

**CLEVELAND MUNICIPAL COURT  
HOUSING DIVISION  
CUYAHOGA COUNTY, OHIO  
Judge Raymond L. Pianka**

**City of Cleveland**

**DATE: January 12, 2010**

**Plaintiff**

**-vs-**

**CASE NO.: 2008 CRB 35039**

**AMC Mortgage Services**

**Defendant**

**JUDGMENT ENTRY**

The City and Defendant have submitted this case to the Court based on stipulated facts, each party arguing through briefs that the facts support either conviction or acquittal. The Court, having reviewed the stipulated facts, finds Defendant not guilty.

Defendant concedes that the City served upon it by certified mail a notice of violations ordering it to correct building code violations at 2285 E. 89<sup>th</sup> St. in Cleveland. *Agreed Stipulations of Fact* at ¶9-10 and *Exhibit E*. Defendant also concedes that it did not make repairs to the property. But Defendant argues that it is not guilty of failing to make the repairs because it was not an “owner” of the property under the City’s ordinances.

By ordering Defendant to make repairs, the City’s notice of violations implicitly declares that Defendant is an “owner” under the City’s ordinances (the notice using the more descriptive term “responsible party”). A responsible party may not challenge in a criminal prosecution the underlying validity of administrative order that the party did not appeal unless the party can show that the administrative order was not clear and unequivocal. *City of Dayton v. Sheibenberger* (1986), 33 Ohio App.3d 263, 515 N.E.2d 948 (2<sup>nd</sup> Dist.). Thus, to the extent that the City’s notice to Defendant was clear and unequivocal, Defendant is bound by the City’s administrative determination that it was a responsible party. To the extent that the City’s notice was not clear and unequivocal, Defendant may seek to challenge its underlying validity.

Because the City’s notice does not state the basis for the City’s determination that Defendant was a “responsible party” and could be understood to have been sent to Defendant as an interest mortgage holder, the notice cannot be said to be have been clear and unequivocal about its declaration that Defendant was a responsible party. Defendant is therefore entitled to raise as an affirmative defense in this action the validity of the City’s determination that it was a responsible party.

The stipulated facts are sufficient to show that Defendant was not a responsible party with ownership or control of the subject property. The Building Code in C.C.O. §3101.05(j) defines “owner” as:

[T]he owner or owners of the premises, a vendee in possession, a mortgagee or receiver in possession, a lessee or joint lessees of the whole thereof, or an agent or any other person, firm, or corporation directly in control of the premises or having a legal or equitable interest in the property.

The Housing Code in C.C.O. §363.12 defines “owner” as:

[T]he owner or owners of the premises, including the holder of title thereto subject to contract of purchase, a vendee in possession, a mortgagee or receiver in possession, a lessee or joint lessees of the whole thereof or an agent or any other person, firm or corporation directly in control of the premises.

The stipulated facts demonstrate that Defendant never took title to the property. Though the owner offered a deed to Defendant, the deed was never delivered to Defendant and Defendant never accepted it. *Agreed Stipulations of Fact* at ¶¶5-6. Nor did Defendant ever take possession of the property. *Id.* at ¶7.

This Court has held that valid record title makes the holder of that title an “owner” under the City’s ordinances and that execution of a quitclaim deed without the recording of that quitclaim deed does not change the fact that the holder of valid record title is an “owner.” *City v. Deutsche Bank*, 2008 CRB 42526, Judgment Entry of January 12, 2010. In this case, however, the deed that the owner recorded was not delivered or accepted and therefore did not represent a valid transfer of ownership. The stipulated facts also show no inaction by Defendant that might constitute acceptance of the transfer. Upon learning of the deed, Defendant filed an action against the owner to declare that Defendant had no interest under the deed. *Agreed Stipulations of Fact* at ¶14.

Based on the stipulated facts, the Court finds Defendant not guilty.

  
JUDGE RAYMOND L. PIANKA

SERVICE

A copy of this judgment entry was sent to the parties by regular mail on \_\_\_/\_\_\_/\_\_\_.