

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

LINCOLN SZIRANKO,
Petitioner,

REF: 21-000021-AP
UCN: 522021AP000021XXXXCI

v.

PINELLAS COUNTY CONSTRUCTION
LICENSING BOARD,
Respondent.

Opinion filed 03/13/2023

On Appeal from Final Administrative Order of the
Pinellas County Construction Licensing Board

Clayton Thomas Osteen, Esq.
Counsel for Petitioner

Jacina Parson, Esq.
Counsel for Respondent

PER CURIAM

Petitioner, Lincoln T. Sziranko, seeks appellate review of a Final Administrative Order Assessing Fine, entered on August 2, 2021 by the Pinellas County Construction Licensing Board (hereafter, "PCCLB"). This Court has direct appellate jurisdiction pursuant to Art V § 5(b), Fla. Const., Fla. Stat. 162.11, Fla. Stat. 489.127(5)(j),, and Fla. R. App. P.

9.030(c)(1)(C). Following review, we affirm the decision of the lower tribunal.

STATEMENT OF FACTS

Petitioner, Lincoln T. Sziranko, is a licensed contractor in the State of Florida. On or about April 30, 2020, Mr. Sziranko was issued two citations for violations of Pinellas County Code §§ 22-14(1), (6) relative to remodeling on a residential property. One Stop Home Design Studio LLC, a Florida limited liability company, was responsible for the remodeling.

Mr. Sziranko was cited by the PCCLB Investigator for violations of: Pinellas County Code § 22-14(1) for engaging in the activity of contracting for kitchen and bathroom remodel involving electrical when One Stop Home Design Studio LLC does not hold an active construction license with the PCCLB; and Pinellas County Code § 22-14(6) for advertising via estimate/invoice #0.0001 for kitchen and bathroom remodel involving electrical when One Stop Home Design Studio LLC does not hold an active construction license with the PCCLB.

On August 2, 2021, the PCCLB held a hearing, wherein the magistrate found Lincoln Sziranko violated Pinellas County Code §§ 22-14(1), (6) and ordered the Petitioner to pay \$4,111.60 in aggregate fines

and costs. Petitioner, Lincoln Sziranko, appeals the Final Administrative Order Assessing Fine.

STANDARD OF REVIEW

According to both Fla. Stat. § 162.11 and Fla. Stat. § 489.127(5)(j), the “appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board.”¹

The Supreme Court of Florida, in City of Deerfield Beach v. Vaillant, 419 So.2d 624 (Fla. 1982), held that where full review of administrative action is given in the circuit court as a matter of right, the circuit court must determine: (1) whether procedural due process is accorded, (2) whether the essential requirements of law have been observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence.

¹ Many trial and appellate courts have assumed that the certiorari standard of review should be applied to the “appeal” described in Fla. Stat. § 162.11. See e.g., Sarasota County v. Bow Point on Gulf Condominium Developers, LLC, 974 So.2d 431 (Fla. 2d DCA 2007). However, in a recent decision by the Fifth District Court of Appeal, that court held that the correct standard of review pursuant to Fla. Stat. § 162.11 is the plenary appeal standard of review. Central Florida Investments, Inc. v. Orange County, 295 So.3d 292 (Fla. 5th DCA 2019). This Court does not decide today which standard of review is correct, and instead applies the standard of review utilized by the Florida Supreme Court in City of Deerfield Beach v. Vaillant, 419 So.2d 624 (Fla. 1982).

ANALYSIS

On appeal, Petitioner argues that (1) the PCCLB lacks authority and jurisdiction to discipline the Petitioner; (2) the citations and order deprived the Petitioner of due process; (3) the PCCLB's actions did not comply with Fla. Stat. § 489.113(4)(d); and (4) the magistrate's findings are not supported by competent, substantial evidence.

