

IN THE MATTER OF
CLAUDETTE V. HESSON, LEGAL OWNER
953 JOSHUA TREE COURT

* BEFORE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-12-054

RE: DPW – SEWER SERVICE CHARGES

* * * * *

ORDER OF DISMISSAL

On May 7, 2012, an appeal was filed to this Board by Claudette V. Hesson, Appellant, from a Decision letter from Edward C. Adams, Director of Department of Public Works, stating that appeal in regard to sewer service charge billed to the property located at 953 Joshua Tree Ct. for the period July 1, 2011 is beyond appeal period and the readings are accurate and correctly calculated.

WHEREAS, the Board is in receipt of Baltimore County's Motion to Dismiss, filed on July 30, 2012, requesting that the Board dismiss this appeal on the basis that it has been untimely filed (a copy of which is attached hereto and made a part hereof); and

WHEREAS, there was no response filed by the Appellant to the County's Motion to Dismiss; and

WHEREAS, the appeal was not filed within the time period as is required statutorily under the Baltimore County Code, Section 20-5-110(a); and

WHEREAS, the Board convened for argument on the Motion to Dismiss on August 23, 2012; and

WHEREAS, there are no extenuating circumstances filed by the Appellant; and

WHEREAS, the Board held a Public Deliberation on the Motion immediately following argument in open Court; and

WHEREAS, there is no sufficient basis for granting the appeal. Based upon the circumstances of this case, the Board will dismiss the appeal.

THEREFORE, IT IS THIS 7th day of September, 2012 by the Board of Appeals of Baltimore County


ORDERED that the April 2, 2012 decision letter of Edward C. Adams, Director of Department of Public Works, stating that appeal in regard to sewer service charge billed to the property located at 953 Joshua Tree Ct. for the period July 1, 2011 is beyond appeal period and the readings are accurate and correctly calculated, be and the same is hereby **AFFIRMED**; and it is furthered

ORDERED that Respondent's Motion to Dismiss be and the same is hereby **GRANTED**; and it is further


ORDERED that the appeal of Claudette V. Hesson, filed in Case No.: CBA-12-054 is **DISMISSED with prejudice**.

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*.

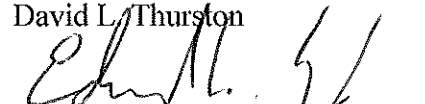
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Wendell H. Grier, Chairman



David L. Thurston



Edward W. Crizer, Jr.

IN THE MATTER OF
CLAUDETTE V. HESSON
953 JOSHUA TREE COURT

BEFORE THE
COUNTY BOARD OF APPEALS

FOR
BALTIMORE COUNTY

Case No: CBA-12-054

RECEIVED
JUL 30 2012

BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

MOTION TO DISMISS

Baltimore County, Maryland, by Michael E. Field, County Attorney, and Nancy C. West, Assistant County Attorney, files this Motion to Dismiss the appeal filed herein and in support thereof states as follows:

1. The above-captioned matter involves an appeal by Claudette V. Hesson ("Hesson") in which she is seeking a refund for sewer service charges billed to her for Fiscal Year 2011-2012 for the property located at 953 Joshua Tree Court in the Owings Mills section of Baltimore County, Maryland 21117.

2. Edward C. Adams, Jr. ("Adams"), Director of the Department of Public Works ("DPW"), could not grant a refund for Fiscal Year 2011-2012 because Hesson did not timely request such review by the DPW Director as required by Baltimore County Code Section 20-5-110 (a) and the relevant Executive Orders for Metropolitan District Charges.

3. Hesson did not notify the County of any claim for alleged sewer service overcharges for Fiscal Year 2011-2012 upon receipt of her July 1, 2011 tax bill. Rather, she waited until March 16, 2012 to make a claim in her letter to Adams that is attached hereto as **Exhibit A** and incorporated herein by reference.

4. The parcel for which Baltimore County billed Hesson for sewer service

charges is Parcel No. 21-00-012966 on the annual tax bill. All records indicate that the tax bill was dated July 1, 2011 and was mailed to Hesson at 953 Joshua Tree Court, Owings Mills, MD 21117. A copy of the tax bill for Fiscal Year 2011-2012 is attached hereto as **Exhibit B** and incorporated herein by reference.

5. Adams denied the claim in his April 2, 2012 letter to Hesson that is attached hereto as **Exhibit C** and incorporated herein by reference.

6. Hesson's claim is barred as untimely because she failed to file the requisite written dispute of claim until March 16, 2012, which was beyond the mandated 90-day statutory time limit of the Baltimore County Code and relevant Executive Orders as noted herein.

