

CITIZENS PROPERTY INSURANCE
CORPORATION,

Defendant.

_____ /

CITIZENS' MOTION TO DISMISS

Defendant Citizens Property Insurance Corporation (“Citizens”) moves for dismissal of this suit for declaratory relief because it has become moot. In his Complaint, Plaintiff seeks a declaration that he cannot be required to participate in the arbitration proceeding currently pending in the Division of Administrative Hearings (“DOAH”), because the arbitration policy endorsement and statute that authorized the endorsement are unconstitutional. However, Citizens has formally withdrawn its request for arbitration in DOAH and Citizens is no longer seeking arbitration on Plaintiff’s insurance claim. Therefore, this suit for declaratory relief is moot and the action should be dismissed.

I. Background

Plaintiff obtained a homeowners insurance policy with Citizens. *Compl.* ¶7. The policy contains a policy endorsement allowing either party to invoke mandatory binding arbitration at DOAH for the resolution of disputes regarding claim determinations. *Compl.* ¶21. Plaintiff submitted a claim to Citizens for a purported loss under the policy. *Compl.* ¶13. After Citizens made a claim determination, Plaintiff served a notice of intent to initiate litigation. *Compl.* ¶22.

Citizens then invoked arbitration pursuant to the insurance policy and, on June 12, 2025, filed a request for arbitration with DOAH. *Compl.* ¶¶22-23. DOAH then opened an arbitration matter in Case No. 25-003159PIC. *Compl.* ¶23.

Plaintiff subsequently filed this one-count suit for declaratory relief requesting a declaration that Plaintiff could not be compelled to arbitration because the arbitration endorsement and section 627.351(6)(II), Florida Statutes, which authorized the arbitration endorsement, are unconstitutional. *Compl.*, Wherefore Clause. On August 1, 2025, this Court entered a temporary injunction pending resolution of Plaintiff's claims.

On November 14th, 2025, Citizens filed with DOAH its formal withdrawal of its demand for arbitration in DOAH Case No. 25-003159PIC, *see* Exhibit A (Notice of Withdrawal in DOAH), and filed in this Court its waiver of right to arbitration on Plaintiff Martin Alvarez's claim. In addition to withdrawing its request for an arbitration hearing, Citizens' filing with DOAH acknowledges this lawsuit, states that the parties are in agreement that arbitration should be dismissed in DOAH Case No. 25-003159PIC, and formally requests that the Administrative Law Judge enter an order closing DOAH Case No. 25-003159PIC. Exhibit A.

II. Argument: Motion to Dismiss

A. This Action Should Be Dismissed As Moot

To establish entitlement to a declaratory judgment under chapter 86, Florida Statutes, a plaintiff must show that: "(1) there is a bona fide dispute between the parties; (2) the plaintiff has a justiciable question as to the existence or nonexistence of some right, status, immunity, power or privilege, or as to some fact upon which existence of such a claim may depend; (3) the plaintiff is in doubt as to the claim; and (4) there is a bona fide, actual, present need for the declaration. *Touchton v. Woodside Credit, LLC*, 316 So. 3d 392, 395 (Fla. 2d DCA 2021) (quoting *Ribaya v.*

Bd. Of Trs. Of City Pension Fund for Firefighters & Police Officers in City of Tampa, 162 So. 3d 348, 354 (Fla. 2d DCA 2015)).

“A case is ‘moot’ and therefore generally subject to dismissal ‘when it presents no actual controversy or when the issues have ceased to exist.’” *Progressive Select Ins. Co. v. Hilchey*, 396 So. 3d 775, 778 (Fla. 2d DCA 2024) (quoting *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992)); *J.P. v. J.N.*, 225 So. 3d 410, 412 n.1 (Fla. 5th DCA 2017) (“Generally, a case that has been rendered moot will be dismissed.”). “The doctrine of mootness is a corollary to the limitation on the exercise of judicial power to the decision of justiciable controversies.” *Hilchey*, 396 So. 3d at 778. Courts can only render declaratory relief “on actual controversies and do not render advisory opinions.” *Id.*; *Real Estate Solutions Home Sellers, LLC v. Viera East Golf Course Dist. Assocs., Inc.*, 288 So. 3d 1228, 1230 (Fla. 5th DCA 2020) (quoting *Ashe v. City of Boca Raton*, 133 So. 2d 122, 124 (Fla. 2d DCA 1961) (“A declaratory judgment ‘may not be invoked if it appears that there is no bona fide dispute with reference to a present judiciable question.’”).

