

IN THE MATTER OF
MARY JANE ARCHER-Appellant/Owner
1732 Amuskai Road
Baltimore, MD 21134

APPEAL FROM THE ANIMAL
HEARING BOARD
Citation No.: E 43409

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-13-034

* * * * *

OPINION

This case is before the Board on an appeal by Appellant, Mary Jane Archer, from the May 15, 2013 decision of the Baltimore County Animal Hearing Board (AHB), in which that Board found that Ms. Archer's dog, "Haiti", was an Animal at Large as defined in Section 12-1-101 (c)(1)(ii) of the Baltimore County Code and therefore Ms. Archer was in violation of Section 12-3-110 of the Baltimore County Code and she was fined \$25.00; they found that "Haiti" was a Dangerous Dog as defined under Baltimore County Code Section 12-8-102(a)(1) and (2) however they dismissed the fine, and Ordered that the dog be surrendered to Baltimore County. Appellant filed a timely appeal. Because of the nature of the finding on "Haiti", this Board held a hearing *de novo* on July 18, 2013. The County was represented by Ashley Hofmeister, Assistant County Attorney, and Ms. Archer appeared *pro se*. As Ms. Archer paid the Twenty-Five (\$25.00) Dollar fine, the finding of an Animal at Large was not before the Board. The only issue on appeal before this Board is the finding of a Dangerous Dog and the order that the dog is to be surrendered to Baltimore County. Deliberations were held immediately following the hearing.

BACKGROUND AND TESTIMONY

The County called as its first witness, Assistant Animal Control Chief Tom Scollins. It is Assistant Chief Scollins' responsibility to review police reports of dog bites and determine what,

if any, action should be taken. In the instant case, Assistant Chief Scollins reviewed a police report dated April 1, 2013 (County's Exhibit #1) wherein it stated that Ms. Archer's dog "Haiti" bit her neighbor, Juan Bautista Minalia, on his hand as Mr. Minalia was trying to separate his dog from "Haiti". Mr. Minalia's dog "Nato" was on a lead attached to a deck in his yard when "Haiti" came under his fence, grabbed "Nato", and was attempting to drag him into his yard. The police officer who took the report spoke with Ms. Archer who stated that "Haiti" was not licensed and had not received any rabies vaccinations.

Mr. Scollins' also considered a statement written by Lisa Michelle Cundia, Mr. Manalia's wife, regarding the incident (County Exhibit #2). She corroborated her husband's statement to the police and added some additional background information on "Haiti". She included in her statement that "Haiti" appears emaciated. She reported that they cannot use their yard if "Haiti" is out because the dog has tried to bite their daughter and son.

Based on the police report and witness statement, Assistant Chief Scollins' determined "Haiti" to be a dangerous dog and issued the violations. Baltimore County Code Section 12-8-101 (c) (1) defines a dangerous animal as one has been declared by the Animal Control Division as posing a threat to public health or safety. Section 12-8-102 (a) states that an animal poses a threat to the public health or safety (1) if the animal attacks or injures a person or domestic animal or (2) exhibits aggressive or dangerous behavior and is not adequately confined or restrained. Mr. Scollins determined that "Haiti" was a dangerous animal as he was not adequately restrained and he got under the neighbor's fence and attacked the neighbor and his dog, a domesticated animal.

Mr. Scollins further testified that they have been trying to find a rescue to accept "Haiti". The Fallston Animal Rescue Mission, suggested by Ms. Archer, can not take him. Several of

Mr. Scollins' staff members have been looking into finding a placement for him, including the Adopt a Homeless Animal rescue, as the Order of the Animal Hearing Board was that the County take ownership of the dog. Therefore, they are trying to find a placement for him. Euthanasia would be a last resort.

The Appellant, Mary Jane Archer, testified. She took "Haiti" when a former neighbor moved and could not take the dog with her. She kept "Haiti" in the basement or on a long chain in the yard. She had previously tried to let "Haiti" get his exercise by allowing him to run around in the basement but he scared off one of her cats and shook another cat to death. She tries to take him for walks around the block when she can. She always tries to check with her neighbors prior to putting "Haiti" out as she knows he has tried to attack their puppy before. She will not let him out until after the neighbors take in their dog. She also does not let "Haiti" out if their children are outside. On the day of the attack she did not see the puppy. She did try and separate the dogs. She did not know why "Haiti" appeared emaciated as she feeds him twice a day but acknowledges that maybe she is not feeding him enough.

