

RESOLUTION NO. 09-039

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH RESPONDENTS IN CODE COMPLIANCE CASE NUMBER CES-07-416, AND THE APPEAL RELATED THERETO, PERMITTING A MITIGATED FINE AMOUNT; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, the City Commission considered an offer from the Respondents in CES 07-416 to permit a mitigated fine amount of \$5000.00, plus costs, with the balance of the fine previously ordered to be suspend contingent upon no future violations.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the City Manager, with the advice and consent of the City Attorney, is authorized to enter into a settlement agreement in conformity with the terms and conditions specified by the City Commission.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held

this 3rd day of February, 2009.

Authenticated by the presiding officer and Clerk of the  
Commission on February 4, 2009.

Filed with the Clerk February 4, 2009.



MORGAN MCPHERSON, MAYOR

ATTEST:



CHERYL SMITH, CITY CLERK

OFFICE OF THE CITY ATTORNEY

SHAWN D. SMITH  
LARRY ERSKINE  
RON RAMSINGH



PHONE: (305) 809-3770  
FAX: (305) 809-3771  
POST OFFICE BOX 1409  
KEY WEST, FL 33041-1409

Memorandum

TO: Mayor & City Commissioners  
FROM: Shawn D. Smith, City Attorney  
CC: Jim Scholl, City Manager  
RE: Code mitigation proposal CES 07-416, City v. Lemon

On September 18, 2007, Special Magistrate Overby entered the attached order fining the Respondents \$40,500.00, plus costs, related to transient rental violations. To my knowledge, no lien was ever recorded against the property. The Respondents' counsel filed an appeal, but has not pursued the matter based on an agreed continuance. Counsel previously made a proposal for settlement, which I recommended the City Manager not act upon because the Commission was discussing how to handle fines at that time. That settlement offer was again restated last week following a letter the Respondent received from Code Compliance. The offer is payment of a \$5,000.00 fine, plus costs. Additionally, the remaining portion of the fine imposed by the Special Magistrate would be suspended contingent upon no future violations of the transient rental ordinance. If the ordinance is violated, the suspended portion of the fine would be due, along with any penalties for the future violation.

Because the matter has not been reduced to lien, the Special Magistrate may still mitigate based on a recommendation from the City Manager. However, it is my position that the best course of action given the dollar value involved and fact that an appeal is pending, is to receive input from the Commission on the subject. I have had some discussions with members of the Commission regarding an ordinance specifying the maximum amount of fine mitigation, as well as the authority to mitigate based on the dollar amount involved. However, at this time, there is no such ordinance. In addition to considering the specifics of the particular matter, this might give the Commission an occasion to publicly discuss the direction the City should take on such issues in the future.

I encourage you to contact me with any questions, concerns or comments.

A handwritten signature in black ink, appearing to read "Shawn D. Smith", is written over a horizontal line.

Shawn D. Smith

**BEFORE THE CODE ENFORCEMENT SPECIAL MASTER  
OF THE CITY OF KEY WEST, FLORIDA**

**FINDINGS AND ORDER**

City of Key West,  
**PETITIONER,**

v.

CASE NUMBER: CES-07-416

William & Britt Lemon,  
owners of property located at 2635 GULFVIEW DRIVE,  
and Fairwayvilla.com  
**RESPONDENTS.**

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This cause came before the Special Magistrate of the City of Key West for alleged violations of City Code involving (1) illegal transient rentals from October 1-8, 2006, (2) lack of proper licenses, and (3) violation of the City's Historic Medium Density Residential District (HMDR) regulations. The City cited the Defendants with a Notice of Irreparable Violation and charged each day between Oct 1 and Oct 8 as separate, daily irreparable violations.

The Special Magistrate has jurisdiction to hear this case, and the defendants were properly and timely served with a notice of the charges and notice of Administrative Hearing.

**FINDINGS OF FACT**

The premises that are the subject of this action are located at 413 Francis Street, Key West, FL 33040. The owners of the subject property are the Defendants.

This address is in the Historic District of the City of Key West and is subject to HMDR zoning regulations that prohibit transient rental (rentals for less than 30 days) in that area.

The city introduced evidence that the Defendants had obtained a NON- Transient license for the subject property. There was no evidence submitted that the subject property had a transient license.

The City also introduced evidence of internet advertisements (one of which was from VacationRentals.com), which showed the monthly "rental rates for October, 2006 to be in the range of \$5000 to \$6000."

