

SPECIAL MAGISTRATE HEARING
City Commission Meeting Room
Judge Floyd Hull, Presiding
February 2, 2006
9:00 A.M. – 11:48 A.M.

Staff Present:

Assistant City Attorney
Diana Cahill, Service Clerk
Dick Eaton, Secretary, Special Magistrate
Farida Mohammed, Clerk, Code Enforcement Board
Leonard Ackley, Community Inspections Officer
Lindwell Bradley, Community Inspections Supervisor
Peggy Burks, Community Inspections Officer
Andre Cross, Community Inspections Officer
John Gossman, Community Inspections Officer
Robert Guilford, Community Inspections Officer
Karl Lauridsen, Community Landscape Officer
Al Lovingshimer, Community Inspections Officer
Mike Maloney, Community Inspections Officer
Skip Margerum, Community Inspections Officer
Cheryl Pingitore, Community Inspections Officer
Ursula Thime, Community Inspections Officer
Salvatore Viscusi, Community Inspections Officer
Irma Westbrook, Community Inspections Officer

Also Present:

*CE05091250: Jay Lefka, contractor
CE05121020: John Aurelius, attorney
CE05121753: Daniel Setton, owner
*CE05020766: Basil Phillips, property manager; Gerard Richardson, owner
*CE05010796: Archie Giles, owner
CE05080171: Amir Idan: owner
CE05080168: Maria Ellis, trustee
*CE05030799: Ramona Garceau, owner
CE05110679: David Esquenazi, owner
*CE05030960: Sanjit Kumar Deb, tenant
CE06011623: Stephen Stella, owner; Omar Hendrix, witness; Fred Sutton, witness
*CE03121635: James Brown, owner
CE04050813: Dick Coker, attorney

*Massey Hearing

NOTE: All individuals who presented information to the Special Magistrate during these proceedings affirmed they would speak only the truth.

The meeting was called to order at 9:15 A.M. Judge Hull introduced himself and explained his role in ensuring adherence with the City's codes. He also pointed out that the proceedings were being recorded.

Reference CE05030960

Super Stop #301 Inc.
1900 Northwest 9th Avenue

Massey Hearing

Ms. Mohammed announced that this case was originally heard on May 5, 2005 with compliance ordered by July 4 and August 3, 2005. The property was not complied and fines had accrued to \$13,700.

Mr. Sanjit Kumar Deb, tenant, said they had applied for the permit on May 20, 2005, received the permit on July 20, 2005, and repaired the sign on August 15, 2005. Ms. Mohammed confirmed that only the parking lot violation: Section 47-20.20.H was still not complied. Mr. Deb said he had applied for that permit on June 10, 2005 and hired an engineer. The plans his engineer submitted were returned by the City, but the City had not yet called the engineer to discuss the problems with the plans.

Mr. Andre Cross, Community Inspections Officer, confirmed that Judge Hull had granted an extension until November and the case was continued to this date because of the hurricane. Inspector Cross said Mr. Deb was trying to comply; Mr. Deb now had to wait for an architect to re-work the plans. He felt there was some misunderstanding between Mr. Deb's architect and the Building Department. Mr. Deb felt he should be able to obtain a permit within 60 days.

Judge Hull granted a 60-day extension.

Reference CE05020766

Gy-Rich Inc.
301 West Sunrise Boulevard

Massey Hearing

Ms. Mohammed announced that this case was originally heard on May 5, 2005 with compliance ordered by June 4, 2005. On July 21, 2005 the date was extended to September 20, 2005; on October 20, 2005 the date was extended to December 20, 2005. The property was not complied and fines had accrued to \$13,200.

Mr. Basil Phillips, property manager, said they were still waiting for the City to approve the architect's plans for the parking area that they had submitted twice.

Mr. Andre Cross, Community Inspections Officer, confirmed that Judge Hull had granted a 60-day extension in July. He noted that the owner was trying to comply, but was waiting for the City's approval of the plans. Mr. Phillips felt they could resolve this within 60 days.

Judge Hull granted a 60-day extension.

