



AGENDA ITEM MEMORADUM

Development Services

Department

Bud Bentley/Tuchette Torres

Department Director/Code Officer

COMMISSION MEETING DATE - 7:00 PM	Deadline to Town Clerk
<input checked="" type="checkbox"/> June 12, 2012	June 8, 2012

- Presentation
 Reports
 Consent
 Ordinance
 Resolution
 Quasi-Judicial
 Old Business
 New Business

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

SUBJECT TITLE: Sandra Stella's Application for Relief of Code Enforcement Liens

EXPLANATION: Ms. Sandra Stella, the owner of three residential properties, seeks relief from six code enforcement liens on three properties. The owner's applications for 98.9% relief and our case histories are attached (**Exhibit 1 - 3**).

- The properties are located at:
1. 4216 Seagrape Drive
 2. 4236 E. Tradewinds Avenue
 3. 4557 Poinciana Street

The Town issued Notice of Violations on August 18, 2010 for no vacation rental permits and on January 5, 2011 for non-renewal of Business Tax Receipts. Each case was presented before the Special Magistrate and given time to comply before the fines started. The owner corrected the violations on May 2, 2012 by acquiring the required business tax receipts and vacation rental permits.

The following tables summarize the cases:

Table 1 – Summary of Six Code Cases

Property	Days in Violation Vacation Rental / BTR	Total Lien	Offered Settlement	
			\$	% of Lien
Seagrape	502 / 382	\$88,350	\$1,000	1.1%
Tradewinds	502 / 382	\$88,350	\$1,000	1.1%
Poinciana	502 / 382	\$88,350	\$1,000	1.1%
Total	502 / 382	\$265,050	\$3,000	1.1%
Administrative Costs of \$1,599				



Table 2 – No Vacation Rental Permit

Case #	Special Magistrate Final order	Days in Violation	Total Lien	Offered Settlement	% of Lien	Exhibit
10-KM-00624 Seagrape	Comply by December 12, 2010 or \$100 per day	502	\$50,350	\$500	1%	1
10-KM-00626 Tradewinds		502	\$50,350	\$500	1%	2
10-KW-0089 Poinciana		502	\$50,350	\$500	1%	3
Total			\$151,050	\$1,500	1%	

Table 2 – Business Tax Receipts were not renewed

Case #	Special Magistrate Final order	Days in Violation	Total Lien	Offered Settlement	% of Lien	Exhibit
10-KW-00016 Seagrape	Comply by April 16, 2011 or \$100 per day	382	\$38,000	\$500	1.3%	1
10-KW-00017 Tradewinds		382	\$38,000	\$500	1.3%	2
10-KW-00015 Poinciana		382	\$38,300	\$500	1.3%	3
Total			\$114,000	\$1,500	1.3%	

The Town's administrative costs have been approximately \$383 per property plus \$450 in attorney fees for a total of \$1,599.

Resolution 2010-13, Subsection 2 requires the Commission to consider all relevant factors, including the following criteria, to determine what relief, if any, is appropriate.

A. The nature and gravity of the violation.

The violations are moderate.

B. Any actions taken by the Respondent to correct the violation.

On May 2, 2012, the property owner paid \$1,920, which covers the current and past due vacation rental license and rental business tax receipts.



C. The length of time between the previously ordered compliance date and the date the violation was brought into compliance.

The properties were in violation from the Special Magistrate's ordered compliance date a total of 502 days for the vacation license violations and 382 days for the Business Tax Receipt violations.

D. Any actual costs expended by the Respondent to cure the violation as provided by supporting documentation.

The violations were cured by securing the appropriate Town licenses and paying their business tax plus late penalties at a total cost of \$1,920. There were no on site conditions that had to be corrected.

E. Any other prior or current violations committed by the Respondent on the subject property or upon any other property owned by the Respondent within the Town.

4216 Seagrape Drive:

1. Cited in 2011 for trash cans left out and no vacant property registration when the property was vacant. Both cases complied before being taken to a hearing.
2. Cited in 2011 for renting property for less than seven days as required for a vacation rental. The case, 11KW-00049, was taken to a hearing and a lien was recorded. The \$625 lien was paid by the property owner on May 2, 2012.

4236 E. Tradewinds:

1. Cited in 2010 for no vacant property registration. The case was taken to a hearing and dismissed by Magistrate because the property owner stated property was not vacant.
2. Cited in 2011 for roof overhangs in disrepair, rotted and falling apart. The property owner came into compliance and paid the administrative fee.

4557 Poinciana:

1. Cited in 2010 for no vacant property registration. The case complied before the Special Magistrate hearing date.
2. Cited in 2011 for renting the property for less than the seven days required for a vacation rental. The case complied before the Special Magistrate hearing date.

The property owner submitted a May 11, 2012 letter of support (**Exhibit 4**) from S. Alan Johnson, Esq. Mr. Johnson raises several points of law concerning the validity and legality of the Town's code process and these fines in particular. The Town Attorney has reviewed Mr. Johnson's letter and advises that the Town processes and procedures are proper and very defensible.



In addition to the property owner's application for relief (**Exhibits 1-3**), Ms. Stella has sent information directly to the Commissioners that provides history she believes relevant to her relief request. Since that information includes personal health information, it is not included as an exhibit to this agenda item.

RECOMMENDATION:

The property owner has offered to settle the six cases for a total of \$3,000, which is a 98.9% reduction.

The Commission generally has not approved relief of more than 80% of the total lien plus the payment of the Town's administrative costs. For these six violations, 80% relief would be a reduction of \$212,040, which would reduce the \$265,050 fine to \$53,010. The Town's administrative costs are \$1,599.

Staff recommends that the Commission determine and set the amount they are willing to mitigate, add the \$1,599 administrative costs to that amount, and make settlement contingent on full payment being made to the Town within 30 days of Commission approval.

EXHIBITS:

- 1 4216 Seagrape Drive: case history and application
- 2 4236 E. Tradewinds Avenue: case history and application
- 3 4557 Poinciana Street: case history and application
- 4 Letter of Support from S. Alan Johnson, Esq.

Reviewed by Town Attorney
 Yes No

Town Manager Initials CA

Summary of Case History

Exhibit 1

Address 4216 Seagrape Drive

Case # 10-KM-00624 Folio # 9318 05 0263

Violation: No vacation rental permit for rental of property

Ordinance: 30-327

1) NOV.

- Issued on: 8/18/2010 Correction Date: 9/1/2010
- Notification was provided via: Personal services/Certified Mailing/Posting
- Complied (prior to correction date/after correction date) /Non-compliance

2) Hearing: Before Magistrate.

- Hearing Date: 11/17/2010 Time: 1:30 p.m.
- Notification was provided via: Personal Service/ Certified Mailing/Posting
- Magistrates Final Order: Bring property into compliance by December 17, 2010 or \$100.00 per day
- Complied with order /Non-compliance with order on: 12/17/2010

3) Certification of Lien Hearing:

- Hearing Date: 1/19/2011 Time: 1:30 p.m.
- Fees owed: Administrative: \$150.00
Fine: \$100.00 per day
Total Amount owed: \$50,350
- Date recorded: 4/8/2011 Book & Page: 47836,806-809

4) Number of days out of compliance after Hearing 502

5) Owner was first notified on 8/18/2010

6) Personnel hours spent on this case 6

7) Expenses expended by the Town (i.e. postage, recording, etc.) \$68.35

Total the owner is requesting to pay 500 = 1 %

Summary of Case History

Address 4216 Seagrape Drive

Case # 11-KW-00016 Folio # 9318 05 0263

Violation: Business Tax Receipt License # 1348 was past due and not renewed for 2010-2011 fiscal year.

Ordinance: 12-27

1) NOV.

- Issued on: 1/5/2011 Correction Date: 1/10/2011
- Notification was provided via: Personal Services/Certified Mailing/Posting
- Complied (prior to correction date/after correction date) /Non-compliance

2) Hearing: Before Magistrate.

- Hearing Date: 3/16/2011 Time: 1:30 p.m.
- Notification was provided via: Personal Service/ Certified Mailing/Posting
- Magistrates Final Order: Bring property into compliance by April 16, 2011 or \$100.00 per day
- Complied with order /Non-compliance with order on: 4/16/2011

3) Certification of Lien Hearing:

- Hearing Date: 5/18/2011 Time: 1:30 p.m.
- Fees owed: Administrative: \$100.00
Fine: \$100.00 per day
Total Amount owed: \$38,300
- Date recorded: 6/20/2011 Book & Page: 47987, 729-732

- 4) Number of days out of compliance after Hearing: 382
- 5) Owner was first notified on 1/5/2011
- 6) Personnel hours spent on this case: 6
- 7) Expenses expended by the Town (i.e. postage, recording, etc.) \$64.45

Total the owner is requesting to pay 500 = 1.3 %

Exhibit 1
Page 2

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308
Tel: (954) 776-0576
Fax: (954) 776-1857

APPLICATION FOR RELIEF FROM CODE ENFORCEMENT FINES OR LIENS

* No application will be accepted or processed unless all violations on the property have been placed in compliance by Code Enforcement

CASE # 10-KM-00624

TOWN OF LAUDERDALE-BY-THE-SEA vs. Sandra Stella
(Name of Respondent(s) as listed)

NAME OF APPLICANT: (Print): Sandra Stella
(Person to attend Hearing)

ADDRESS OF APPLICANT: 5051 NE 24 Ave
(Full mailing address) Lighthouse Pt, FL 33064

PHONE NUMBER: 954-809-8209

ADDRESS OF PROPERTY: 4216 Seagrave DR
(Where violation(s) existed)

NATURE OF VIOLATION: non-renewal vacation rental license

TOTAL AMOUNT OF FINE: \$50,350

AMOUNT REQUESTING FINE BE REDUCED TO: \$500

THIS PROPERTY CURRENTLY IS IS NOT (check one) INVOLVED IN LITIGATION

All Applications for Relief (where applicable) MUST have the following documentation provided as part of the Application to be reviewed:

- N/A 1. A copy of the Notice of Lis Pendens recorded with Broward County Records with the date, book and page shown;
- N/A 2. A copy of the Foreclosure Complaint;
- N/A 3. A copy of the Foreclosure Order, with the recording date, book and page shown;
- N/A 4. A copy of the Final Summary Judgment of Foreclosure, with the recording date, book and page shown;
- 5. A copy of the Certification of Lien Order, with the recording date, book and page shown;
- N/A 6. A copy of the new Certificate of Title, with the recording date, book and page shown;
- 7. A copy of the Town's Final Order of Imposition of Fine; and
- 8. A copy of the Claim of Lien(s) with the recording date, book and page shown.

Please provide a copy of these requirements with all Applications for Relief.

FACTORS RELEVANT TO APPLICATIONS FOR RELIEF:

- A. The nature and gravity of the violation(s);
- B. Any actions you have taken to correct the violation(s);
- C. The length of time between the previously ordered compliance date and the date the violation(s) was brought into compliance;
- D. Any actual costs you expended to cure the violation(s), if supported by documentation;
- E. Any other prior or current violations you committed on the subject property or upon any other property you own within the Town; and
- F. Equitable considerations.

WHY RELIEF SHOULD BE GRANTED (This section must be completed and, at a minimum, should address the above factors): See Attached # 3

(Attach additional pages if needed, along with any supporting documentation)

IF APPLICABLE:

Name Of Attorney/Representative: Scott Alan Johnson

Address: 11932 Fairway Lakes Dr. Fort Myers
33913

Phone Number: 954 - 573 - 1250

I CERTIFY THAT I am the current owner of the subject property or an Attorney for said owner, or that I am the legal representative for the property or otherwise authorized to act on behalf of the property owner in this matter.

