

**NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED**

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PIENLLAS COUNTY, STATE OF FLORIDA
APPELLATE DIVISION**

**REF: 19-000051-AP-88A
UCN: 522019AP000051XXXXCI**

**JOHN J. LIU,
Appellant,**

-vs-

**PINELLAS COUNTY CONSTRUCTION
LICENSING BOARD,
Appellee.**

_____/

Opinion Filed _____

Appeal from a Final Administrative
Order from the Pinellas Construction
Licensing Board

John J. Liu
Appellant

Jacina Haston, Esq.
Attorney for Appellee

PER CURIAM

John J. Liu appeals the December 13, 2019 Amended Final Administrative Order Assessing Fine of the Special Magistrate Langford W. White. Upon consideration of the briefs, the record and being otherwise fully advised this Court affirms the Amended Final Administrative Order Assessing Fine.

Statement of Facts

This is an appeal of an Amended Final Administrative Order Assessing Fine from the Pinellas County Construction Licensing Board (“PCCLB”) Special Magistrate (as amended December 13, 2019) finding Appellant violated Florida Building Code, 5th Edition (2014)-Building, Florida Statute § 489.129(1)(o) and section 24(2)(n), Chapter 75-489, Laws of Florida and further assessing and ordering a civil penalty, fines and costs against Appellant.

On or about July 3, 2018, the PCCLB issued Administrative Complaint A18-2010 to Appellant by certified mail. The nature of the violation was that Appellant, a Florida licensed certified building contractor, had allowed building permit #14-11001095 issued by the City of St. Petersburg for construction activity at 4629 25th Ave. South, St. Petersburg, FL (“Property”) on November 25, 2014 to expire

without obtaining the required inspections. On January 4, 2019, Appellant elected to refute the Administrative Complaint and requested an informal hearing. On July 16, 2019, a hearing was held before Special Magistrate Langford White on Administrative Complaint A18-2010. Appearing at the proceeding were counsel for the PCCLB, Jacina Haston, Senior Assistant County Attorney, Appellant, John J. Liu and Todd Myers, an Investigation Manager of the PCCLB.

Mr. Myers testified that Appellant was issued a permit to renovate the Property on November 25, 2014. Appellant was the principal contractor named on the permit. Appellant asked for and received multiple extensions on the property, but allowed the permit to expire on October 2, 2017 without a final inspection of the Property. This testimony was not disputed by Appellant.

Mr. Liu testified that he had obtained final approval on the electrical, plumbing and the roofing work, but could not obtain approval for the mechanical portion of the permit as no subcontractor had been selected to complete that work. Appellant testified that he allowed the permit to expire at the request of the Property owner,

Robert Kilgo, as Mr. Kilgo was undecided on how he wished to proceed with the project. Appellant submitted, without objection, an affidavit of the owner stating:

“10. Owner was fully aware that the Permit would expire and was prepared to pay a \$250 administrative fee to the City of St. Petersburg to reinstate the Permit at such time Owner made a final decision as to the AC system.”

Appellant further testified that while the permit was expired Appellant did not proceed with any work on the property. Appellant could not obtain inspections until the mechanical subcontractor completed its portion of the job. Appellant conceded that he was aware that he could have extended the permit for the charge of \$250 for 30 days. Appellant testified that he never received any notice that he was in violation of any statute, ordinance or regulation until he received the Administrative Complaint. Upon receiving the Administrative Complaint, Appellant notified Mr. Kilgo and obtained his permission to complete the project. Appellant reinstated the permit and obtained all of the final inspection approvals.

The Special Magistrate found, based on the evidence presented, that Appellant did engage in the business of construction by

obtaining permit 14-11001095 for construction activity at the Property but allowed said permit to expire without required inspections as required by Pinellas County and in violation of Florida Statute § 489.129(1)(m)(o). The Special Magistrate also found that the notice of the licensing law violation and notice of Administrative Complaint and Hearing were mailed to Appellant by certified mail. This timely appeal followed.

Standard of Review

The standard of review for a final administrative order of an enforcement or licensing board shall not be a hearing *de novo*, but shall be limited to the appellate review of the record created before the enforcement board. Fla. Stat. § 162.11. The circuit court's review of an administrative action is limited to three elements: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether there was competent, substantial evidence to support the administrative findings. *See Falk v. Scott*, 19 So. 3d 1103, 1104 (Fla. 2d DCA 2009).

