



THE CITY OF KEY WEST
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AMENDED EXECUTIVE SUMMARY

Date: August 16, 2021
To: City Commission
CC: Patti McLauchlin, City Manager
Shawn D. Smith, City Attorney
From: Nathalia A. Mellies, Assistant City Attorney
Jim Young, Director of Code Compliance
Re: 2811 Staples Avenue Lien Mitigation

Background

The City of Key West received a mitigation request from Dasha Ray on behalf of Federal National Mortgage Association (“Bank”), the current owner of the property, for liens recorded against 2811 Staples Avenue.



The subject property is a single-family residential property purchased on September 25, 2007 by Melanie and Lee Bennett (the “Bennetts”) for \$415,000.¹ Subsequently, due to a foreclosure of the property, ownership eventually transferred to the current owner/applicant. The histories of the ownership transfers, as available by public record, are shown below in **Table 1**.

During the Bennetts’ ownership, Code Compliance staff processed Code Case No. 18-0030. Violations incurred were for failure to obtain building permits, failure to obtain plumbing inspections, failure to obtain a Business Tax Receipt, failure to obtain a Certificate of Occupancy for a second unit and failure to obtain utility accounts for the second unit. During the Bank’s ownership, Code Compliance processed Code Case No. 18-1113 and an additional lien was recorded on the property for the same ongoing violations. Compliance was achieved on March 3, 2020. The histories of the code compliance cases are shown below in **Table 2** and **Table 3**.

Table 1: Property Ownership²

DATE	NARRATIVE
09/25/2007	Melanie and Lee Bennett purchase 2811 Staples Avenue
12/10/2015	Ditech Financial LLC f/k/a Green Tree Servicing LLC (“Green Tree”), as assignee of the original mortgagor, filed a Real Property Mortgage Foreclosure Action against the Bennetts (Case no. 2015-CA-1144-K).
02/09/2016	Notice of Lis Pendens recorded by Green Tree.
03/30/2016	Green Tree filed an Amended Complaint. Neither the Original Complaint nor the Amended Complaint named the City of Key West as a party-in-interest.
11/15/2017	The Court granted a Final Summary Judgment of Foreclosure to Green Tree in the amount of \$418,872.12.
05/16/2018	The Court denies prior owner’s objections to Foreclosure Sale denied.
06/28/2018	Certificate of Title issued to Federal National Mortgage Association a/k/a Fannie Mae (“Bank”), the current property owner.
03/20/2019	Bank files with the court request for Writ of Possession.
05/24/2019	Writ of Possession issued 11 months after title was first issued to Bank.
05/30/2019	Property turned over to Dasha Ray, owner’s representative

¹ Monroe County Property Appraiser’s Office

² Monroe County Clerk of the Courts

Table 2: Case History, CC18-0030

DATE	NARRATIVE
01/10/2018	<p>Code Compliance received an anonymous call stating that there are five to six rooms being rented at the subject property. The complainant also stated that there are two habitable units on the property and the owners do not reside at the subject property. The complainant also advised they do not have a business tax receipt to rent the subject property and the City of Key West only recognizes the subject property to have one habitable unit with one utility account.</p> <p>Code Compliance Officers conducted a site inspection and met with lease holder Jeffrey Kenneth Greenspun who is also the Keys Energy Services account holder. Mr. Greenspun mentioned that the lease is shared with Andrew Ewing. A copy of the lease was obtained via request to Keys Energy Services where this information was confirmed. The lease commenced on September 15th, 2016 signed by the property owner. The code officers also met other tenants, Mr. Brian Whitaker and Steven Ross, who both have separate bedrooms within the residence. An inspection of the residence revealed four bedrooms, one bathroom, two kitchens, one of which was constructed without the required building permits.</p> <p>A Notice of Code Violation, (“NOCV”), was generated and issued to the property owner(s), Lee & Melaine Bennett, for violation of City of Key West Code of Ordinances Section 14-37 Building permits required, Florida Plumbing Code P2503.1, no required plumbing inspections, Section 90-363 Certificate of Occupancy required and Section 66-87 Business Tax Receipt Required.</p>
01/19/2018	NOCV was received by the property owner(s).
02/06/2018	Notice of Administrative Hearing (“NOAH”) was issued, via certified mail, to the subject property owner. On the NOAH, a fifth violation was added, Section 58-61, failure to obtain a utility account for the second unit. The Hearing date was scheduled for March 28, 2018.
02/20/2018	NOAH was received by the property owner(s).
03/28/2018	Special Magistrate found the subject property owner(s) in violation of all five violations. The Special Magistrate assessed an Administrative Cost of Two Hundred and Fifty Dollars, (\$250.00), and a Fine of Two Hundred and Fifty Dollars, (\$250.00), per day, per count if compliance was not achieved by April 24, 2018.
04/25/2018	Special Magistrate dismissed count 4 and instituted Fines for the remaining four (4) counts, which totaled One Thousand Dollars, (\$1,000.00), per day.
07/10/2018	A lien was recorded with the Monroe County Clerk of Courts, Book # 2916, Page # 799 against the former property owner(s), the Bennetts.