Here, this Court should dismiss this action because there is no longer a bona fide dispute between the parties creating a present, actual need for declaratory relief regarding the constitutional validity of arbitration under Plaintiff Martin A. Alvarez’s policy endorsement. Citizens has withdrawn its demand for arbitration in in DOAH Case No. 25-003159PIC. Therefore, this Court should not render a declaratory judgment because there are “no articulated facts which demonstrate a real threat of immediate injury.” *Apthorp v. Detzner*, 162 So. 3d 236, 240 (Fla. 1st DCA 2015)

B. This Court Lacks Jurisdiction To Provide Declaratory Relief

Because this action has become moot, this Court no longer has jurisdiction to provide declaratory relief. The above-stated elements for a declaratory action, including the requirement

that there be a bona fide dispute between the parties requiring an actual, present need for the declaration, **are jurisdictional**. See *Progressive Select Ins. Co. v. Hilchey*, 396 So. 3d 775, 780 (Fla. 2d DCA 2024) (observing that the Second District is bound to follow cases that “describe the absence of the required declaratory judgment elements as an absence of jurisdiction”); *Guttenberg v. Smith & Wesson Corp.*, 357 So. 3d 690, 694 (Fla. 4th DCA 2023) (quoting *Martinez v. Scanlan*, 582 So. 2d 1167, 1170 (Fla. 1991) (observing that “[t]hese elements are necessary in order to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the courts.”) (emphasis in original)); *Strickland v. Pinellas County*, 261 So. 3d 700, 703 (Fla. 2d DCA 2018) (quoting *Treasure Chest Poker, LLC v. Dep’t of Bus. & Prof’l Regulation*, 238 So. 3d 338, 341 (Fla. 2d DCA 2017) (“Thus, absent a bona fide need for a declaration based on present, ascertainable facts, the circuit court lacks jurisdiction to render declaratory relief.”)); *Riverside Avenue Property, LLC v. 1661 Riverside Condominium Association, Inc.*, 325 So. 3d 997, 1000 (Fla. 1st DCA 2021) (quoting *Martinez v. Scanlan*, 582 So. 2d 1167, 1171 (Fla. 1991) (“Before a court may exercise its jurisdiction to grant declaratory relief ‘some justiciable controversy’ must exist ‘between adverse parties that needs to be resolved.’”)); *Apthorp v. Detzner*, 162 So. 3d 236, 240 (Fla. 1st DCA 2015) (quoting *Yell v. Healthmark of Walton, Inc.*, 772 So. 2d 568, 570 (Fla. 1st DCA 2000) (“Declaratory judgment is appropriate only when there is an actual controversy before the court; a court otherwise lacks jurisdiction.”)).

Therefore, a trial court loses jurisdiction to enter a declaratory judgment where an insurer moots the action. *Hilchey*, 396 So. 3d at 779-80. In such a situation, the trial court only retains jurisdiction to enter an order determining that the plaintiff is not entitled to declaratory relief. *Id.* The court cannot enter a declaratory judgment on the merits of a controversy that has ceased to

exist. *Id.* at 780 (observing that the court does “not have jurisdiction to enter a declaratory judgment on the merits of the controversy when a case has become moot.”) (emphasis omitted).

This is because courts can only render declaratory relief “on actual controversies and do not render advisory opinions.” *Id.* at 778 (citing *Dep’t of Revenue v. Kuhnlein*, 646 So. 2d 717, 721 (Fla. 1994)). “Even though the legislature has expressed its intent that the declaratory judgment act [chapter 86, Florida Statutes] should be broadly construed, there still must exist some justiciable controversy between adverse parties that needs to be resolved for a court to exercise its jurisdiction. Otherwise, any opinion on a statute’s validity would be advisory only and improperly considered in a declaratory action.” *Atwater v. City of Weston*, 64 So. 3d 701, 704-05 (Fla. 1st DCA 2011) (quoting *Martinez v. Scanlan*, 582 So. 2d 1167, 1170-71 (Fla. 1991)). Also, “courts are bound to take notice of the limits of their authority and if want of jurisdiction appears at any stage of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order.” *Rhody v. Veeco Instruments, Inc.*, 325 So. 3d 949, 950 n.1 (Fla. 5th DCA 2021) (quoting *Polk Cnty. V. Sofka*, 702 So. 2d 1243, 1245 (Fla. 1997)).