Sandra Stella

Sandy by the Sea Realty

• Phone: 954-809-8209 • Fax: 954-571-7201
E-Mail: sandybythesearealty@yahoo.com

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Factors Relevant To Applications For Relief From Code Enforcement Liens, Resolution 2010-13 Subsection 2,

- A. Action taken to correct violation: Paid all penalty fines and fee's to bring all licenses current
- B. Nature and gravity of the violations: low, non-renewal vacation license
- C. Length of time from order of compliance date to date violation brought to compliance: Final Order November 17, 2010 brought into compliance May 2, 2012
- D. Costs to Cure: \$2,545.00 paid by cashiers check 5/2/12
- E. Any other prior or current violations committed on other property: Yes, The other 2 properties have the same violation that also complied prior to this hearing
- F. Equitable considerations: The condition of my daughter's health, I have been a property and business owner since 1998, I have never had a lien or code infraction prior to this in Lauderdale by the Sea. I have paid the penalties associated with the Vacation and Business licenses and I 'am in compliance now. I have always supported our fire department I received a good citizens award from the mayor after hurricane Wilma for my support with the fire department.

Signature of Applicant *San G. [Signature]* Date 5/11/12

(NOTE: Proof of such lawful authority or written authorization from the property owner must be provided by the applicant prior to this matter proceeding.)

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA
CODE COMPLIANCE SPECIAL MAGISTRATE

CASE NO: 10-KM-00624

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA,
PETITIONER,

vs.

SANDRA STELLA
5051 NE 24 AVE LIGHTHOUSE POINT FL 33064
RESPONDENT.

NOTICE OF APPEARANCE AS COUNSEL

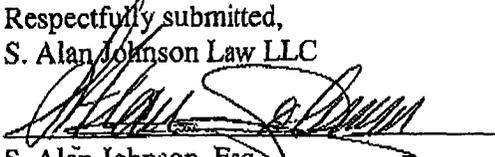
Please take notice that S. ALAN JOHNSON of the law firm S. ALAN JOHNSON LAW LLC, 11932 Fairway Lakes Drive, Unit #1, Fort Myers, FL 33913, hereby appears as counsel for Respondent SANDRA STELLA. Please send copies of all pleadings, motions, notices, and orders to S. Alan Johnson at the foregoing address.

CERTIFICATE OF SERVICE

I CERTIFY a copy hereof has been furnished by mail on this 11th of May, 2012 to:
Town of Lauderdale By The Sea, 4501 N. Ocean Dr., Lauderdale By The Sea, FL 33308.

Respectfully submitted,
S. Alan Johnson Law LLC

By:


S. Alan Johnson, Esq.
Florida Bar No. 874809
Attorney for Respondent
11932 Fairway Lakes Drive, Unit #1
Fort Myers, FL 33913
Phone: 954-573-1250
Facsimile: 239-689-5095

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA
4501 N. OCEAN DRIVE
Lauderdale-By-The-Sea, Florida 33308

BEFORE THE SPECIAL MAGISTRATE
ORDER IMPOSING FINE/CERTIFICATE OF LIEN

TOWN OF LAUDERDALE-BY-THE-SEA,

Petitioner

v.

Case No. 10-KM-00624

SANDRA STELLA
5051 N.E. 24TH AVENUE
LIGHTHOUSE POINT, FL 33064

Respondent(s).

_____ /

The above referenced case was heard on November 17, 2010 and the Respondent did not appear at the hearing. A Notice of Violation was issued on August 18, 2010 with a correction date of September 1, 2010. Compliance was not gained on September 1, 2010. The Special Magistrate ordered that the Respondent be given thirty (30) days from the hearing date to bring the property into compliance or a daily fine of One Hundred (\$100.00) Dollars would be assessed plus an Administrative Fee of One Hundred Fifty (\$150.00) Dollars was imposed.

The property located at 4216 Seagrape Drive, Lauderdale-By-The-Sea, Florida, corresponding to Folio # 9318-05-0263, legally described as:
SILVER SHORES UNIT A 28-39 B LOT 4 BLK 1

Has not been brought into compliance and a daily fine of One Hundred (\$100.00) Dollars began to accrue on December 17, 2010 and continues to accrue until compliance is gained. The Final Order was mailed via Certified Mail on November 22, 2010. On January 3, 2011 Notice of Certification of Lien Intent was sent via certified mail for the hearing date January 19, 2011. Respondent was not present at the hearing

Therefore, pursuant to Section 162.09, Florida Statutes, the Special Magistrate certifies as follows:

1. The Order of November 17, 2010 required the Respondent to bring the property into compliance thirty days (30) days from the hearing date or be assessed a daily fine of One Hundred (\$100.00) Dollars. In addition, an Administrative Fee of One Hundred Fifty (\$150.00) Dollars was imposed.

exh 1
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2. The Respondent has not brought the violation into compliance, and the Respondent has continued to violate the order of November 17, 2010 by not paying the Administrative Fee of One Hundred Fifty (\$150.00) Dollars and the daily fine of One Hundred (\$100.00) Dollars that continues to accrue for the period of non-compliance. At the January 19, 2011 Certification of Lien Hearing, testimony indicates that the fines due and owing for the period of non-compliance have reached Three Thousand Four Hundred (\$3,400.00) Dollars plus an Administrative Fee of One Hundred Fifty (\$150.00) Dollars.

3. Therefore, Special Magistrate imposes and certifies fines for the daily fine of One Hundred (\$100.00) Dollars that continues to accrue for the period of non-compliance plus an Administrative Fee of One Hundred Fifty (\$150.00) Dollars.

4. That this Certification, together with the original Final Order, be recorded in the Public Records of the Office of the Clerk of the Circuit Court in and for Broward County, Florida. Pursuant to Section 162.09, Florida Statutes, these documents, once recorded, shall constitute a lien against the land on which the violation(s) exists, and upon any other real or personal property owned by Respondent.

5. If any person desires to appeal, pursuant to Section 162.11, Florida Statutes, such person will need a record of the proceedings which includes the testimony and evidence upon which the appeal is based.

Certification of Lien ordered at Lauderdale-By-The-Sea this 19th day of January, 2011.

ATTEST:

Special Magistrate of the
Town of Lauderdale-By-The-Sea

BY: Colleen Tyrrell
Colleen Tyrrell, Secretary for the Special Magistrate

BY: Gordon B. Linn
Gordon B. Linn, Special Magistrate

() Personally known to me

Copies furnished to:

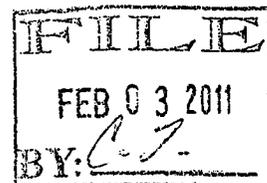
HSBC
961 Weigel Drive
Elmhurst, IL 60120

CERTIFICATION

I certify this to be a true and correct copy of the record in my office.

WITNESSED by my hand and official seal of the Town of Lauderdale-By-The-Sea, Florida

25th day of March, 2011
Jane White, CMC Town clerk



ex 1
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TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA
CODE COMPLIANCE SPECIAL MAGISTRATE

CASE NUMBER: 10-XM-00624

TOWN OF LAUDERDALE BY THE SEA,
MUNICIPAL CORPORATION OF FLORIDA

PETITIONER

VS.

Sandra Stella
5051 NE 24th Avenue
Lighthouse Point, FL 33064

RESPONDENT

FINAL ORDER

HEARING DATE: November 17, 2010

VIOLATION(S): No vacation rental permit for rental of property.

CODE SECTION: 30-327

An Administrative hearing was held before the Special Magistrate on November 17, 2010. Set below are the findings of fact, conclusions of law and final order for the subject hearing.

FINDINGS OF FACT

The record indicates that the Respondent(s) owns certain real property located at: 4216 Seagrape Drive, Lauderdale-By-The-Sea, FL 33308 and more particularly described as follows:

Tax Folio Number (Property I.D.): 9318-05-0263

At the hearing held on this matter on November 17, 2010 the Petitioner Town presented testimony by Code Compliance Officer Kim Williams concerning her personal knowledge of the existence of the subject violation(s), and entered into the record evidence of notice required under Town Ordinance Section 20-16. Officer Williams said that the property still was not able to gain compliance and that the property was going through the foreclosure process, however, the property was still being rented. Officer Williams said that she has been in contact with Ms Stella but she has not completed the vacation rental process to bring the property into compliance. The Respondent was not present at the hearing.

CONCLUSIONS OF LAW

Accordingly, based on the testimony and evidence referenced above, the Petitioner Town has met its burden of providing by substantial competent evidence that alleged violation(s) does in fact exist on the subject property but was not in compliance at or prior to the subject hearing.

ORDER

THEREFORE, BASED UPON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE UNDERSIGNED SPECIAL MAGISTRATE FINDS THE RESPONDENT(S) GUILTY OF VIOLATING: CODE SECTION 30-327.

SANDRA STELLA
CASE NUMBER: 10-KM-00624

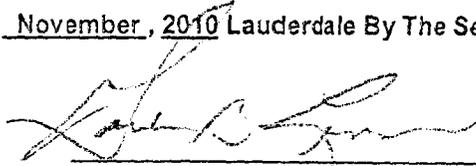
IN DETERMINING THE FINE AMOUNT TO BE IMPOSED, CONSIDERATION WAS GIVEN TO: (1) THE GRAVITY OF THE VIOLATION(S), (2) ANY ACTIONS TAKEN BY THE RESPONDENT(S) TO CORRECT THE VIOLATION(S); AND (3) ANY PREVIOUS VIOLATION(S) COMMITTED BY THE RESPONDENT(S).

FINALLY, THE PETITIONER, TOWN, VERIFIED THAT THE VIOLATION WAS NOT IN COMPLIANCE AT THE TIME OF THE HEARING.

THE SPECIAL MAGISTRATE ORDERS THAT THE RESPONDENT BE GIVEN THIRTY (30) DAYS FROM THE HEARING DATE TO BRING THE PROPERTY INTO COMPLIANCE. FAILURE TO ABATE THE VIOLATION WITHIN THE THIRTY (30) DAY TIMEFRAME, A ONE HUNDRED (\$100.00) DOLLAR FINE PER DAY WOULD BE ASSESSED UNTIL COMPLIANCE IS GAINED. THE SPECIAL MAGISTRATE ALSO IMPOSED A ONE HUNDRED FIFTY (\$150.00) DOLLAR ADMINISTRATIVE FEE.

THE TOWN MAY AVAIL ITSELF OF ALL LEGAL REMEDIES AVAILABLE TO IT, INCLUDING THE FORECLOSURE OF THE LIEN.

Done and Ordered this 17TH day of November, 2010 Lauderdale By The Sea, Florida.


Gordon B. Linn, Special Magistrate

ATTEST:


Colleen Tyrrell, Secretary for the Special Magistrate

Cc to: Linton Loan Services
4828 Loop Central Drive
Houston, TX 77081

CERTIFICATION

I certify this to be a true and correct copy of the record in my office.

WITNESSED by my hand and official seal of the Town of Lauderdale-By-The-Sea, Florida

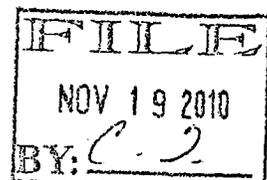
25th day of March, 2011
Jane White CMC Town clerk

Note: Please make your check payable to:

Town of Lauderdale-By-The-Sea

Please send your check to:

4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308



Ex 1
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Summary of Case History

Address 4236 E Tradewinds Avenue

Case # 10-KM-00626 Folio # 9318 06 0290

Violation: No vacation rental permit for rental of property

Ordinance: 30-327

1) NOV.

- Issued on: 8/18/2010 Correction Date: 9/1/2010
- Notification was provided via: Personal Services/Certified Mailing/Posting
- Complied (prior to correction date/after correction date) /Non-compliance

2) Hearing: Before Magistrate.

