

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

MARK HUNT,

Appellant,

Case No.: 21-AP-02-K

Lower Case No.: 20-506

v.

THE CITY OF KEY WEST,

Appellee.

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**OPINION**

**THIS CAUSE** comes before the Court upon the Appellant, Mark Hunt's, appeal of a code enforcement final order finding him in violation of provisions of the City of Key West Code of Ordinances relating to short-term vacation rentals. The Court, having considered the Appellant's Initial Brief, the Appellee's Answer Brief, the Appellant's Reply Brief, the record, the argument of counsel at the oral argument held before this Court on April 8, 2022, pertinent legal authority, and being otherwise fully advised in the premises, finds and orders as follows:

**I. BACKGROUND**

Appellant is the owner of property located at 1020 Eaton Street in Key West, Florida. Appellant has previously been noticed of a violation for impermissibly renting this property on a short-term basis back in 2017. Appellant entered into a settlement agreement in the prior case and received a suspended fine of \$4,500.00.

On April 13, 2020, Code Enforcement Officer Doctoche located an advertisement on VRBO.com for the subject property which listed a seven-night minimum stay contrary to the City of Key West Code of Ordinances which prohibit rentals for less than 28 days. Officer Doctoche was able to book a stay for eight (8) nights, April 14, 2020 through April 22, 2020, at a total cost of \$3,452.75. On June 4, 2020, the City of Key West Code Compliance Division issued a Notice of Violation/Notice of Hearing alleging the following nineteen (19) violations of the Key West Code of Ordinances:

- Counts 1-8—Section 18-601: Unlawfully leasing a residential property for a period of less than 30 days or one calendar month without having obtained a business tax receipt. One count for each night of the rental.
- Counts 9-11—Section 122-1371: Violating transient living accommodations in residential dwellings regulations. One count for each regulation violated.
- Counts 12-19—Section 122-1371: Unlawfully holding out short-term rental for eight nights. One count for each night of the rental.

On December 17, 2020, a hearing took place before a Code Compliance Special Magistrate. Appellant appeared on his own behalf.<sup>1</sup> Code Enforcement Officer Doctoche was the only witness to testify at the hearing. She testified how she was able to book the subject property for eight nights, and that this is a repeat offense. (Tr. 4). Officer Doctoche also testified that the fine entered in the settlement agreement for the previous violation was still outstanding. (Tr. 4). Appellant argued that he did not hold the property out for rent for less than one month, and that the seven-

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<sup>1</sup> Appellant is an attorney licensed in another state but not in Florida.

day rental span advertised on VRBO was a typographical error that was subsequently fixed. (Tr. 7, 11).

At the conclusion of the hearing, the Special Magistrate found there was substantial competent evidence to support each violation alleged. (Tr. 12). He further found there was substantial competent evidence that these were repeat violations. (Tr. 13). The Special Magistrate imposed a \$500 fine for each repeat count for a total amount due of \$9,500 for the 19 violations. (Tr. 12). He then imposed the \$4,500 fine from the prior case that had been previously suspended. (Tr. 14). The Special Magistrate also imposed \$250 for administrative fees for a total of \$14,250. (Tr. 14). On that same date, the Special Magistrate entered “Findings of Fact, Conclusions of Law and Order” confirming his oral rulings. This appeal of the Special Magistrate’s Final 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 Circuit Court also has jurisdiction to consider and resolve constitutional issues as part of a code enforcement

appeal. *Key Haven Associated Enterprises, Inc. v. Board of Trustees of Internal Improvement Trust Fund*, 427 So. 2d 153, 157 (Fla. 1982).

### **III. DISCUSSION**

The Appellant seeks review of the Code Compliance Magistrate's Final Order alleging: 1) no real violation or offense; 2) no mens rea, actus reus or overt act to violate ordinance; 3) excessive fines; and 4) unfairness and bias (due process violation).

The Appellant was found in violation of eight (8) counts of Section 18-601 of the Key West Code of Ordinances (the "Code") which states:

Sec. 18-601. - License required.

(a) The short-term rental of a residential property is a business activity that requires the property owner to hold a business tax receipt issued by the city. A state or county license without an accompanying city license is insufficient. Notwithstanding the existence of any other regulation of the city regulating the transient use of property, the short-term rental of a residential property without a business tax receipt violates the law.

(b) It shall be unlawful for a property owner to lease a residential property for a period of less than 30 days or one calendar month without having obtained a business tax receipt under this division.

The Appellant was also found in violation of eight (8) counts of Section 122-1371(d) of the Code which states in pertinent part:

(d) *General regulations.* The following regulations shall pertain to transient lodging use of or within a residential dwelling.

(9) It shall be unlawful for any owner, tenant, broker, realtor, agent or other representative of the owners to hold out or advertise a residential dwelling for transient rental if the property is not permitted, as provided hereunder. A broker or realtor who is found in violation of this regulation shall be subject to business tax receipt revocation.

Additionally, Appellant was found in violation of three (3) counts with respect to portions of Section 122-1371(c) which states in pertinent part:

(c) *Application.* The holder of a business tax receipt allowing residential transient use must annually provide or comply with the following information:

(3) An approved inspection report of the fire marshal verifying compliance with the fire marshal's criteria for a residential dwelling transient lodging use.