7. Baltimore County Code ("BCC"), Section 20-5-110, Review of User Charges; Appeals; Refunds, Subsection (a), provides as follows:

Any person liable for the payment of the user charges imposed pursuant to this title and who disputes such charges **may, within ninety (90) days after mailing of the bill for such charges, request the Director of Public Works to review the charges imposed.** Such requests for review shall be in such form, contain such information, and be supported by such documents as the Director of Public Works may require. The Director of Public Works shall investigate the merits of all such requests, and the person requesting review shall be entitled to a hearing before the director of Public Works or designee. After investigation and hearing, if requested, the Director of Public Works shall, by written notice, notify the person requesting review of the action taken. If the Director of Public Works or designee determines that all or any part of the charges were erroneously, mistakenly, or illegally charged or collected, such charges shall either be abated or refunded. (Emphasis added.)

8. To implement BCC Section 20-5-110, there were Executive Orders in place that, unchanged in the current 2010 Executive Order, Section III.C, Disputes,

state as follows:

Any person disputing sewer service charges **shall submit a written protest to the Director of Public Works within 90 calendar days of** (1) the issuance of the receipt for the charges paid in connection with the plumbing permit, or (2) the issuance of the tax bill or invoice for the charge being disputed, as the case may be. Any disputes shall be governed by Section 20-5-110 of the Baltimore County Code, 2003. (Emphasis added).

9. As required by the Executive Orders, Hesson was obligated to dispute the charge within 90-days of either (a) the issuance of a receipt for charges paid in connection with the relevant plumbing permit issued for her property located at 953 Joshua Tree Court; or (b) the issuance of a tax bill or invoice for the charge being disputed.

THE APPLICABLE LAW

10. Numerous decisions of the Maryland Court of Appeals have made it clear that the courts have no power or discretion to allow an appeal not filed within the prescribed time in the face of statutory language requiring an appeal be taken within a specified time. The time for filing an appeal is mandatory. *See Keynon v. Board of Zoning Appeals of Harford County*, 235 Md. 388 (1964) in which a property owner's failure to file an appeal, within 20 days from the date of a letter from the local Planning and Zoning Commission denying an extension of a non-conforming use, was held to be too late. Interestingly, the Commission's Executive Secretary telephoned the property owner, and even met to discuss the matter. Yet it was almost nine months later before the property owner appealed to the Zoning Board of Appeals, a time lapse deemed fatal.

11. In *Bushey v. State Roads Comm'n*, 231 Md. 154 (1963), an appeal to the

Circuit Court by owners of land taken for highway construction from an award of the Board of Property Review was dismissed because the appeal was not taken within 30 days after the award, as required by statute. Despite the fact that the State Roads Commission had verbal notice of objection to the award within 30 days thereafter, and was given written notice thereof shortly after the expiration of time allowed for noting an appeal, no notice of appeal was filed in the Circuit Court within the time specified. The contention that the Court had a "reasonable discretion" to allow an appeal although not filed within the specified time was unavailing. "The courts have no such power, unless given the same by statute, rule of court, or constitutional provision." *Id.* at 157.

12. In *Gibson v. District of Columbia Public Employee Relations Board*, 785 A.2d 1238 (D.C. 2001), the District of Columbia Court of Appeals held that a Public Employees Relation Board rule concerning the time for filing a complaint "exemplifies the principle that '[t]he time limits for filing appeals with administrative adjudicative agencies...are mandatory and jurisdictional.'" See also, *Hoggard v. District of Columbia Public Employee Relations Board*, 655 A.2d 320, 323 (D.C. 1995). The same rationale applies to the instant case as the 90-day time limit for filing a claim is jurisdictional, and the Board has no authority to waive it.

WHEREFORE, Baltimore County, Maryland, respectfully prays that this Honorable Board:

1. Grant its Motion to Dismiss the appeal filed by Claudette V. Hesson herein as the underlying claim is barred because it was filed beyond the mandatory 90-day time limit; and
2. For such other and further relief as this Board may deem just and

appropriate.

Respectfully submitted,

MICHAEL E. FIELD
County Attorney




NANCY C. WEST
Assistant County Attorney
Historic Courthouse, 2nd Floor
400 Washington Avenue
Towson, MD 21204
410-887-4420

Attorneys for
Baltimore County, Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2012, a copy of
the foregoing Motion to Dismiss was sent by first class mail, postage prepaid, to:

Claudette V. Hesson
953 Joshua Tree Court
Owings Mills, MD 21117



NANCY C. WEST
Assistant County Attorney