- Hearing Date: 11/17/2010 Time: 1:30 p.m.
- Notification was provided via: Personal Service/ Certified Mailing/Posting
- Magistrates Final Order: Bring property into compliance by December 17, 2010 or \$100.00 per day
- Complied with order /Non-compliance with order on: 12/17/2010

3) Certification of Lien Hearing:

- Hearing Date: 1/19/2011 Time: 1:30 p.m.
- Fees owed: Administrative: \$150.00
Fine: \$100.00 per day
Total Amount owed: \$50,350
- Date recorded: 4/8/2011 Book & Page: 47836,810-813

- 4) Number of days in arrears after Hearing: 502
- 5) Owner was first notified on 8/18/2010
- 6) Personnel hours spent on this case: 6
- 7) Expenses expended by the Town (i.e. postage, recording, etc.) \$68.35

Total the owner is requesting to pay 500 = 1 %

Summary of Case History

Address 4236 E Tradewinds Avenue

Case # 11-KW-00017 Folio # 9318 06 0290

Violation: Business Tax Receipt License # 1516 was past due and not renewed for 2010-2011 fiscal year.

Ordinance: 12-27

1) NOV.

- Issued on: 1/5/2011 Correction Date: 1/10/2011
- Notification was provided via: Personal Services/Certified Mailing/Posting
- Complied (prior to correction date/after correction date) /Non-compliance

2) Hearing: Before Magistrate.

- Hearing Date: 3/16/2011 Time: 1:30 p.m.
- Notification was provided via: Personal Service/ Certified Mailing/Posting
- Magistrates Final Order: Bring property into compliance by April 16, 2011 or \$100.00 per day
- Complied with order/Non-compliance with order on: 4/16/2011

3) Certification of Lien Hearing:

- Hearing Date: 5/18/2011 Time: 1:30 p.m.
- Fees owed: Administrative: \$100.00
Fine: \$100.00 per day
Total Amount owed: \$38,300
- Date recorded: 6/20/2011 Book & Page: 47987, 733-736

- 4) Number of days out of compliance after Hearing 382
- 5) Owner was first notified on 1/5/2011
- 6) Personnel hours spent on this case 6
- 7) Expenses expended by the Town (i.e. postage, recording, etc.) \$64.45

Total the owner is requesting to pay 500 = 13 %

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308
Tel: (954) 776-0576
Fax: (954) 776-1857

APPLICATION FOR RELIEF FROM CODE ENFORCEMENT FINES OR LIENS

* No application will be accepted or processed unless all violations on the property have been placed in compliance by Code Enforcement

CASE # 10-KM-00626

TOWN OF LAUDERDALE-BY-THE-SEA vs.

Sandra Stella
(Name of Respondent(s) as listed)

NAME OF APPLICANT: (Print): Sandra Stella
(Person to attend Hearing)

ADDRESS OF APPLICANT: 5051 NE 24 AVE
(Full mailing address) Lighthouse Pt, FL 33064

PHONE NUMBER: 954-809-8209

ADDRESS OF PROPERTY: 4236 E Trackwinds Ave
(Where violation(s) existed)

NATURE OF VIOLATION: Non-renewal vacation rental license

TOTAL AMOUNT OF FINE: \$50,350

AMOUNT REQUESTING FINE BE REDUCED TO: \$500

THIS PROPERTY CURRENTLY IS IS NOT (check one) INVOLVED IN LITIGATION

All Applications for Relief (where applicable) MUST have the following documentation provided as part of the Application to be reviewed:

- N/A 1. A copy of the Notice of Lis Pendens recorded with Broward County Records with the date, book and page shown;
- N/A 2. A copy of the Foreclosure Complaint;
- N/A 3. A copy of the Foreclosure Order, with the recording date, book and page shown;
- N/A 4. A copy of the Final Summary Judgment of Foreclosure, with the recording date, book and page shown;
- 5. A copy of the Certification of Lien Order, with the recording date, book and page shown;
- N/A 6. A copy of the new Certificate of Title, with the recording date, book and page shown;
- 7. A copy of the Town's Final Order of Imposition of Fine; and
- 8. A copy of the Claim of Lien(s) with the recording date, book and page shown.

Please provide a copy of these requirements with all Applications for Relief.

FACTORS RELEVANT TO APPLICATIONS FOR RELIEF:

- A. The nature and gravity of the violation(s);
- B. Any actions you have taken to correct the violation(s);
- C. The length of time between the previously ordered compliance date and the date the violation(s) was brought into compliance;
- D. Any actual costs you expended to cure the violation(s), if supported by documentation;
- E. Any other prior or current violations you committed on the subject property or upon any other property you own within the Town; and
- F. Equitable considerations.

WHY RELIEF SHOULD BE GRANTED (This section must be completed and, at a minimum, should address the above factors): See Attached # 3

(Attach additional pages if needed, along with any supporting documentation)

IF APPLICABLE:

Name Of Attorney/Representative: Scott Alan Johnson

Address: 11932 Fairway Lakes Dr. Fort Myers, 33913

Phone Number: 954-573-1250

I CERTIFY THAT I am the current owner of the subject property or an Attorney for said owner, or that I am the legal representative for the property or otherwise authorized to act on behalf of the property owner in this matter.

Sandra Stella

Sandy by the Sea Realty

• Phone: 954-809-8209 • Fax: 954-571-7201

E-Mail: sandybythesearealty@yahoo.com

3



Factors Relevant To Applications For Relief From Code Enforcement Liens, Resolution 2010-13 Subsection 2,

- A. Action taken to correct violation: Paid all penalty fines and fee's to bring all licenses current
- B. Nature and gravity of the violations: low, non-renewal vacation license
- C. Length of time from order of compliance date to date violation brought to compliance: Final Order November 17, 2010 brought into compliance May 2, 2012
- D. Costs to Cure: \$2,545.00 paid by cashiers check 5/2/12
- E. Any other prior or current violations committed on other property: Yes, The other 2 properties have the same violation that also complied prior to this hearing
- F. Equitable considerations: The condition of my daughter's health, I have been a property and business owner since 1998, I have never had a lien or code infraction prior to this in Lauderdale by the Sea. I have paid the penalties associated with the Vacation and Business licenses and I 'am in compliance now. I have always supported our fire department I received a good citizens award from the mayor after hurricane Wilma for my support with the fire department.

Ex 2
Pg 16

Signature of Applicant *Samuel Smith* Date *5/11/12*

(NOTE: Proof of such lawful authority or written authorization from the property owner must be provided by the applicant prior to this matter proceeding.)

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA
CODE COMPLIANCE SPECIAL MAGISTRATE

CASE NO: 10-KM-00626

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA,
PETITIONER,

vs.

SANDRA STELLA
5051 NE 24 AVE LIGHTHOUSE POINT FL 33064
RESPONDENT.

NOTICE OF APPEARANCE AS COUNSEL

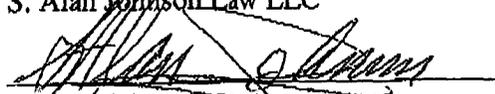
Please take notice that S. ALAN JOHNSON of the law firm S. ALAN JOHNSON LAW LLC, 11932 Fairway Lakes Drive, Unit #1, Fort Myers, FL 33913, hereby appears as counsel for Respondent SANDRA STELLA. Please send copies of all pleadings, motions, notices, and orders to S. Alan Johnson at the foregoing address.

CERTIFICATE OF SERVICE

I CERTIFY a copy hereof has been furnished by mail on this 11th of May, 2012 to: Town of Lauderdale By The Sea, 4501 N. Ocean Dr., Lauderdale By The Sea, FL 33308.

Respectfully submitted,
S. Alan Johnson Law LLC

By:


S. Alan Johnson, Esq.
Florida Bar No. 874809
Attorney for Respondent
11932 Fairway Lakes Drive, Unit #1
Fort Myers, FL 33913
Phone: 954-573-1250
Facsimile: 239-689-5095

Ex 2
Pg 18

CFN # 109972661, OR BK 47836 Page 810, Page 1 of 4, Recorded 04/08/2011 at 01:14 PM, Broward County Commission, Deputy Clerk 1037

2

**TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA
4501 N. OCEAN DRIVE
Lauderdale-By-The-Sea, Florida 33308**

**BEFORE THE SPECIAL MAGISTRATE
ORDER IMPOSING FINE/CERTIFICATE OF LIEN**

TOWN OF LAUDERDALE-BY-THE-SEA,

Petitioner

v.

Case No. 10-KM-00626

**SANDRA STELLA
5051 N.E. 24TH AVENUE
LIGHTHOUSE POINT, FL 33064**

Respondent(s).

The above referenced case was heard on November 17, 2010 and the Respondent did not appear at the hearing. A Notice of Violation was issued on August 18, 2010 with a correction date of September 1, 2010. Compliance was not gained on September 1, 2010. The Special Magistrate ordered that the Respondent be given thirty (30) days from the hearing date to bring the property into compliance or a daily fine of One Hundred (\$100.00) Dollars would be assessed plus an Administrative Fee of One Hundred Fifty (\$150.00) Dollars was imposed.

The property located at 4236 E. Tradewinds Avenue, Lauderdale-By-The-Sea, Florida, corresponding to Folio # 9318-06-0290, legally described as:
SILVER SHORES SUB TRACT D 29-21 B LOT 7 BLK 9

Has not been brought into compliance and a daily fine of One Hundred (\$100.00) Dollars began to accrue on December 17, 2010 and continues to accrue until compliance is gained. The Final Order was mailed via Certified Mail on November 22, 2010. On January 3, 2011 Notice of Certification of Lien Intent was sent via certified mail for the hearing date January 19, 2011. Respondent was not present at the hearing.

Therefore, pursuant to Section 182.09, Florida Statutes, the Special Magistrate certifies as follows:

1. The Order of November 17, 2010 required the Respondent to bring the property into compliance thirty days (30) days from the hearing date or be assessed a daily fine of One Hundred (\$100.00) Dollars. In addition, an Administrative Fee of One Hundred Fifty (\$150.00) Dollars was imposed.

④

CFN # 109972661, OR BK 47836 PG 811, Page 2 of 4

Certification of Lien - Case # 10-KM-00626-4236 E. Tradewinds - Respondent: Sandra Stella

2. The Respondent has not brought the violation into compliance, and the Respondent has continued to violate the order of November 17, 2010 by not paying the Administrative Fee of One Hundred Fifty (\$150.00) Dollars and the daily fine of One Hundred (\$100.00) Dollars that continues to accrue for the period of non-compliance. At the January 19, 2011 Certification of Lien Hearing, testimony indicates that the fines due and owing for the period of non-compliance have reached Three Thousand Four Hundred (\$3,400.00) Dollars plus an Administrative Fee of One Hundred Fifty (\$150.00) Dollars.

3. Therefore, Special Magistrate imposes and certifies fines for the daily fine of One Hundred (\$100.00) Dollars that continues to accrue for the period of non-compliance plus an Administrative Fee of One Hundred Fifty (\$150.00) Dollars.

4. That this Certification, together with the original Final Order, be recorded in the Public Records of the Office of the Clerk of the Circuit Court in and for Broward County, Florida. Pursuant to Section 162.09, Florida Statutes, these documents, once recorded, shall constitute a lien against the land on which the violation(s) exists, and upon any other real or personal property owned by Respondent.

5. If any person desires to appeal, pursuant to Section 162.11, Florida Statutes, such person will need a record of the proceedings which includes the testimony and evidence upon which the appeal is based.

Certification of Lien ordered at Lauderdale-By-The-Sea this 19th day of January, 2011.

