

IN THE CIRCUIT COURT FOURTH
JUDICIAL CIRCUIT IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 2018-AP-00115-XXXX-MA
DIVISION: AP-A

L.T. NO.: 2018-IN-08337-AXXX-MA
DIVISION: CC-G

BH DEFENSE, LLC,
Appellant,

v.

CITY OF JACKSONVILLE,
Appellee.

_____/

Appeal from the County Court, in and for Duval County, Florida
The Honorable Emmet F. Ferguson, III

August 23, 2022

PER CURIAM.

OPINION

This matter is before this Court upon direct appeal from the Duval County Court, whereby Appellant seeks review of the lower tribunal's "Findings of Facts and Recommendations of Special Magistrate and Final Order Approving Recommendations of Special Magistrate." This Court has jurisdiction pursuant to Florida Rules of Appellate Procedure 9.030(c)(1)(A).

I. Factual Background and Procedural History

Appellant, BH Defense, applied for a Certificate of Use ("COU") from Appellee, City of Jacksonville, for space it occupied in the Blackstone Building in downtown Jacksonville. As part of the process, Appellee required a fire inspection of the premises by a representative of the Fire Marshal's Office. Appellant refused the inspection, maintaining it was not required to complete an inspection because it was only requesting a new COU due to a name/ownership change. On January 5, 2018, Appellee's COU application was denied.

On March 12, 2018, Appellee's Municipal Code Compliance Division issued its Notice of Violation to Appellant for failure to obtain or display a COU. Subsequently, on May 8, 2018, Appellee issued its Citation for Ordinance Violation to Appellant for violation of section 656.151 of the Jacksonville Ordinance Code ("Code") for failure to obtain and display a COU.

The Appellant contested the citation and requested a court date. On July 9, 2018, the Special Magistrate held a hearing on the civil infraction alleged against the Appellant, charged with a violation of section 656.151 of the Code for failure to obtain or display a COU. The Special Magistrate received testimony from the Fire Marshal, Chief Kevin Jones, and counsel for both sides presented argument. The Special Magistrate concluded that the Code is clear on its face that every business must have a COU, even if it is only changing its name or ownership, and because Appellant did not obtain a COU, it was in violation of the Code and subject to civil penalty. The County Court agreed there was a violation of the plain language of section 656.151 of the Code and entered its final order against Appellant. The final order assessed a total civil penalty against Appellant, including costs, in the amount of \$303.00. On October 26, 2018, Appellant filed a timely Notice of Appeal of the county court's order. On December 26, 2018, Appellant filed its Initial Brief. On May 15, 2019, Appellee filed its Amended Answer Brief.¹ On July 30, 2019, Appellant filed a Reply Brief.

II. Summary of the Arguments

Appellant maintains the Code distinguishes between name and/or ownership changes which do not require a fire inspection as they are administrative changes only, and correspondingly cost less, and changes in the use or function of the property which do require a fire inspection with an accompanying higher fee. Appellant maintains that reading sections 656.151 and 656.153 in

¹ Of note, Appellee filed an Answer Brief on February 21, 2019, that this Court struck on April 26, 2019.

pari materia makes clear that section 656.151 sets forth the basic requirement for when a business must obtain a new certificate of use. Appellant argues that section places no requirements for fire inspections as a condition precedent to the issuance of new certificates of use.

The Appellee contends that regardless of the reason, Appellant never obtained or displayed a COU, which it was required to do for a name or ownership change, according to the provisions of the Code. Accordingly, Appellee asserts that Appellant was *per se* in violation of the Code and subject to a fine.

III. Analysis

Appellant maintains in this appeal, and maintained at the underlying hearing on the citation, that it was not required to obtain a fire inspection for the COU. Appellant singularly focuses on a statutory construction argument to support this claim.

However, this argument is not properly before this Court. The reason for failing to obtain a COU must proceed through the appeals process at the city level before review would be proper in this Court. See Kirby v. City of Archer, 790 So. 2d 1214, 1215 (Fla. 1st DCA 2001) (“If he contested the facts raised by the Code Enforcement Board, he was obligated to present his evidence to the Board at that time. If he then disputed the final order of the Board, his remedy was to file an appeal in the circuit court pursuant to section 162.11, Florida Statutes (1997).”). Appellant’s dispute over the administration’s denial of its COU, for whatever reason, is reviewable under section 656.156 of the Code, which provides:

In the event the Zoning Administrator determines to deny any application for a certificate of use, the Zoning Administrator shall provide the applicant written notice of said denial, along with the reasons for said denial and any written documents pertaining to the denial. Said notice of denial shall afford the applicant an opportunity to appear before the Certificate of Use Board by written appeal filed within 30 days of the denial so as to allow the applicant to present additional information or otherwise explain factors the applicant deems relevant. At said appeal the Certificate of Use Board shall notify the applicant of the Certificate of

Use Board's final decision and shall confirm said decision in a final order prepared in writing within 30 days of the appeal. The final order of the Certificate of Use Board shall be a final action of the City and shall be effective as of date of issuance and *an applicant shall thereafter have any remedies available at law.* (Emphasis added).

There is no evidence in the record on appeal that Appellant filed an appeal of the January 5, 2018 denial of the COU as provided under section 656.156 of the Code. Instead, Appellant waited until it was issued a Notice of Violation in March 2018, and then waited until it was issued a Citation for Violation in May 2018, before it contested the fine it was levied as a result of the violation. A hearing was held before a Special Magistrate, who found, based upon the uncontroverted evidence at the hearing and the parties' stipulation, that the Appellant failed to obtain or display a COU in violation of the Code. The reason why the Appellant did not obtain a COU, or better stated, the reason justifying the Appellant's actions in failing to obtain or display a COU, is not properly at issue in this appeal.

The instant appeal stems from the county court's decision affirming the underlying civil citation and fine for failing to have a COU. It is not an appeal from the Certificate of Use Board's decision on the requirements for obtaining a COU. Having failed to challenge the denial of the COU application on the basis of the lacking fire inspection report, Appellant cannot raise factual disputes with the county court's findings in this appeal. "Matters determined in an order which has become final without appeal are not later subject to appellate review..." City of Plantation v. Vermut, 583 So. 2d 393, 394 (Fla. 4th DCA 1991). Accordingly, Appellant's attempt to circumvent that procedural process by raising it in this appeal is improper.

IV. Conclusion

This appeal centers on Appellant's citation for failure to obtain a COU from the City in accordance with the Code. Both parties acknowledge that Appellant never obtained a COU.

Because there is no dispute that Appellant did not obtain a COU, which is required under the Code and is the basis for the civil infraction, this Court affirms the underlying court's Order.

Based on the above, it is **ORDERED** that the trial court's "Findings of Facts and Recommendations of Special Magistrate and Final Order Approving Recommendations of Special Magistrate," entered on September 26, 2018, is **AFFIRMED**.

SALVADOR AND CHARBULA, JJ., concur.

Michael R. McCullough, Esq., counsel for Appellant

Craig D. Fieser, Esq., counsel for Appellee