

IN THE MATTER OF
RAJI, LLC- APPELLANT
Javad Aizaz, Resident Agent
6120 Baltimore National Pike

2nd ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

RE: CODE INSPECTIONS & ENFORCEMENT
VIOLATION/CIVIL CITATION
[Civil Citation No.: CO-0087350, Code Inspection
And Enforcement Violation BCC Section 1-7]

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO.: CBA-11-017

* * * * *

OPINION

This matter comes before the County Board of Appeals on an appeal from a decision of the Code Enforcement Hearing Officer dated December 21, 2010, assessing a civil penalty of \$3,000.00 against RAJI, LLC, 6120 Baltimore National Pike, Baltimore, Maryland, 21228, the landlord for B&B Therapy, located at the same address, for allowing B&B Therapy to use the property as a living quarters for one or more person or persons without a Special Exception for such use having been granted and as a location of sexual activities or use as a brothel which is illegal in any location in Baltimore County. The Respondent/Appellant, RAJI, LLC, through Javad Aizaz, its resident agent, filed a timely appeal from the decision of the Hearing Officer, and oral argument on the record was held before the Board on March 22, 2011 at 11:30 a.m. The Appellant, RAJI, LLC, was represented at the hearing by its resident agent, Javad Aizaz, who appeared with counsel, Richard I. Martal, Jr., Esquire; Adam M. Rosenblatt, Assistant County Attorney, appeared on behalf of Baltimore County. A non-public deliberation of the case was held on April 19, 2011 at 9:15 a.m. The Board members reviewed the record, the

recording of the hearing before the Hearing Officer, considered the arguments of Counsel and their supporting memorandum.

Background

A Civil Citation, No. CO-0087350, was served on Mr. Aizaz as resident agent for RAJI, LLC, on December 15, 2010. The citation was for violating BCZR 230.1 and 230.3, operation of a brothel not permitted in any zone in Baltimore County and use of property as a living quarter without the benefit of a Special Exception. The citation was issued by Code Enforcement Officer, Robyn Clark. A hearing was held before the Code Enforcement Hearing Officer on that citation on December 15, 2010. Javid Aizaz, Resident Agent for RAJI, LLC, and Robyn Clark, Baltimore County Code Enforcement Officer testified at the hearing. Entered as exhibits were the lease between RAJI, LLC and B&B Therapy, photographs of the property, and the Statement of Probable Cause prepared by Baltimore County Detective Blackburn, *id* #4222, which charges a number of individuals with prostitution. The Statement of Probable Cause also included statements of several individuals that they received sexual favors at the massage business, and a statement made by one of the individuals arrested that she was from New York and that she was staying in Maryland for a month to work for Ms. Johnson.

Officer Clark testified that she was contacted by the Baltimore County Police Department and advised of a raid at B&B Therapy, located at 6120 Baltimore

National Pike, Ste. 200 C, Baltimore, Maryland, 21228. She went to the location following the raid and took pictures and spoke with several individuals. Officer Clark testified that she spoke with Pin Sung Johnson, the owner of the massage business, and Taejun Kim. Officer Clark testified that Ms. Kim advised her that she was from New York and was residing at the massage business. As the massage business was in a BL Zone, living quarters are not permitted except by special exception. Officer Clark further testified that based upon her experience as a Code Enforcement Officer, her conversations with the police following the raid and her observations inside the location, it was her opinion that the business was being used to provide sexual favors to its clientele. A citation was issued without prior Correction Notice due to the fact that prostitution was involved. See Section 4B-101 of the Baltimore County Zoning Regulations (BCZR), *Baltimore County Code* (BCC) Section 3-6-205.

Mr. Aizaz testified that he is a real estate owner and dealer and his office, as well as other businesses are located in the same building as B&B Therapy. He and his three brothers own the building and they entered into a lease with Pin Sung Johnson approximately thirteen months prior to the hearing. The business is now closed but he has not rescinded the lease. Mr. Aizaz stated that he did not believe he could terminate the lease as the criminal case had not gone to trial and still had not as of the date of the hearing. He went to the business to collect rent. He was unaware of the illegal use of the tenancy.

Decision

The responsibility of this Board in Code Enforcement appeals has been prescribed under *Baltimore County Code* § 3-6-304, which states:

In a proceeding under this subtitle, the Board of Appeals may:

- (i) Remand the case to the Hearing Officer;
- (ii) Affirm the final order of the Hearing Officer; or
- (iii) Reverse or modify the final order if a finding, conclusion, or decision of the Code Official or Hearing Officer:
 - 1. Exceeds the statutory authority or jurisdiction of the Code Official or Hearing Officer;
 - 2. Results from an unlawful procedure;
 - 3. Is affected by any other error of law;
 - 4. Subject to paragraph (2) of this section, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - 5. Is arbitrary or capricious.

