

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

ALEXANDER HUNTING,

CASE NO.: 2011-CV-50

Appellant,

v.

ORANGE COUNTY, FLORIDA

Appellee.

Appeal from a decision of the
Code Enforcement Board,
Orange County, Florida.

Alexander Hunting, *pro se*,
for Appellant.

P. Andrea DeLoach, Esquire, Assistant County Attorney,
for Appellee.

Before BLACKWELL, SHEA, and DAVIS, J.J.

PER CURIAM.

FINAL ORDER AND OPINION AFFIRMING FINAL JUDGMENT

Appellant, Alexander Hunting, appeals from the order of the City of Orlando Code Enforcement Board (“Board”), dated May 18, 2011, which found Appellant to be in violation of section 9-277, 304.7, Orange County Code. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(C); and section 162.11, Florida Statutes (2011).

Appellant is the owner of the property located at 904 East Buchanon Avenue, Orlando, Florida 32809. On February 18, 2011, Christopher Boucher, an officer from the Orange County

Code Enforcement Division, inspected the property and cited it for violating section 9-277, 304.7, Orange County Code. Appellant was given until March 24, 2011 to take corrective action.

On May 18, 2011, a Code enforcement hearing was held regarding the violation on the property. The sole Code violation was section 9-277, 304.7, Roofs and Drainage. Appellant represented himself at the hearing. Officer Boucher testified and presented evidence of the violation at the hearing. Appellant testified on his own behalf, arguing that he did not replace his entire roof, but rather he merely performed up to 100 square feet of repair work, which he claims is permissible under the Code. Based upon the testimony and arguments heard at the hearing, the Board entered an order finding Appellant in violation of the Code for the single violation charged against him. The order required Appellant to cure the violation by June 17, 2011, or pay a fine of \$150 per day. This appeal followed.

When reviewing a decision by a code enforcement board, the circuit court must determine: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the administrative findings and judgment are supported by competent substantial evidence. *City of Deland v. Benline Process Color Co., Inc.*, 493 So. 2d 26, 28 (Fla. 5th DCA 1986) (quoting *City of Deerfield Beach v. Valliant*, 419 So. 2d 624 (Fla. 1982)). Also, according to section 162.11, Florida Statutes (2011), a circuit court reviewing a final administrative order of an enforcement board cannot engage in de novo review, and it shall limit its review to “the record created before the enforcement board.”

On appeal, Appellant argues that: 1) the board erred in using hypothetical reasoning and ignored the standards of evidence to reach an illogical conclusion based solely on speculation and hearsay; 2) the conclusion by an unqualified board in deciding questions of law violated his right to due process; and 3) the imposition of a cost in the form of a work/inspection permit or

the threat of a tax lien based on an unproven and unsubstantiated allegation for work that he never did violates the Florida Constitution, as well as the Fourth, Fifth, and Eighth Amendments. Conversely, Appellee argues that the order is supported by competent substantial evidence and the essential requirements of the law have been observed because the Code was not misapplied.

Appellant's main argument at both the hearing and on appeal appears to involve Appellant's contention that there was insufficient evidence to determine whether or not he violated the Code. Thus, argues Appellant, the County failed to offer competent substantial evidence of failure to obtain a roofing permit. Appellant is mistaken in his contention that the burden of proof for a Code violation is beyond a reasonable doubt. At the hearing, the County must present competent and substantial evidence of the existing Code violations. *See Heifetz v. Dept. of Business Regulation, Div. of Alcoholic Beverages & Tobacco*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985) (noting that "[i]t is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence"). Here, the County presented photographic evidence of the violation, along with the testimony of Officer Boucher. After this initial offer of evidence, Appellant was entitled to present evidence disproving the Code violations. Here, Appellant simply argues that he was repairing his roof, not replacing his roof, thus not refuting the County's evidence. Additionally, the essential requirements of the law were not violated because the current Code provisions were correctly applied to Appellant. Thus, the Court finds that the County provided competent and substantial evidence of the Code violation through its photographic evidence and Officer Boucher's testimony.

Appellant also argues that he was denied due process at the hearing. The amount of due process required in a quasi-judicial hearing “is not the same as that to which a party to a full judicial hearing is entitled, and such hearings are not controlled by strict rules of evidence and procedure.” *Seminole Entm’t, Inc. v. City of Casselberry*, 811 So. 2d 693, 696 (Fla. 5th DCA 2001) (citing *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So. 2d 996, 1002 (Fla. 2d DCA 1993)). In fact, evidence that is “irrelevant, immaterial, or unduly repetitious” shall be excluded by the special master at the Code enforcement hearing. Orange County, FL, Code § 11-35(d) (2006). In general, a quasi-judicial hearing meets “basic due process requirements if parties are provided notice of hearing and opportunity to be heard.” *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991). The parties “must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts.” *Id.* (citing *Coral Reef Nurseries, Inc. v. Babcock Co.*, 410 So. 2d 648, 652 (Fla. 3d DCA 1982)).

Here, Appellant does not contest that he was given notice of the hearing; however, he contends that he was not given a meaningful opportunity to be heard. As evident from the hearing transcript, Appellant interjected his arguments throughout the hearing, and questioned Officer Boucher as to his findings. The transcript of the hearing reveals that Appellant was given ample opportunity to be heard, as evidenced by his frequent arguments as to why he had not committed a Code violation. Based on the record, the Court finds that Appellant was not denied due process of law.

Appellant argues that the imposition on him in the form of a work/inspection permit or the threat of a tax lien based on an unproven or unsubstantiated allegation for work that he did not do violates the Florida and U.S. Constitutions.

In this case, the amount of the fine is within the statutory range found in section 162.09, Florida Statutes (2011). Additionally, Chapter 162, Florida Statutes, and Chapter 11, Orange County Code, provide a violator with procedures to challenge the imposition, validity, and amount of the fine assessed. *See* § 162.09, Fla. Stat. (2011); Orange County, FL, Code § 11-37 (2011). Accordingly, the Court finds that the fine imposed by the Board did not constitute an excessive fine in violation of the state and federal constitutions, and therefore, the County did not violate the essential requirements of the law.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Orange County Code Enforcement Board's "Findings of Fact, Conclusions of Law, and Order" is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this 8th day of August, 2013.

/S/

ALICE L. BLACKWELL
Circuit Judge

/S/

TIM SHEA
Circuit Judge

/S/

JENIFER M. DAVIS
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to **Alexander Hunting, Appellant**, 904 Buchanon Ave., Orlando, Florida 32809 and **P. Andrea DeLoach, Esq., Assistant County Attorney, Orange County Attorney's Office—Litigation Section**, 201 South Rosalind Ave., Third Floor, P.O. Box 1393, Orlando, FL 32802-1393 on the 8th day of August, 2013.

/S/ _____

Judicial Assistant