ATTEST:

Special Magistrate of the Town of Lauderdale-By-The-Sea

BY: Coleen Tyrrell
Coleen Tyrrell, Secretary for the Special Magistrate

BY: Gordon B. Linn
Gordon B. Linn, Special Magistrate

() Personally known to me

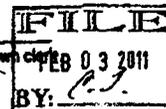
Copies furnished to:

US Bank National Association
C/o Safeguard Properties
7887 Safeguard Circle
Cleveland, OH 44125

CERTIFICATION
I certify this to be a true and correct copy of the record in my office.

WITNESSED by my hand and official seal of the Town of Lauderdale-By-The-Sea, Florida

25th day of March, 2011
Just White CMC Town Clerk



Page 2 of 2

EX 2
PG 20

CEN # 109972661, OR BK 47836 PG 812, Page 3 of 4

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA
CODE COMPLIANCE SPECIAL MAGISTRATE

CASE NUMBER: 10-KM-00626

TOWN OF LAUDERDALE BY THE SEA,
MUNICIPAL CORPORATION OF FLORIDA

PETITIONER

VS.

Sandra Stella
5051 NE 24th Avenue
Lighthouse Point, FL 33064

RESPONDENT

FINAL ORDER

HEARING DATE: November 17, 2010

VIOLATION(S): No vacation rental permit for rental of property.

CODE SECTION: 30-327

An Administrative hearing was held before the Special Magistrate on November 17, 2010. Set below are the findings of fact, conclusions of law and final order for the subject hearing.

FINDINGS OF FACT

The record indicates that the Respondent(s) owns certain real property located at: 4236 E. Tradewinds Avenue, Lauderdale-By-The-Sea, FL 33308 and more particularly described as follows:

Tax Folio Number (Property I.D.): 9318-06-0290

At the hearing held on this matter on November 17, 2010 the Petitioner Town presented testimony by Code Compliance Officer Kim Williams concerning her personal knowledge of the existence of the subject violation(s), and entered into the record evidence of notice required under Town Ordinance Section 20-16. Officer Williams said that the property still was not able to gain compliance and that the property was going through the foreclosure process, however, the property was still being rented. Officer Williams presented a composite printout from a website advertising the property for rent that was entered into evidence as Town's Composite Exhibit A. Officer Williams said that she has been in contact with Ms Stella but she has not completed the vacation rental process to bring the property into compliance. The Respondent was not present at the hearing.

CONCLUSIONS OF LAW

Accordingly, based on the testimony and evidence referenced above, the Petitioner Town has met its burden of providing by substantial competent evidence that alleged violation(s) does in fact exist on the subject property but was not in compliance at or prior to the subject hearing.

ORDER

THEREFORE, BASED UPON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE UNDERSIGNED SPECIAL MAGISTRATE FINDS THE RESPONDENT(S) GUILTY OF VIOLATING CODE SECTION 30-327.

Ex 2
Pg 21

SANDRA STELLA
CASE NUMBER: 10-KM-00624

IN DETERMINING THE FINE AMOUNT TO BE IMPOSED, CONSIDERATION WAS GIVEN TO: (1) THE GRAVITY OF THE VIOLATION(S), (2) ANY ACTIONS TAKEN BY THE RESPONDENT(S) TO CORRECT THE VIOLATION(S); AND (3) ANY PREVIOUS VIOLATION(S) COMMITTED BY THE RESPONDENT(S).

FINALLY, THE PETITIONER, TOWN, VERIFIED THAT THE VIOLATION WAS NOT IN COMPLIANCE AT THE TIME OF THE HEARING.

THE SPECIAL MAGISTRATE ORDERS THAT THE RESPONDENT BE GIVEN THIRTY (30) DAYS FROM THE HEARING DATE TO BRING THE PROPERTY INTO COMPLIANCE. FAILURE TO ABATE THE VIOLATION WITHIN THE THIRTY (30) DAY TIMEFRAME, A ONE HUNDRED (\$100.00) DOLLAR FINE PER DAY WOULD BE ASSESSED UNTIL COMPLIANCE IS OBTAINED. THE SPECIAL MAGISTRATE ALSO IMPOSED A ONE HUNDRED FIFTY (\$150.00) DOLLAR ADMINISTRATIVE FEE.

THE TOWN MAY AVAIL ITSELF OF ALL LEGAL REMEDIES AVAILABLE TO IT, INCLUDING THE FORECLOSURE OF THE LIEN.

Done and Ordered this 17TH day of November, 2010 Lauderdale By The Sea, Florida.

Gordon B. Linn
Gordon B. Linn, Special Magistrate

ATTEST:

Colleen Tyrrell
Colleen Tyrrell, Secretary for the Special Magistrate

CERTIFICATION

I certify this to be a true and correct copy of the record in my office.
WITNESSED by my hand and official seal of the Town of Lauderdale-By-The-Sea, Florida
25th day of March, 20 11
Jose Walter CMC Town clerk

Cc to: Safeguard Properties
7887 Safeguard Circle
Cleveland, OH 44125

Note: Please make your check payable to:

Town of Lauderdale-By-The-Sea

Please send your check to:

4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308

FILE
NOV 19 2010
BY: *C.J.*

Ex 2
Pg 22

Page 2.
RESPONDENT: SANDRA STELLA CASE NUMBER: 11-KW-00017

IN DETERMINING THE FINE AMOUNT TO BE IMPOSED, CONSIDERATION WAS GIVEN TO: (1) THE GRAVITY OF THE VIOLATION(S); (2) ANY ACTIONS TAKEN BY THE RESPONDENT(S) TO CORRECT THE VIOLATION(S); AND (3) ANY PREVIOUS VIOLATION(S) COMMITTED BY THE RESPONDENT(S). FINALLY, THE PETITIONER, TOWN, VERIFIED THAT THE VIOLATION WAS NOT IN COMPLIANCE AT THE TIME OF THE HEARING.

THE SPECIAL MAGISTRATE ORDERS THAT THE RESPONDENT BE GIVEN THIRTY (30) DAYS FROM THE HEARING DATE TO BRING THE PROPERTY INTO COMPLIANCE. FAILURE TO ABATE THE VIOLATION WITHIN THE SPECIFIED TIMEFRAME, A ONE HUNDRED (\$100.00) DOLLAR FINE PER DAY WOULD COMMENCE. IN ADDITION, A ONE HUNDRED (\$100.00) DOLLAR ADMINISTRATIVE FEE WAS IMPOSED.

THE TOWN MAY AVAIL ITSELF OF ALL LEGAL REMEDIES AVAILABLE TO IT, INCLUDING THE FORECLOSURE OF THE LIEN.

Done and Ordered this 16th day of March, 2011 Lauderdale By The Sea, Florida.

Gordon B. Linn

 Gordon B. Linn, Special Magistrate

ATTEST:
Colleen Tyrrell

 Colleen Tyrrell, Secretary for the Special Magistrate

Cc to: US BANK NATL ASSOC C/O SAFEGUARD PROPERTIES
7887 SAFEGUARD CIRCLE
CLEVELAND, OH 44125

Note: Please make your check payable to:
 Town of Lauderdale-By-The-Sea
 Please send your check to:
 4501 Ocean Drive
 Lauderdale-By-The-Sea, FL 33308

CERTIFICATION
 I certify this to be a true and correct copy of the record in my office.
 WITNESSED by my hand and official seal of the Town of Lauderdale-By-The-Sea, Florida
 13th day of June 20 11
June 2011 Town Clerk

FILE
 MAR 24 2011
 BY: *[Signature]*

Ex 2
Pg 23

Summary of Case History

Address 4557 Poinciana Street

Case # 10-KW-00089 Folio # 9318 01 3850

Violation: No vacation rental permit for rental of property

Ordinance: 30-327

1) NOV.

- Issued on: 8/18/2010 Correction Date: 9/1/2010
- Notification was provided via: Personal Services/Certified Mailing/Posting
- Complied (prior to correction date/after correction date) /Non-compliance

2) Hearing: Before Magistrate.

- Hearing Date: 11/17/2010 Time: 1:30 p.m.
- Notification was provided via: Personal Service/ Certified Mailing/Posting
- Magistrates Final Order: Bring property into compliance by December 17, 2010 or \$100.00 per day
- Complied with order /Non-compliance with order on: 12/17/2010

3) Certification of Lien Hearing:

- Hearing Date: 1/19/2011 Time: 1:30 p.m.
- Fees owed: Administrative: \$150.00
Fine: \$100.00 per day
Total Amount owed: \$50,350
- Date recorded: 4/8/2011 Book & Page: 47836,814-817

- 4) Number of days out of compliance after Hearing 50
- 5) Owner was first notified on 8/18/2010
- 6) Personnel hours spent on this case 0
- 7) Expenses expended by the Town (i.e. postage, recording, etc.) \$68.35

Total the owner is requesting to pay 500 = 1 %

Ex 3
Pg 24

Summary of Case History

Address 4557 Poinciana Street

Case # 11-KW-00015 Folio # 9318 06 0290

Violation: Business Tax Receipt License # 1515 was past due and not renewed for 2010-2011 fiscal year.

Ordinance: 12-27

1) NOV

- Issued on: 1/5/2011 Correction Date: 1/10/2011
- Notification was provided via: Personal Services/Certified Mailing/Posting
- Complied (prior to correction date/after correction date) /Non-compliance

2) Hearing: Before Magistrate.

- Hearing Date: 3/16/2011 Time: 1:30 p.m.
- Notification was provided via: Personal Service/ Certified Mailing/Posting
- Magistrates Final Order: Bring property into compliance by April 16, 2011 or \$100.00 per day
- Complied with order /Non-compliance with order on: 4/16/2011

3) Certification of Lien Hearing:

- Hearing Date: 5/18/2011 Time: 1:30 p.m.
- Fees owed: Administrative: \$100.00
 Fine: \$100.00 per day
 Total Amount owed: \$38,300
- Date recorded: 6/20/2011 Book & Page: 47987, 725-728

- 4) Number of days out of compliance after hearing 382
- 5) Owner was first notified on 1/5/2011
- 6) Personnel hours spent on this case 5
- 7) Expenses expended by the Town (i.e. postage, recording, etc.) \$64.45

Total the owner is requesting to pay 500 = 1.3 %

Ex 3
Pg 25

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308
Tel: (954) 776-0576
Fax: (954) 776-1857

APPLICATION FOR RELIEF FROM CODE ENFORCEMENT FINES OR LIENS

* No application will be accepted or processed unless all violations on the property have been placed in compliance by Code Enforcement

CASE # 10-KW-00089

TOWN OF LAUDERDALE-BY-THE-SEA vs. Sandra Stella
(Name of Respondent(s) as listed)

NAME OF APPLICANT: (Print): Sandra Stella
(Person to attend Hearing)

ADDRESS OF APPLICANT: 5051 NE 24 Ave
(Full mailing address) Lighthouse Pt, Fl. 33064

PHONE NUMBER: 954-809-8209

ADDRESS OF PROPERTY: 4557 Poinciana St.
(Where violation(s) existed)

NATURE OF VIOLATION: Now renewal vacation rental permit

TOTAL AMOUNT OF FINE: \$50,350

AMOUNT REQUESTING FINE BE REDUCED TO: \$500

THIS PROPERTY CURRENTLY IS IS NOT (check one) INVOLVED IN LITIGATION

All Applications for Relief (where applicable) MUST have the following documentation provided as part of the Application to be reviewed:

- N/A 1. A copy of the Notice of Lis Pendens recorded with Broward County Records with the date, book and page shown;
- N/A 2. A copy of the Foreclosure Complaint;
- N/A 3. A copy of the Foreclosure Order, with the recording date, book and page shown;
- N/A 4. A copy of the Final Summary Judgment of Foreclosure, with the recording date, book and page shown;
- 5. A copy of the Certification of Lien Order, with the recording date, book and page shown;
- N/A 6. A copy of the new Certificate of Title, with the recording date, book and page shown;
- 7. A copy of the Town's Final Order of Imposition of Fine; and
- 8. A copy of the Claim of Lien(s) with the recording date, book and page shown.

