

**BEFORE THE SPECIAL MAGISTRATE
OF THE
CITY OF ORMOND BEACH, FLORIDA**

**CITY OF ORMOND BEACH,
FLORIDA**

CASE NO. 22-112237

Petitioner,

**LOCATION OF VIOLATION:
33 Cypress Circle
Ormond Beach, FL
("the Property")**

vs.

**MICHAEL HENRY and
KATHERINE HENRY,**

PARCEL NO. 4223-02-06-0130

Respondents.

ORDER IMPOSING DAILY ACCRUAL OF FINES

This cause having come to be heard before the Special Magistrate of the City of Ormond Beach, Florida, May 20, 2024, and upon the evidence and sworn testimony presented, the Special Magistrate makes the following findings of fact and conclusions of law:

- 1) The Special Magistrate has jurisdiction of the parties and the subject matter of this cause.
- 2) A hearing was held for Failure to Comply with the Special Magistrate's previous order entered March 1, 2023, finding the Respondents violated City of Ormond Beach Land Development Code, Chapter 2, Article III, Section 2-50(n)(1)(a).
- 3) The City of Ormond Beach previously waived the citation of \$100 and the Special Magistrate ordered Respondents to pay costs totaling \$23.56 no later than March 27, 2023 and were further ordered to bring the subject property into compliance by March 27, 2023 by obtaining an approved fence permit and passing final inspection. Additionally, it was ordered that if Respondents failed to bring the subject property into compliance by March 27, 2023, a fine of \$25 per day shall accrue beginning March 28, 2023.

4) Subsequent to the Special Magistrate's order being entered, Respondent timely filed an appeal with the Seventh Judicial Circuit, Circuit Court.

5) The Circuit Court entered an Order for Temporary Stay on April 6, 2023 ruling that "Any action taken on the Order(s) Finding Violation entered by the Special Magistrate On March 1, 2023 **shall be stayed** pending this Court's review of the Response to be filed as ordered herein and a subsequent ruling on Appellants' Emergency Motion."

6) The Circuit Court's Order for Temporary Stay did not specifically address whether the \$25 per day fine previously ordered by the Special Magistrate on March 1, 2023 shall continue to accrue during the court ordered stay.

7) The Circuit Court subsequently entered an order on March 4, 2024 finding Appellee had failed to present evidence supporting the portion of the Special Magistrate's Order of Violation which directs Appellee to enter Appellants' property (subsequent to the time provided to bring the property into compliance) to remove the violating fence.

8) The Circuit Court further ruled the violations do lawfully impose monetary sanctions in the form of citations, associated costs, and the accrual of a daily fine.

9) The Circuit Court struck those portions of the Special Magistrate's order directing Appellee/City of Ormond Beach to enter the property to take action to bring Respondents' property into compliance.

10) The Circuit Court further stated its' ruling "in no manner disturbs the proper imposition of the one-time citation fine and the costs associated therewith, and the imposition of the daily fine and its accrual as set forth in the Order of Violation."

11) At the May 20, 2024 hearing, it was stipulated to by Respondents that the fence remains on the property and respondent Katherine Henry testified she had not obtained a permit for the fence.

12) The City of Ormond Beach presented uncontroverted evidence of additional costs incurred to bring this matter before the Special Magistrate in the amount of \$9.36.

Thereupon, and in consideration thereof, it is

ORDERED AND ADJUDGED as follows:

A. Respondents remain in Violation of the Special Magistrates Order Finding Violation dated March 1, 2023.

B. In light of the clear language in the Circuit Court's order dated March 3, 2024 stating that the order "in no manner disturbs the proper imposition of the one-time citation fine and the costs associated therewith, and the imposition of the daily fine and its accrual," Respondents are required to pay the full amount of the daily \$25 fines totaling 419 days from March 28, 2023 to May 19, 2024 for a total of \$10,475.

C. The Special Magistrates Order Finding Violation dated March 1, 2023 requiring Respondents pay the city's costs of \$23.56 remains in effect.


D. Respondents are further required to pay additional costs incurred by the City of Ormond Beach totaling \$9.36 as presented at the May 20, 2024 hearing.

E. The Special Magistrate finds all other arguments presented by Respondents at the May 20, 2024 hearing are without merit.

F. The Special Magistrates Order Finding Violation dated March 1, 2023 remains in full force and effect and this order does not limit the continuation of the accrual of daily fines and the ongoing responsibility of Respondents to bring their property into compliance.

ORDERED *nunc pro tunc* May 20, 2024.

DATED: May 29th, 2024

BY: 
THOMAS J. UPCHURCH
CITY OF ORMOND BEACH
SPECIAL MAGISTRATE

Copies To:
Ann-Margaret Emery, Deputy City Attorney
Chris Mason, Neighborhood Improvement Manager
Respondents



CITY OF ORMOND BEACH

Police Department • Neighborhood Improvement Division • 170 West Granada Boulevard • Ormond Beach, FL 32174-5209
(386) 676-3352 • Fax (386) 615-7074

May 30, 2024

Michael Henry & Katherine Henry
PO Box 333
Ormond Beach, FL 32175

RE: Case No. 22-112237 (33 Cypress Cir., Ormond Beach, FL)
Special Magistrate Hearing Order

Enclosed please find a copy of the Magistrate's Order from the Special Magistrate Hearing of May 20, 2024.

Please be advised that payment of the outstanding costs as indicated on the enclosed Special Magistrate Order must be remitted to the City of Ormond Beach, Building Department, 22 South Beach Street, Ormond Beach, FL 32174.

Should you have any questions, please feel free to contact our office at 386-676-3352.

Thank you.

Barbara Radcliffe, Administrative Assistant
Neighborhood Improvement Division

Enclosure

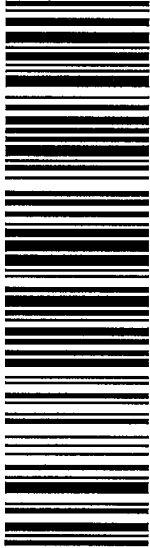
Certified Mail: 9214 8969 0099 9790 1652 3770 04

Barbara Radcliffe
City of Ormond Beach/NID
170 W Granada Blvd
Ormond Beach, FL 32174

2013

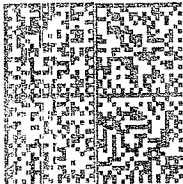
22-112237 *Value 5*

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE
CERTIFIED MAIL™



9214 8969 0099 9790 1652 3770 04

Michael Henry & Katherine Henry
PO Box 333
Ormond Beach, FL 32175



quodient
FIRST-CLASS MAIL
IMI
\$007.36⁹
06/03/2024 ZIP 32174
043M31248590

US POSTAGE

6-4