

IN THE MATTER OF
NICHOLAS KIM – APPELLANT
28 Westminster Bridge Way
Lutherville, Maryland 21093
BALTIMORE, MD 21219

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-13-014

RE: DECISION OF
ANIMAL HEARING BOARD /#3852

* * * * *

OPINION

This matter comes before the County Board of Appeals as an appeal from the Appellant, Nicholas Kim, from an Animal Hearing Board decision dated November 26, 2012, upholding civil monetary penalties in the amount of One Thousand Two Hundred (\$1,200.00) Dollars for the following violation: Violation E 41648, Menacing animal; License required; two (2) counts of dangerous animal and two (2) counts of animal at large – "Moo Moo" and E 18709 Animal at Large. In addition, the Opinion and Order of the Animal Hearing Board ordered that

- 1) "Moo Moo" could be returned to Mr. Kim under the condition that "Moo Moo" be enrolled in an approved group obedience class and 2) that "Moo Moo" must be on a leash when outdoors and must be leashed prior to exiting the home.

It should be noted that the Animal Hearing Board UPHELD the monetary penalty for 'dangerous animal' in its decision of November 26, 2012, i.e., One Thousand Two Hundred (\$1,200.00) Dollars; but did not find that the dog "Moo Moo" was a 'dangerous animal'.

The Board of Appeals scheduled a public hearing on February 13, 2013. The Appellant, Nicholas Kim, appeared *pro se* and is the legal owner of the subject animal. Also appearing with Mr. Kim was his girlfriend. Ashley Hofmeister, Assistant County Attorney, appeared on behalf of the Baltimore County.

The Board informed all parties that this was an appellate hearing, and that the Board was required to review the case based upon the testimony and record established at the Animal Hearing Board.

Argument was held and no briefs were filed.

Discussion

In making his argument before the Board of Appeals, Mr. Kim indicated that he was unable to work and that his girlfriend was paying all of the bills with respect to this particular matter. His sole purpose in appealing the citation was to protest the One Thousand Two Hundred (\$1,200.00) Dollars fine levied by the Animal Hearing Board. While Mr. Kim and his girlfriend contested whether or not the citation was valid, they had no valid evidence to indicate that the Affidavits given by the two (2) Complainants were false.

Mr. Kim indicated that the dog has been in an obedience training class for two (2) weeks at a cost of One Hundred Twenty (\$120.00) Dollars. His family has installed an electrical fence in the rear yard, which they did themselves, at a cost of One Hundred Eight (\$180.00) Dollars. The girlfriend stated she had been laid off from her job, and since she was paying the bills, it was very difficult for them to meet the requirement of the One Thousand Two Hundred (\$1,200.00) Dollar fine.

Mr. Kim indicated that the dog is on a leash whenever it leaves his property.

Animal Hearing Board Record

Board members reviewed the tapes and record of the Animal Hearing Board.

Decision

Pursuant to § 12-1-114 (g)(1) of the *Baltimore County Code*, the County Board of Appeals in such cases 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 error 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.

The Board feels that since the Animal Hearing Board returned the dog to Appellant Kim, without a finding that the dog was a 'dangerous animal', the fine should be reduced.

Therefore, the Board will reduce the fine to Five Hundred (\$500.00) Dollars and allow the dog to remain with Mr. Kim under the circumstances that 1) the electrical fence be maintained and 2) that the dog not be allowed out of the yard without being on a leash.

ORDER

THEREFORE, IT IS THIS 28th day of February, 2013 by the Board of Appeals of Baltimore County

ORDERED that, for the reasons stated above, the decision of the Animal Hearing Board regarding Violation E 41448, in Case No.: 3852 before the Animal Hearing Board is hereby **AFFIRMED**, and it is further

ORDERED that, Mr. Kim be allowed to retain the dog "Moo Moo" in his possession under the terms and conditions set forth by the Animal Hearing Board, which are that proof

of enrollment that "Moo Moo" has been enrolled in an approved group obedience class be provided to the Animal Control Board and 2) that "Moo Moo" must be on a least when outdoors and must be leashed prior to exiting the home, and it is further

ORDERED that, the electrical fence in the rear yard of his home be maintained and in effect as long as "Moo Moo" is in his possession, and it is further

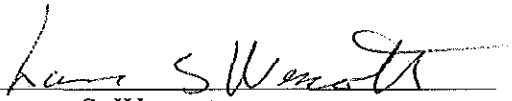
ORDERED that, the civil monetary penalty of One Thousand Two Hundred (\$1,200.00) Dollar fine levied by the Animal Hearing Board, be and is hereby reduced to Five Hundred (\$500.00) Dollars.

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*.

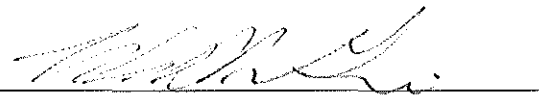
**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**



David L. Thurston, Panel Chairman



Lawrence S. Wescott



Wendell H. Grier