In *Progressive Select Insurance Company v. Hilchey*, 396 So. 3d 775 (Fla. 2d DCA 2024), the insurer requested that the insured submit to an examination under oath (“EUO”) pursuant to the insurance policy. *Id.* at 777. The insured filed a complaint seeking declaratory relief, alleging he was in doubt about his duty to attend the EUO in person due to the COVID-19 pandemic, and requesting declaratory relief allowing him to attend the EUO remotely. *Id.* After the insured filed the declaratory suit, the insurer rescinded its request for an EUO. *Id.* The trial court entered an order granting the insured’s motion for summary judgment, concluding that the insurer’s rescission of its request for EUO rendered the action moot and therefore the court “lacked jurisdiction to render declaratory relief.” *Id.* at 778. The trial court then entered a final order dismissing the case

as moot. *Id.* On appeal, the Second District specifically found that the trial court acted properly in entering the order dismissing the case as moot, as opposed to entering a declaratory judgment on the merits of the case or no order at all. *Id.* at 789-81. The Second District observed that, once a declaratory action becomes moot, the trial court is deprived of jurisdiction to provide declaratory relief, and only retains jurisdiction to enter an order finding the plaintiff is not entitled to declaratory relief. *Id.*

The same rule applies to suits for declaratory relief challenging the constitutionality of a statute. That is, even in declaratory actions involving the constitutionality of a statute, if the underlying controversy is resolved between the parties, the trial court loses jurisdiction to provide declaratory relief. For example, in *Santa Rosa County v. Administrative Commission, Division Of Administrative Hearings*, 661 So. 2d 1190 (Fla. 1995), the Department of Community Affairs (“the Department”) filed a petition with DOAH seeking a determination that Santa Rosa’s County’s comprehensive plan did not comply with chapter 163, Florida Statutes. *Id.* at 1191. The county then filed a complaint for declaratory and injunctive relief in circuit court against the Department and DOAH, seeking a declaration as to the constitutionality of the statutes and rules being applied in the DOAH action. *Id.* at 1191-92.

The parties, in the context of the pending DOAH action, eventually entered into an agreement in which the county agreed to adopt a remedial plan in compliance with Florida law. *Id.* at 1192. The Department then filed a motion for summary judgment in the circuit court action arguing the civil suit had become moot due to the agreement. *Id.* The county argued in opposition that it still needed the declaration because it would be exposed to future problems in complying

with chapter 163. *Id.* Still, the trial court granted the motion for summary judgment. *Id.* On appeal,¹ the Florida Supreme Court approved the trial court's order. *Id.* The Florida Supreme Court reasoned that, once the agreement had been reached, "there was no longer a bona fide, actual, or present need for a declaration as to the constitutionality of those statutes or rules being applied to the county. Therefore, the circuit court lacked jurisdiction to grant declaratory and injunctive relief." *Id.* at 1193; *see also Roberts v. Brown*, 43 So. 3d 673, 680 (Fla. 2010) (quoting *Martinez v. Scanlan*, 582 So. 1167, 1170 (Fla. 1991) ("Although a court may entertain a declaratory action regarding a statute's validity, there *must* be a bona fide need for such a declaration based on present, ascertainable facts or the court *lacks jurisdiction* to render declaratory relief.") (emphasis in original)); *Treasure Chest Poker, LLC v. Dep't of Bus. & Pro'l Regulation*, 238 So. 3d 338, 341 (Fla. 2d DCA 2017) ("Courts will not determine the construction or validity of a statute or ordinance in the absence of a justiciable controversy."); *Livingston v. Frank*, 150 So. 3d 239, 244 (Fla. 2d DCA 2014) (quoting *Fla. Dep't of Ins. v. Guarantee Trust Life Ins. Co.*, 812 So. 2d 459, 461 (Fla. 1st DCA 2002) ("[W]here a controversy has been resolved by settlement agreement, there is no longer an actual or present need for a declaration as to the constitutionality of statutes or rules as applied to the consenting parties, and the trial court lacks jurisdiction to grant declaratory relief.")).

Here, this Court should dismiss this action because there is no longer a bona fide, present need for declaratory relief regarding the constitutionality of DOAH arbitration. Citizens has formally withdrawn its request for arbitration in DOAH Case No. 25-003159PIC and Citizens is no longer seeking arbitration on Plaintiff's insurance claim. Exhibit A. The parties are in

¹ Before reaching the Florida Supreme Court, the First District Court of Appeal agreed with the county that its challenge was not moot, however, the First District affirmed the summary judgment based on lack of standing. *Santa Rosa County*, 661 So. 2d at 1192.

agreement that the arbitration should be dismissed. Therefore, this suit for declaratory relief has become moot and this Court lacks jurisdiction to provide declaratory relief.

III. Conclusion

WHEREFORE, CITIZENS respectfully requests that the Court enter an order (i) granting this motion to dismiss this action; and (ii) ruling that the Court will dissolve the temporary injunction and enter a dispositive dismissal of the declaratory action upon relinquishment of jurisdiction from the Second District Court of Appeal for that purpose.

