

IN THE MATTER OF
NICOLE A. KANE –Owner /Appellant
11927 THURLOE DRIVE
TIMONIUM, MD 21093

RE: DECISION OF
ANIMAL HEARING BOARD

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-13-011

* * * * *

OPINION

This case is before the Board on an appeal by Appellant/Respondent, Nicole A. Kane, from a decision of the Baltimore County Animal Hearing Board (AHB), dated September 12, 2012, Case No.: DD 3829, Violation No.: E 41630, in which that Board found that Ms. Kane's dog, "Mercury" presented a threat to the public health and safety and was a "dangerous animal" and should be humanely euthanized. Additionally, the AHB ordered a civil penalty against Ms. Kane totaling Five Hundred Dollars (\$500.00). Because of the nature of the finding, this Board held a hearing *de novo* on January 16, 2013. Baltimore County was represented by Ashley Hofmeister, Assistant County Attorney. Appellant, Nicole A. Kane was represented by Rue Stewart, Esquire. No briefs were filed.

Evidence Presented

The facts in this matter are not in dispute.

Nicole A. Kane testified that during the time period in question, she was living with her father and mother at 11927 Thurloe Drive, Timonium, Maryland, as she was taking care of them. Her father is legally blind and her mother was dying of cancer. Ms. Kane stated that she owned a Portuguese Water Spaniel named "Mercury". The dog was five (5) years old at the time of the incidents herein. Ms. Kane testified that the dog had never had any behavioral training.

Ms. Kane stated that she had a cage for "Mercury" and he was to be placed in his cage when she was not at home. Her father did not always comply with that requirement.

Police reports indicate that there were four (4) incidents involving "Mercury" biting individuals. The first incident occurred on September 1, 2010 when James C. Fabian was delivering a pizza to 11927 Thurloe Drive. When Mr. Fabian came to the door, the dog pushed open the door and bit him on the right wrist and left bicep. The report indicated that Mr. Fabian declined medical treatment but that punctures and scratches were observed.

The second incident occurred on September 19, 2011. John J. Malinowski was delivering food to the Thurloe Drive address when he was bitten on the hand, leg and stomach. The report indicates that the Appellant, Ms. Kane, was home at that time.

The third incident occurred on December 22, 2011 when a 15 year old boy, Remick Cheek, was crossing the lawn on the back of the property. He stated that he was bitten by a black dog and had minor bruising. He refused treatment at that time.

Finally, the fourth incident occurred on August 20, 2012, when Cheryl Wisner was making a delivery to the Thurloe Drive address for "Meals on Wheels". She stated that she was bitten on the hand, on the thigh and on the buttocks area. The bites broke the skin and she was treated at a Patient First medical facility. Ms. Wisner filed an Affidavit of Complaint with the Animal Control Division in Baltimore County. The Complaint resulted in issuance of a Citation dated August 22, 2012 and ordered that Ms. Kane surrender "Mercury" to the Baltimore County Animal Control Shelter, where he would remain in custody until there was a decision of the Animal Hearing Board.

Discussion

In defense of her position, Appellant presented two witness. The first witness was Deborah Winkler, who was admitted as an expert witness in animal behavior and who is a Certified Animal Consultant and Dog Trainer. She stated that she had evaluated "Mercury" and found that the dog was not inherently aggressive. She felt that the problem was situational. That the dog was confused about himself and was aggressive when he met strangers. After approximately five (5) minutes with the person, the dog was fine.

She recommended that the dog be put in a crate or in another room during the day when Ms. Kane was not home to take care of him. She stated that Portuguese Water Spaniels are usually very friendly and outgoing, but were very protective of their owners.

On cross-examination, Ms. Winkler indicated that the dog should be placed behind a barrier so that he would never have access to the front door. She recommended that when walking the dog, Ms. Kane use a baskerville muzzle, so that there would be no possibility of anyone being bitten. Ms. Winkler also indicated that she would help Ms. Kane if the dog was to be released to Ms. Kane's custody. She could not guarantee that if the dog was trained and subjected to behavior modification that another incident would never happen. She stated that she was never comfortable making that prediction.

Ms. Kane then testified on behalf of herself. She was not present when the first incident occurred and stated that her father had not placed the dog in the proper cage at the time of the first incident. She stated that she has had two (2) of the Water dogs and that one had died.

Ms. Kane further stated that she no longer lives in Timonium with her father and mother and that her father has moved to Texas. She now lives in Columbia, Maryland and has a two-bedroom apartment. She stated that if the dog is returned to her, the dog will be kept in one

room, in a crate, when she is not at home. She states that her apartment has an unusual arrangement of two doors, one with a small vestibule, so that if she is greeting visitors, she can close one door and keep the dog in the apartment while she opens the outer door; thereby insuring that the dog would not be able to become aggressive with any visitor.

