

IN THE MATTER OF
MIRZA YALCIN
9403 TURF ROAD
BALTIMORE, MD 21234

RE: 13 PRIMROSE COURT
Civil Citation: 94362;
Violation BCC, §35-6-110.1

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA- 12-016

* * * * *

OPINION

This case comes to the Board on appeal of the Final Order of the Administrative Law Judge (ALJ) for the Department of Permits Approvals and Inspections dated September 9, 2011, which Order did not uphold or revoke a violation under BCC, §35-6-110.1; and which Order revoked the rental housing license for the property at 13 Primrose Court, located in Baltimore County. The Final Order did not uphold or dismiss a civil penalty in the amount of \$500.00 which penalty was proposed in civil citation 94362.

Appellant Mirza Yalcin, appeared at the Code Enforcement Hearing without Counsel and Kathy O'Donnell and Enforcement Officer of Baltimore County Code Enforcement appeared on behalf of the County.

A hearing before this Board was held on November 17, 2011. Appellant, Mirza Yalcin was represented by Damon A. Trazzi, Esquire. Aaron Burch, Assistant County Attorney represented Baltimore County. No closing briefs were requested.

Background

The owner of a dwelling in Baltimore County may obtain a license from the County in order to rent that dwelling or a portion thereof to a tenant. *See Baltimore County Code (BCC) §35-6-105; 35-6-109.*

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The license may be revoked by the Director of the Department of Permits, Approvals, and Inspections of the County if the Director finds that within a six (6) month period two public nuisance incidents have occurred at the dwelling or dwelling unit, subject to the law. The Code Official is required to provide notice of the public nuisance to the property owner in accordance with Section 3-6-203© of the Code.

If within six (6) months after the date of the notice a third public nuisance incident has occurred the Director may deny, suspend or revoke a license.

Section 35-6-110-1(d) gives a property owner the right to a hearing on a violation. It requires that the Code Official demonstrate by a preponderance of evidence that each violation stated in the notice issued under subsection (b) at the order issued under subsection (c) has occurred.

Section 3-6-206(g) of the Code states:

Final Order – Appearances

"The hearing officer shall issue a final order with written findings."

The Appellant appeals the Order of the Administrative Law Judge (ALJ/Hearing Officer) in this matter on the basis that the ALJ did not make written findings of fact and conclusions of law with respect to the finding of three (3) violations within a six (6) month period and the subsequent revocation of the license to rent the property at 13 Primrose Court.

Appeals from Code Enforcement hearings are limited to the record created before the Hearing Officer. That record includes all exhibits and other papers filed with the ALJ/Hearing Officer, and the written findings and final order of the ALJ/Hearing Officer (*Baltimore County Code* Section 3-6-303).

In deciding a code enforcement appeal, per Section 3-6-304, 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.”

After hearing arguments by counsel, reviewing the file, which includes the transcript of the ALJ's proceeding, this Board finds that it cannot reach a final disposition of the case without first remanding it back to the ALJ for clarification of his Final Order.

In his decision upholding the revocation of the license, the ALJ made conclusionary statements that the inspector documented police calls for service at the subject property. He did not make specific findings as to the dates of the violations or the type of violations that occurred on each specific date within a six (6) month period. Nor did the ALJ deal with the \$500.00 fine that was assessed in the citation by the Chief Administrator of Permits, Approvals and Inspections.

The Board, feels it is necessary to remand this matter to the ALJ so that he might clarify his Final Order and make specific findings of fact and conclusions of law in support of his opinion. In addition the ALJ should deal with the \$500.00 fine which was assessed.

ORDER

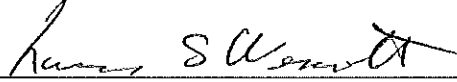
THEREFORE, IT IS THIS 30th day of November, 2011 by the Board of Appeals of Baltimore County,

ORDERED that the matter in Case No.: CBA-12-016 is hereby REMANDED to the Administrative Law Judge for further clarification of his decision as follows:

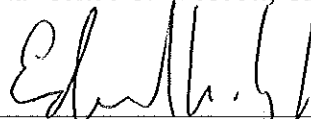
1. To set forth specific Findings of Fact and Conclusions of Law under which he had found the three (3) nuisance violations within a six (6) month period in order to revoke the license granted to Mr. Yalcin at 13 Primrose Court in Baltimore County; and
2. An explanation as to whether he is upholding or dismissing the penalty assessed in the amount of \$500.00 in his Order.

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*.

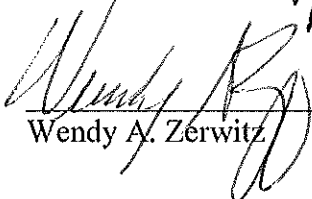
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Lawrence S. Wescott, Chairman



Edward W. Crizer, Jr.



Wendy A. Zerwitz