Ex 3
Pg 26

Please provide a copy of these requirements with all Applications for Relief.

FACTORS RELEVANT TO APPLICATIONS FOR RELIEF:

- A. The nature and gravity of the violation(s);
- B. Any actions you have taken to correct the violation(s);
- C. The length of time between the previously ordered compliance date and the date the violation(s) was brought into compliance;
- D. Any actual costs you expended to cure the violation(s), if supported by documentation;
- E. Any other prior or current violations you committed on the subject property or upon any other property you own within the Town; and
- F. Equitable considerations.

WHY RELIEF SHOULD BE GRANTED (This section must be completed and, at a minimum, should address the above factors): See Attached # 3

(Attach additional pages if needed, along with any supporting documentation)

IF APPLICABLE:

Name Of Attorney/Representative: Scott Alan Johnson

Address: 11932 Fairway Lakes Dr. Fort Myers 33913

Phone Number: 954 - 573 - 1250

I CERTIFY THAT I am the current owner of the subject property or an Attorney for said owner, or that I am the legal representative for the property or otherwise authorized to act on behalf of the property owner in this matter.

EX 3
PG 27

Sandra Stella

Sandy by the Sea Realty

• Phone: 954-809-8209 • Fax: 954-571-7201

E-Mail: sandybythesearealty@yahoo.com

#3



Factors Relevant To Applications For Relief From Code Enforcement Liens, Resolution 2010-13 Subsection 2.

- A. Action taken to correct violation: Paid all penalty fines and fee's to bring all licenses current
- B. Nature and gravity of the violations: low, non-renewal vacation license
- C. Length of time from order of compliance date to date violation brought to compliance: Final Order November 17, 2010 brought into compliance May 2, 2012
- D. Costs to Cure: \$2,545.00 paid by cashiers check 5/2/12
- E. Any other prior or current violations committed on other property: Yes, The other 2 properties have the same violation that also complied prior to this hearing
- F. Equitable considerations: The condition of my daughter's health, I have been a property and business owner since 1998, I have never had a lien or code infraction prior to this in Lauderdale by the Sea. I have paid the penalties associated with the Vacation and Business licenses and I 'am in compliance now. I have always supported our fire department I received a good citizens award from the mayor after hurricane Wilma for my support with the fire department.

Ex 3
Pg 28

Signature of Applicant *Sanle Huts* Date 5/11/12

(NOTE: Proof of such lawful authority or written authorization from the property owner must be provided by the applicant prior to this matter proceeding.)

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA
CODE COMPLIANCE SPECIAL MAGISTRATE

CASE NO: 10-KW-00089

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA,
PETITIONER,

vs.

SANDRA STELLA
5051 NE 24 AVE LIGHTHOUSE POINT FL 33064
RESPONDENT.

NOTICE OF APPEARANCE AS COUNSEL

Please take notice that S. ALAN JOHNSON of the law firm S. ALAN JOHNSON LAW LLC, 11932 Fairway Lakes Drive, Unit #1, Fort Myers, FL 33913, hereby appears as counsel for Respondent SANDRA STELLA. Please send copies of all pleadings, motions, notices, and orders to S. Alan Johnson at the foregoing address.

CERTIFICATE OF SERVICE

I CERTIFY a copy hereof has been furnished by mail on this 11th of May, 2012 to:
Town of Lauderdale By The Sea, 4501 N. Ocean Dr., Lauderdale By The Sea, FL 33308.

Respectfully submitted,
S. Alan Johnson Law LLC

By:


S. Alan Johnson, Esq.
Florida Bar No. 874809
Attorney for Respondent
11932 Fairway Lakes Drive, Unit #1
Fort Myers, FL 33913
Phone: 954-573-1250
Facsimile: 239-689-5095

CFN # 109972662, OR BK 47836 Page 814, Page 1 of 4, Recorded 04/08/2011 at 01:14 PM, Broward County Commission, Deputy Clerk 1037

3

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA
4501 N. OCEAN DRIVE
Lauderdale-By-The-Sea, Florida 33308

BEFORE THE SPECIAL MAGISTRATE
ORDER IMPOSING FINE/CERTIFICATE OF LIEN

TOWN OF LAUDERDALE-BY-THE-SEA,

Petitioner

v.

Case No. 10-KW-00089

SANDRA STELLA
5051 N.E. 24TH AVENUE
LIGHTHOUSE POINT, FL 33064

Respondent(s).

The above referenced case was heard on November 17, 2010 and the Respondent did not appear at the hearing. A Notice of Violation was issued on August 18, 2010 with a correction date of September 1, 2010. Compliance was not gained on September 1, 2010. The Special Magistrate ordered that the Respondent be given thirty (30) days from the hearing date to bring the property into compliance or a daily fine of One Hundred (\$100.00) Dollars would be assessed plus an Administrative Fee of One Hundred Fifty (\$150.00) Dollars was imposed.

The property located at 4557 Poinciana Street, Lauderdale-By-The-Sea, Florida, corresponding to Folio # 9318-01-3850, legally described as:
LAUDERDALE BY THE SEA 6-2 LOT 88 BLK 28

Has not been brought into compliance and a daily fine of One Hundred (\$100.00) Dollars began to accrue on December 17, 2010 and continues to accrue until compliance is gained. The Final Order was mailed via Certified Mail on November 22, 2010. On January 3, 2011 Notice of Certification of Lien Intent was sent via certified mail for the hearing date January 19, 2011. Respondent was not present at the hearing.

Therefore, pursuant to Section 162.09, Florida Statutes, the Special Magistrate certifies as follows:

- 1. The Order of November 17, 2010 required the Respondent to bring the property into compliance thirty days (30) days from the hearing date or be assessed a daily fine of One Hundred (\$100.00) Dollars in addition, an Administrative Fee of One Hundred Fifty (\$150.00) Dollars was imposed.

4

EX 3
Pg 31

CFN # 109972662, OK BK 47836 PG 815, Page 2 of 4

Certification of Lien - Case # 10-KW-00089- 4557 Poinciana Street - Respondent: Sandra Stella

2. The Respondent has not brought the violation into compliance, and the Respondent has continued to violate the order of November 17, 2010 by not paying the Administrative Fee of One Hundred Fifty (\$150.00) Dollars and the daily fine of One Hundred (\$100.00) Dollars that continues to accrue for the period of non-compliance. At the January 19, 2011 Certification of Lien Hearing, testimony indicates that the fines due and owing for the period of non-compliance have reached Three Thousand Four Hundred (\$3,400.00) Dollars plus an Administrative Fee of One Hundred Fifty (\$150.00) Dollars.

3. Therefore, Special Magistrate imposes and certifies fines for the daily fine of One Hundred (\$100.00) Dollars that continues to accrue for the period of non-compliance plus an Administrative Fee of One Hundred Fifty (\$150.00) Dollars.

4. That this Certification, together with the original Final Order, be recorded in the Public Records of the Office of the Clerk of the Circuit Court in and for Broward County, Florida. Pursuant to Section 162.09, Florida Statutes, these documents, when recorded, shall constitute a lien against the land on which the violation(s) exists, and upon any other real or personal property owned by Respondent.

5. If any person desires to appeal, pursuant to Section 162.11, Florida Statutes, such person will need a record of the proceedings which includes the testimony and evidence upon which the appeal is based.

Certification of Lien ordered at Lauderdale-By-The-Sea this 19th day of January, 2011.

ATTEST:

BY: Colleen Tyrrell
Colleen Tyrrell, Secretary for the Special Magistrate

Special Magistrate of the
Town of Lauderdale-By-The-Sea
BY: Gordon B. Linn
Gordon B. Linn, Special Magistrate

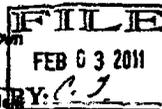
() Personally known to me

Copies furnished to:

Aurora Loan Services
2617 College Park
Scottsbluff, NE 69383-1706

CERTIFICATION
I certify this to be a true and correct copy of the record in my office.

WITNESSED by my hand and official seal of the Town of Lauderdale-By-The-Sea, Florida
20th day of March, 2011
Jose White, C.A.P. Town Clerk



Page 2 of 2

EX 3
PG 32

CFN # 109972662, OR BK 47836 PG 816, Page 3 of 4

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA
CODE COMPLIANCE SPECIAL MAGISTRATE

CASE NUMBER: 10-KW-00089

TOWN OF LAUDERDALE BY THE SEA
MUNICIPAL CORPORATION OF FLORIDA

PETITIONER

VS.

Sandra Stella
5051 NE 24th Avenue
Lighthouse Point, FL 33064

RESPONDENT

FINAL ORDER

HEARING DATE: November 17, 2010

VIOLATION(S): No vacation rental permit for rental of property.

CODE SECTION: 30-327

An Administrative hearing was held before the Special Magistrate on November 17, 2010. Set below are the findings of fact, conclusions of law and final order for the subject hearing.

FINDINGS OF FACT

The record indicates that the Respondent(s) owns certain real property located at: 4557 Poinciana Street, Lauderdale-By-The-Sea, FL 33308 and more particularly described as follows:

Tax Folio Number (Property I.D.): 9318-01-3850

At the hearing held on this matter on November 17, 2010 the Petitioner Town presented testimony by Code Compliance Officer Kim Williams concerning her personal knowledge of the existence of the subject violation(s), and entered into the record evidence of notice required under Town Ordinance Section 20-16. Officer Williams said that the property still was not able to gain compliance and that the property was going through the foreclosure process, however, the property was still being rented. Officer Williams presented a composite printout from a website advertising the property for rent that was entered into evidence as Town's Composite Exhibit A. Officer Williams said that she has been in contact with Ms Stella but she has not completed the vacation rental process to bring the property into compliance. The Respondent was not present at the hearing.

CONCLUSIONS OF LAW

Accordingly, based on the testimony and evidence referenced above, the Petitioner Town has met its burden of providing by substantial competent evidence that alleged violation(s) does in fact exist on the subject property but was not in compliance at or prior to the subject hearing.

ORDER

THEREFORE, BASED UPON THE ABOVE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THE UNDERSIGNED SPECIAL MAGISTRATE FINDS THE RESPONDENT(S) GUILTY OF VIOLATING CODE SECTION 30-327.

EX 3
pg 33

CFN # 109972662, OR BK 47836 PG 817, Page 4 of 4

SANDRA STELLA
CASE NUMBER: 10-KW-00089

IN DETERMINING THE FINE AMOUNT TO BE IMPOSED, CONSIDERATION WAS GIVEN TO: (1) THE GRAVITY OF THE VIOLATION(S), (2) ANY ACTIONS TAKEN BY THE RESPONDENT(S) TO CORRECT THE VIOLATION(S); AND (3) ANY PREVIOUS VIOLATION(S) COMMITTED BY THE RESPONDENT(S).

FINALLY, THE PETITIONER, TOWN, VERIFIED THAT THE VIOLATION WAS NOT IN COMPLIANCE AT THE TIME OF THE HEARING.

THE SPECIAL MAGISTRATE ORDERS THAT THE RESPONDENT BE GIVEN THIRTY (30) DAYS FROM THE HEARING DATE TO BRING THE PROPERTY INTO COMPLIANCE. FAILURE TO ABATE THE VIOLATION WITHIN THE THIRTY (30) DAY TIMEFRAME, A ONE HUNDRED (\$100.00) DOLLAR FINE PER DAY WOULD BE ASSESSED UNTIL COMPLIANCE IS GAINED. THE SPECIAL MAGISTRATE ALSO IMPOSED A ONE HUNDRED FIFTY (\$150.00) DOLLAR ADMINISTRATIVE FEE.

