

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA
APPELLATE DIVISION

ALAN WALKER,

Appellant,

Case No.: 22-AP-01-K

L.T. Case No.: CES 21-1537

v.

CITY OF KEY WEST,

Appellee.

_____ /

OPINION

THIS CAUSE comes before the Court upon the Appellant, Alan Walker's Notice of Appeal of a Final Order entered by the Code Enforcement Special Magistrate finding Mr. Walker in violation of seven (7) counts of the Key West Code of Ordinances. The Court, having considered the Appellant's Initial Brief, the Appellee's Answer Brief, the record, the argument of counsel at the hearing held before this Court on October 25, 2022, pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

I. BACKGROUND

On September 15, 2021, the City of Key West issued Appellant, Alan Walker, a "Notice of Code Violation/Administrative Hearing" alleging seven (7) violations of the Key West Code of Ordinances (the "Code"). (Appellant's Exhibit A-Notice of Violation). The violations allegedly occurred at a property owned by Richard Hoy at 1011 Windsor Lane, Key West, Florida (the "subject property"). (Appellant's Exhibit B-Case Detail).

The City charged Mr. Walker and co-defendants Richard Hoy, John Spencer, and Edward Chilton with performing work on the property without permits. *Id.*

On October 15, 2021, the City amended its Notice of Violation as to Mr. Walker to allege “Repeat Violations” based on a 2019 settlement agreement Mr. Walker entered regarding a different property. (Appellant’s Exhibit C-Amended Notice).

At a hearing on October 21, 2021, the Special Magistrate granted a continuance to Mr. Walker and Mr. Hoy to January 27, 2022. Mr. Spencer’s case was dismissed because he died prior to the hearing. (Appellant’s Exhibit B). Mr. Chilton failed to appear at this hearing and fines were issued against him. *Id.*

On January 27, 2022, a hearing took place before a Code Enforcement Special Magistrate. The Special Magistrate took testimony from Code Inspector Officer Leo Slecton who testified that the evidentiary support for the charges against Mr. Walker were: (1) statements allegedly made by John Spencer (deceased); (2) statements made by Edward Chilton; (3) statements made by Richard Hoy contained in a settlement agreement signed off on that day; and (4) statements made by Mr. Walker. (Transcript at 6-7). Mr. Walker requested a continuance because he had just been made aware that Mr. Chilton made a statement against him, and that Mr. Hoy had entered a settlement agreement; he requested additional time to refute this new evidence. (Transcript at 9). The request for the continuance was denied. (Transcript at 10). At the hearing, Mr. Walker did not call any witnesses. Mr. Walker testified that he only did minor work on the property that did not require a permit and stated, “it wasn’t me as acting contractor.” (Transcript at 7).

At the conclusion of the hearing, the Special Magistrate found Mr. Walker in violation of all seven counts and imposed fines totaling \$3,750.00. (Transcript at 12). On that same date, the Special Magistrate issued an “Order Imposing Lien/Findings of Fact, Conclusions of Law and Order.” (Appellant’s Exhibit F). This appeal of the Special Magistrate’s Order followed.

II. STANDARD OF REVIEW

Pursuant to Fla. Stat. § 162.11, the Circuit Court sitting in its appellate capacity has jurisdiction to review code enforcement final orders. *Central Florida Investors v. Orange County*, 295 So. 3d 292 (Fla. 5th DCA 2019). “Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board.” Fla. Stat. § 162.11. When an appeal is taken from the final administrative order of a local enforcement board, the circuit court has plenary appellate review of the record before the enforcement board. *Id.* at 294; § 162.11 Fla. Stat. “[O]n appeal, all errors below may be corrected; jurisdictional, procedural, and substantive. *Id.* at 295 (quoting *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 526 n. 3 (Fla. 1995)). The Court engages in a three-part standard of review to determine: (1) whether due process was accorded; (2) whether the essential requirements of the law have been observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence.” *Haines*, 658 So. 2d at 530.

III. DISCUSSION

Appellant seeks review of the Special Magistrate’s Final Order based on the following arguments: 1) the Appellant’s due process rights were violated; 2) no specific findings were made against Mr. Walker; and 3) The Final Order was entered erroneously. The Court concludes that due to the

insufficiency of record findings of fact and conclusions of law in this case, it cannot determine what facts and what evidence the Special Magistrate relied upon to support the findings of violation against Mr. Walker.

In this case, the violations alleged required the City to prove that Mr. Walker was the contractor responsible for obtaining the permits and certificates required for the subject property. If Mr. Walker was not the contractor responsible, he could not be found in violation of the counts for which he was found to have violated, to wit:

Count 1: Failure to apply and obtain Building Permits with the City of Key West Building Department-Repeat.

