

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

APPELLATE DIVISION (CIVIL): "AY"
Case No.: 502011CA006044XXXXMB
L.T. No.: C2011-01100001

ISAAC FEDER,

Appellant,

v.

PALM BEACH COUNTY,

Appellee.

Opinion filed: **NOV 29 2011**

**Appeal from Palm Beach County Code Enforcement Final Order,
Special Magistrate Carolyn Ansay.**

For Appellant/Petitioner: Ester Zaretsky, Esq., 1655 Palm Beach Lakes Boulevard, Suite
900, West Palm Beach, Florida 33401

For Appellee/Respondent: Paul F. King, Esq., Assistant County Attorney, 301 North Olive
Avenue, Suite 601, West Palm Beach, Florida 33401

PER CURIAM.

REVERSED AND REMANDED. On January 13, 2011, Palm Beach County Code Enforcement Officer, Mr. Elpidio Garcia of the Palm Beach County Planning, Zoning, & Building Department's Code Enforcement Division issued a Notice of Violation (Complaint Number C-2011-01100001) to Mr. Isaac Feder ("Appellant") due to his violation of Section 110.1 of the Palm Beach County Code Amendments to the Florida Building Code 2007 Edition. The violation cited Appellant for failing to obtain a new Certificate of Occupancy for his condominium unit at 17 Golf's Edge in the Century Village Complex in West Palm Beach based on what Palm Beach County ("the County") considered a change of his occupancy of that unit.

Both Appellant and the County appeared at a March 23, 2011 hearing before a Special Magistrate. Both sides presented testimony and evidence and at the conclusion of the hearing, the Special Magistrate determined that a continuing violation of Section 110.1¹ existed such that Appellant was in violation of the Florida Building Code.

This Court has jurisdiction to review the decision of the Special Magistrate. § 162.11, Fla. Stat. (2010) and Fla. R. App. P. 9.030(c). The standard of review this Court must apply when evaluating the Special Magistrate's administrative finding is limited to a three-prong test. First, this Court must determine whether the Special Magistrate afforded Appellant procedural due process. Second, this Court must determine whether the Special Magistrate observed the essential requirements of law and last, whether the Special Magistrate's findings and judgment are supported by competent substantial evidence. *Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). The Court does not have discretion to widen or narrow this standard. *See Dep't of Highway Safety and Motor Vehicles v. Allen*, 539 So. 2d 20, 20 (Fla. 5th DCA 1989).

Appellant argues that the Order of the Special Magistrate made no specific finding of fact in ruling that Appellant was in violation of Section 110.1 of the Florida Building Code and further, she made no findings of fact nor instruction when she ordered Appellant to come into compliance within 30 days. While Appellant raises other issues on appeal, this Court limits its discussion to this issue as we find it to be dispositive of this matter.

Section 162.07(4), Fla. Stat. (2011) details the process by which code enforcement hearings are conducted and specifically, with regard to the issue of factual findings, provides that "[a]t the conclusion of the hearing, the enforcement board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief

¹ "No building or structure shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a Certificate of Occupancy."

consistent with powers granted herein.” The Final Order of the Special Magistrate recites the following “findings of fact:”

1. Respondent, Issac Feder, whose mailing address is 11 Sasev Ct. 105, Monroe, NY 10950-5939 is the owner(s) or person(s) in charge of the property located at 17 Golfs Edge, Unit 2 Bldg. E, West Palm Beach, FL (00-42-43-23-08-005-0172).
2. Respondent(s) received notice of the code violations cited above and was given reasonable time to correct said violations. Respondent(s) failed to correct said violations within the allotted time.
3. At the time of hearing, the violations cited about continued to exist.

The Special Magistrate’s findings of fact are followed by her “conclusions of law:”

1. Respondent, by reason of the foregoing is in violation of the Codes as cited above, and is therefore subject to the provisions of Article 10 of the Palm Beach County Unified Land Development Code, under the authority of Chapter 162 of Florida Statutes, as may be amended.

Although the Order finds that Appellant is in continued violation of Section 110.1, neither the Order itself nor the transcript of the hearing actually makes a finding of fact which illustrates the record evidence upon which the Special Magistrate relied in determining that Appellant changed the residential nature of his unit. At the hearing, the Special Magistrate’s oral findings are limited to the following statements:

But I am going to, based on the evidence presented this afternoon, find that there is indeed a violation of Section 110.1 of the Florida Building Code as amended and adopted by Palm Beach County; in that there – the provisions of 110.1 related to use and occupancy.

I’m going to order that the respondent come into compliance with that code section within 30 days of today’s date. In the event that there is not compliance within 30 days of today’s date then, in that event, there will be a fine of \$100 per day for every day of noncompliance thereafter.

It is impossible for this Court to consider, on appeal, whether the Special Magistrate observed the essential requirements of law and based her findings on competent substantial evidence when there is nothing in the record indicating what findings were made. The Special Magistrate’s

failure to make such findings, as required by section 162.07(4), was itself a departure from the essential requirements of law. Therefore, the Order of the Special Magistrate is REVERSED and REMANDED to provide an opportunity for the Special Magistrate to make detailed findings of specific facts that support the conclusion of law that Appellant is in violation of Section 110.1 based on a change in the existing occupancy of his unit.

Appellant's Motion for Attorney's Fees is DENIED. Appellant has not articulated any valid grounds upon which he is entitled to an award of fees. *See Welch v. Welch*, 22 So. 3d 153, 156 (Fla. 1st DCA 2009).

KEYSER, ROSENBERG, and BROWN, JJ., concur.