The appellate court examines the record to determine whether the lower tribunal had before it competent substantial evidence to

support its findings and judgment which also must accord with the essential requirements of the law. *DeGroot v. Sheffield*, 95 So. 2d 912, 912 (Fla. 1957). The appellate court is not "permitted to reweigh conflicting evidence and is primarily relegated to assaying the record to determine whether the applicable law was applied in accordance with established procedure." *Dade County v. Gayer*, 388 So. 2d 1292, 1294 (Fla. 3d DCA 1980).

Discussion

Appellant raises three issues in his Brief. Appellant's first issue is that the Special Magistrate expanded the clear statutory directive in abrogation of legislative power when he found that by allowing the permit on the property to expire Appellant violated the Florida Building Code, 5th Edition (2014)-Building, Florida Statute § 489.129(1)(o) and section 24(2)(n), Chapter 75-489, Laws of Florida. Appellant argues that the language of § 489.129(1)(o) prohibits a contractor from "[p]roceeding on any job without obtaining applicable local building department permits and inspections." Appellant's position is that he did not "proceed" with any work on the Property while the permit was expired. Appellant argued to the Special

Magistrate that “proceed” as defined by the Merriam-Webster Dictionary as “to move or go forward or onward, especially after stopping”. Appellee responds that “proceed’ is also defined as “to begin”. Appellant began a remodel at the subject property and requested extensions until the permit expired on October 2, 2017.

The Special Magistrate found that the Appellant did engage in the business of construction by obtaining a permit, but allowed said permit to expire without required inspections as required in Pinellas County and therefor was in violation of the Florida Building Code, 5th Edition (2014)-Building; § 489.129(1)(o), Florida Statutes and 24(2)(n), Chapter 75-489, Laws of Florida.

Competent substantial evidence must exist to support the findings of a code enforcement board or special magistrate. Competent substantial evidence is defined as such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. *DeGroot*, 95 So. 2d at 916. 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). Although Appellant has provided reasons for not extending the

permit, there is no dispute that the permit expired without the required inspections as required in Pinellas County.

Appellant argues that the findings of the Special Magistrate were not supported by competent substantial evidence as no evidence was offered that Appellant “proceeded” on the job or that PCCLB visited the Property. The testimony by Mr. Myers, the Investigation Manager of the PCCLB was that the permit expired without the final inspections as required by statute. Again, there is no dispute that the permit expired without the required inspections. There is nothing in the record to suggest the Special Magistrate relied on any other evidence than was presented at the hearing. The Special Magistrate’s findings are based on the plain unambiguous language of the statute which required inspections prior to the expiration of the permit.

Appellant’s last issue is that he was deprived of due process when the only notice received was the PCCLB’s notice of violation. There is no duty of the PCCLB to notify anyone that failure to obtain inspections prior to the expiration of the permit can result in a violation. The PCCLB afforded the Appellant proper notice upon the

service of the Administrative Complaint. Count 1 of the Administrative Complaint states that Appellant obtained permit 14-11001095 and failed to obtain inspections of the work prior to the expiration of the permit. Count I also states that Appellant violated Florida Building Code, 5th Edition (2014)-Building, Florida Statute § 489.129(1)(o) and section 24 (2)(n), Chapter 76-489, Laws of Florida, as amended, for failing to obtain the inspection of the work. Appellant received notice of the Administrative Complaint by certified mail and requested an informal hearing. After his request for a hearing, Appellant received a letter by certified mail informing him of the date of the hearing, July 16, 2019. PCCLB complied with the notice requirement of Florida Statute § 162.12. The Appellant was given notice and an opportunity to be heard. Appellant was provided due process and proper notice.

Conclusion

This Court concludes that procedural due process was accorded, the essential requirements of law have been observed and the Special Magistrate's Final Administrative Order Assessing Fine is

supported by competent, substantial evidence.

Accordingly, it is hereby

ORDERED AND ADJDUDGED that the Final Administrative Order Assessing Fines is affirmed.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this _____ day of _____, 2022.

TRUE COPY

Original Order entered on April 8, 2022, by Circuit Judges Sherwood Coleman, Keith Meyer, and George M. Jirotko.

Copies furnished to:

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