

**IN THE CIRCUIT COURT FOR THE FIFTH JUDICIAL CIRCUIT
IN AND FOR MARION COUNTY, FLORIDA**

**WILLIAM SLAVICH a/k/a
BILL SLAVICH,**

Appellant,

vs.

**CASE NUMBER: 2021-CA-86
LOWER CASE NUMBER: 2018-1177**

THE CITY OF OCALA,

Appellee.

_____ /

OPINION

THIS CAUSE is before the Court on Appellant WILLIAM SLAVICH a/k/a BILL SLAVICH's Petition for Writ of Certiorari, which this Court construed as a notice of appeal of a Final Administrative Order rendered by the City of Ocala's Contractor's Board of Examiners and Appeals. Special Magistrate Thomas J. Dobbins of the Contractor's Board of Examiners and Appeals found Appellant guilty of violating multiple sections of the City of Ocala Code of Ordinances. This Court has jurisdiction pursuant to Fla. Stat. § 498.127 and Fla. R. App. P. 9.030(c)(1)(C). The Court, having reviewed and considered the Initial Brief, Answer Brief, and Reply Brief, the record provided by the parties, and being otherwise fully informed of the premises, finds as follows:

BACKGROUND

On December 19, 2018, the Contractor's Board of Examiners and Appeals of the City of Ocala, Marion County, Florida, issued a notice of hearing, formally initiating a case against JG Strickland, LLC, a licensed contractor, Interior Concepts of Central Florida, Inc., an unlicensed contractor, and Appellant, an unlicensed contractor, for several violations of the City of Ocala Code of Ordinances relating to the activities of licensed and unlicensed contractors during the

construction of a home owned by Joseph and Stephania Spaziani. After multiple continuances were granted, an evidentiary hearing was held before the Special Magistrate on November 22, 2019.

At the hearing, the City of Ocala was represented by Jeremy Powers, Appellant was represented by Robert Buchanan, and the Spazianis were represented by Theodore Schatt. The Special Magistrate heard testimony from Dale Hollingsworth, the manager of the Code Enforcement Division when the complaint was filed, Mr. Spaziani, Appellant, Susan Slavich, Appellant's wife, James Strickland, and Chad McPherson. At the conclusion of the hearing, the Special Magistrate requested the parties submit additional evidence and brief issues regarding whether Appellant could be charged with the violations in his individual capacity and whether Mr. Strickland could have hired Appellant to provide services as a contractor.

On October 27, 2020, a notice of hearing was mailed to the Spazianis, Mr. Strickland, Interior Concepts of Central Florida, Inc., c/o Mrs. Slavich, and Appellant. Appellant's notice was mailed to 3887 SE Lake Weir Avenue, Ocala, FL 34480. The notice advised that on November 18, 2020, "a hearing [would] be held before the Contractor's Board of Examiners and Appeals of the City of Ocala as a continuation of the prior hearings to determine whether you have violated one or more provisions of the City of Ocala Code of Ordinances." The notice also advised that the parties were "entitled to be represented by counsel, present testimony and evidence, and to testify on [their] behalf." On November 4, 2020, a second notice of hearing was mailed to the parties and additionally sent to Appellant at 5207 NW 35th Lane Road, Ocala, FL 34482. The notice of hearing was also posted at "2841 SE 49th Ave / 29732-001-36, Ocala, Florida" and the City Hall Lobby located at 110 SE Watula Avenue, Ocala, Florida.

On November 18, 2020, the continuation of the evidentiary hearing was held. Present at

the hearing was Christopher Anderson, on behalf of the City of Ocala, Mr. Spaziani, Mr. Schatt, Mr. Strickland, Appellant, Mrs. Slavich, and Greg McClellan, the site inspector from the City of Ocala. Appellant appeared without Mr. Buchanan and advised the Special Magistrate that Mr. Buchanan had withdrawn from representing Appellant several months prior to the hearing. Appellant also advised that he received a notice posted on the front door of his home, which he saw when he returned from vacation on November 12, 2020. Appellant also advised he was not aware the hearing would include the questioning of witnesses. The Special Magistrate advised the parties that the hearing would proceed and then questioned Mr. McClellan, Mr. Spaziani, Mr. Strickland, and Appellant. The Special Magistrate also heard legal argument from Mr. Anderson.

On December 14, 2020, the Special Magistrate entered a Final Administrative Order finding, *inter alia*, Appellant guilty of violating sections 22-151(b)(1), 22-151(b)(2), 22-151(b)(12), 22-151(b)(13), 22-151(a)(8), and 22-151(a)(23) of the City of Ocala Code of Ordinances. The Special Magistrate found the evidence presented established that, at all times relevant to the matter, Mr. Strickland was a licensed contractor and Appellant was an unlicensed contractor. The Special Magistrate further found Appellant

(1) advertised or held himself and Diversified Construction Management out as a contractor or journeyman; (ii) impersonated a contractor or journeyman; (iii) assisted in and participated in a joint venture amongst and between JG Strickland, LLC and Diversified Construction Management, LLC without all of the parties to such a joint venture being appropriately licensed; (iv) promoted or assisted in Diversified Construction Management, LLC in contracting without a license or holding itself out as a contractor; and (v) materially failed to comply with Florida Statutes Chapter 489 or the provisions of the Code of Ordinances of the City of Ocala which directly relates to contracting.

STANDARD OF REVIEW

Appellant appeals the Final Administrative Order rendered by the City of Ocala's Contractor's Board of Examiners and Appeals pursuant to Fla. Stat. § 489.127(5)(j). "Such an

appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board or licensing board or designated special magistrate.” Fla. Stat. § 489.127(5)(j).

