

IN THE MATTER OF
MARK GENERALD BANKS, 2ND
4417 ANNAPOLIS ROAD
BALTIMORE, MD 21227

APPEAL FROM THE ANIMAL
HEARING BOARD

* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-13-026

* * * * *

OPINION

This case is before the Board on an appeal by the Appellant/Owner, Mark G. Banks, 2nd, from the February 25, 2013 decision of the Baltimore County Animal Hearing Board (AHB), in which that AHB found that the Appellant operated a holding facility as defined under Baltimore County Code Section 12-1-101(r)(1) without a proper license in violation of Baltimore County Code Section 12-2-104(2) and Section 12-6-101, failed to provide his dogs with good and wholesome food and portable water and did not make certain all food and water containers were clean and so placed that animals cannot readily tip them in violation of Baltimore County Sections 12-3-103(1) and (2), did cruelly treat or otherwise abuse dogs in violation of Baltimore County Code Section 12-3-103(b)(1), did not provide a suitable shelter for dogs under his care in violation of Baltimore County Code Section 12-3-111(c)(1), owned, harbored or kept a dog in the County over four months old and did not have the animal vaccinated in a manner and with the frequency required to provide the animal with continuous protection against rabies in violation of Baltimore County Code Section 12-5-102(a) or did not exhibit a current rabies vaccination certificate or other evidence that the animal had been vaccinated as required when requested to do so by the Animal Control Division in violation of Baltimore County Code Section 12-5-102(b), did not remove excreta deposited by his dogs in violation of Baltimore County Code Section 12-3-106, did not apply for a permit to handle a canine guard dog in

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violation of Baltimore county Code Section 12-2-301, and kept or harbored one or more protection-trained dogs on his property or premises and did not post at a conspicuous place readily noticeable from all normal and regular entrances to the property a conspicuous warning in letters not less than four inches high that protection trained dogs are or could be present in violation of Baltimore County Code Section 12-2-304. The AHB upheld the Animal Control Division's fines and imposed a civil monetary penalty in the amount of Four Thousand, Four Hundred Dollars (\$4,400.00) to be paid with thirty (30) days of their decision and ordered that all dogs impounded from the Appellant not be returned to him and that said dogs were to become the property of Baltimore County. The Appellant filed a timely appeal of that order.

This matter came before this Board on April 25, 2013 as an on the record appeal from the findings on the Animal Hearing Board pursuant to Baltimore County Code Section 12-1-114. The County was represented by Ashley Hofmeister, Assistant County Attorney, and Mr. Banks was represented by James Guillory, Esquire. The Board reviewed the file from the hearing before the AHB, reviewed the transcript from the hearing and considered the arguments of Counsel. A non-public deliberation was held on May 21, 2013.

BACKGROUND AND TESTIMONY

At the hearing before the AHB on January 15, 2013, John Markley of the Baltimore County Health Department read from the business records maintained by the Animal Control Division. On October 15, 2012, the Animal Control office received a complaint regarding dogs owned or kept by the Appellant running at large. An Animal Control Officer responded and issued the Appellant a citation for the dog running at large. At that time, the Appellant showed

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the officer four dogs contained in outside kennels attached to the garage area and one dog inside the garage in a kennel. The officer advised the Appellant that he had to apply for and be granted a holding facility license in order for him to keep the dogs on his property. The Appellant at that time stated that he had applied for the holding facility license. On October 17, 2012 it was discovered by the Animal Control Officer that no holding facility license had been applied for by the Appellant. On November 29, 2012 an Animal Control Officer responded to the Appellant's property and observed three dogs in the shed and noticed a strong odor coming from the shed. As there was no response at the Appellant's home a return date of December 4, 2012 was set up to check on the condition of the dogs. On December 4, 2012 an Animal Control Officer responded to the Appellant's home. There was no answer, but the officer saw one dog inside the house. On December 17, 2012, a neighbor contacted Animal Control to report that the Appellant's dogs and puppies were at large. The neighbor told the officer that no one lives at the residence but the Appellant visits once or twice a week. An officer responded to the Appellant's address where he was met by State Trooper Keys and State Correctional Officer Hickman who were chasing the dogs. Trooper Keys thought that there was one dog in the house and five more in the shed where a foul odor was noted. Two puppies on the property were impounded. The Appellant arrived and told the officers that the puppies did not belong to him, that the owner lives in New York and dropped them off with him to be sold to a third party who lives in South Carolina. The Appellant stated that only the dog in the house belonged to him. He did not have the health certificates on the two puppies as the owner had them. He stated that he had applied online for a kennel license. The Appellant showed the officers the dogs. There were four dogs