Reference CE05091250

101 Coconut Investments LLC Massey Hearing
101 Southwest Coconut Drive

Ms. Mohammed announced that this case was originally heard on October 20, 2005 with compliance ordered by November 9, 2005. The property was not complied and fines had accrued to \$4,200.

Mr. Jay Lefka, contractor, said he had spoken with Inspector Lauridsen and pulled a permit on November 4, 2005. He said there was a misunderstanding; he thought they could wait until the house was rebuilt to replant the trees. Inspector Lauridsen had informed him that they must be planted immediately or they must mitigate by paying a fine.

Mr. Karl Lauridsen, Community Landscape Officer, confirmed that the contractor had pulled the permit and the requirement to replace the trees immediately was stated on the permit. They had recently reduced the mitigation fee to approximately \$11,000. Inspector Lauridsen agreed that there could have been a misunderstanding. Mr. Lefka felt they could comply within 30 days.

Judge Hull granted a 30-day extension.

Reference CE05030799

Ramona Garceau Massey Hearing
1271 Southwest 28th Road

Ms. Mohammed announced that this case was originally heard on July 21, 2005 with compliance ordered by October 19, 2005. The property was not complied and fines had accrued to \$9,000.

Ms. Ramona Garceau, owner, said she and her neighbors had been working on her house to try to comply. She had suffered damage in both hurricanes and had also lost her job.

Ms. Ursula Thime, Community Inspections Officer, confirmed that Ms. Garceau had complied two of the three violations. Inspector Thime had enlisted the neighbors' aid after the hurricanes to help clean up the property. Inspector Thime had just informed Ms. Garceau that she could put gravel down instead of paving the parking area.

The Assistant City Attorney recommended a 30-day extension to put the gravel on the parking area.

Judge Hull granted a 30-day extension.

Reference CE05010796

Frih Chkn LLC
590 Northwest 7th Avenue

Massey Hearing

Ms. Mohammed announced that this case was originally heard on April 7, 2005 with compliance ordered by June 21, 2005. The property was complied and fines had accrued to \$7,200.

Mr. Archie Giles, owner, presented invoices and a copy of the check paying for the work to prove the property was complied prior to the ordered date. He noted that he was scheduled for two final inspections that were both postponed after the hurricanes.

Mr. John Gossman, Community Inspections Officer, confirmed that the inspection schedule had been disrupted by the hurricanes and that he was not the original inspector. He confirmed that the property was entirely complied.

Judge Hull abated the fine.

Reference CE04050813

Schaefer Industries LLC
3301 Southwest 13th Avenue

Request to Vacate Previous Order

Ms. Mohammed announced that the City was requesting vacation of the orders dated June 17, 2004 and January 20, 2005.

Judge Hull vacated the order.

Reference CE05080168

Land Trust #1132 Northwest 5th Avenue
1132 Northwest 5th Avenue

Sec. 47-21.8: Missing ground cover

Ms. Mohammed announced that certified mail addressed to the trustee was accepted [no date on card].

Ms. Irma Westbrook, Community Inspections Officer, testified that there was missing ground cover on the property. She presented photos of the property, a copy of the property history, notice of violation and inspection report.

Ms. Maria Ellis, trustee, confirmed that she received the notice. She informed Judge Hull that she needed to install a fence to prevent the next-door neighbors from parking on her property. She had spoken with the neighbor, who agreed to split the cost of the fence. After she had found a fencing contractor, the hurricanes hit and the neighbor then said she did not want to help pay for the fence. She had phoned the City and asked what methods she could use to prevent the neighbors from parking on her property, but no one had offered any suggestions. She asked for those suggestions today, and an extension to accomplish this. She added that the fencing contractor now said there was a 3-month wait for an installation.

Mr. Lindwell Bradley, Community Inspections Supervisor, advised Ms. Ellis to speak to Tim Welch in the Building Department; Supervisor Bradley thought she might be able to plant shrubbery in the swale. The Assistant City Attorney said the City needed specific plans to review and advised Ms. Ellis to have a contractor submit them. She recommended a 30-day extension for a contractor to submit plans, or a fine of \$25 per day.

