

**NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED**

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL  
CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION**

**Case No.: 15-000058AP-88A  
UCN: 522015AP000058XXXXCV**

**BRADLEY PADDOCK,  
Appellant,**

**v.**

**CITY OF CLEARWATER, FLORIDA,  
CODE ENFORCEMENT BOARD  
Appellee.**

Opinion Filed \_\_\_\_\_

Appeal from decision of  
Code Enforcement Board,  
City of Clearwater, Florida

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Attorney for Appellant

Andrew J. Salzman, Esq.  
Attorney for Appellee

**PER CURIAM.**

Appellant/Defendant, Bradley Paddock, appeals the City of Clearwater Municipal Code Enforcement Board's September 30, 2015, "Repeat Violation" Order. We affirm.

**Statement of Facts**

After an evidentiary hearing, the City of Clearwater, Florida, Code Enforcement Board made findings of fact that "an illegal short-term rental was advertised on the web from August 11 to 21, 2015." The Board concluded that Mr. Paddock violated City of Clearwater Community Development Code section 1-104B and section 3-919. Further, the Board determined that Mr. Paddock violated these same Code sections on March 15, 2015. Therefore, Mr. Paddock's actions in August 2015 constitute repeat violations

of the Code.

### **Standard of Review**

Under section 162.11, Florida Statutes (2015), an appeal of a code enforcement board's order to the circuit court "shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board." Sarasota County v. Bow Point on Gulf Condo. Developers, LLC, 974 So. 2d 431, 433 n.3 (Fla. 2d DCA 2007). When the circuit court in its appellate capacity reviews local governmental administrative action, there is a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative agency's findings and judgment are supported by competent, substantial evidence. Lee County v. Sunbelt Equities, II, Ltd. P'ship, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). The circuit court is not entitled to make separate findings of fact or to reweigh the evidence. Haines City Cmty. Dev. v. Heggs, 658 So. 2d 523, 529 (Fla. 1995).

### **Analysis**

#### **Procedural Due Process**

Procedural due process requires both fair notice and a real opportunity to be heard at a meaningful time and in a meaningful manner. Massey v. Charlotte County, 842 So. 2d 142, 146 (Fla. 2d DCA 2003). Appellant does not raise a due process argument.

#### **Essential Requirements of Law and Competent Substantial Evidence**

Appellant raises two arguments:

1. "If an appellee fails to substantiate and prove competent evidence at the board hearing to prove in fact that appellant was in violation of code sections, a final order with substantial fines shall not be given."
2. "Without limitation, the final order is invalid because evidence heard was complete hearsay testimony, hearsay statements, hearsay documents, and improper authentication on any of alleged documents."

In the Answer Brief, the Board explains that Mr. Paddock owns property at 738 Mandalay Avenue, Clearwater, Florida, that is located in a residential zoning district. Code Section 1-104B provides: "No building, structure, water or land shall be used or occupied, and no building, structure, or land shall be developed unless in conformity

with all of the provisions of the zoning district in which it is located, all applicable regulations, and all development approvals."

Clearwater Community Development Code section 8-102 – Definitions, states in part:

*Residential use* means a permanent place of residence for a family. A residential use located on residentially zoned property shall not include rentals for periods of less than 31 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place rented for periods of less than 31 days or one calendar month, whichever is less. A residential use located on residentially zoned property shall not include an interval ownership, a fractional ownership, or a timesharing unit.

Clearwater Community Development Code section 3-919 provides:

Prima facie evidence of certain uses located in any residential zoning district, consisting of rentals for periods of less than 31 days or one calendar month, whichever is less, and advertising or holding out to the public as a place rented for periods of less than 31 days or one calendar month, whichever is less, shall include but not be limited to one or more of the following:

- (1) Registration or licensing for short-term or transient rental use by the state under Florida Statutes, Chapters 212 (Florida Tax and Revenue Act) and 509 (Public Lodging Establishments);
- (2) Advertising or holding out a dwelling unit for tourist housing or vacation rental use;
- (3) Reservations, booking arrangements or more than one signed lease, sublease, assignment or any other occupancy agreement for compensation, trade, or other legal consideration addressing or overlapping any period of less than 31 days or one calendar month, whichever is less; or
- (4) Use of an agent or other third person to make reservations or booking arrangements.