in a kennel in one row and a separate kennel for the puppies. The kennels were unsanitary and there was no water or buckets in them. There was a strong odor coming from the backyard. The appellant stated that he cleans and provides water for the dogs daily. He was told that he must clean the kennels and provide water daily for the dogs and he must obtain a holding facility license. He was given two weeks to comply and was issued citation E41912, holding facility license required, E41911, animal at large, and E41910, animal at large. On December 26, 2012, an Animal Control Officer returned to the property and observed five dogs. There was no response at the door. At least four dogs were in the shed barking. On January 3, 2013 three Animal Control Officers returned to the property and were met by three Baltimore County Police Officers. They observed three dogs and one puppy in the outdoor kennel garage and one dog in the house. None of the dogs had food or water except for a brindle and white dog. It had water but it was frozen. Only the puppy had food. Most of the containers for food and water were empty or turned on their side. The dogs which were in the yard had inadequate shelter for the weather conditions and all were thin. There was no electric in the house or on the outside. There was a refrigerator inside the garage with what appeared to be rotten chicken in bags (it was later determined that the meat was not rotten, just raw). Most of the animals had straw for bedding. The officers saw one dog in the house and it appeared emaciated. It did not have access to the outside. An officer opened the door and observed approximately one hundred piles of fecal matter on the floor. The dogs were impounded. Cruelty reports were written and veterinary reports were completed on the impounded dogs. One dog, Jag, was taken for radiographs as he had a discharge and foul odor coming from its pelvic region. On January 7, 2013 the Appellant

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was issued the following citations: E43530, holding facility license required, 17 counts at \$100.00 each; E43531A, E43533A, E43534A, E43535A no food and water; E43532A no water; E43531B, E43532B, E43533B, E43534B, E43535B Cruelty-prohibited acts; E43531C, E43532D, E43533D, E43534D shelter; E43531D, E43532E, E43533E, E43534D, E43535E, rabies vaccination required; E43532C, E43533C, E435334C, E43535C, animal waste; E43534E, E43535F, guard dog; E43534F, E43535G, guard dog warning. Each citation carried a \$100.00 fine.

In support of the citations, in addition to testimony, Animal Control Officer Anthony Maxwell presented binders of photographs and other documents. Binder A was to show that the Appellant was operating a holding facility as it is defined in the Baltimore County Code. The Appellant offered breeding and training of dogs on his own website under the name "Howard John Kennels". The Appellant admitted to running a kennel as he stated many times that the dogs were not his, he was merely boarding them. There are also photographs in that binder which are purported to show that two of the dogs, Jag and Buck, were being trained to perform protection work. There were no warnings posted that such dogs were on the property and the dogs were not licensed. Also included in the binders were reports from the veterinarians who examined the dogs after they were impounded. Binder F, in particular, was presented to show that dog impound number 36718 vomited what appeared to be raw chicken and chicken parts, including bones.

The Appellant also testified at the hearing before the Animal Hearing Board. He testified that in October of 2012 he had some electrical problems in the house and had to move out of the

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house. He and his family moved in with his father in Prince George's County while the electrical problem was being repaired. He would drive every day from Prince George's County to Baltimore County to drop his daughter off at school and would then proceed to work. In between, he would stop at the house to take care of the dogs. While the dogs were not being cared for the way they were when he lived there, they were not being neglected. He admitted to not cleaning up the feces every day but thought he probably did it every other day. But, he said, he showed up every day and fed them every day. He did not use the automatic feeders. He was feeding them on a diet of raw chicken backs which he got from work.