She has another dog and that dog is up to date on shots and is properly licensed. Ms. Archer testified that she feels really bad that she did not get "Haiti" his shots or have him neutered. She was planning on doing it the day that animal control came and took him away because she thought that neutering him might eliminate his aggression. She had planned on doing it earlier but she never got around to it.

Ms. Archer thinks "Haiti" is about three years old. She has had him for about two years. When her neighbor got him, he was a ten month old puppy. He weighs about sixty (60) pounds and stands about three feet tall. She has never taken him to a vet. She has never had him trained. Ms. Archer further testified that she accepts sole responsibility for what happened. She testified

that it is her fault, not "Haiti's". She does not want to see "Haiti" euthanized because of her actions or inactions. She doesn't have an explanation as to why he never got his shots or a license. She just did not get a chance to do it. She has looked into rescues and had hoped that Fallston could take him. They have told her to give them a call back after the hearing. She does not want "Haiti" returned to her.

On May 15, 2013, the Animal Hearing Board issued a decision finding that Ms. Archer's dog, "Haiti", was at large as defined in Section 12-1-101(c) (1) (ii) of the Baltimore County Code and that she was in violation of Section 12-3-110. They imposed a fine of Twenty-five (\$25.00) Dollars. Ms. Archer has paid that fine and she is not appealing that finding. The Animal Hearing Board further found that "Haiti" on the date in question attacked or injured a person and exhibited aggressive or dangerous behavior and was not adequately restrained or confined and is therefore a dangerous animal under Baltimore County Code Section 12-8-109(a)(1) and (2). The Animal Hearing Board dismissed the fine and Ordered that "Haiti" be surrendered to Baltimore County. A dangerous animal is one who is a threat to public health or safety. Mr. Minalla was injured due to "Haiti's" aggressive, unrestrained, behavior. There was evidence which suggested that "Haiti" may be bitten or injured Mr. Minalla's children in the past, may have attacked Mr. Minalla's puppy, and he may have killed Ms. Archer's cat, both the dog and cat being domesticated animals. "Haiti's" behavior may have been the result of human error. This Board sympathizes with the fact that Ms. Archer feels that "Haiti's" behavior is her fault not his and that he should not pay for her mistakes. After listening to the witnesses and reviewing all of the evidence presented, this Board does not feel that it can return "Haiti" to Ms. Archer, as it is clear that she cannot properly care for him. Further, she has testified that she does not want "Haiti" returned to her.

DECISION

The Board finds that based upon the evidence presented at the hearing in this matter the dog "Haiti" is a Dangerous Animal as defined and described in Section 12-8-102 of the Baltimore County Code. The Board has determined that the appropriate sanction in this matter is that "Haiti" should be surrendered to Baltimore County and will uphold this decision of the Animal Hearing Board.

ORDER

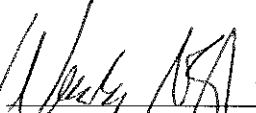
THEREFORE, IT IS THIS 21st day of August, 2013, by the Board of Appeals for Baltimore County

ORDERED that the decision of the Animal Hearing Board finding that the dog "Haiti" is a "dangerous animal" within the meaning of Section 12-8-102 (a)(1) and (2) of the Baltimore County Code, shall be **UPHELD**, and it is further

ORDERED that the dog known as "Haiti," shall be surrendered to Baltimore County.

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*.

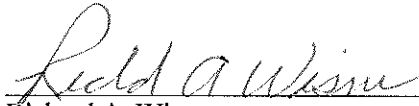
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Wendy A. Zerwitz, Panel Chairman



Wendell H. Grier



Richard A. Wisner



Board of Appeals of Baltimore County

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August 21, 2013

Mary Jane Archer
1732 Amuskai Road
Baltimore, MD 21234

Ashley Hofmeister, Assistant County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Mary Jane Archer – Owner/Appellant*
Case No.: CBA-13-034

Dear Mses. Archer and Hofmeister:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review** filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Acting Administrator

Enclosure
Duplicate Original Cover Letter

c: Juan Bautista Minalla
Lisa Michelle Cudnia
Bernard J. Smith, Chairman /AHB
Tom Scollins/Animal Control Division
John Markley /Animal Control
April Naill / Animal Control
Michael E. Field, County Attorney