Count 2: Failure to apply and obtain a Certificate of Appropriateness with the City of Key West HARC Department-Repeat.

Count 3: Failure to apply and obtain electrical permits with the City of Key West Building Department.

Count 4: Failure to schedule a required inspection with the City of Key West Building Department.

Count 5: Failure to apply and obtain a plumbing permit with the City of Key West Building Department.

Count 6: Failure to apply and obtain a Business Tax Receipt with the City of Key West Licensing Department-Repeat.

Count 7: Failure to achieve a Certificate of Competency-Repeat.

A. Sufficiency of findings

In this case, the findings of fact and conclusions of law are not legally sufficient to establish the elements of these counts. The findings of fact and conclusions of law come from brief statements the Special Magistrate made at the code enforcement hearing and in the Final Order. At the hearing, the Special Magistrate states: “I am going to find there are violations” and

“[t]here is competent substantial evidence that you are in violation.”
(Transcript at 12). The Final Order states:

...the Special Magistrate having heard sworn testimony, having reviewed the evidence submitted, and being otherwise advised in the premises; The Special Magistrate finds Alan Walker is in violation of Key West Code of Ordinances, section(s), 14-37 Repeat, 14-40 Repeat, 14-256, 14-262, 14-359, 18-150 Repeat, 66-87 Repeat. In that the following condition(s) exists at 1609 Catherine Street¹...

The Order then goes on to list the counts against Mr. Walker, but it does not list any evidence that would support a finding of violation for any of the counts. The Special Magistrate did not make any specific findings as to what evidence he relied on to find the violations.

The Key West Code requires that, “[a]t the conclusion of the hearing, the special magistrate shall issue findings of fact based on the evidence of the record and conclusion of law and shall enter an order affording the proper relief consistent with the powers granted in this division.” Sec. 2-642(a). Chapter 162, Florida Statutes, the Local Government Code Enforcement Boards Act requires the same. While neither the Act nor the Code mandates any specific amount of detail, the Special Magistrate is required to make basic findings supported by the evidence. *See* Key West Fla., Code § 2-641(a); § 162.07(4), Fla. Stat.; *Hayes v. Monroe County*, 337 So. 3d 442 (Fla. 3d DCA 2022). Detailed written findings may not be necessary, but the Appellant is entitled to notice of the specific findings of fact upon which the ultimate action is taken. “The statutory and regulatory provisions’ requirement of factual findings is ultimately based on principles of due process.” *Borges v. Dep’t of Health*, 143 So. 3d 1185, 1187 (Fla. 3d

¹ The Court notes that this is not the address for the subject property.

DCA 2014). The Final Order in this case “does not sufficiently comply with the requirement to make express findings of fact.” *See id.*

B. Competent substantial evidence

Appellee argues that even if the Final Order lacks detailed findings, the findings of violation are supported by competent substantial evidence. “Competent substantial evidence is tantamount to legally sufficient evidence.” *School Board of Hillsborough County v. Tenney*, 210 So. 3d 130, 134 (Fla. 2d DCA 2016) (internal citation and quotation omitted). “The evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.” *DeGroot v. L.S. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). The City states that there are four (4) grounds that support the code violations: (1) the statements allegedly made by John Spencer; (2) the statements made by Edward Chilton; (3) the settlement agreement reached with Richard Hoy; and (4) the statements of Mr. Walker.

At the hearing, Code Enforcement Officer Leo Slecton summarized the City’s case against Mr. Walker. Mr. Slecton testified that he discovered the alleged violations while conducting a “routine canvassing.” (Transcript at 3). Mr. Slecton testified that at the subject property he spoke with John Spencer, an unlicensed contractor who told him he “was hired by Al.” (Transcript at 4). Mr. Slecton testified that he had a follow-up meeting with Mr. Spencer where Mr. Spencer told him that Alan Walker “had hired him and was basically acting as the general contractor and also providing payroll.” (Transcript at 5). Mr. Spencer’s statements were not recorded or otherwise memorialized, and at the time of the hearing on the code violations, Mr. Spencer was deceased.

Mr. Slection testified that he also spoke to Edward Chilton, an unlicensed contractor, who was working at the subject property and “explained that he was hired by a guy named Al at the Schooner Wharf Bar.” (Transcript at 4). Mr. Slection testified that Edward Chilton testified at a prior hearing on December 16, 2021 that “while he was at the Schooner Wharf Bar, Alan Walker who he identified as being in the court earlier that day, had hired him to perform the work at 1011 Windsor Lane.” (Transcript at 6). However, the transcript from the December 16, 2021, hearing shows that Mr. Chilton did not actually testify that Mr. Walker hired him or that Mr. Walker was the acting contractor for the job at the subject property. What Mr. Chilton actually said was that Mr. Walker told him that “a guy named Johnny needs some help over at this job.” (Appellant Exhibit E-transcript of Chilton mitigation hearing).

