

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

ALEXANDER GREGORY,

APPELLATE DIVISION (CIVIL)

CASE NO.: 502008CA039996XXXXMB

Petitioner,

Appealed from the City of Atlantis, Florida

v.

CITY OF ATLANTIS, FLORIDA,

Respondent.

Opinion filed:

October 5, 2009

✓ Appeal from the City of Atlantis, Florida

✓ For Petitioner: Matthew L. Schneider, Esq., Joseph E. Altschul, Esq., 717 West Cypress
Creek Road, Fort Lauderdale, FL 3309

/ For Respondent: Keith W. Davis, 1111 Hypoluxo Road, #207, Lantana, FL 33462

PER CURIAM.

On April 17, 2008, a code enforcement special magistrate for the City of Atlantis found Alexander Gregory in violation of Section 9-28 of the City Code for operating an unauthorized business in his home. On July 17, 2008, the special magistrate found him to be in compliance, having cured the violation. On November 3, 2008, Atlantis sent Gregory notice of repeat violation and notice of hearing for unlawful business operations out of home. The special magistrate held an evidentiary hearing on this violation on November 20, 2008. The magistrate found that based on the evidence and testimony Gregory was in repeat violation of Section 9-28 of the Code. The special magistrate assessed a fine of \$250.00 per day since the code inspector determined that the property was not in compliance to run until the date the property was brought back into compliance.

Section 2-97 of the City Code provides that:

The enforcement board, upon notification by the code inspector that a previous order...has not been complied with by the set time, may order the violator to pay a fine not to exceed \$250.00 for each day that the violation continues past the date set for compliance for a first violation and may order the violator to pay a fine not to exceed \$500.00 for each day the violation continues past the date set for compliance for a repeat violation.

Although the order states that it is to be complied with immediately, the order fails to set a compliance date.

The order additionally found that fines would be assessed beginning on July 18, 2008, the date that the code inspector found Gregory to be out of compliance. Florida Statute section 162.09(1), in contrast to section 2-97 of the City Code, provides that fees are to be assessed each date a repeat violation continues beginning with the date the repeat violation is found to have occurred by the code inspector. The City failed to follow Section 2-97 of its Code because that section of the City Code would begin to assess fees the date that compliance was set by order, not the date the inspector found the violation to have occurred. The Petition for Writ of Certiorari is **GRANTED** and the matter is remanded to the lower tribunal so the City may set a compliance date for which the fees may begin to run for a repeat violation.

FRENCH, KELLEY, and ROSENBERG, JJ., concur.