(6) A valid and current Florida Department of Revenue sales tax identification number under Chapter 212, Florida Statutes, and a valid and current license under Chapter 509, Florida Statutes.

(7) The name, address and 24-hour phone number of the person who will be operating the property's transient accommodations.

### **I. Competent Substantial Evidence**

There is competent substantial evidence that the Appellant held the property out for short-term rental and that the Appellant does not have a valid license or business tax receipt to rent the property on a short-term basis. The City put in the record evidence of the VRBO advertisement that indicated short term rental availability and testimony from the code enforcement officer that she was able to book the property for eight nights. There is no evidence that the Appellant has a license or business tax receipt that would allow short-term rentals of the property. Therefore, the violations pertaining to section 18-601 (License) and Section 122-1371(d) (holding out for rental) are supported by competent substantial evidence. However, this incident is only one event, not eight. This incident gives rise to two violations—one for not having the requisite license and one for holding out the residential dwelling for transient rental. There is no legal basis for multiplying the fine based on the number of nights that the property was held out for rental without a license. Further, counts 9-11 are not independent violations, they are just requirements of licensing that are subsumed into the violation for not having a transient rental license in this case. To conclude, there is competent substantial evidence to support the Magistrate's finding of violation of one count of Sec. 18-601 for not having

the necessary license, and one count of Section 122-1371(d) for unlawfully holding out the property for transient rental.

The Appellant argues that there is “no real violation” of the Code because there was no actual rental of the property. This argument fails because under the plain language of the ordinance, the holding out, or advertisement, of an illegal rental unit by itself can support a violation of the Code. Contrary to the Appellant’s argument, the term “hold out” as used in the Code is not vague or ambiguous, and the ordinance prohibiting “holding out” does not violate the Appellant’s First Amendment right to free speech.

The Appellant argues that there can be no violation because there is no mens rea, actus reus or overt act to violate the Code. This argument fails because mens rea and actus reus are concepts applicable in criminal cases and this is a non-criminal code enforcement case. The argument is also unavailing because the Florida Supreme Court has recognized the legislative branch’s broad authority to determine any requirement for intent or knowledge in the definition of a crime—including excluding knowledge or intent as a requirement altogether. *See State v. Adkins*, 96 So. 3d 412, 417 (Fla. 2012) (“Given the broad authority of the legislative branch to define the elements of crimes, the requirements of due process ordinarily do not preclude the creation of offenses which lack a guilty knowledge element.”); *id.* (“We thus have recognized that generally it is within the power of the legislature to declare an act a crime regardless of the intent or knowledge of the violation thereof.”) (internal citation and quotation omitted).

## **II. Due Process**

The Appellant argues that the “unfairness of the magistrate and bias of the court process violates due process.” This broad, meritless claim is

rejected. 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). In this case, fundamental due process was afforded to the Appellant. The Appellant was allowed to present evidence and argument at the Code Enforcement Hearing which the Special Magistrate reviewed and considered prior to issuing his findings of fact and conclusions of law.

### **III. Fines**

The Appellant argues that the fines imposed in this case are unconstitutionally excessive and violate due process. The fines imposed in the final order are the following: 1) \$500.00 per count for each violation for a total of \$9,500.00; 2) \$4,500.00 fine previously suspended pursuant to settlement agreement on previous case; and 3) an administrative fee of \$250.00.

The fines imposed for the violations are not excessive. § 162.09 (2)(a), Fla. Stat., provides that “a fine imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation.” Here, there is clear evidence that this is a repeat violation, and therefore, the \$500 fine for violation of the Code is not excessive. The administrative fee is also authorized under Chapter 162. However, the Court finds that the Code Enforcement Magistrate improperly brought the suspended fine from the previous case into this case. The \$4500 fine previously imposed is part of a settlement agreement which is not part of this case, and the Appellant’s non-compliance with the previous settlement agreement cannot be the subject of a new and distinct code violation in the present matter.

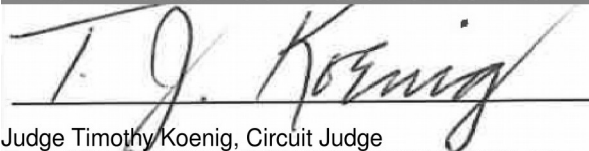
### **IV. CONCLUSION**

For the foregoing reasons, the matter is **AFFIRMED in part and REVERSED in part.**

1. The \$500.00 fine for violation of Section 18-601 is affirmed but only as to one count. The other seven counts are reversed.
2. The \$500.00 fine for violation of Section 122-1371(d) is affirmed but only as to one count. The other seven counts are reversed.
3. The findings of violation and imposition of fines as to Counts 9-11 are reversed.
4. The imposition of \$250.00 for administrative costs is affirmed.
5. The imposition of the \$4500.00 suspended fine from the previous settlement agreement in another case is reversed as applied to this case.

**DONE AND ORDERED** at Key West, Monroe County, Florida this Monday, August 1, 2022

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Judge Timothy Koenig, Circuit Judge  
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