THE TOWN MAY AVAIL ITSELF OF ALL LEGAL REMEDIES AVAILABLE TO IT, INCLUDING THE FORECLOSURE OF THE LIEN.

Done and Ordered this 17TH day of November, 2010 Lauderdale By The Sea, Florida.

Gordon B. Linn
Gordon B. Linn, Special Magistrate

ATTEST:)

Colleen Tyrrell
Colleen Tyrrell, Secretary for the Special Magistrate

CERTIFICATION

I certify this to be a true and correct copy of the record in my office.

WITNESSED by my hand and official seal of the Town of Lauderdale-By-The-Sea, Florida

25th day of March, 2011
Jane White, C.M.C. Town clerk

Cc to: Aurora Loan Services
327 Inverness Drive South
Englewood, CO 80112

Law Office of David Stern c/o Karen Black
900 S. Pine Island Road, Ste 400
Plantation, FL 33324-3920

Note: Please make your check payable to:

Town of Lauderdale-By-The-Sea

Please send your check to:

4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308

FILE
NOV 19 2010
BY: *CL*

Ex 3
pg 34

S. Alan Johnson Law LLC

May 11, 2012

Town of Lauderdale-By-The-Sea
4501 North Ocean Drive
Lauderdale-By-The-Sea, FL 33308

RE: Letter in Support of Application For Relief from Code Enforcement Fines or Liens

<u>Property address</u>	<u>Case Number</u>	<u>Issue</u>
4216 Seagrape Drive	10-KM-00624	Vacation Rental Certificate
	11-KW-00016	Business Tax Receipt License
	11-KW-00049	Rental for improper period
4236 East Tradewinds Avenue	10-KM-00626	Vacation Rental Certificate
	11-KW-00017	Business Tax Receipt License
4557 Poinciana Street	11-KW-00015	Business Tax Receipt License
	10-KW-00089	Vacation Rental Certificate

Honorable Town Commissioners:

This office represents Sandra Stella, legal owner of the properties described above (the "Properties"). This letter is an attachment to the Application For Relief from Code Enforcement Fines or Liens ("Application for Relief") from certain liens arising out of the above case numbers which were recorded by the Town of Lauderdale-By-The-Sea (the "Town") against Sandra Stella's Properties. The purpose of this letter is to provide explanation and support for our position that relief from the recorded liens and related fines should be granted to Sandra Stella.

This letter will address factors relevant to Sandra Stella's Application for Relief. The nature and gravity of the violations is low or minimal, as all the violations are for either failure to obtain a Business Tax Permit or failure to obtain a Vacation Rental Certificate. The violations do not constitute any building code violation or constitute any material threat to health, safety, or welfare of the citizens of the counties and municipalities of this state as contemplated by §162.02, Florida Statutes (Intent of the Local Government Code Enforcement Boards Act). Sandra Stella has corrected the violations by obtaining current Business Tax Permits and Vacation Rental Certificates for all three Properties on May 2, 2012, including payment of all past due permit and certificate fees, penalties, and associated charges. The previously-ordered compliance dates were December 17, 2010 for case numbers 10-KM-00624, 10-KM-00626, and 10-KW-00089, and were April 15, 2011 for case numbers 11-KW-00015, 11-KW-00016, and 11-KW-00017, and was May 20, 2011 for case number 11-KW-00049. The length of time prior to the violations being brought into compliance therefore ranged from 348 days (i.e., 11 months, and 12 days) to 502 days (i.e., 1 year, 4 months, and 15 days). Actual costs Sandra Stella expended to cure the violations, as supported by documentation attached to the Application for Relief, include the following:

1. Payment of one thousand nine hundred twenty dollars and no cents (\$1,920.00), paid via BankUnited certified check number 400301692 on May 2, 2012, to correct the violations related to case numbers 10-KM-00624, 11-KW-00016, 10-KM-00626, 11-KW-00017,

11-KW-00015, and 10-KW-00089, by obtaining current Business Tax Permits and Vacation Rental Certificates for all three Properties, including payment of all past due permit and certificate fees, penalties, and associated charges.

2. Payment of six hundred twenty-five dollars and no cents (\$625.00), paid via BankUnited certified check number 400301699 on May 2, 2012, to satisfy the violation and total fine amount related to case number 11-KW-00049.

There are no prior or current violations Sandra Stella committed on the subject properties or upon any other properties owned by Sandra Stella within the Town, other than the violations at issue in this Application for Relief.

Equitable considerations relevant to this Application for Relief are significant, and are well documented by exhibits to this Application for Relief. As reflected within Sandra Stella's letter in support of this Application for Relief, Sandra Stella's daughter Tiffany began having substantial vision problems in May of 2010 and was diagnosed with retinitis pigmentosa. Since that time, Sandra Stella has dedicated her time, efforts, and limited financial resources in pursuit of medical treatment for Tiffany's condition. Any of the violations and any associated fines related to this Application for Relief occurred subsequent to Tiffany's diagnosis in May of 2010. These hardship circumstances justify a substantial reduction or elimination of the fines at issue in the above-described cases.

Legal considerations are also relevant to this Application for Relief and present significant issues deserving due consideration by the Town Commission. The first legal issue involves whether each Order Imposing Fine/Certificate of Lien and each related Final Order imposes fines at one hundred dollars (\$100.00) per day that are inordinate in amount and inappropriate in application. The fines are inordinate in amount and application regarding the three Business Tax Permit cases based upon applying section 205.053, Florida Statutes, and section 162.09, Florida Statutes, to the facts in the cases at issue (case numbers 11-KW-00016, 11-KW-00017, and 11-KW-00015). The Florida Attorney General issued Advisory Legal Opinion Number AGO 96-72 ("Advisory Legal Opinion") on September 23, 1996, which is attached to this letter as Exhibit A and incorporated herein by reference. Subsections (2) and (3) of Section 205.053, Florida Statutes (1996), as quoted within the Legal Advisory Opinion, were as follows:

(2) Any person who engages in or manages any business, occupation, or profession without first obtaining a local occupational license, if required, is subject to a penalty of 25 percent of the license due, in addition to any other penalty provided by law or ordinance.

(3) Any person who engages in any business, occupation, or profession covered by this chapter, who does not pay the required occupational license tax within 150 days after the initial notice of tax due, and who does not obtain the required occupational license is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to \$250.

Subsections (2) and (3) of Section 205.053, Florida Statutes (2011), provide as follows:

(2) Any person who engages in or manages any business, occupation, or profession without first obtaining a local business tax receipt, if required, is subject to a penalty of 25 percent of the tax due, in addition to any other penalty provided by law or ordinance.

(3) Any person who engages in any business, occupation, or profession covered by this chapter, who does not pay the required business tax within 150 days after the initial notice of tax due, and who does not obtain the required

receipt is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to \$250.

The only amendments to subsections (2) and (3) of Section 205.053, Florida Statutes relate to the change from "occupational license" to "business tax receipt." The remaining substantive provisions of subsections (2) and (3) of Section 205.053, Florida Statutes, remain unchanged, resulting in the Florida Attorney General's Advisory Legal Opinion being directly applicable to the cases at issue in this Application for Relief.

As stated by Florida Attorney General Robert A. Butterworth in the Advisory Legal Opinion, "... while section 162.09, Florida Statutes, generally provides for the imposition of a fine, section 205.053, Florida Statutes, specifically provides for the penalty to be imposed for failure to obtain or renew an occupational license. As the more specific statute imposing a penalty, the provisions of section 205.053, would appear to control when a civil fine is imposed for failure to comply with the occupational license tax ordinance enacted pursuant to Chapter 205, Florida Statutes." The Advisory Legal Opinion continues:

While section 205.053(2), Florida Statutes, in authorizing a penalty of 25 percent on a person who fails to obtain an occupational license, states that the penalty is "in addition to any other penalty provided by law or ordinance," the reference to other penalties would appear to be nonmonetary when considered in light of s. 205.053(3). Section 205.053(3) provides that a person who fails to pay the occupational license within 150 days of notice of the tax is subject to civil actions and penalties, including court costs, reasonable attorney's fees, administrative costs incurred as a result of collection efforts, and a monetary penalty not to exceed \$250. An unreasonable result would be reached by reading section 205.053(2) as authorizing additional monetary penalties, such as those prescribed in Chapter 162, Florida Statutes, on an individual who fails to obtain an occupational license when section 205.053(3) limits the monetary penalty that may be imposed on such an individual if he fails to obtain such license for more than 150 days. Thus, section 205.053 appears to place limitations on the enforcement of the statute, whether it be by a code enforcement board or the court, on persons failing to obtain the necessary license.

Based upon the application of section 205.053, Florida Statutes, and section 162.09, Florida Statutes, and the Florida Attorney General's Advisory Legal Opinion to the facts in the Business Tax Receipt License cases at issue, I respectfully submit to the Town Commission that Sandra Stella has paid all amounts due and owing to the Town as the result of Sandra Stella having corrected the violations by obtaining current Business Tax Permits and Vacation Rental Certificates for all three Properties on May 2, 2012, including payment of all past due permit and certificate fees, penalties, and associated charges.

The fines are inordinate in amount and application regarding the three Vacation Rental Certificate cases based upon applying the provisions of the Town of Lauderdale-By-The-Sea Municipal Code Section 30-327 (Vacation Rentals), to the facts in the cases at issue (case numbers 10-KM-00624, 10-KM-00626, and 10-KW-00089). Subsection (k) of section 30-327 provides as follows:

Revocation or suspension of vacation rental certificate. Violation of this section, after proper notice and hearing, is a basis for revocation or suspension of a vacation rental certificate.

1. Suspension. The Town Manager may suspend the vacation rental certificate for a specific period of time not to exceed six months, or until certain conditions have been complied with or violations cured.
2. Revocation. The Town Manager may revoke the vacation rental certificate. After revocation of a property owner's vacation rental certificate, the owner shall not reapply for a vacation rental certificate for any single-family or townhouse dwelling in the Town until the basis for the revocation has been resolved and in no event prior to six months following the date of revocation.
3. Penalty. If the property owner, after such revocation or suspension, thereafter continues to allow vacation rental use of the dwelling, each day of continued use shall be a continuing violation subject to a fine up to the maximum permitted by law per day, which fine shall result in a lien upon the vacation rental dwelling or other property of the owner as otherwise provided in this Code.

Based upon available evidence, Sandra Stella's Vacation Rental Certificate numbers 2010-VAC-001, 2010-VR-002, and 2010-VR-003 have never been suspended or revoked by action of the Town Manager. In fact, the Business Tax Receipts issued by the Town on May 2, 2012 to Sandra Stella upon payment of all past due permit and certificate fees, penalties, and associated charges, do not reflect any fee or other charge for any appeal from any suspension or revocation of any of Sandra Stella's three Vacation Rental Certificates. Page five of the Town's "Application for a Vacation Rental Certificate" addresses appeals from revocation or suspension of a Vacation Rental Certificate. Further, all Renewal Notices provided by the Town to Sandra Stella regarding the three Vacation Rental Certificates (and related Business Tax Receipts) did not reflect any indication that the Vacation Rental Certificates to be renewed had been suspended or revoked. Copies of such Renewal Notices are attached hereto as Composite Exhibit B, and are incorporated herein by reference.

