

IN THE MATTER OF  
RICHARD ALAN LEVIN and  
ELENI KORONIOU, Appellants  
25 East Seminary Avenue  
Lutherville, MD 21093

RE: Appeal of Opinion and Order of Animal  
Hearing Board on Citation E35080 – Holding  
Facility Required and Imposing a Penalty of  
\$100.00 to be paid within 30 days

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\*  
\* Case No. CBA- 10-040

\* \* \* \* \*

**OPINION**

This case comes to the Board on appeal of the final decision of the Animal Hearing Board on Citation E35080 – Holding Facility Required and Imposing a Penalty of \$100.00 to be paid within 30 days. The Appellants, Richard Alan Levin and Eleni Koroniou (hereinafter collectively the “Appellants”), filed a timely appeal of that decision to this Board.

A public hearing was held before this Board on August 10, 2010. The Appellants were represented by G. Warren Mix, Esquire. Baltimore County was represented by Michael Field, Assistant County Attorney.

**Factual Background**

Mr. Levin is in the business of selling puppies. He does not have a holding facility license to do so. He has sold 12 puppies within the 3 months immediately preceding the Animal Hearing Board hearing. He brings the puppies either to his home or directly to the buyer. Sometimes the puppies only stay at his home for a short period of time before they are sold. There was no dispute that the puppies he sells are not the offspring of his own household pets. He explained that he buys puppies from an Amish farm in Pennsylvania. However, he claimed that the volume of puppies that he has recently been buying has decreased.

Mr. Levin also made clear that he has been in regular contact with Animal Control to find out whether any complaints had been lodged against him.

Decision

Baltimore County Code §12-1-114(g) ("BCC") requires that all hearings before this Board from the Animal Hearing Board ("AHB") be heard on the record made at the AHB hearing. Upon review of the AHB record, this Board has the authority to:

- (i) Remand the case to the Animal Hearing Board;
- (ii) Affirm the decision of the Animal Hearing Board;
- (iii) Reverse or modify the decision of the Animal Hearing Board if a finding, conclusion or decision of the Animal Hearing Board:

- 1. Exceeds the statutory authority or jurisdiction of the Animal Hearing Board;
- 2. Results from an unlawful procedure;
- 3. Is affected by any other error of law;
- 4. Subject to paragraph (2) of this subsection, is unsupported by competent, material and substantive evidence in light of the entire record as submitted; or
- 5. Is arbitrary and capricious.

The issue in this case is whether or not the Appellants are required to obtain a holding facility license under BCC, §12-6-101 and §12-1-101(r), (x). A person who operates a holding facility is required to have a license in accordance with BCC, §12-6-101.

**§ 12-6-101. LICENSE REQUIRED.**

As a condition of continued operation, a holding facility shall have a current valid license.

**§ 12-1-101. DEFINITIONS.**

(r) *Holding facility.*

(1) "Holding facility" means any animal shelter, commercial kennel, commercial stable, grooming parlor, humane animal shelter, or pet shop.

(2) "Holding facility" includes, for licensing purposes only, a fancier kennel or cattery which is operated from the fancier's home.

\* \* \* \*

(x) *Pet shop.*

(1) "Pet shop" means a person or establishment that sells or offers to sell animals, whether as owner, agent, or on consignment, to the general public.

(2) "Pet shop" does not include a horse farm licensed by the state.

The Board finds that, upon review of the record before the Animal Hearing Board, Mr. Levin admitted that he offers for sale and/or sells puppies to the general public. Mr. Levin further admitted that he brought dogs from Pennsylvania to stay at his home before he sells them to the public. Accordingly, his home, by definition, becomes a "pet shop" under BCC, §12-1-101(x). Even if the dogs are not brought to his home, he is personally operating a "pet shop" by delivering dogs directly to his buyers. Either way, this Board finds that because he operates a "pet shop", he is also operating a "holding facility" and, as a result, he needs a license.

Under the definition of "pet shop", it is irrelevant whether or not he "breeds" the puppies. To fall under the definition of "pet shop", he only needs to "sell" or "offer to sell" animals. By his own testimony, this case is not analogous to the one-time sale of a litter of puppies produced by a household dog. A "pet shop" can either be a "person" or an "establishment." Mr. Levin has a regular business of importing dogs from another state and reselling them in Maryland.

The defense that he regularly called Animal Control to find out about complaints or to find whether he was in compliance does not change this Board's position. One is presumed to know what the law requires. In short, Mr. Levin argues that the County should be equitably estopped from enforcing the holding facility license against him because he regularly called Animal Control and they never told him that he would have to get this license. Even if we assume that Animal Control made a mistake by not telling Mr. Levin that he would need a facility license, this is no excuse under the law. *Marzullo v. Kahl*, 366 Md. 158 (2002) holds that the doctrine of equitable estoppel does not apply to allow avoidance of zoning law based on reliance of mistaken information or even in reliance upon erroneous permits issued by officials.

The law charges that persons who deal with public officials with knowledge of the law and the extent of the official's authority. Consequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.' *Lipsitz v. Parr*, 164 Md. 222, 228 (1933). Therefore, the doctrine of equitable estoppel 'cannot be ... invoked to defeat the municipality in the enforcement of its ordinances, because of

an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment.' *Lipsitz* at 228.

Moreover, the law does not allow public officials to give away the legal rights of the public whether intentionally or by mistake. *Id.* This Board recognizes that the purpose of this license is to protect animals by ensuring that a "pet shop" is complying with food and water, quartering, no escape, size of cage, exercise and veterinary care provisions of county laws. By protecting the animals, the license requirement also protects the public.

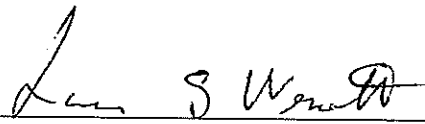
**ORDER**

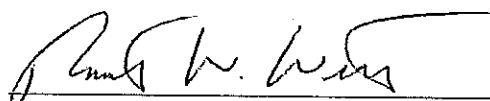
THEREFORE, IT IS THIS 21<sup>st</sup> day of September, 2010 by the County Board of Appeals of Baltimore County

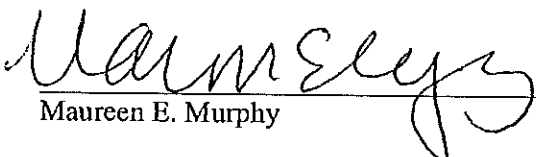
**ORDERED** that the decision of the Animal Hearing Board dated April 20, 2010 in the above captioned case, be and the same is hereby **AFFIRMED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
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Lawrence S. Wescott, Panel Chairman

  
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Robert W. Witt

  
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Maureen E. Murphy