Judge Hull found in favor of the City and ordered compliance within 30 days or a fine of \$25 per day would be imposed.

Reference CE05080171

Amir Idan
1130 Northwest 5th Avenue

Sec. 47-21.8: Missing ground cover

Ms. Mohammed announced that certified mail addressed to the owner was accepted on December 24, 2005.

Ms. Irma Westbrook, Community Inspections Officer, testified that there was missing ground cover on the property. She presented photos of the property, a copy of the property history, notice of violation and inspection report and recommended ordering compliance within 30 days or a fine of \$25 per day.

Mr. Amir Idan, owner, said he was the neighbor of the previous case owner. He stated he was willing to share the cost of the fence. He had already paid a deposit to have the parking area paved as well.

Judge Hull found in favor of the City and ordered compliance within 30 days or a fine of \$25 per day would be imposed.

Reference CE06011623

Stephen Stella
2137 Tanbark Lane

Sec. 39-279: Operating a business
on residential property

Ms. Mohammed announced that personal service was made to the owner by Inspector Kaplan on January 30, 2006.

Mr. Stephen Stella, owner, requested a 45-day continuance since he had only been notified of the case a few days ago and wished to have a lawyer represent him.

The Assistant City Attorney stated the City objected to any continuance of the case, as the property had been found in violation of the ordinance in Case CE04111075 dated May 2005.

Judge Hull continued the case to March 2, 2006.

Reference CE05121020

Miniaci Enterprises
213 South Fort Lauderdale Beach Boulevard

Sec. 47-19.9 A: Outside displays

Ms. Mohammed announced that certified mail addressed to the owner was accepted on January 17, 2006; certified mail addressed to the registered agent and an officer of the company were both accepted on January 11, 2006.

Mr. Al Lovingshimer, Community Inspections Officer, testified that there was outside storage and display of merchandise on the public sidewalk in front of this business. This was a repeat violation of cases CE03102433 dated 12/18/03, and CE03071471 dated 8/21/03 and was therefore constant and repetitive. Inspector Lovingshimer presented copies of inspection reports from December 2005.

Mr. John Aurelius, attorney for the landlord, here representing the tenant, objected to Inspector Lovingshimer's presentation of the inspection reports into evidence. Mr. Aurelius noted that the notice the tenant received referred only to January 3, 2006; there was no mention that the violations actually occurred in December 2005. Mr. Aurelius took issue with the City's method of sending notices to the owner instead of the tenant [by lease, the responsible party] because in this case, the owner had not sent the notice on to the tenant in a timely manner.

The Assistant City Attorney explained that the store manager received the "courtesy notice." These notices were required by statute and they were typically handed to someone at the business. In this case, since it was a repeat violation, the courtesy notice was not required; the City could begin the case immediately.

Inspector Lovingshimer confirmed that the notices were handed to the store manager.

Mr. Lindwell Bradley, Community Inspections Supervisor, reminded Judge Hull that they issued the inspection reports first in an attempt to resolve the matter before a case was opened. This tenant's lease did indicate that the tenant was responsible for code violations. Supervisor Bradley noted that the inspectors regularly walked up the street asking the tenants to bring the merchandise inside. The Assistant City Attorney added that the reason they sent the notices to the owner was that recorded orders could be recorded as a lien on the property. Therefore, the owner must be notified. She reiterated that this was not required in the case of repetitive violations.

The Assistant City Attorney informed Judge Hull of the particulars of the previous cases at the property and reiterated that it was the tenant's responsibility to comply and keep the property in compliance. She noted that in the previous cases, there had been a "tremendous lien put on the property", which Mr. Aurelius had negotiated for reduction.

Mr. Aurelius said he "questioned the whole notice that you have before you, and its legal validity." He felt the notice was not specific enough. The Assistant City Attorney clarified for Judge Hull that the landlord was ultimately responsible, and City believed the landlord "suffers and permits this problem to persist." Mr. Aurelius noted that the City issued the tenant the occupational license, but then cited the landlord. The Assistant City Attorney stated that their only recourse against the tenant would be a "non-custodial arrest of the manager of the store." She added that the statute required the City to look to the tax records to identify the violator. In most circumstances, they could not identify the tenant.