Even if the Town Commission should find that there was a suspension or revocation of Sandra Stella's Vacation Rental Licenses imposed at any time subsequent to each Order Imposing Fine/Certificate of Lien and each related Final Order regarding any violations of the Town's Vacation Rental Certificate requirements, any \$100-per-day fines should be limited in amount because the Properties were not in "vacation rental use" as referred to in the Town of Lauderdale-By-The-Sea Municipal Code Section 30-327, subsection (k)(3) during the entire duration of the time period contemplated within each Order Imposing Fine/Certificate of Lien and each related Final Order. In fact, the property located at 4557 Poinciana Street was occupied by Sandra Stella's daughter from approximately the end of March 2011 through December 15, 2011. Prior to that time, the property was utilized for "vacation rental use" only during irregular intervals of time (such documentation being available to the Town Commission upon request). The properties located at 4216 Seagrape Drive and 4236 East Tradewinds Avenue were also utilized for "vacation rental use" only during irregular intervals of time (such documentation also being available to the Town Commission upon request). Therefore, based upon the language of Municipal Code Section 30-327, subsection (k)(3), stating, in relevant part, "... *each day of continued use* shall be a continuing violation subject to a fine up to the maximum permitted by law per day. ..." (emphasis added), the properties were not in continuous "vacation rental use" subsequent to the entry of each Order Imposing Fine/Certificate of Lien and each related Final Order regarding any violations of the Town's Vacation Rental Certificate requirements.

The second legal issue relates to whether the Town is compliant with the requirements of section 162.05(1), Florida Statutes, which provides as follows:

The local governing body may appoint one or more code enforcement boards and legal counsel for the enforcement boards. The local governing body of a county or a municipality that has a population of less than 5,000 persons may appoint five-member or seven-member code enforcement boards. The local governing body of a county or a municipality that has a population equal to or greater than 5,000 persons must appoint seven-member code enforcement boards. The local governing body may appoint up to two alternate members for each code enforcement board to serve on the board in the absence of board members.

Town of Lauderdale-By-The-Sea Municipal Code Chapter 6.5 (Code Enforcement), subsection Sec. 6.5-2 (Special Masters), provides as follows:

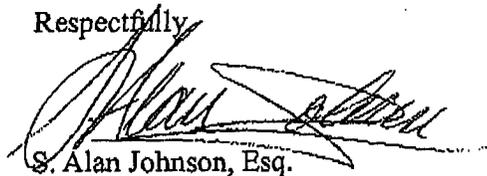
- (a) The Town shall retain one or more Special Masters who may conduct code enforcement hearings and assess fines against violators of the Town in the same manner as a Code Enforcement Board established pursuant to F.S. ch. 162.
- (b) Each agreement for Special Master services shall be approved by resolution of the Town Commission.
- (c) To qualify for and hold the position of Special Master, a individual shall be a member in good standing with the Florida Bar and engaged in the practice of law in Broward County.

The Town of Lauderdale-By-The-Sea Municipal Code appears to reflect no provisions indicating compliance with the clear and unambiguous requirements of Florida Statutes section 162.05, et seq., mandating that the Town to establish a Code Enforcement Board comprised of the appropriate number and composition of Code Enforcement Board members. If the Town is not compliant with the requirements of Florida Statutes section 162.05, et seq., mandating that the Town to establish a Code Enforcement Board, the Town does not possess the authority to impose administrative fines under authority of section 162.09, Florida Statutes.

Sandra Stella is in compliance with Town Municipal Code requirements associated with the cases at issue in the Application for Relief. On behalf of Sandra Stella, I respectfully request relief from the fines and liens imposed under the six Business Tax Receipt License and Vacation Rental Certificate cases at issue based upon the nature and gravity of the violations, the actions taken to correct the violations as reflected by the current status of Sandra Stella's Business Tax Receipt Licenses and Vacation Rental Certificates, the payment by Sandra Stella to the Town to cure the violations, the significant and substantial equitable considerations discussed above, and the foregoing legal analysis. The relief requested is either an elimination of any and all outstanding fines or other charges alleged by the Town to be due and owing to the Town regarding the cases at issue, or a reduction in the amount of fines or other charges alleged by the Town to be due and owing to the Town regarding the cases at issue to the total amount of three thousand dollars (\$3,000.00).

Thank you for you kind consideration of Sandra Stella's position and the issues presented within this letter in support of Sandra Stella's Application for Relief.

Respectfully



S. Alan Johnson, Esq.
Florida Bar No. 874809

Attachments: Exhibit A and Composite Exhibit B

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EXHIBIT A

Florida Attorney General Advisory Legal Opinion

Number: AGO 96-72

Date: September 23, 1996

Subject: Occupational license enforced by code enforcement board

Ms. Lori Stelzer
Venice City Clerk
401 West Venice Avenue
Venice, Florida 34285

RE: MUNICIPALITIES--LOCAL GOVERNMENT CODE ENFORCEMENT BOARDS--
OCCUPATIONAL LICENSES--enforcement of occupational license
ordinance by code enforcement board; authorized penalty. ss.
162.09, 205.053, Fla. Stat.

Dear Ms. Stelzer:

On behalf of the City of Venice Code Enforcement Board, you ask substantially the following question:

May the code enforcement board impose the daily fine prescribed in section 162.09, Florida Statutes, for violations of its occupational license tax ordinance enacted pursuant to Chapter 205, Florida Statutes, in addition to the fine prescribed by Chapter 205?

In sum:

If the city prosecutes violations of its occupational license tax ordinance enacted pursuant to Chapter 205, Florida Statutes, before its code enforcement board, section 205.053, Florida Statutes, prescribes the fine that may be imposed.

Section 205.042, Florida Statutes, authorizes the governing body of a municipality to levy, by appropriate resolution or ordinance, an occupational license tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. [1] Section 205.053, Florida Statutes, provides:

"(1) All licenses shall be sold by the appropriate tax collector beginning August 1 of each year, are due and payable on or before September 30 of each year, and expire on September 30 of the

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succeeding year. . . . Licenses that are not renewed when due and payable are delinquent and subject to a delinquency penalty of 10 percent for the month of October, plus an additional 5 percent penalty for each subsequent month of delinquency until paid. However, the total delinquency penalty may not exceed 25 percent of the occupational license tax for the delinquent establishment.

(2) Any person who engages in or manages any business, occupation, or profession without first obtaining a local occupational license, if required, is subject to a penalty of 25 percent of the license due, in addition to any other penalty provided by law or ordinance.

(3) Any person who engages in any business, occupation, or profession covered by this chapter, who does not pay the required occupational license tax within 150 days after the initial notice of tax due, and who does not obtain the required occupational license is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to \$250."

Thus, the Legislature in section 205.053, Florida Statutes, has prescribed the penalties for failure to obtain a required occupational license. The statute does not, however, provide for exclusive jurisdiction in any specific court or enforcement board for the imposition of fines nor is there anything in the statute to indicate that prosecution of businesses in violation of an occupational license tax ordinance must be handled in a manner different than that used for any other ordinance violation. [2]

Section 34.01(1)(b), Florida Statutes, places original jurisdiction in county courts for "all violations of municipal and county ordinances." Counties and municipalities have the option, however, to adopt, by ordinance, an alternate code enforcement system which gives code enforcement boards or special masters designated by the local governing body the authority to hold hearings and assess fines against violators of codes and ordinances. [3]

Chapter 162, Florida Statutes, the "Local Government Code Enforcement Boards Act," [4] authorizes the creation of quasi-judicial administrative boards with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any codes and ordinances in force in counties and municipalities, where a pending or repeated violation continues to exist. [5]

The plain language of section 162.02, Florida Statutes, setting forth the legislative intent of the act, authorizes local government code enforcement boards to enforce "any" codes and ordinances in force in the county or municipality. [6] While an earlier version of the statute limited a code enforcement board's

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Advisory Legal Opinion - Occupational license enforced by code enforcement board

authority to the enforcement of "technical" codes, [7] the statute was amended in 1989 "to delete any reference to specific types of codes and ordinances under the jurisdiction of code enforcement boards." [8] Thus, under section 162.02, Florida Statutes, local government code enforcement boards are authorized to enforce any code or ordinance of the city.

For any jurisdiction that has established a local government code enforcement board, section 162.09, Florida Statutes, authorizes the imposition of administrative fines for noncompliance with an order of the board or for repeat violations. Specifically, however, a fine imposed pursuant to section 162.09, Florida Statutes, "shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation[.]" [9]

Your question arises because section 162.09, Florida Statutes, authorizes the imposition of administrative fines for noncompliance with an order of the board or for repeat violations, while section 205.053, Florida Statutes, also authorizes a fine and prescribes the amount of such fine. As both chapter 162 and section 205.053 are penal in nature, they are to be strictly construed. [10]

In Attorney General Opinion 91-7, this office was asked whether the penalty provisions prescribed in the Convenience Store Security Act prevailed over the penalty provisions of the Local Government Code Enforcement Boards Act. This office concluded:

"While Ch. 162, F.S., generally controls the administrative enforcement procedures and means of imposing fines for the violation of local codes and ordinances which have no criminal penalty, the more specific and more recently enacted provisions in Ch. 90-346, Laws of Florida, would control when the civil fine is imposed for failure to comply with a local ordinance enacted pursuant to the Convenience Store Security Act.

Thus, the opinion concluded that if a local government had created a code enforcement board and authorized it to prosecute violations of the Convenience Store Security Act, the board could impose the fine authorized by the Convenience Store Security Act as prescribed by the local ordinance.

Similarly, while section 162.09, Florida Statutes, generally provides for the imposition of a fine, section 205.053, Florida Statutes, specifically provides for the penalty to be imposed for failure to obtain or renew an occupational license. As the more specific statute imposing a penalty, the provisions of section 205.053, would appear to control when a civil fine is imposed for failure to comply with the occupational license tax ordinance enacted pursuant to Chapter 205, Florida Statutes. [11]

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Advisory Legal Opinion - Occupational license enforced by code enforcement board

While section 205.053(2), Florida Statutes, in authorizing a penalty of 25 percent on a person who fails to obtain an occupational license, states that the penalty is "in addition to any other penalty provided by law or ordinance," the reference to other penalties would appear to be nonmonetary when considered in light of s. 205.053(3). Section 205.053(3) provides that a person who fails to pay the occupational license within 150 days of notice of the tax is subject to civil actions and penalties, including court costs, reasonable attorney's fees, administrative costs incurred as a result of collection efforts, and a monetary penalty not to exceed \$250. An unreasonable result would be reached by reading section 205.053(2) as authorizing additional monetary penalties, such as those prescribed in Chapter 162, Florida Statutes, on an individual who fails to obtain an occupational license when section 205.053(3) limits the monetary penalty that may be imposed on such an individual if he fails to obtain such license for more than 150 days.[12] Thus, section 205.053 appears to place limitations on the enforcement of the statute, whether it be by a code enforcement board or the court, on persons failing to obtain the necessary license.

Accordingly, until this matter is legislative or judicially clarified, I am of the opinion that if the city prosecutes violations of its occupational license tax ordinance enacted pursuant to Chapter 205, Florida Statutes, the code enforcement board would impose the fine prescribed by Chapter 205, Florida Statutes.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See, s. 205.043, Fla. Stat. (1995), setting forth the conditions for a municipality to levy such a license tax.

[2] See, Op. Att'y Gen. Fla. 93-2 (1993).

[3] Section 162.03, Fla. Stat. (1995).

[4] Section 162.01, Fla. Stat. (1995).

[5] Section 162.02, Fla. Stat. (1995). Such authorization is

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necessary for the creation of a quasi-judicial advisory board with the power to impose administrative fines in light of Art. V, s. 1, and Art. I, s. 18, Fla. Const., which respectively provide that administrative officers or bodies may be granted quasi-judicial powers in matters connected with their office, and that no administrative agency shall impose a sentence of imprisonment nor shall it impose any other penalty except as provided by law. See, *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145 (Fla. 4th DCA 1982) (provision of a county ordinance authorizing assessment of penalties by a county agency was unconstitutional).