## **Discussion**

Section 162.07(3), Florida Statutes (2015), states in part that formal rules of evidence shall not apply to a code enforcement board hearing, but fundamental due process shall be observed and shall govern the proceedings. Hearsay evidence alone is not sufficient to support a finding. However, hearsay evidence that is corroborated by otherwise competent, substantial evidence, may support an administrative

determination. See Spicer v. Metro. Dade County, Political Subdivision of State of Fla., 458 So. 2d 792, 794 (Fla. 3d DCA 1984).

In the present case, Code Enforcement Inspector Julie Phillips presented a Power Point presentation and testified about Petitioner's residential property being advertised on the Internet for daily and weekly rentals from August 11 through August 21, 2015. (Resp. App. Ex. A, p. 1-6; Ex. C, p. 4-6). The subject property was listed for short-term rental on the Trip Advisor website that has changed its name to "Florida Fantasy Beach Rental."

Steve Curtis, a neighbor to the subject property, testified that multiple times he has observed tenants in the subject property for a period of one week. Mr. Curtis testified that in conversations with several of the tenants he was informed by the tenants that they were renting the subject residence for one week. (Resp. App. Ex. C, p. 6-9). A second neighbor, Samuel Hutkin, testified and confirmed Mr. Curtis' observations and testified that he also had been told by tenants that they were renting the subject property for one week. (Resp. App. Ex. C, p. 9-10).

Appellant, Bradley Paddock, did not appear at the hearing. However, his wife, Jeanie Paddock, appeared and testified. Ms. Paddock admitted that there was a prior violation of the Code for this residential property, but indicated that the property had been in compliance with the Code thereafter. (Resp. App. Ex. C, p. 32). This admission is sufficient to support the Board's finding that the August 11 through 21, 2016, advertisements of the subject property constitute repeat violations of the Code.

Ms. Paddock admitted that the photographs of the house on the internet website presented in Inspector Phillips' Power Point presentation are photographs of the subject property. (Resp. App. Ex. C, p. 6-9, 11-13). However, she asserted that the description of the house contained in the internet advertisement does not accurately describe the residence that is the subject of this action. Ms. Paddock testified that she and her husband did not authorize their house to be placed on the Trip Advisor/Florida Fantasy Beach Rental website, only on the "Beach House Florida" website. (Resp. App. Ex. C, p. 14-17, 18-19). Ms. Paddock did concede that the photographs on the internet website advertising a vacation rental are photographs of the subject residential property. (Resp. App. Ex. C, p. 19).

In response to the testimony of the neighbors concerning weekly rental of the subject property to tenants, Ms. Paddock explained that she had her husband have nine children who use the residence. Ms. Paddock speculated that their children were the "tenants" observed by the neighbors. (Resp. App. Ex. C, p. 10). However, Ms. Paddock had no calendar or information as to when these family members used the residence and explained that the children "just do it when it's empty and they can." (Resp. App. Ex. C, p. 22).

### **Conclusion**

This Court concludes that procedural due process was accorded.

Code Section 3-919 provides that advertising residential property rentals for tourist housing or vacation rental use for a period of less than thirty-one days is prima facie evidence of a Code violation. On appeal, this Court is to determine whether the administrative agency's findings and Order are supported by competent, substantial evidence. This Court is not to reweigh the evidence.

This Court concludes that competent, substantial evidence supports the Board's September 30, 2015, order, and the essential requirements of law have been observed.

Affirmed.

**DONE AND ORDERED** in Chambers in Clearwater, Pinellas County, Florida, this  
20 day of August, 2016.

Original Order entered on August 20, 2016, by Circuit Judges Linda R. Allan, Jack R. St. Arnold, and Keith Meyer.

Copies furnished to:

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