The City also introduced copies of the correspondence between the parties, including email that established the "rental rate for October is \$2000 plus \$150 cleaning fee." The Defendants explained that this was a discounted rate since there was a vacancy. The Court did not find the Defendant's explanation to be credible and rejects the attempted miss-explanation.

The City of Key West used some of its employees that, at the time, worked for the Code Enforcement Division, now known as the Code Compliance Dept. to work undercover to investigate complaints of transient rental activity.

Jim Young, a former city employee, testified that he established contact with Mr. William Lemon and an employee of Lemon's to try to secure a transient rental October 1-8, 2006.

Pam Thomas (i.e. Jim Young) was sent a lease that was identified as the lease that the Defendants prepared and that was mailed to the undercover name in the instant case. That lease was to commence on Sept. 21, 2006 and conclude October 21, 2006.

Strangely, the lease was to commence the day it was mailed to Pam Thomas. It could not have arrived at the undercover operatives address in Margate, FL prior to the commencement of the "new" lease period of September 21, 2006. Further, Young forwarded to the Defendants a Wachovia Bank check, dated 9/27/2006, payable to the order to the Defendant in the amount of \$2,650, which included \$500 deposit, the rental rate of \$2,000.00 and a cleaning fee of \$150.00. The notes typed on the front of the check indicate the rental period was 10/1-10/8. (As of this date, the Defendants have never refunded the damage deposit for the unit).

Given that there were no documents, email or correspondence to back-up the Defendant's position that the dates had changed, the undersigned finds that this date change was a sham to try to provide an additional rental period during the very busy Halloween weeks that commence near the end of October. This annual event is called Fantasy Fest. It is common knowledge that rental rates and hotel rates dramatically increase during this period.

Inspector Randy Pekarik and his wife stayed at the subject property the 8 days of the lease, then contacted Mr. Lemon to get instructions where to turn in the keys and check out.

Mrs. Pekarik, pretending to be Pam Thomas, spoke with the Defendant as they were leaving the rental property on the 8<sup>th</sup>. According to the sworn testimony of Mrs. Pekarik, which the undersigned hearing officer finds to be totally credible, the Defendant, Mr. Lemon stated that "other renters were arriving soon" in response to a statement given by Mrs. Pekarik that they wished they could stay longer. This testimony is diametrically opposed to that given by Mr. Lemon.

The Defendant testified that he kept no detailed records of the rentals, the security deposits, and the name of the vendors that cleaned or repaired the subject property. He further testified that he did not have any cancelled checks or receipts to show expenses and income for the subject property. The Defendant admitted that he had not paid any State sales tax to the Florida Dept of Revenue for any of the rental periods. The Defendant further testified that he did not keep any records of renters, their addresses, etc. The undersigned, as the Trier of fact, finds that Mr. Lemon's testimony on these points to be unreliable and not credible.

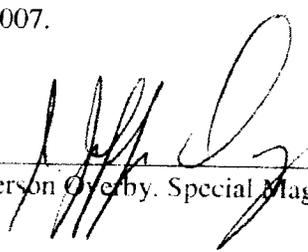
It is noted that Mr. Lemon has been previously cited for a violation of this transient rental ordinance, involving another property that Mr. Lemon owns, and therefore should have known that the conduct complained of is illegal. (City of Key West v. Lemon 03-1030). In this case the City and Mr. Lemon signed a settlement agreement.

It is therefore ORDERED AND ADJUDGED that the City of Key West has proved its allegations against the Defendants in each of the accusations listed in the Notice of Irreparable Violation and that the Defendants are guilty of each and every allegation.

The Defendant shall be ordered to repay the city for the illegal rental in the full amount tendered to the Defendant, \$2650.00. Additionally the Defendants shall be fined \$5,000.00 for the Irreparable Violations for each day that he illegally rented the subject property, for a total of \$40,000.00. Further, the Defendant shall be required to pay the City for the Costs of Investigating and Prosecuting this Case. The undersigned will hold an evidentiary hearing to determine the amount of the cost of Investigating and Prosecuting the Defendants, should the parties not be able to agree on an amount for these costs and the undersigned specifically retains jurisdiction to enter further orders to establish the taxable costs. Should a Court of competent jurisdiction determine that the irreparable fine applies only to the single episode of renting transiently, then the undersigned would have fined the Defendant \$5,000.00 for the 8 days of illegal transient rentals.

The undersigned further finds that the Defendants should be fined \$250.00 for each of the two other counts.

DONE AND ORDERED this 18<sup>th</sup> day of September, 2007.

  
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J. Jefferson Overby, Special Magistrate