[6] See, *Black's Law Dictionary* Any p. 86 (5th ed. 1979) (one indiscriminately of whatever kind or quantity) and *Webster's Third New International Dictionary* Any p. 97 (unabridged ed. 1981) (one indifferently out of more than two).

[7] See, s. 162.02, Fla. Stat. (1987). And see, *Op. Att'y Gen. Fla. 83-63* (1983), in which this office concluded that the jurisdiction of a local government code enforcement board was restricted to the enforcement of local codes relating to a particular art, science, profession, trade or skill, and to those enumerated at the time (occupational license, fire, building, zoning, and sign codes) and codes of a similar nature, excluding ordinances concerning parking and traffic violations and all misdemeanors and other offenses provided for by municipal ordinance.

[8] See, *Staff Analysis, House of Representatives Committee on Governmental Operations*, as revised by the Committee on Rules and Calendar Staff Analysis and Economic Impact Statement, CS/CS/HB 1210, HB 1474, and HB 1484, May 25, 1989, stating that the amendment "would make it clear that local governments can place the enforcement of any local code or ordinance under the jurisdiction of code enforcement boards."

[9] Section 162.09(2)(a), Fla. Stat. The statute, however, provides that if the code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation. And see, s. 162.09(2)(b), Fla. Stat., setting forth the criteria to be used by the board in determining the amount of the fine.

[10] See, e.g., *City of Tampa v. Braxton*, 616 So. 2d 554 (Fla. 2d DCA 1993) (administrative fine provisions of Ch. 162 must be strictly construed); and *Texas Company v. Amos*, 81 So. 471 (Fla. 1919) (laws imposing license taxes, and providing a penalty for doing business without a license, are penal in their nature, and should be strictly construed).

[11] See, *Harley v. Board of Public Instruction of Duval County*,

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Advisory Legal Opinion - Occupational license enforced by code enforcement board

103 So. 2d 111 (Fla. 1958) (special grant of power or special act of the Legislature takes precedence over a general grant or law on the same subject).

[12] See, *State v. Iacovone*, 660 So. 2d 1371 (Fla. 1995) (statutes, as a rule, will not be interpreted so as to yield an absurd result).

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COMPOSITE EXHIBIT B

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TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

No: 1348

Lauderdale-By-The-Sea, FL 33308

Date: 1/10/12

October 1, 2011 thru September 30, 2012

BUS TAX	250.00
PENALTY	62.50
FIRE INSP	
SIGN	
PRIOR/TRF	312.50
Total Due	625.00

Address: 4216 Seagrape Dr.
Lauderdale By The Sea, FL 33308
VACATION RENTAL
Certificate # 2010-VAC-001

Issued to: Sandy Stella

5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

No: 1348

Lauderdale-By-The-Sea, FL 33308

Date: 1/10/12

October 1, 2011 thru September 30, 2012

BUS TAX	6.00
PENALTY	1.50
FIRE INSP	
SIGN	
PRIOR/TRF	7.50
Total Due	15.00

Address: 4216 Seagrape Dr.
Lauderdale By The Sea, FL 33308
Rental Single Family 232.5B

Issued to: Sandy Stella

5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

No: 1516

Lauderdale-By-The-Sea, FL 33308

Date: 1/10/12

October 1, 2011 thru September 30, 2012

Address: 4236 E. Tradewinds Ave.
Lauderdale By The Sea, FL 33308
RENT S Rental Single Family 232.5B

BUS TAX 6.00
PENALTY 1.50
FIRE INSP
SIGN
PRIOR/TRF 7.50
Total Due 15.00

Issued to: Sandra Stella

5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

No: 1516

Lauderdale-By-The-Sea, FL 33308

Date: 1/10/12

October 1, 2011 thru September 30, 2012

Address: 4236 E. Tradewinds Ave.
Lauderdale By The Sea, FL 33308
VACATION RENTAL
Certificate # 2010-VR-003

BUS TAX 250.00
PENALTY 62.50
FIRE INSP
SIGN
PRIOR/TRF 312.50
Total Due 625.00

Issued to: Sandra Stella

5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

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PG 4A

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

Lauderdale-By-The-Sea, FL 33308

October 1, 2011 thru September 30, 2012

No: 1515

Date: 1/10/12

Address: 4557 Poinciana St.
Lauderdale By The Sea, FL 33308
RENT S Rental Single Family 232.5B

BUS TAX	6.00
PENALTY	1.50
FIRE INSP	
SIGN	
PRIOR/TRF	7.50
Total Due	15.00

Issued to: Sandra Stella

5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

Lauderdale-By-The-Sea, FL 33308

October 1, 2011 thru September 30, 2012

No: 1515

Date: 1/10/12

Address: 4557 Poinciana St.
Lauderdale By The Sea, FL 33308
VACATION RENTAL
Certificate #2010-VR-002

BUS TAX	250.00
PENALTY	62.50
FIRE INSP	
SIGN	
PRIOR/TRF	312.50
Total Due	625.00

Issued to: Sandra Stella

5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

No: 1348

Lauderdale-By-The-Sea, FL 33308

Date: 12/02/11

October 1, 2011 thru September 30, 2012

Address: 4216 Seagrape Dr.
Lauderdale By The Sea, FL 33308
Rental Single Family 232.5B

BUS TAX 6.00
PENALTY 1.20
FIRE INSP
SIGN
PRIOR/TRF 7.50
Total Due 14.70

Issued to: Sandy Stella
5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

Dec. 1 14.70
Jan. 1 15.00

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

No: 1348

Lauderdale-By-The-Sea, FL 33308

Date: 12/02/11

October 1, 2011 thru September 30, 2012

Address: 4216 Seagrape Dr.
Lauderdale By The Sea, FL 33308
VACATION RENTAL
Certificate # 2010-VAC-001

BUS TAX 250.00
PENALTY 50.00
FIRE INSP
SIGN
PRIOR/TRF 312.50
Total Due 612.50

Issued to: Sandy Stella
5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

Dec. 1 612.50
Jan. 1 625.00

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

EX 4
P951

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

Lauderdale-By-The-Sea, FL 33308

October 1, 2011 thru September 30, 2012

No: 1516

Date: 12/02/11

Address: 4236 E. Tradewinds Ave.
Lauderdale By The Sea, FL 33308
VACATION RENTAL
Certificate # 2010-VR-003

Issued to: Sandra Stella

5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

BUS TAX 250.00
PENALTY 50.00
FIRE INSP
SIGN
PRIOR/TRF 312.50
Total Due 612.50

Dec. 1 612.50
Jan. 1 625.00

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

Lauderdale-By-The-Sea, FL 33308

October 1, 2011 thru September 30, 2012

No: 1516

Date: 12/02/11

Address: 4236 E. Tradewinds Ave.
Lauderdale By The Sea, FL 33308
RENT S Rental Single Family 232.5B

Issued to: Sandra Stella

5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

BUS TAX 6.00
PENALTY 1.20
FIRE INSP
SIGN
PRIOR/TRF 7.50
Total Due 14.70

Dec. 1 14.70
Jan. 1 15.00

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

EX 4
Pg 50

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

No: 1515

Lauderdale-By-The-Sea, FL 33308

Date: 12/02/11

October 1, 2011 thru September 30, 2012

Address: 4557 Poinciana St.
Lauderdale By The Sea, FL 33308
RENT S Rental Single Family 232.5B

BUS TAX 6.00
PENALTY 1.20
FIRE INSP
SIGN
PRIOR/TRF 7.50
Total Due 14.70

Issued to: Sandra Stella
5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

Dec. 1 14.70
Jan. 1 15.00

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

TOWN OF LAUDERDALE-BY-THE-SEA

4501 Ocean Drive

No: 1515

Lauderdale-By-The-Sea, FL 33308

Date: 12/02/11

October 1, 2011 thru September 30, 2012

Address: 4557 Poinciana St.
Lauderdale By The Sea, FL 33308
VACATION RENTAL
Certificate #2010-VR-002

BUS TAX 250.00
PENALTY 50.00
FIRE INSP
SIGN
PRIOR/TRF 312.50
Total Due 612.50

Issued to: Sandra Stella
5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

Dec. 1 612.50
Jan. 1 625.00

Notice of Violation to be issued if not paid.

PLEASE PAY PROMPTLY

EX 4
PO 53

License Year Oct 1, 2010 - Sept 30, 2011
TOWN OF LAUDERDALE-BY-THE-SEA

No: 1515

4501 Ocean Dr., Lauderdale-By-The-Sea, FL 33308

Date: 7/23/10

INDICATE BUSINESS TAX RECEIPT NUMBER ON CHECK

Address: 4557 Poinciana St.
Lauderdale By The Sea, FL 33308
Activity: RENT S Rental Single Family 232.5B
Issued to: Sandra Stella
5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

BUS TAX	6.00
PENALTY	
TRANSFER	
SIGN	
PRIOR BAL	
Total Due	6.00
October 1	6.60
November 1	6.90
December 1	7.20
January 1	7.50

Failure to pay by October 1 will result in a penalty.

Please Pay Promptly

License Year Oct 1, 2010 - Sept 30, 2011
TOWN OF LAUDERDALE-BY-THE-SEA

No: 1515

4501 Ocean Dr., Lauderdale-By-The-Sea, FL 33308

Date: 7/23/10

INDICATE BUSINESS TAX RECEIPT NUMBER ON CHECK

Address: 4557 Poinciana St.
Lauderdale By The Sea, FL 33308
Activity: VACATION RENTAL
Certificate #2010-VR-002
Issued to: Sandra Stella
5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

BUS TAX	250.00
PENALTY	
TRANSFER	
SIGN	
PRIOR BAL	
Total Due	250.00
October 1	275.00
November 1	287.50
December 1	300.00
January 1	312.50

Failure to pay by October 1 will result in a penalty.

Please Pay Promptly

License Year Oct 1, 2010 - Sept 30, 2011
TOWN OF LAUDERDALE-BY-THE-SEA

No: 1516

4501 Ocean Dr., Lauderdale-By-The-Sea, FL 33308

Date: 7/23/10

INDICATE BUSINESS TAX RECEIPT NUMBER ON CHECK

Address: 4236 E. Tradewinds Ave.
Lauderdale By The Sea, FL 33308
Activity: RENT S Rental Single Family 232.5B
Issued to: Sandra Stella
5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

BUS TAX	6.00
PENALTY	
TRANSFER	
SIGN	
PRIOR BAL	
Total Due	6.00
October 1	6.60
November 1	6.90
December 1	7.20
January 1	7.50

Failure to pay by October 1 will result in a penalty.

Please Pay Promptly

License Year Oct 1, 2010 - Sept 30, 2011
TOWN OF LAUDERDALE-BY-THE-SEA

No: 1516

4501 Ocean Dr., Lauderdale-By-The-Sea, FL 33308

Date: 7/23/10

INDICATE BUSINESS TAX RECEIPT NUMBER ON CHECK

Address: 4236 E. Tradewinds Ave.
Lauderdale By The Sea, FL 33308
Activity: VACATION RENTAL
Certificate # 2010-VR-003
Issued to: Sandra Stella
5051 N.E. 24th Ave.
Lighthouse Point, FL 33064

BUS TAX	250.00
PENALTY	
TRANSFER	
SIGN	
PRIOR BAL	
Total Due	250.00
October 1	275.00
November 1	287.50
December 1	300.00
January 1	312.50

Failure to pay by October 1 will result in a penalty.

Please Pay Promptly