The Board is not entitled to substitute its judgment for that of the Hearing Officer, and deference is due the totality of the Hearing Officer's decision in examining the Appellant's petition for appellate review and the parties' oral arguments.

In its review of this matter, the Board considered whether the landlord knew or should have known that B&B Therapy was using the leased property as a brothel and whether anyone was living on the premises.

In his decision, the Hearing Officer stated:

“After proper consideration of the evidence presented, the Hearing Officer finds that there is substantial evidence to support a finding that the property was used as a living quarters for one or more persons without a Special Exception for such having been granted and as a location of sexual activities or use as a brothel, a use which is illegal at any location within Baltimore County.”

The burden of proving a violation of the Code rests with the County. In this case, the decision of the Hearing Officer was based on the testimony of the Code Enforcement Officer, and the evidence she presented, as well as the testimony of Mr. Aizaz. There was no evidence presented that the landlord had any direct knowledge of what was going on inside the property. The County argues that the landlord does not have to know that the property is being used in an improper manner, it is enough that he should have known. In support of their position, the County argues that the landlord should have known because he works in the same building as B&B Therapy and, as the landlord, he should have inspected the premises. The County argues that the situation in this case is analogous to the situation in dog bite cases where the landlord has been held liable for the injuries caused by the tenant’s dog and in code violation cases where the landlord was held responsible for violations on the property of the tenant.

The Board is not persuaded by the County’s arguments in this case. In the dog bite cases, the landlord who was held to be liable knew the tenant had a dog, and so even if the landlord was unaware of the breed or its propensity towards violence, the Courts have held the landlord to be liable because there was some knowledge of potential harm and the

landlord has some control over the presence of the dog. See Solesky v Tracey, 2011 WL 1238663 (Md. App.) In the Code Violation cases, the landlord has been found to be liable because the landlord is in the best position to remedy a dangerous situation. In those cases, however, the landlord has received notice of the violation and had an opportunity to correct same. The Courts have not gone so far as to impose a strict liability standard on landlords. See Joseph v Bozzuto Management Company, et al 173 Md.App. 305, 918 A.2d 1230 (2006).

In the instant case, the tenant was a licensed massage business, licensed by the State of Maryland. No prior Correction Notice was given to the landlord of the alleged violation which would have put him on notice and given him an opportunity to remedy same. To say that the landlord should have known that they were also operating a brothel would suggest a licensed massage business should be treated different than any other licensed business and impose a burden on all landlords of massage businesses to go inside of private treatment rooms, invading the privacy of the business' customers, to make sure that no criminal activity is afoot.

As to the allegation that people were living in the business, the evidence presented is inconsistent. While Officer Clark testified that she was told by Ms. Kim that she was living there, Detective Blackburn, in his Statement of Probable Cause, wrote that Ms. Kim said she resides in New York and that she had been staying in Maryland for about a month although she was planning on returning to New York the following week. The pictures in evidence are also inconclusive as to proof that people were living on the premises as reasonable inferences can be made in interpreting the photographs.

Accordingly, the Board believes that there was insufficient evidence obtained in the testimony and record of the Hearing Officer's hearing to determine that the landlord should be

held liable for the violations of the tenant.

ORDER


THEREFORE, IT IS THIS 28th day of April, 2011, by the Board of Appeals of Baltimore County

ORDERED that the decision of the Code Enforcement Hearing Officer dated December 21, 2010 be **REVERSED**; and it is further

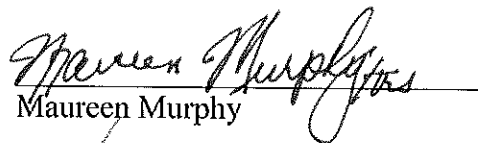
ORDERED that the civil penalty of \$3,000.00 shall be **VACATED** and immediately returned to the Appellant.

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*.

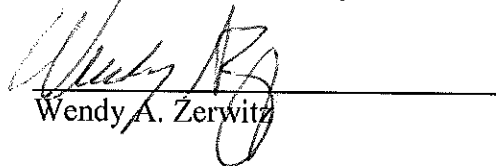
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Chairman



Maureen Murphy



Wendy A. Zerwitz