Table 3: Case History, CC18-1113

DATE	NARRATIVE
07/30/2018	A new code case was initiated with a Notice of Administrative Hearing (“NOAH”), citing the current property owner, Federal National Mortgage Association (“Bank”). The hearing date was scheduled for August 29, 2018.
08/29/2018	The City requested dismissal of Section 90-363 Certificate of Occupancy required and Section 66-87 Business Tax Receipt Required. Special Magistrate then found the subject property owner(s) in violation of three violations. The Special Magistrate assessed an Administrative Cost of Two Hundred and Fifty Dollars, (\$250.00), and a Fine of Two Hundred and Fifty Dollars, (\$250.00), per day, per count if compliance was not achieved by September 25, 2018. Subsequently, the property owner was given additional time to have the property come into compliance.
01/30/2019	The Special Magistrate found the property was not in compliance of the three violations. The Special Magistrate ruled the daily fines per count would start if compliance was not achieved by February 1, 2019.
02/01/2019	The the property owner failed to achieve compliance and the daily fines totaling Seven Hundred and Fifty Dollars (\$750.00) began to accrue.
05/14/2019	A lien was recorded with the Monroe County Clerk’s Office in Book # 2964, on Page # 45.
08/13/2019	A follow up inspection was conducted by Code Compliance where it was determined that Count 2 of the NOCV / NOAH would be dismissed since the property no longer had a second unit. 193 days after Special Magistrate ruled Bank violated City of Key West Code of Ordinances, the property was in compliance with regard to Count 2.
03/03/2020	Pumar’s Plumbing submitted an after the fact plumbing permit, which the CBO refused to issue until the full amount of the lien was paid. Also, Gary the Carpenter submitted an after the fact permit for the construction violation. The status of this permit is listed as issued on March 17, 2020. If both permits had been issued compliance would have been achieved on this date. 410 days after Special Magistrate ruled Bank violated City of Key West Code of Ordinances., the property was in compliance on the remaining two counts.
05/28/2020	City Management requested that the Building Department release the plumbing permit so compliance could be achieved.
06/01/2020	Permits were finalized and compliance was achieved.

A summary of the fines and offered settlement is shown in Table 4. The applicant is requesting a 97% reduction in fines.

Table 4.1: Code Fines Summary

Case Number	Violation	Days in Violation	Daily Fine	Fines Due	Settlement Offered	Reduction Requested		
CC18-0030	Building Permits	65	250.00	\$16,250	\$10,000.00	97%		
CC18-0030	Plumbing Inspections	65	250.00	\$16,250				
CC18-0030	Business Tax Receipt	65	250.00	\$16,250				
CC18-0030	Certificate of Occupancy	0	250.00	\$0				
CC18-0030	Utility Accounts	65	250.00	\$16,250				
CC18-1113	Building Permits	410	250.00	\$102,500				
CC18-1113	Plumbing Inspections	410	250.00	\$102,500				
CC18-1113	Utility Accounts	193	250.00	\$48,250				
Total Fines Due				\$318,250.00				

Table 4.2: Bennetts' Code Fines Summary

Case Number	Violation	Days in Violation	Daily Fine	Fines Due
CC18-0030	Building Permits	65	250.00	\$16,250
CC18-0030	Plumbing Inspections	65	250.00	\$16,250
CC18-0030	Business Tax Receipt	65	250.00	\$16,250
CC18-0030	Certificate of Occupancy	0	250.00	\$0
CC18-0030	Utility Accounts	65	250.00	\$16,250
Total Fines Due				\$65,000.00

Table 4.3: Bank's Code Fines Summary

Case Number	Violation	Days in Violation	Daily Fine	Fines Due
CC18-1113	Building Permits	410	250.00	\$102,500
CC18-1113	Plumbing Inspections	410	250.00	\$102,500
CC18-1113	Utility Accounts	193	250.00	\$48,250
Total Fines Due				\$253,250.00

Bank's Justification for Fine Reduction

Attorney for the Bank contends that there exists a statutory exemption for Fannie Mae against state and local taxation (property taxes exception). As such, if the City of Key West attempted to collect on the full lien, Bank would oppose based on the following:

In placing Fannie Mae into conservatorship with the FHFA, the FHFA acquired all of Fannie Mae's rights, titles, powers, and privileges with respect to its assets.

12 U.S.C. 4617(j)(3)-Property Protection. No property of the Agency³ shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to property of the Agency.

12 USC 4617(j)(4)- Penalties and fines. The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

Recommendation

Staff recommends the Commission hear from the applicant/representative, determine the appropriate mitigation amount for the lien, require full payment of that mitigated amount on or before the closing date, and direct Staff to provide the applicant/representative with a Release of Lien for recording with the Monroe County Clerk of the Courts but only upon receipt of the mitigation amount in full.

³ The term "Agency" means the Federal Housing Finance Agency (FHFA).