Mr. Aurelius felt there was a difference between the physical property and conduct on the property, he stated, "I question whether conduct is within the purview of the landlord; it seems it's in with the purview of the City to enforce it through a different methodology than they're doing."

Judge Hull found in favor of the City and ordered compliance within 30 days or a fine of \$200 per day would be imposed.

The Assistant City Attorney said they were entering into an agreement "where the tenant, on behalf of the property owner, is agreeing to stop violating this Section and if they do violate it again, the City can impose a fine..." Judge Hull asked how the client could stipulate when the tenant was not "a party here today." The Assistant City Attorney said that Mr. Aurelius had informed them he was the tenant's attorney here, acting with authority of the owner to resolve this.

Mr. Lindwell Bradley, Community Inspections Supervisor, said the City just wanted the mannequins to be removed from the sidewalk permanently. After the 30 days, a repeat violation would force them to return to the Special Magistrate. Judge Hull felt it was unfair to fine the landlord "if there is resistance by the tenant" in complying with the order.

The Assistant City Attorney read from Chapter 162, “Repeat violation means a violation of a provision of a code or ordinance by a person who has been previously found through Code Enforcement Board to have violated, or has admitted violating the same provision within 5 years prior to the violation.” She noted that the special Magistrate was included in the phrase “Code Enforcement Board” and two cases had previously been presented to a Special Magistrate for this violation by this property owner. This met the definition of a repeat violation. Chapter 162.06 stated, “If the repeat violation has been corrected, the Code Enforcement Board or Special Magistrate retains the right to schedule a hearing to determine costs and impose a payment of reasonable enforcement fees upon the repeat violator.” Judge Hull said he didn’t think there was any proof that there were prior violations.

The Assistant City Attorney read Chapter 162.06.2: "If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the Enforcement Board even if the violation has been corrected prior to the hearing and the notice shall so state." She stated that the City's case was that the Inspector gave the courtesy notice to someone on the premises and when he returned, the violation was in evidence on two occasions.

Mr. Aurelius offered that the tenant would pay a fine of \$50 for “any past things under this case number,” even though he alleged there were no violations, and they agreed that any future fine would be \$50. The City Attorney agreed.

Judge Hull ordered that a \$50 fine be imposed, and that a fine of \$50 per day be imposed for any future violations.

Reference CE05121753

Clothes Connection Inc. Sec. 47-19.9 A: Outside displays
227 South Fort Lauderdale Beach Boulevard

Ms. Mohammed announced that certified mail addressed to the owner was accepted [no date on card], and certified mail addressed to the registered agent was accepted on January 4, 2006.

Mr. Al Lovingshimer, Community Inspections Officer, testified that there was outside storage and display of merchandise on the public sidewalk in front of this business. This was a repeat violation of cases CE03110649 dated 12/18/03 and CE03071474 dated 8/21/03 and was therefore constant and repetitive. Inspector Lovingshimer recommended that a \$50 fine be imposed, and that a fine of \$50 per day be imposed for any future violations.

Mr. Daniel Setton, owner, admitted an employee had put a few mannequins outside on December 3, 2005. He promised it would never happen again. The Assistant City Attorney suggested they treat this case the same as the previous case.

Judge Hull ordered that a \$50 fine be imposed, and that a fine of \$50 per day be imposed for any future violations.

Reference CE05110679

David Esquenazi
1500 Northeast 8th Street

Sec. 18-27(a): Trash and overgrowth on property

Ms. Mohammed announced that certified mail addressed to the owner was accepted [no date on card].

Ms. Ursula Thime, Community Inspections Officer, testified that there was trash and overgrowth on the property. She presented photos of the property, a copy of the inspection report and notice of violation and recommended ordering compliance within 14 days or a fine of \$25 per day.

Mr. David Esquenazi, owner, said someone had dumped the sofa on the property. He had hired someone to clean up the trash and overgrowth already. He agreed to comply within 2 weeks.