Mr. Slection testified at the code enforcement hearing that Mr. Walker voluntarily told him that “he had a very small part in this. He did trim work.” (Transcript at 6).

Finally, Mr. Slection testified that “Richard Hoy signed a settlement agreement that you signed off on today with, sir, which it talks about Mr. Walker’s role.” (Transcript at 6). Mr. Walker was not given a copy of the settlement agreement, nor was it introduced as evidence at the code enforcement hearing.

After the City presented its case, Mr. Walker testified that “it wasn’t me as acting contractor.” (Transcript at 7). He testified that John Spencer and Richard Hoy were the acting contractors. (Transcript at 8). Mr. Walker

stated that he was working for Richard Hoy and that he didn't "do anything out of my realm of having to have a permit..." (Transcript at 11).

The lack of factual findings by the Special Magistrate in this case makes it impossible to determine what evidence the Special Magistrate considered and rejected in this case. It also makes it impossible for the Court determine if there is competent substantial evidence to support the Special Magistrate's decision. For example, it is unclear if the Special Magistrate considered and relied upon the contents of Mr. Hoy's settlement agreement or Officer Slection's summary of Mr. Chilton's testimony at the mitigation hearing. If the Special Magistrate relied upon Richard Hoy's settlement agreement, it would be error because the settlement agreement was never disclosed to Mr. Walker and it was not admitted into evidence at the Code Enforcement Hearing. It would also be error for the Special Magistrate to have relied upon Officer Slection's summary of Mr. Chilton's testimony when it has been demonstrated to be an incorrect recitation of what Mr. Chilton actually testified to at the mitigation hearing, because it does not constitute competent substantial evidence as a matter of law given that the record establishes that Mr. Chilton did not testify that Mr. Walker was the contractor for the subject property as Mr. Slection testified.

In examining the record without the guidance of basic findings, the Court would be re-weighing the evidence and substituting its judgment for that of the Special Magistrate which it cannot do. "When the entity charged with finding facts upon the evidence presented, the hearing officer, has, for

whatever reason, failed to perform this function, the appropriate remedy is not for the agency (or the court of appeal) to reach its own conclusion, but rather to remand for the officer to do so.” *Cohn v. Dep’t of Prof’l Regulation*, 477 So. 2d 1039, 1047 (Fla. 3d DCA 1985).

C. Due Process

In Code Enforcement proceedings, “the special magistrate shall take testimony from the code inspector and the alleged violator.” § 2-640, Key West Code of Ordinances; § 162.07(3), Fla. Stat. “The formal rules of evidence do not apply, but fundamental due process shall be observed and shall govern the proceedings.” *Id.* Fundamental due process requires fair notice and a real opportunity to be heard. *Keys Citizens for Responsible Gov’t, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001).

Appellant argues that the Special Magistrate violated Mr. Walker’s due process rights by allowing a “trial by ambush” when he refused to grant Mr. Walker’s request for a continuance to investigate new evidence presented at the Code Enforcement Hearing. The new evidence at issue is/are the statements allegedly made by Mr. Chilton and the contents of the settlement agreement entered into by Mr. Hoy. Without knowing what evidence the Special Magistrate considered and relied upon, the Court cannot assess whether due process was afforded in this case.

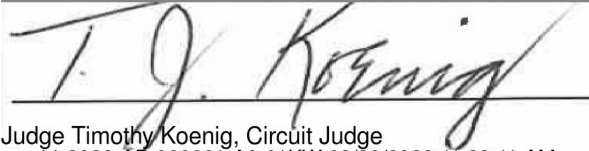
IV. CONCLUSION

In this case, the findings of fact and conclusions of law are legally insufficient and the matter is **REVERSED** and **REMANDED** to the Special

Magistrate to make legally sufficient findings of fact and conclusions of law, consistent with the requirements set forth herein.

DONE AND ORDERED in Key West, Monroe County, Florida this Thursday, March 30, 2023

44-2022-AP-000001-A0-01KW 03/30/2023 11:33:11 AM

A handwritten signature in black ink, appearing to read "T. J. Koenig", is written over a horizontal line. The signature is cursive and somewhat stylized.

Judge Timothy Koenig, Circuit Judge
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