IN THE THIRTEENTH JUDICIAL CIRCUIT FOR THE STATE OF FLORIDA
CIVIL APPELLATE DIVISION

CHEROKEE HOUSE, LLC,
Appellant,

v.

CITY OF TAMPA (Code Enforcement),
Appellee.

Appeal No.: 21-CA-5157
Division: H
L.T. No.: COD-21-0000283

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On review of a final order of the Code Enforcement Special Magistrate for the City of Tampa.

APPELLATE OPINION

This case is before the court to review a final order of the City of Tampa code enforcement special magistrate finding that Appellant Cherokee House, LLC, violated the code's proscription against short-term rentals when evidence showed an apparent attempt to rent the subject real property for fewer than seven days in violation of the property's residential zoning classification. Because no competent, substantial evidence shows that the property was actually rented for a period less than seven days, and the code does not address, much less prohibit, mere attempts to engage in short-term rental of real property, the order finding a violation and imposing fine departs from the essential requirements of law. Therefore, the order finding violation and imposing fine must be quashed.

This court has jurisdiction. §162.11, Fla. Stat.

On April 6, 2021, the City of Tampa issued a Notice of Violation to Cherokee House, LLC (principal Ken Goodstein) stating that the property was in violation of several sections of the City of Tampa Code of Ordinances. Specifically, the notice indicated that the property was in violation of Code Sections 27-43, 27-156, and Table 4-1 of 27-156.[1] The notice asserted that because the property is zoned for use as a "dwelling unit" it is prohibited from being rented out or leased for fewer than seven days.

A hearing on the violation was held before a City of Tampa Code Enforcement Special Magistrate on May 19, 2021. Violations must be proven by a preponderance of the evidence. §9-108(l), Tampa, Fla. Code. The City presented the testimony of Laurie Tiberio, who lives next door to the subject property. Her relationship with Mr. Goodstein is not a friendly one. As evidence of the violation, the City presented an apparent reservation, a confirmation of a reservation, and receipt of payment for a reservation from April 19, 2021 to April 22, 2021, that Ms. Tiberio made under a false name in

[1] The notice also cited the property as having violated section 27-326, Tampa, Fla. Code. This section is an informational provision; it does not itself mandate or prohibit any specific conduct with regard to the use of property.

January, 2021, and canceled a short time later. This was the only evidence of the purported rental.

In rebuttal, Appellant provided documentation indicating that the reservation, confirmation, and payment receipt were incomplete. The evidence Ms. Tiberio provided showed she booked a seven-day stay, which would be legal under the City Code, then added a four-day stay by way of an "alteration request." She then cancelled the seven-day booking, leaving the four-day booking intact for a brief time before cancelling it, too, leaving no reservation for those dates. Mr. Goodstein was not even aware of the four-day booking; it was cancelled before the service he uses to assist with renting the property could notify him.[2] Indeed, Mr. Goodstein showed that Ms. Tiberio had waged something of a campaign to catch, or intentionally create, a violation on the property, and that the City effectively enabled this conduct by citing the property for a violation *before* the alleged short-term rental had even occurred. Mr. Goodstein testified he would not rent the property for fewer than seven days, and the City had no evidence that the property had been rented for fewer than seven days in the previous two years.[3] In fact, it would seem impossible for the City to have proven its case here, considering that the April 6, 2021 notice of violation was issued *before* the dates of the manufactured reservation—April 19 through April 22—had occurred. Despite this, on May 24, 2021, the special magistrate issued a written order finding that the property was in violation of the code, that the violation was irreparable, and assessed a $2500 fine.

On May 20, 2021, after the hearing but before the issuance of a written order, Appellant issued a public records request under Chapter 119, Florida Statutes. The City provided responsive documents that showed it had withheld information reflecting that it had been corresponding with Ms. Tiberio since November, 2020, as well as exculpatory evidence that showed that Cherokee House had included a declaration in its rental listing as early as November, 23, 2020 that the home could only be rented for seven days or more in compliance with the code. Appellant sought rehearing, which is authorized under the city code, but rehearing did not take place because the city clerk lost all the exhibits.[4] This appeal followed. The parties have stipulated to the re-creation of the record for purposes of the appeal.

Decisions of code enforcement boards and magistrates are reviewed on appeal to determine whether Appellant was afforded due process, whether the decision comports with the essential requirements of law, and whether competent, substantial evidence supports the decision. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

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[2] Mr. Goodstein's unrebutted testimony was that a reservation had to be in place for at least 48 hours and paid for before he would be notified. That did not occur here.

[3] *Cf. Super Host, LLC v. City of Tampa,* Appeal Case No. 20-CA-5743 (Fla. 13th Jud. Cir. October 24, 2022), which contained competent evidence of a property rented for fewer than seven days' time, specifically, a *completed* two-day booking, photographs of occupants arriving, and neighbors' and a renter's testimony as to the length of the stay.

[4] The City claimed in its response that Petitioner did not seek rehearing.

Appellant contends that the order finding violation is not supported by competent, substantial evidence. Substantial evidence is "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). The court agrees with Appellant where the record contains no evidence that at the time of the notice of violation Appellant rented the property for less than the minimum rental period allowed in the property's zoning classification. The evidence showed that a scheduled reservation for fewer than seven days was made and cancelled so quickly that Appellant did not receive notification of the reservation.[5] Moreover, the rental never took place. Nothing presented to this court indicates that the code permits a code enforcement officer to issue a notice of violation for an attempted violation that has not actually occurred.[6] *See Canton v. Hillsborough County,* Civil Appeal No. 20-CA-3272 (Fla. 13th Jud. Cir. 2022) (the code does not permit a code enforcement officer to issue a notice of violation for an inchoate or attempted violation that has not actually occurred.) [7]

In light of the foregoing, it is unnecessary to discuss any other issues raised by Appellant.

It is therefore ORDERED that the Order Imposing Fine is QUASHED in Tampa, Hillsborough County, Florida, on the date imprinted with the Judge's signature.

Electronically Conformed 12/12/2022
Emmett L. Battles

Emmett L. Battles, CIRCUIT JUDGE

Electronic copies provided through JAWS

[5]Undisclosed evidence in the City's possession shows that Appellant's booking site required reservations to be a minimum of seven days. Although it is unfortunate that the City withheld this evidence, it is unnecessary to sustain this court's decision. As is explained in the opinion, the code does not prohibit an immature or unripe violation.

[6] This should not be read as precluding the City from issuing a warning, however.

[7] It is unfathomable to this court how a finding that a violation that has not occurred could be deemed irreparable, for there is nothing broken. For reasons set forth in this Court's recent decision in *Super Host, LLC v. City of Tampa,* Case No. 20-CA-5743 (Fla. 13th Jud. Cir. [Appellate] October 24, 2022), had a violation occurred it is accurate to say it would not be curable, but it could not be considered irreparable because only violations specifically deemed by the code to be irreparable may be considered as such. Such violations more closely fit the code's reference to *transient* violation. §§ 9-2 (defining "itinerant" or "transient" violation), 9-3(c), Tampa, Fla. Code.