The County then presented Thomas Collins, the Assistant Chief of Baltimore County Animal Control Division, as its only witness. He stated that he was aware of the four (4) police reports and that Ms. Wiseman had made a formal Affidavit of Complaint. He stated that the Animal Control Division had brought "Mercury" to the animal control facility on August 22, 2012. He sees 'Mercury' everyday and he barks every time you go by him. Mr. Collins stated that if the dog is to be released, he recommends training and modification of behavior for the dog. He also stated that Ms. Kane visits the dog frequently. He has known Ms. Winkler for years and she is a qualified Animal Behavior Specialist. Mr. Collins stated that for the dog to be relocated to Howard County, the Howard County Animal Control Board would have to give approval for the dog to come into its jurisdiction.

Decision

The *Baltimore County Code* (BCC) Section 6-259 defines a "dangerous animal" as:

"...(a) An animal poses a threat to the public health or safety if the animal:

- (1) attacks or injures a person or a domestic animal;
- (2) exhibits aggressive or dangerous behavior and is not adequately confined or restrained;"...

On four (4) occasions, Appellant's dog "Mercury" was unrestrained and attacked four (4) different individuals. Three (3) individuals were making deliveries to the home on Thurloe Drive and one (1) individual was crossing the back yard. This Board finds that "Mercury", is considered a "dangerous animal" and upholds the fine of Five Hundred

Dollars (\$500.00) assessed by the Animal Hearing Board. This Board, however, is reluctant to have the dog euthanized. The dog has been owned by Ms. Kane for five years and has never been trained. Ms. Kane submitted letters in support of her retaining her dog from people who are familiar with the dog on almost a daily basis.

In addition, Ms. Winkler indicated that she would be available for behavioral modification training with Ms. Kane and "Mercury". Since Ms. Kane is now situated in Columbia, Maryland in an apartment that would be conducive to restraining the dog in the event of strangers coming into the apartment, the Board will allow Ms. Kane to retain the dog under the following circumstances.

- 1) Ms. Kane pays the Five Hundred Dollar (\$500.00) fine;
- 2) Ms. Kane pays Baltimore County for the cost of boarding the dog at the Animal Control Shelter, from August 22, 2012 until the dog is released, in the amount determined by the Animal Control Shelter;
- 3) Ms. Kane and Ms. Winkler will agree on a mutually convenient time and length of time to engage "Mercury" in behavioral modification;
- 4) Ms. Kane will not walk the dog 'Mercury' outside of her home without a baskerville muzzle on the dog; and the dog being on a leash;
- 5) The Howard County Animal control division will be notified of the presence of the dog "Mercury" in Howard County and will give permission for the dog to be within its jurisdiction;
- 6) If the Howard County Animal Control Division does not accept the dog "Mercury" in Howard County, then the dog "Mercury" will be sent to the Fallston Animal Rescue in Fallston, Maryland; and

7) If, for some reason, the Fallston Animal Rescue facility does not accept "Mercury", after all of the above options have been utilized, the dog "Mercury" will be humanely euthanized.

ORDER

THEREFORE, IT IS THIS 1st day of February, 2013 by the Board of Appeals of Baltimore County

ORDERED that the decision of the Animal Hearing Board in Case No.; DD 3829, Violation No.: E41630 issued in this matter, as to the civil fine imposed in the amount of Five Hundred Dollars (\$500.00), is UPHELD; and it is further

ORDERED that the Dog "Mercury" be returned to its owner, Nicole A. Kane under the following conditions:

2) Ms. Kane pays Baltimore County for the cost of boarding the dog at the Animal Control Shelter, from August 22, 2012 until the dog is released, in the amount determined by the Animal Control Shelter;

3) Ms. Kane and Ms. Winkler will agree on a mutually convenient time and length of time to engage "Mercury" in behavioral modification;

4) Ms. Kane will not walk the dog 'Mercury' outside of her home without a baskerville muzzle on the dog; and the dog being on a leash;

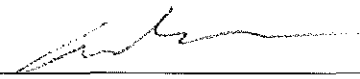
5) The Howard County Animal control division will be notified of the presence of the dog "Mercury" in Howard County and will give permission for the dog to be within its jurisdiction;

6) If the Howard County Animal Control Division does not accept the dog "Mercury" in Howard County, then the dog "Mercury" will be sent to the Fallston Animal Rescue in Fallston, Maryland; and it is further

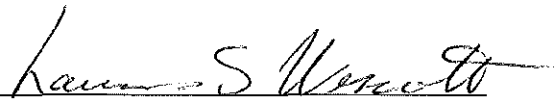
ORDERED, in the event Appellant/Respondent cannot accomplish the relocation of the dog to the Fallston Animal Rescue in Fallston, Maryland, it is to be humanely euthanized as provided in Article 12, Title 8, § 101 of the *Baltimore County Code*.

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*.

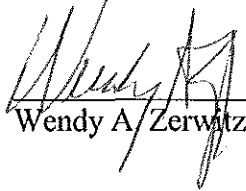
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Chairman



Lawrence S. Wescott



Wendy A. Zerwitz