Buck was a former demo dog for obedience training. He had to retire him and gave him away to another family. He then received a call that the dog was being mistreated so he took him back. This occurred three days before Animal Control came and impounded the dogs. He was emaciated when Mr. Banks took him back. Jag, also referred to as Latanza, is a dog Mr. Banks received from Madrid, Spain. When she arrived, she had a broken tooth. She had a litter about a month ago so she was also a little underweight.

Mr. Banks testified that he applied for a holding facility license but did not qualify for zoning reasons. Of the five dogs impounded, three were the Appellants, the brindle and white dog, Zamata; Latanza, also referred to as Jag; and a six and a half month old Shepard named Kobi. There was also a four month old puppy which Mr. Banks did not believe counted as a dog, and Buck. Animal Control officer Assistant Chief Thomas Scollins pointed out that according to the vet's report, the puppy appeared to be two years old. He also advised the Appellant that the county recognizes a dog as any canine four months or older.

The Appellant had licenses for two of the five dogs. The third dog, Kobi, was two months out of range for getting rabies vaccine. The puppy was just at the age where a dog would get a rabies vaccine. Buck had his rabies vaccine before he was sold but Mr. Banks gave the certificate to the owner and did not get it back.

Mr. Banks testified that he is now back in the house and the house has electricity. That should remedy the situation.

At the hearing before this Board, Appellant argues that he only kept three dogs at his home because he could not obtain a holding facility license. Buck was not his dog and the puppy did not count. None of the dogs taken were being trained to be guard dogs. The pictures presented to the Animal Hearing Board were from a website. He did have a guard dog about a year ago but that dog died. He was never given an opportunity to address and correct the problems. He was not home when the dogs were taken. Now that he is back in the house, the Animal Control Officers could re-inspect the property. He was never asked about the rabies vaccines. Buck had numerous vaccines but the paperwork was with his prior owner. The puppy was not yet due. He submitted what proof he had regarding vaccinations.

In response, the County argues that complaints regarding the dogs on that property go back to March 24, 2009. There may have been some confusion about what dogs were on the property because the numbers changed regularly. On December 17, 2012, Animal Control prepared a full investigative report. They told Mr. Banks what he needed to fix and told him they would be back. When they returned, the house was empty except for the dogs and the conditions had not improved. They performed a physical inspection of the dogs. They were

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dirty, underweight, had sores, broken teeth and worn-down toenails. There was no food, no water and too much fecal matter in the kennels. Mr. Banks was given a chance to correct the problems, he did not, so Animal Control had to act and impounded the dogs.

Mr. Banks responded that the County is wrong. He repeated his argument that the information regarding guard dog training came from an old website. There was plenty of straw and big buckets for food and water. There was no barrier between inside and outside but there is one now. None of these problems would have occurred if he had been in the house. He was not present during the December 17, 2012 inspection. He never received the report. He arrived home while the puppies were being impounded however no one ever asked for vaccination records and no one gave him any report.

The County responded that the problem with the food buckets was that they were not untipable. There have been complaints since 2009. December 12, 2012 was not the trigger event. Two puppies were impounded during the December 17, 2012. Mr. Banks acknowledges he was there when they were impounded. He would have received the violation report at that time.

DECISION

Pursuant to Section 12-1-114 of the Baltimore County Code, in case such as the instant one may:

- (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 issue of law;
4. Subject to paragraph (2) of this subsection, is unsupported by competent material and substantial evidence in light of the entire record submitted; or
5. Is arbitrary or capricious.

Having reviewed the record below, reviewing the transcript and after hearing and considering the arguments from the Appellant and the County, it is clear the Animal Hearing Board had sufficient evidence to support its decision and the Board finds no cause to remand or reverse that decision.

A “holding facility” is defined in Baltimore County Code Section 12-1-101 as “any animal shelter, commercial kennel, commercial stable, grooming parlor, humane animal shelter, or pet shop.” By keeping dogs on his property that did not belong to him, the Appellant was operating a holding facility. The Appellant had a website which offered boarding, training and breeding. He admitted to operating a kennel by stating repeatedly that a number of the dogs were not his, he was holding them for a new owner. Baltimore County Code Sections 12-2-104 (2) and 12-6-101 prohibits the operation of a holding facility without a license. The Appellant

knew that he needed to obtain a license, and even tried to obtain one but could not for zoning reasons.

