

**RESPONSE TO MOTION TO STAY AND/OR
ADD INDISPENSABLE PARTIES**

FILE # 22-3145

Petitioner/Appellant, Michael R. Deegan Revocable Trust, files this response to the Motion to Stay and/or Add Indispensable Parties (“Motion”) filed by opposing counsel David Paul Horan, Esq., on behalf of Dennis Koshier and Go Get LLC.

Motion to Stay

The appeal to the City of Key West (“City”) Board of Adjustment was specific to the denial by the City Licensing Official of Appellant’s application to renew its transient rental business tax receipt (“BTR”) and place it in unassigned status, on or about November 23, 2021. Appellant had no knowledge that its BTR had been transferred without its authorization to Dennis Koshier until the renewal application was denied. Appellant timely filed its notice of appeal of the Licensing Official decision.

The Motion filed by opposing counsel misstated several facts. Appellant did purchase a transient BTR from the Santa Maria Resort in 2010, but the BTR was never used by Appellant for transient rentals. The BTR was expressly conditioned with “NO USE

PERMITTED” and required additional approvals from the City to be activated. Therefore, at the time of the sale of Unit 2, 715 Duval Street to Dennis Koshier, the property was **not** permitted for transient use.

The Motion erroneously claims that the Addendum attached to the sales contract somehow “confirmed” the property’s use as a transient rental. This is objectively incorrect because the BTR expressly prohibited its use by the “NO USE PERMITTED” condition. The fact that in the Addendum Appellant maintained that transient use was permissible at the property does not confirm anything with regard to the BTR in question. Rather, it reflected that Appellant believed transient use was permissible with proper approvals from the City. No such transient use approvals existed at the time Mr. Koshier purchased the property in September 2016.

Appellant never sold the BTR to Mr. Koshier and did not sell a transient rental business to Koshier. As such, Appellant is not coming to any “conclusion” six years later that the BTR was “not included” in the sale of the property in 2016. Appellant never sold the BTR to Dennis Koshier as evidenced by the fact that Mr. Koshier was not named on the BTR until February 2020. A fact important to

this administrative appeal is that the BTR was improperly transferred by the City to Mr. Koshier in February 2020 without the required consent and authorization of Appellant. Appellant first learned of this errant transfer in November 2021.

There was nothing “improper” about Appellants appeal to the Board of Adjustment as speciously asserted in the Motion. Rather, Appellant applied to renew its BTR and was denied by the City Licensing Official. Appellant filed its notice of appeal of that denial as provided by the City Code of Ordinances.

Further, the City already stayed the appeal pending the outcome of the Circuit Court case styled Go Get LLC v. Michael R. Deegan Revocable Trust, Case No. 22-CA-494-K.

Motion to Add Indispensable Parties

The Motion asserts that Appellant’s appeal to the Board of Adjustment failed to join indispensable parties. The Motion cited to *Phillips v. Choate*, 456 So.2d 556, 557 (Fla 4th DCA 1984), for its assertion that indispensable parties “must” be included in this administrative appeal. The Motion misconstrued that case as it was specific to judicial lawsuits and not “administrative lawsuits” as alleged in the Motion. The Florida Supreme Court explained in

Brigham v. Dade County, 305 So.2d 756, 758 (Fla. 1974) "In some situations involving administrative action so many third parties may have interests that to require their joinder along with the administrative agency would be impracticable and defeating to the cause of action."

Appellant could find no provision in the City Code which requires, "indispensable parties" be joined to an administrative appeal to the Board of Adjustment. Appellant's appeal to the Board of Adjustment is specific to the decision of the City Licensing Official to deny Appellant's application to renew its BTR. The guidance in *Brigham v. Dade County* applies here—joining Koshier and Go Get LLC to the administrative appeal would be "impracticable and defeating" to the appeal. *See Id.* Further, joining Koshier and Go Get LLC is unnecessary because Koshier and Go Get LLC, as interested parties, have full ability to submit comments and attend the appeal hearing. Further, interested parties can appeal decisions of the Board of Adjustment if they so choose.

Appellant is appealing the City's decision, and not appealing Koshier or Go Get LLC. Appellant based its appeal on the fact that the City did not follow the City Code with regard to the transfer of the

BTR in question. Koshier and Go Get LLC are fully aware of the appeal as evidenced by the filing of the Motion, and are in effect, already “joined” to the administrative appeal. Appellant believes that Koshier and Go Get LLC are already joined to this action by the existing rules pertaining to City administrative appeals.

WHEREFORE, for the reasons stated, the Motion should be denied. The appeal is already stayed by the City pending the outcome of the Circuit Court case, and there is no apparent legal requirement that “indispensable parties” be joined to an administrative appeal.

Respectfully submitted,

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