ANALYSIS

Appellant first argues his due process rights were violated when the City of Ocala failed to provide timely notice of the November 18, 2020, hearing. Appellant alleges he did not receive the notice of hearing in the mail and did not discover the notice posted to the front door of his home until November 12, 2020. Appellant alleges that, based on the conclusion of the November 22, 2019, hearing, Appellant believed that the November 18, 2020, hearing would not include the taking of testimony, but instead, would consist only of the Special Magistrate announcing his decision. Additionally, Appellant alleges he was denied the opportunity to cross-examine witnesses at the November 18, 2020, hearing.

Appellant was charged with multiple violations of Code of Ordinances, City of Ocala, Florida, § 22-151. Code of Ordinances, City of Ocala, Florida, § 22-155 requires all notices to be provided by certified mail, return receipt requested, by hand delivery, or by leaving notice at the violators usual place of residence with a person older than 15 years. In addition, Code of Ordinances, City of Ocala, Florida, § 22-155(2) allows notice to be provided by publication or posting. Pursuant to Code of Ordinances, City of Ocala, Florida, § 2-446(b)(2)a,

notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the primary municipal government office (i.e. city hall).

Proof of the posting must be made by affidavit. Code of Ordinances, City of Ocala, Florida, § 2-446(b)(2)b. “Evidence that an attempt has been made to . . . mail notice . . . together with proof of . . . posting . . . shall be sufficient to show that the notice requirements of this article have been

met, without regard to whether or not the alleged violator actually received such notice.” Code of Ordinances, City of Ocala, Florida, § 22-155(3). The record before the Court establishes that the City of Ocala complied with the notice requirements.

As to Appellant’s allegation that he was denied his right to cross-examine witnesses, the Court finds Appellant waived this issue. *See City of Miami v. Cortes*, 995 So. 2d 604 (Fla. 3d 2008); *Acree v. State*, 15 So. 2d 262 (1943) (the right to cross-examine witnesses is waived if a party fails to request to exercise that right).

Based on the above, the Court finds Appellant’s due process rights were not violated.

Next, Appellant argues the Special Magistrate erred in finding Appellant guilty in his individual capacity for actions taken by Appellant as manager of DCM because there is no competent substantial evidence to support such a finding.

“The Supreme Court of Florida has defined substantial evidence as ‘such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred.’” *Marion County v. Priest*, 786 So. 2d 623, 625 (Fla. 5th DCA 2001) (citing *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957)). A circuit court may not reweigh the evidence or substitute its evaluation of the evidence for that of the Code Enforcement Special Master. *Florida Power & Light Co. v. City of Dania*, 761 So. 2d 1089 (Fla. 2000).

The court must review the record to assess the evidentiary support for the agency's decision. Evidence contrary to the agency's decision is outside the scope of the inquiry at this point, for the reviewing court above all cannot reweigh the “pros and cons” of conflicting evidence. While contrary evidence may be relevant to the wisdom of the decision, it is irrelevant to the lawfulness of the decision. As long as the record contains competent substantial evidence to support the agency's decision, the decision is presumed lawful and the court's job is ended.

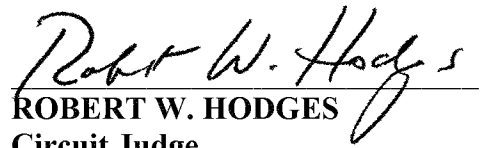
Dusseau v. Metropolitan Dade County Bd. Of Cnty. Com'rs, 794 So. 2d 1270,1276 (Fla. 2001).

The Court, reviewing the record presented, finds there is competent substantial evidence

to support the Special Magistrate’s finding that Appellant violated several sections of the City of Ocala Code of Ordinances in his individual capacity. Under Code of Ordinances, City of Ocala, Florida, § 22-151(b), “an unlicensed contractor or *any person* who assists an unlicensed contractor” in engaging in the enumerated actions may face disciplinary action. (emphasis added). Under Fla. Stat. § 489.127(1), “no person” shall engage in any of the enumerated actions, including, “[f]alsely hold[ing] himself or herself or a business organization out as a licensee, certificate holder, or registrant,” and “[engaging] in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified.” The plain language establishes that an individual person may be found to be in violation of the City of Ocala Code of Ordinances and Fla. Stat. § 489.127. Therefore, the Special Magistrate did not err in finding Appellant guilty of several violations of the City of Ocala Code of Ordinances in his individual capacity. *See Helms v. Pinellas County Construction Licensing Bd.*, 17 Fla. L. Weekly Supp. 1161a (Fla. 6th Judicial Circuit, August 18, 2010). *See generally Murthy v. N. Sinha Corp.*, 644 So. 2d 983 (Fla. 1994) (discussing that Chapter 489 provides for administrative remedies against qualifying agents).

Accordingly, the Final Administrative Order rendered by the City of Ocala’s Contractor’s Board of Examiners and Appeals is **AFFIRMED**.

IT IS SO ORDERED in Ocala, Florida this 13th day of August 2021.

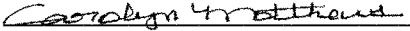

ROBERT W. HODGES
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by the Florida Court's e-portal to the following this 13th day of August 2021.

Eric Dibert, Esq.
Bogin, Munns & Munns, P.A.
Attorney for Appellant

Christopher A. Anderson, Esq.
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Attorney for Appellee



Judicial Assistant