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**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE No.:

DENIS KELLY,
Plaintiffs,

v.

PEDRO J. GARCIA, as Property Appraiser of
Miami-Dade County, Florida, FERNANDO CASAMAYOR,
as Tax Collector of Miami-Dade County, Florida,
And JIM ZINGALE, as Executive Director of
the Florida Department of Revenue,
Defendants.

AMENDED COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, DENIS KELLY, sues Defendants, PEDRO J. GARCIA, as Property Appraiser of Miami-Dade County, Florida ("Appraiser"), FERNANDO CASAMAYOR, as Tax Collector of Miami-Dade County, Florida ("Collector"), and JIM ZINGALE, as Executive Director of the Florida Department of Revenue ("Department"), and alleges:

1. This is an action for a declaratory judgment and to challenge the removal of a homestead exemption on property in Miami-Dade County, Florida and the imposition of a tax lien. This Court has jurisdiction pursuant to Chapter 194, Florida Statutes, article V, sections 5 and 20 of the Florida Constitution, and section 86.011, Florida Statutes.
2. Plaintiff, DENIS KELLY, is the owner of certain real property located at 1722 Jefferson Avenue, Miami Beach, Florida and identified as Folio No. 02-3234-004-0460 ["Subject Property"], which is classified and assessed as owner-occupied residential property.
3. Appraiser is sued herein in his official capacity and is a necessary party to the action pursuant to section 194.181(2), Florida Statutes.

4. Collector is sued herein in his official capacity and is a necessary party to the action pursuant to section 194.181(3), Florida Statutes.

5. Defendant, JIM ZINGALE, is sued herein in his official capacity and is a necessary party to the action pursuant to section 194.181(5), Florida Statutes.

6. From 2005 to present, the Plaintiff has/does own the subject property and made it his permanent residence.

COUNT I
Removal of Tax Lien

7. The Plaintiff re-alleges and incorporates by reference paragraphs 1 through 6 of this Complaint as though fully set forth herein.

8. The Plaintiff applied for and received a homestead exemption on the subject property in the 2008 tax year. Plaintiff continued to receive the homestead exemption on the property through the 2015 tax year.

9. On March 31, 2017 Appraiser sent the Plaintiff a Notice of Intent to Lien ["Lien Notice"] notifying him that the homestead exemption on the subject property for year 2016 not approved. A copy of the Lien Notice is attached as Exhibit "A" and incorporated herein. Plaintiff received a Notice of Disapproval of Application for Property Tax Exemption (renewal) dated June 30, 2017 which stated that the reason for the removal of the homestead exemption was no evidence of continued permanent residence and property rented and abandoned. A copy of the Notice of Disapproval of Application for Property Tax Exemption is attached as Exhibit "B".

10. The Property Appraiser recorded a tax lien against the subject property and Notice of Payment and Satisfaction of Homestead Violation Lien dated August 25, 2017.

11. Section 196.161, Florida Statutes allows the Property Appraiser to file a tax lien against property of a taxpayer who was granted a homestead exemption to which he was not entitled for any year or years within the prior 10 years.

12. However, the Plaintiff was entitled to the homestead exemption on the subject property in the 2016, 2017 and 2018 tax years, pursuant to article VII, section 6 of the Florida Constitution and sections 196.015 and 196.031, Florida Statutes. Thus, the Property Appraiser's retroactive removal of the homestead exemption and imposition of a tax lien was unlawful.

WHEREFORE, Plaintiff requests that this Court enter an order reinstating the 2016, 2017 and 2018 homestead exemptions on the subject property; cancelling the tax lien; reimbursement of monies expended for satisfaction of lien, awarding Plaintiff his costs incurred in bringing this action pursuant to section 194.192, Florida Statutes; and awarding such other general relief as may be just and equitable.

COUNT II
Reinstatement of 2016, 2017 and 2018 Homestead Exemptions

13. The Plaintiff re-alleges and incorporates by reference paragraphs 1 through 12 of this Complaint as though fully set forth herein.

14. Plaintiff received notices from Property Appraiser as more fully set forth in paragraph 9 above.

15. Plaintiff has paid the 2016, 2017 and 2018 taxes on the subject property, and paid a 2016 homestead penalty bill in the amount of \$27,601.35, in full, pursuant to section 194.171(3) (4), Florida Statutes. A copy of the receipts for payment of the 2016, 2017 and 2018 taxes is attached as Composite Exhibit "C."

16. Plaintiff has performed all conditions precedent which are required to be performed by Plaintiff in establishing his right to bring this action. Specifically, this action has been filed within the time period prescribed by section 196.1S1, Florida Statutes.

17. The notice of denial of the 2016 homestead exemption for the subject property did not meet the specificity requirements of section 196.193(5), Florida Statutes. Thus, the notice was invalid and ineffective to remove the 2016 homestead exemption and consequently the 2017 and 2018 homestead exemptions. Further, Plaintiff is qualified and entitled to the 2016, 2017 and 2018 tax exemptions pursuant to Florida Statutes Sections 196.015 and 196.031.

18. Moreover, the Plaintiff was entitled to the homestead exemptions on the subject property in 2016, 2017 and 2018, pursuant to article VII, section 6 of the Florida Constitution and section 196.031, Florida Statutes, and thus the Appraiser's denial of the homestead exemptions was unlawful.

19. Plaintiff has suffered money damages in the amount of \$58,084.26 due to over payment to Miami-Dade County for real-estate taxes due to wrongful denial of homestead exemption entitlements for the years of 2016, 2017 and 2018.

WHEREFORE, Plaintiff requests that this Court enters an order reinstating the 2016, 2017 and 2018 homestead exemptions on the Subject Property, ordering the Collector to cancel the original tax bills for 2016, 2017 and 2018, issue new tax bills that reflect the 2016, 2017 and 2018 homestead exemptions, and to refund overpayment of \$58,084.26; awarding Plaintiff his costs incurred in bringing this action pursuant to section 194.192, Florida Statutes; and awarding such other general relief as may be just and equitable.

Dated: February 18, 2019

SPITTLER & ASSOCIATES, P.A.

/s/John J. Spittler, Jr.

JOHN J. SPITTLER, JR.

Counsel for Plaintiff

FBN: 194894

1865 Brickell Avenue, TH-5

Miami, Florida 33129

Telephone: (305) 860-9991

Telephone: (305) 860-9992

E-Mail: jjs@spittlerlaw.com

Sec. E-mail: la@spittlerlaw.com