Baltimore County Code Section 12-3-101 (1) and (2) requires an owner of an animal to supply that animal with good and wholesome food and potable water and that all food and water containers should be clean and placed so that they cannot be tipped over. When the Officers arrived, they saw food and water bowls tipped over. There were water bowls which contained water however that water was frozen. The dogs appeared to be emaciated, suggesting that they were not being fed enough food. The food they were being feed was raw chicken, which was stored in a refrigerator that did not have electricity.

Baltimore County Code Section 12-3-103 (b)(1) prohibits a person from beating, treating cruelly, tormenting overloading, overworking or otherwise abusing an animal. The conditions in which the Appellant was keeping the dogs was cruel. By his own admission the conditions were not as he would have liked. He tried to explain saying they would not have occurred had he been in the home. However, he was not home for a number of months, in the winter, and the conditions did occur. The dogs were living in unsanitary conditions, the shelters were not appropriate for the weather conditions, they were emaciated, they had wounds and broken teeth.

Baltimore County Code Section 12-5-102(a) state that a “person may not own, harbor, or keep a dog, cat, or ferret in the county over 4 months old unless the dog, cat, or ferret has been vaccinated in a manner and with the frequency to provide the animal with continuous protection against rabies”. The Appellant admitted he had a dog whose vaccination was not current by his

own admission. He had no documentary proof that Buck or the two puppies who were impounded earlier were up-to-date on their vaccinations. Even if the animal the Appellant describes as a puppy was only four months old, he still needed to be vaccinated. Only two of the dogs who were impounded were current on their vaccines.

Baltimore County Code Section 12-3-106 requires an owner to remove excreta deposited by the animal on private property. The Appellant acknowledged that he did not clean up after the dogs every day.

Baltimore County Code Section 12-2-301 states that an owner and handler of a canine guard dog shall apply for a permit to handle a canine guard. Baltimore County Code Section 12-2-304 requires that a “person who keeps or harbors, whether as owner or custodian, one or more protection-trained dogs on the person's property or premises shall post at a conspicuous place readily noticeable from all normal and regular entrances to the property a conspicuous warning in letters not less than 4 inches high that protection-trained dogs are or could be present.” The evidence present by Animal Control shows that dogs impound numbers 36714 and 36716 were guard dogs. The Appellant needs a special license to keep guard dogs and a warning must be posted that a guard dog could be present, regardless of whether there were any on his property at the present time. He has had guard dogs and has never had a special license nor has he posted a warning sign.

ORDER

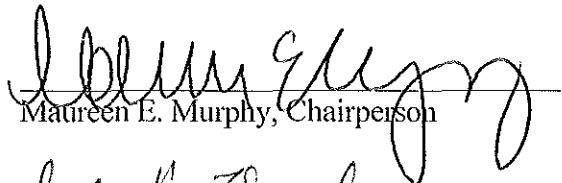
THEREFORE, IT IS THIS 11th day of June, 2013, by the Board of Appeals for Baltimore County

ORDERED that the decision of the Animal Hearing Board ordering that all dogs impounded from the Appellant in this case not be returned to him and instead become the property of Baltimore County shall be **UPHELD**, and it is further


ORDERED that the civil monetary penalty in the amount of Four Thousand, Four Hundred Dollars (\$4,400.00) shall be **UPHELD** and shall be paid within thirty (30) days from the date of this 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**


Maureen E. Murphy, Chairperson


Wendy A. Zerwitz


David L. Thurston



Board of Appeals of Baltimore County

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June 11, 2013

James Guillory, Esquire
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Ashley Hofmeister, Assistant County Attorney
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Towson, MD 21204

RE: *In the Matter of: Mark G. Banks, 2nd – Owner/Appellant*
Case No.: CBA-13-026

Dear Counsel:

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 "Theresa Shelton/kc".

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original Cover Letter

c: Mark Banks, 2nd
Bernard J. Smith, Chairman /AHB
John Markley /Animal Control
April Naill / Animal Control
Michael E. Field, County Attorney