CERTIFICATE OF CONFERRAL

I certify that conferral prior to filing is not required under rule 1.202.

Respectfully submitted this 14th day of November, 2025.

/s/ Ricky Polston

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Counsel for Citizens Property Insurance Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished *via* Florida E-Portal this 14th day of November, 2025, to: Lynn Brauer, Esq., INSURANCE TRIAL LAWYERS, Town Center One, Suite 2267, 8950 SW 74th Ct., Miami, FL 33156-3171, pleadings@itl.legal

/s/ Ricky Polston

Ricky L. Polston

EXHIBIT A

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARTIN A. ALVAREZ,

Petitioner,

DOAH Case No. 25-003159PIC

vs.

CITIZENS PROPERTY INSURANCE
CORPORATION,

Respondent.

_____ /

**NOTICE OF WITHDRAWAL OF CITIZENS' REQUEST FOR
ARBITRATION HEARING**

Respondent Citizens Property Insurance Corporation gives notice that it withdraws its request for arbitration hearing in this proceeding, initiated by notice dated June 12, 2025. Petitioner agrees that this arbitration should be dismissed based on the circuit court action filed on July 11, 2025, against Citizens in Case No. 25-CA-006626, 13th Circuit, Hillsborough, raising a challenge to Petitioner's policy endorsement. The Complaint is attached as Exhibit A.

Accordingly, Citizens requests that this DOAH arbitration case be closed.

Respectfully submitted this 14th day of November, 2025.

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/s/ **Ricky Polston**
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2025, a true and correct copy of the foregoing was electronically filed with the Clerk of the Division of Administrative hearings, and served electronically to:

Isaiah K. Harvey
8950 SW 74th Ct.
Miami, FL 33156
Hollywood, FL 33024
isaiah@itl.legal
Counsel for Petitioners

s/ Ricky Polston
Attorney

EXHIBIT A



25-000183952

MARTIN A ALVAREZ

PLAINTIFF(S)

VS.

CITIZENS PROPERTY INSURANCE
CORPORATION

DEFENDANT(S)

SUMMONS, COMPLAINT, ORDER

CASE #: 25-CA-006626
COURT: 13TH JUDICIAL CIRCUIT
COUNTY: HILLSBOROUGH
DFS-SOP #: 25-000183952

NOTICE OF SERVICE OF PROCESS

NOTICE IS HEREBY GIVEN of acceptance of Service of Process by the of the State of Florida. Said process was received in my office by ELECTRONIC DELIVERY on Tuesday, July 22, 2025 and a copy was forwarded by ELECTRONIC DELIVERY on Wednesday, July 23, 2025 to the designated agent for the named entity as shown below.

CITIZENS PROPERTY INSURANCE CORPORATION
ALLISON BEGLEY
301 W. BAY STREET
JACKSONVILLE, FL 32202

***Our office will only serve the initial process (Summons and Complaint) or Subpoena and is not responsible for transmittal of any subsequent filings, pleadings, or documents unless otherwise ordered by the Court pursuant to Florida Rules of Civil Procedure, Rule 1.080.**

ROBERT F GONZALEZ
FLORIDA INSURANCE LAW GROUP LLC
8724 SUNSET DRIVE # 260
MIAMI, FL 33173

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IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

Martin A Alvarez

Case No.

Plaintiff,

vs.

Citizens Property Insurance Corporation

Defendant.

COMPLAINT

Plaintiff, Martin A Alvarez, by and through undersigned counsel, hereby files this Complaint against Defendant, CITIZENS PROPERTY INSURANCE CORPORATION, and in support thereof, would allege:

JURISDICTION AND VENUE

1. This is an action for monetary damages in the amount of 82,805.56 exclusive of prejudgment interest, costs, and attorneys' fees.
2. Venue is proper in HILLSBOROUGH COUNTY, Florida pursuant to Florida Statute 47.011, because the cause of action upon which these allegations are based accrued in HILLSBOROUGH COUNTY, Florida, and the property at issue is located in HILLSBOROUGH COUNTY, Florida.

PARTIES

3. Plaintiff, Martin A Alvarez ("Plaintiff"), is a natural person residing in HILLSBOROUGH COUNTY, Florida.
4. Defendant, Citizens Property Insurance Corporation ("Citizens"), is an entity doing business in the State of Florida and specifically, HILLSBOROUGH COUNTY, Florida.
5. Defendant is an authorized insurance carrier by the State of Florida to engage in the

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business of insurance with Florida citizens, and is duly authorized to, and does in fact, issue, or otherwise causes to be issued, policies of insurance in HILLSBOROUGH COUNTY, Florida, and throughout the State of Florida.

