

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

BLUE MARTINI BOCA, LLC,  
Appellant,

APPELLATE DIVISION (CIVIL): AY  
CASE NO: 50-2018-CA-003563-XXXX-MB

v.

CITY OF BOCA RATON,  
Appellee.

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Opinion filed: **APR 16 2019**

Appeal from the Order of Harry Hipler, Esq., Special Magistrate of the City of Boca Raton, Florida.

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PER CURIAM.

Appellant, Blue Martini Boca, LLC (“Blue Martini”), appeals an “Order Imposing Fine Repeat Violation” (“Order”) by a special magistrate of the City of Boca Raton, Florida, issued on February 21, 2018. In the Order, the special magistrate found in favor of the City of Boca Raton

("the City"), imposing \$45,000.00 in fines against Blue Martini as a repeat violator of section 10-55 of the City Code, which prohibits "excessive or unusually loud" noise. On appeal, Blue Martini asserts the special magistrate misapplied the law, and that the special magistrate's Order is not based on competent, substantial evidence. We disagree with Blue Martini's argument with respect to eight of the nine fines imposed in the Order, and affirm the special magistrate's Order as to those fines without further comment. However, we find that one of the nine fines the special magistrate assessed against Blue Martini as a repeat violator of section 10-55 of the City Code constitutes a departure from the essential requirements of the law.<sup>1</sup>

Upon review of an administrative action, the circuit court is limited to a three-pronged determination: (1) "whether procedural due process is 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." *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). As Blue Martini made no procedural due process argument, we focus solely on whether the special magistrate observed the essential requirements of the law in his Order, and, if so, whether the Order imposing fines for repeat violations was based on competent, substantial evidence.

"Failure to observe the essential requirements of law means failure to accord due process of law within the contemplation of the Constitution, or the commission of an error so fundamental in character as to fatally infect the judgment and render it void." *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 527 (Fla. 1995) (internal citations and quotations omitted). "A departure from the

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<sup>1</sup> Although Blue Martini does not directly argue that the \$10,000.00 total fine amount assessed for violations that took place on January 17, 2018 exceeds the daily maximum allowed by law, we find such an argument intertwined with Blue Martini's position that the special magistrate departed from the essential requirements of law, and therefore find the issue sufficiently raised for our review.

essential requirements of law is synonymous with the failure to apply the correct law.” *United Auto. Ins. Co. v. Peter F. Merkle, M.D., P.A.*, 32 So. 3d 159, 161 (Fla. 4th DCA 2010) (citing *State v. Belvin*, 986 So. 2d 516, 525 (Fla. 2008)).

Under section 162.09, Florida Statutes, the fines imposed by a special magistrate cannot exceed “\$5,000.00 per day per violation for a repeat violation.” § 162.09(2)(d), Fla. Stat. (2018). Here, the special magistrate imposed two \$5,000.00 fines for repeat violations that took place on January 17, 2018; one at approximately 10:00 p.m., and the other at approximately 11:10 p.m. Because the special magistrate exceeded the \$5,000.00 statutory daily maximum for repeat violators, we find the special magistrate departed from the essential requirements of the law by imposing a second \$5,000.00 fine for this date.

Accordingly, we **AFFIRM** the special magistrate’s “Order Imposing Fine Repeat Violation” with respect to eight (8) of the nine (9) fines. However, because we find the second \$5,000.00 fine assessed for January 17, 2018, exceeded the statutory daily maximum contained in section 162.09(2)(d), Florida Statutes, we find the special magistrate departed from the essential requirements of the law with respect to the imposition of that fine. We therefore **REVERSE** the special magistrate’s second \$5,000.00 fine imposed for January 17, 2018, leaving Blue Martini with a total amount of \$40,000.00 in fines.

SMALL, GOODMAN, and J. KEYSER, JJ., concur.

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Special Magistrate of the City of Boca Raton,  
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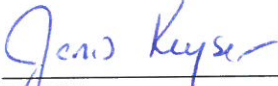
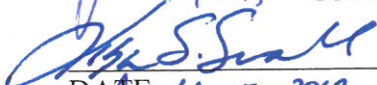
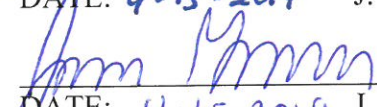
Date of Appeal: March 23, 2018

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DATE OF PANEL: FEBRUARY 19, 2019

PANEL JUDGES: SMALL, GOODMAN, J. KEYSER

AFFIRMED/REVERSED/OTHER: AFFIRM IN PART, REVERSE IN PART

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With/Without Opinion	)	With/Without Opinion	)
	)	_____	)	_____	)
DATE: <u>4-15-2019</u> J.	)	J.	)	J.	)
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DATE: <u>4-15-2019</u> J.	)	J.	)	J.	)
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DATE: <u>4-15-2019</u> J.	)	J.	)	J.	)