

**IN AND BEFORE THE SPECIAL MASTER  
OF THE CITY OF MIAMI BEACH, FL  
Miami Beach, Miami-Dade County, FL**

Special Master Case: JA08000049

1032 MICHIGAN, LLC, as Owner/  
Agents of 1032 MICHIGAN AVENUE,  
Miami Beach, Florida

Petitioner,

v.

City of MIAMI BEACH,  
A municipal corporation,

Respondent.

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AN ADMINISTRATIVE HEARING was held before the Special Master of the City of Miami Beach, Florida, on June 5, 2008, at the request of the Petitioner, for the purpose of appealing

Transient rental in a residential district, 1032 Michigan Avenue, MBCH

AS A CONSEQUENCE THEREOF, the Conclusion of the Special Master is as follows:

THIS CAUSE HAVING COME BEFORE THE UNDERSIGNED SPECIAL MASTER ON JUNE 5, 2008, AND BEING FULLY AWARE OF THE TESTIMONY AND EXHIBITS PRODUCED ON THAT DATE, AND THE LEGAL ARGUMENTS MADE ON THAT DATE AND IN BRIEFS FILED SUBSEQUENTLY, I FIND AS FOLLOWS:

The following facts are undisputed: (1) the property at 1032 Michigan Avenue which is the subject of this case ("Property") exists within the City's RM -1 zoning District, titled in the Code (Section 142-152) as "Residential Multifamily Low Intensity" with "main permitted uses" being defined as "single family detached dwelling; townhouses; apartments;" (and other structures), and impliedly not permitting structures excluded from the definition; (2) the Property is a four unit apartment building with full kitchen facilities in each; (3) the units are rented out to visitors for short periods of time, less than 6 months; (4) the owner of the Property pays Resort Taxes on the rentals, pursuant to Section 102-307;

A citation was issued to the Property owner after the Code Enforcement Officer determined that visitors were renting one or more of the apartment units for periods less than 6 months. He concluded that such a short term rental is violative of the Code for buildings in RM-1 districts. Since Section 142-152 does not expressly prohibit short term rentals, Code Enforcement looked elsewhere to determine if this Property otherwise met the permitted use test.

On February 29, 2000, the City's Planning Department adopted an Administrative Interpretation 00-2A ("AI") covering the subject of when apartments can operate within RM-1 Districts. I find that the AI contains two tests for defining whether the Code does or does not permit short term rentals. The first is whether the apartment functioned "as a type of hotel use..." and was thus prohibited from operating in the RM-1 District. I find that this test does not apply in this case because I specifically find that the Property was not a hotel.

I find that the second test is a broader one. It involves whether the apartment functioned on a "transient use" rental basis, and if so, it was not a permitted use in this District. The AI then defined "transient" as a lease for less than six months. This transient quality of rentals is both a component of the "type of hotel use" first test as well as a stand alone "transient use" second test.

I find that the two primary issues here are: whether the City has the power, through its Planning Department Director, to make the interpretations found in 00-2A and whether those interpretations were dispositive of whether the Property was prohibited by Section 142-152 from operating in an RM-1 District as the Code Enforcement Officer concluded.

I find that the City does have the authority to interpret its Ordinances through an administrative order, as long as the interpretation does not in effect re-write the Ordinance. I find, however, that this AI was not lawfully dispositive of the issues in this case for the following reasons:

I find that the Code, Section 142-151, contains clear language of the Purpose of the Code dealing with RM-1 Districts. That Purpose reads as follows:

Purpose. The RM-1 residential multifamily, low density district is designed for low intensity, low rise, single-family and multiple family residences.

That Section clearly defines the purpose of the RM-1 district as being reserved for family residences. The AI picks up on that Purpose and interprets an apartment being rented on a transient use in a RM-1 District as being contrary to the expressed Purpose of the Code. The Director expresses in the AI that the language of Section 142-151, which plainly and obviously expresses the policy of the City that RM-1 zoning must be in favor of family

residences, can reasonably be construed as rejecting short term, transient rentals as being anathema to that policy.

There is, however, one glaring defect in the AI.

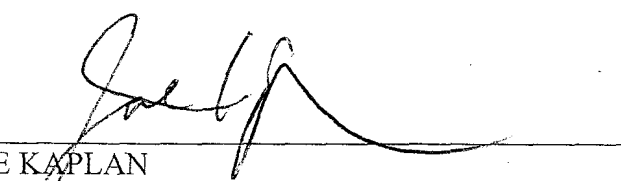
If the AI merely referenced rentals of an apartment on a "transient" basis, and looked at the law for a definition of "transient" approved by the City, the AI would be logical, consistent and enforceable. However, by inventing a 6 month formula to govern what is and what is not, permissible apartment renting, the AI inserts an arbitrary condition into the Code. In short, the AI puts a time certain period into the applicable Code that does not flow logically and definitely from anything else written in that Code.

To impose a greater than 6 month requirement for rentals of apartments in order for apartments to survive in the RM-1 zoning restrictions, is clearly not within the authority of the Director. I find that while the AI interpretation of the language "transient use" is not unfair or inconsistent with what is the City's development plan, the arbitrary imposition of a specific 6 month rental requirement is unsupportable. The AI was not therefore enforceable. (Of course, the City can address this matter very easily by expressing its view of transient rentals in apartment buildings in RM-1 Districts.)

On the basis of my finding that the Administrative Interpretation cannot stand as authority in this case, and my further finding that Petitioner maintained an "apartment" building otherwise permitted in an RM-1 District, I conclude that Petitioner did not violate Section 114-4 (3). The appeal is granted and the Notice of Violation is quashed.

I specifically find that notwithstanding the fact that Petitioner failed to timely raise the matter of the \$75.00 administrative fee, it is my ruling that the fee is not violative of law.

DONE AND ORDERED as of July 31, 2008



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JOE KAPLAN  
As Special Master for the City of Miami Beach

cc: City Attorney ✓  
Code Compliance  
Finance Department