First, the requirements of procedural due process pursuant to the United States Constitution, as well as the Florida Constitution, are fair notice and a reasonable opportunity to be heard. Housing Authority of City of Tampa v. Robinson, 464 So.2d 158, 164 (Fla. 2d DCA 1985). "[T]here is ... no single, unchanging test which may be applied to determine whether the requirements of procedural due process have been met." Hadley v. Department of Administration, 411 So.2d 184, 187 (Fla. 1982). These are flexible concepts to be discerned from the facts of each case. Mathews v. Eldridge, 424 U.S. 319 (1976).

It is clear from the record that Petitioner, Lincoln Sziranko, was provided with fair notice and a reasonable opportunity to be heard. Mr. Sziranko received verbal warnings during the investigation, was issued written citations upon which he was informed of his rights to request a hearing, and in fact was provided with a Notice of Hearing dated July 22,

2021 for the hearing that actually occurred on August 2, 2021.

Notwithstanding that these facts are enough to conclude that Petitioner was in fact afforded due process of law, Petitioner further argues that the Respondent was also required to issue a "Notice of Non-Compliance" pursuant to Fla. Stat. § 489.113(4)(d).

The relevant citation procedures for violations of the Pinellas County building code are located at Pinellas County Code § 22-12 – Citation Procedures. Any requirement that Respondent should issue a written "Notice of Non-Compliance" to Petitioner is absent from § 22-12. Testimony from the investigator revealed that following verbal warning, Petitioner was issued citations that clearly stated the violations of §§ 22-14(1), (6), was given an opportunity to be heard, and was actually heard on August 2, 2021. Petitioner was afforded due process of law without the additional requirement of a "Notice of Non-Compliance."

Second, whether the essential requirements of law have been observed hinges upon the lower tribunal's application of the correct law. Haines City Community Development v. Heggs, 658 So.2d 523, 531 (Fla. 1995). A deviation from the essential requirements of law entails a violation of a clearly established principle of law resulting in a miscarriage of justice. Id.

Petitioner argues that a violation of a clearly established principle of law occurred because the PCCLB is without jurisdiction and authority to discipline the Petitioner. However, the PCCLB operates pursuant to the PCCLB Special Act CHAPTER, 75-489 LAWS OF FLORIDA. Specifically, "Section 12. Pinellas County Construction Licensing Board; organization; meetings, and powers." authorizes the PCCLB:

"to adopt rules and regulations in accordance with s. 162.08, Florida Statutes;" [and]... "to employ investigators or inspectors to enforce the provisions of this part and to issue citations in accordance with s. 489.127(3), Florida Statutes, for violation of this part;"

Accordingly, this Court must conclude that the PCCLB was acting within its jurisdiction to enforce provisions of the Pinellas County Code and, by reference, certain provisions of Chapter 489, Florida Statutes. The PCCLB was acting in observance of the essential requirements of law.

Third, whether the administrative findings and judgment are supported by competent substantial evidence demands an honest look at the evidence. Wiggins v. Florida Dep't of Highway Safety & Motor Vehicles, 209 So. 3d 1165 (Fla. 2017). The evidence cannot be untruthful or nonexistent. Id. Competent, substantial evidence must be reasonable and logical. Gonci v. Panelfab Prods., Inc., 179 So.2d 856, 858 (Fla. 1965).

Nothing in the record suggests that the magistrate's findings and judgment are supported by untruthful or nonexistent statements, or that the findings are unreasonable or illogical. This Court may not reweigh the evidence or substitute its judgment for that of the PCCLB. Heggs, 658 So.2d at 530. Testimony from the investigator linking Lincoln Sziranko's licenses to the construction permits is enough to rebut Petitioner's argument that Mr. Sziranko was not affiliated with One Stop Home Design Studio LLC, and the overall conclusion of violation is sufficiently supported by competent substantial evidence.

DISPOSITION

Affirmed.

ORDERED in Chambers at Clearwater, Pinellas County, Florida, this

13th day of March, 2023.

Original Order entered on March 13, 2023, by Circuit Judges Sherwood Coleman, George Jirotko, and Patricia A. Muscarella.

Copies furnished to:

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