Judge Hull found in favor of the City and ordered compliance within 14 days or a fine of \$25 per day would be imposed.

Reference CE05120995

James & Mary Clinton
740 Northeast 15th Avenue

Sec. 18-27(a): Trash and overgrowth on property

Ms. Mohammed announced that certified mail addressed to the owner was accepted on January 14, 2006.

Ms. Ursula Thime, Community Inspections Officer, testified that there was trash and overgrowth on the property. She presented photos of the property, a copy of the inspection report and Notice of Violation and recommended ordering compliance within 14 days or a fine of \$25 per day.

Judge Hull found in favor of the City and ordered compliance within 14 days or a fine of \$25 per day would be imposed.

Reference CE03121635

James Brown
2708 Northeast 29th Court

Massey Hearing

Ms. Mohammed announced that this case was originally heard on May 6, 2004 with compliance ordered by July 5, 2004. The property was complied and fines had accrued to \$33,675.

Mr. Len Ackley, Community Inspections Officer, reminded Judge Hull that this case was continued from the last hearing because Inspector Ackley could not recall what Sections were complied when he posted the property. He had visited the property and stopped the fines as of September 28, 2005

Mr. James Brown, owner, stated the work had been done "almost immediately," but he had never called Inspector Ackley to reinspect. Inspector Ackley said he had been by the property several times in the interim and the property was not complied. He gave Judge Hull the dates he had visited and what aspects of the property he could judge for compliance. Mr. Brown stated he had repaired the stucco on the house front almost immediately, not in June 2005 as Inspector Ackley thought.

Mr. Brown informed Judge Hull that he had recently declared bankruptcy and presented paperwork to that effect and the Assistant City Attorney said that a bankruptcy imposed an automatic stay on enforcement. Judge Hull and the Assistant City Attorney discussed the fact that the lien did not officially attach to the property until the order and lien were recorded on the property. The Assistant City Attorney wondered if Judge Hull should impose the fine and the City could then attempt to become an unsecured creditor in the bankruptcy. Judge Hull was afraid he would be in contempt of court since he was aware that the bankruptcy had begun. The Assistant City Attorney withdrew the case for further review.

Cases Complied

Ms. Mohammed announced that the below listed cases were in compliance. Additional information regarding respondents, violations, etc. can be found in the agenda, which is incorporated into this record by reference:

CE05120906	CE05121617	CE05121358	CE05091391
CE05091476	CE05090814	CE05090820	CE05100351
CE05120720	CE05101518	CE05101519	CE05110488
CE05120431	CE05120693	CE05120786	CE05121439
CE05121459	CE05121462	CE04100818	CE05121875

Cases Pending Service

Ms. Mohammed announced that the below listed cases had been withdrawn pending service to the respondents. Additional information regarding respondents, violations, etc. can be found in the agenda, which is incorporated into this record by reference:

CE05041581	CE05090201	CE05110675	CE04121494
CE05100936	CE05090812	CE05121447	CE05121461
CE05090815	CE05111482		

Cases Withdrawn

Ms. Mohammed announced that the below listed cases had been withdrawn. Additional information regarding respondents, violations, etc. can be found in the agenda, which is incorporated into this record by reference:

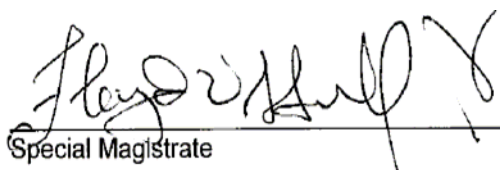
CE05051079 CE05121252

Approved for Claim of Lien

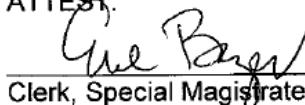
Ms. Mohammed presented Judge Hull with the following cases to sign the order to impose the fine, which Judge Hull signed based on the affidavits of the inspectors

CE97090307 - \$ 61,225 CE02061207 - \$ 45,700

There being no further business, the hearing was adjourned at 11:48 a.m.


Special Magistrate

ATTEST:


Clerk, Special Magistrate