COUNT I – DECLARATORY RELIEF

6. This is an action for Declaratory Relief under Fla. Stat. 86.011 et seq.
7. Plaintiff purchased a homeowner’s policy of insurance from Defendant, which insured the property owned by the Plaintiff located at 3415 Oak Trail Ct Tampa, Florida 33614 (the “Property”).
8. In consideration for the payment of a premium, Defendant issued an insurance policy insuring to the benefit of Plaintiff (“Policy”).
9. The Plaintiff does not have a copy of the foregoing insurance policy and/or the same is in the possession of the Defendant and will be obtained via discovery.
10. The foregoing insurance policy was in full force and effect at all material times hereto and during the subject date of loss.
11. At all times material hereto, the Policy, among other things, provided insurance coverage for direct physical losses to the property.
12. On or about October 9, 2024, the Property suffered a loss resulting from a peril that is covered under the Policy; and timely reported the damage to Defendant.
13. In response to the Plaintiff’s reported claim, Defendant acknowledged the loss and assigned an adjuster and the claim number 00100596772 for same.
14. Thereafter, Defendant conducted and completed an investigation of the loss.
15. All conditions precedent and post-loss obligations to obtaining payment of said benefits under the Policy and Florida Statutes have been complied with, met, or waived.
16. Any conditions precedent and post-loss obligations not met or complied with, have not caused any prejudice to the Defendant.

17. Plaintiff and Defendant had a binding contract that insured the property during the aforementioned period.

18. Section 86.011, Florida Statutes, gives the court jurisdiction to render a declaratory judgment on the existence or nonexistence of (1) a right under the insurance contract or (2) a fact upon which the existence or nonexistence of such right under the insurance contract depends. *See Higgins v. State Farm Fire & Cas. Co.*, 894 So. 2d 5, 12 (Fla. 2004) (declaratory action allowed to decide disputes in respect to insurance policy indemnity and defense obligations).

19. Further, “[f]ollowing *Higgins*, it is clear—even if it was not before—that a declaratory-relief action may proceed based on an unambiguous insurance policy.” *Ocean’s 11 Bar & Grill, Inc. v. Indemnity Ins. Corp. of DC*, 2011 WL 3843931 at *2 (S.D. Fla. 2011).

20. Pursuant to Chapter 86 of the Florida Statutes, the Plaintiff requests this Court to take jurisdiction over this action and determine the Plaintiff’s rights under the contract.

21. Within the policy, Defendant has added a clause requiring DOAH Arbitration pursuant to the insurance contract and Fla. Stat. §627.351(6)(11).

22. Plaintiff filed a notice of intent to litigate required by Fla. Stat. §627.70152, and Defendant invoked the DOAH arbitration.

23. The claim is currently pending in DOAH arbitration and has been assigned case number 25-003159PIC.

24. The insurance contract contains the arbitration provision, but the provision was not bargained for, nor is the arbitration voluntary. Once arbitration is invoked, the Plaintiff is required to either accept an offer of judgment or withdraw the claim, which results in an arbitration award. Once the arbitration award is entered, the Defendant then seeks attorney’s fees based upon their offer of judgment.

25. It is Plaintiff’s understanding that the policy provision and statute results in a violation of

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Article 1, Section 21 of the Florida Constitution and violates the due process rights of the Plaintiff.

25. Plaintiff is in doubt as to the validity of the arbitration statute and policy provisions.

26. This has created a bona fide, actual, present practical need for the requested declarations as it deals with a present, ascertained or ascertainable state of facts or present controversy as to the above state of facts.

27. As a direct and proximate result of Defendant's position, the Plaintiff has been required to retain the services of the undersigned attorneys to represent and protect the interests of the Plaintiff and the Plaintiff has become obligated to pay them a reasonable fee for their services in bringing this action.

28. In the event that the Plaintiff prevails in this action, Plaintiff is entitled to an award of attorneys' fees and costs pursuant to Florida Law.

WHEREFORE, the Plaintiff respectfully requests:

- a. Entry of a declaratory judgment pursuant to Chapter 86 of the Florida Statutes declaring that Section 627.351(6)(II), Florida Statutes (2024) and the provisions of the policy are invalid;
- b. An award of attorneys' fees pursuant to Florida Statutes, along with an award of taxable costs; and
- c. Any other relief the Court deems just and proper under the circumstances.

WHEREFORE, Plaintiff demands a judgment against Defendant, Citizens Property Insurance Corporation, for damages, attorney's fees, prejudgment interest, costs, and all other relief deemed just and proper by this Court.

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