

**IN THE CIRCUIT COURT FOR THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA**

SHAKEED KHAN,

Appellant,

v.

CASE NO.: CVA1 06-44
Consolidated with CVA1 06-45

CITY OF ORLANDO, FLORIDA,

Appellee.

An appeal from a decision of the
Code Enforcement Board,
City of Orlando, Florida.

Wayne C. Golding, Sr., Esquire,
for Appellant.

Victoria Cecil, Assistant City Attorney,
for Appellee.

Before T. SMITH, THORPE, AND PERRY, JJ.

PER CURIAM.

**FINAL ORDER AFFIRMING CODE ENFORCEMENT BOARD'S ORDER
DENYING REQUEST FOR RECONSIDERATION OF THE PENALTY**

The Appellant seeks review of the Code Enforcement Board's ("CEB") denial of his request for a reduction of the penalties it imposed on property owned by the Appellant. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(3) and section 162.11, Florida Statutes. This Court dispenses with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

On April 21, 2005, the CEB issued a Statement of Violation and Notice of Hearing on property located at 618 West Church Street. The Appellant was cited in two separate cases for zoning and commercial violations on this property. On May 11, 2005, the CEB entered two orders finding the Appellant in violation of certain provisions of the City Code. The orders also set a compliance schedule to correct those violations. The orders gave the Appellant until July 11, 2005, to bring the property into compliance or a \$250.00 daily penalty would be imposed.

On July 15, 2005, a code enforcement officer re-inspected the property and found that the property was still not in compliance. The property was brought into compliance on May 19, 2006. The CEB entered the order imposing the penalty and lien on June 6, 2006. The total amount of the penalty that accrued for each case was \$77,750.00 and \$78,000.00.

On June 5, 2006, the Appellant requested a reduction of the penalty for both violations. The Appellant sought a reduction due to his filing for Chapter 13 bankruptcy. On June 14, 2006, the CEB held a hearing on the request for reduction. As part of the hearing, the code enforcement officer and her supervisor submitted letters regarding the Appellant's request for reduction. The letters contained statements regarding the Appellant's history of past code enforcement violations. The CEB subsequently entered an order denying the request for a reduction. This appeal followed.

Pursuant to section 162.11, Florida Statutes, a circuit court's review of a quasi-judicial decision of a CEB is not a hearing de novo, but is limited to a review of the

record before the CEB. City of Deland v. Benline Process Color Co., Inc., 493 So. 2d 26, 27 (Fla. 5th DCA 1986). An appeal from the CEB is governed by a three part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of law have been observed; and (3) whether the administrative agency's findings and judgment are supported by competent substantial evidence. City of Deerfield Beach v. Vaillant, 419 So. 2d 624, 626 (Fla. 1982). The circuit court is not entitled to make separate findings of fact or to reweigh the evidence. Haines City Cmty. Dev. v. Heffs, 658 So. 2d 523, 529 (Fla. 1995).

The Appellant argues that the CEB violated his due process rights in considering unsworn letters from the code enforcement officer and her supervisor in denying the Appellant's request for reduction. The Appellant also asserts that the CEB erred when it considered the factors listed in section 162.09(2)(b), Florida Statutes, in determining whether to reduce the penalty. The Appellant contends that the CEB should only consider these factors when it initially imposes the penalty and not again at the reduction hearing. Lastly, the Appellant asserts that the CEB improperly focused on the fact he had declared bankruptcy and therefore, there would be no reason to reduce the penalty because due to the bankruptcy, the Appellant would be unable to pay the reduced penalty.

On the other hand, the Appellee asserts that the Appellant failed to demonstrate a deprivation of a constitutionally protected right, which is essential to a due process claim. In addition, the Appellee maintains that the CEB's order is supported by competent substantial evidence.

Pursuant to section 162.09(3), Florida Statutes, the CEB may reduce a fine that it imposed. While Chapter 162, Florida Statutes, authorizes the CEB to reduce a fine, it does not set forth procedure for the CEB to follow when considering a request for reduction. § 162.09(c), Fla. Stat. (2006). However, under section 162.08, Florida Statutes, the CEB is allowed to adopt and implement its own rules for the conduct of its hearings. Section IX of the CEB's Rules of Procedure requires the property owner to submit the appropriate request for reduction form along with any information detailing the financial, health, or other extenuating circumstances that precluded compliance within the prescribed time period to the recording secretary at least ten days prior to the next scheduled meeting. Paragraph two of Section IX provides that the code enforcement officer may submit written comments in response to the request for reduction. The CEB is supposed to receive the completed request and documentation in advance of the hearing so it may grant, deny, or approve a modification of the requested relief at the hearing. The rules further direct the CEB to make its determination based solely upon the written record and not on substantive issues involving the case itself.

Section 162.09(2)(b), Florida Statutes, states that “[i]n determining the amount of the fine, if any, the enforcement board shall consider the following factors: 1. the gravity of the violation; 2. any actions taken by the violator to correct the violation; and 3. any previous violations committed by the violator.” Based upon a plain reading of the statute, it does not appear that the CEB is necessarily precluded from considering these factors when deciding whether to grant a reduction. See Compton v. City of Kissimmee, 16 Fla. L. Weekly Supp. 230b (Fla. 9th Cir. Ct. Apr. 17, 2007) (finding that the CEB may

properly consider the factors set out in section 162.09(2)(b) when considering whether to grant a reduction).

Based on the foregoing, the CEB did not err in considering the letters from the code enforcement officers since the officers are allowed to submit written responses to the request for reduction. Further, there is no requirement in the CEB's rules of procedure that the code enforcement officer's written responses are made under oath. As stated above, the CEB may properly consider the statutory factors set out in section 162.09(2)(b), Florida Statutes, in considering a reduction of the penalty.

Lastly, while the transcript of the hearing reveals that the CEB did discuss the Appellant's ability to pay the penalty since he filed for bankruptcy, the transcript also shows that the CEB determined that whether the bankruptcy action survived was beyond the scope of the CEB's hearing on reducing the penalty. The CEB then focused on whether there were any other extenuating circumstances regarding the Appellant's inability to comply with the penalty before moving to a vote on the issue. Therefore, the CEB did not violate the Appellant's due process rights or fail to follow the essential requirements of the law.

This opinion is limited to the specific facts and circumstances of this case. It should not be interpreted to mean that the CEB can create rules and procedures that are unfair or unjust or that the code enforcement officer can submit comments in response to a request for reduction without regard to whether those comments are relevant, material, and truthful.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Code

Enforcement Board's "Order Denying Request for Reconsideration of the Penalty" is
AFFIRMED.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this
____30__ day of __March_____, 2009.

_____/S/_____
THOMAS B. SMITH
Circuit Court Judge

_____/S/_____
JANET C. THORPE
Circuit Court Judge

_____/S/_____
BELVIN PERRY, JR.
Chief Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail or hand delivery to **Wayne C. Golding, Esq.**, PO Box 4336, Orlando, Florida 32802-4336 and **Victoria Cecil, Esquire**, Assistant City Attorney, Orlando City Hall, 400 S. Orange Avenue, Orlando, Florida 32801 on this ____9__ day of ____April_____, 2009.

_____/S/_____
Judicial Assistant