

IN THE MATTER OF  
DAWN AND FRANCIS KLINE-RESPONDENTS  
1846 EDGEWOOD ROAD  
BALTIMORE, MD 21234

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA-13-027

\* \* \* \* \*

**OPINION**

This matter comes before the Board of Appeals for Baltimore County (the "Board") as an Appeal from Administrative Law Judge Lawrence Stahl's March 29, 2013 Amendment to Final Order. The matter came before Judge Stahl for a hearing on October 3, 2012 on a citation for violations under Baltimore County Code (BCC) Section 13-7-201 for failure to eliminate cat urine odors from interior and exterior of the property and for failure to eliminate any conditions which contributed to the nuisances. On September 24, 2012, pursuant to Section 1-2-217 of the Baltimore County Code, Sanitarian/Inspector Hee Song issued the Code Enforcement Citation. The citation was sent to the Appellant by 1<sup>st</sup> class mail to the above address. The citation proposed a civil penalty of One Thousand, Five Hundred (\$1,500.00) Dollars. An administrative hearing was then held on October 3, 2012. By Order dated October 29, 2012, Judge Stahl ordered that the civil penalty in the amount of One Thousand, Five Hundred (\$1,500.00) Dollars be imposed, however he further ordered that the entire penalty be suspended if the Appellant brought the property into compliance.

A copy of the Order was sent to the Appellants on October 29, 2012. The cover letter advised the Appellants that if they disagreed with the decision they had fifteen (15) days to file an Appeal to the Baltimore County Board of Appeals ("Board"). No appeal was filed.

On February 26, 2013 the County filed a "Motion to Amend", alleging that on December 6, 2012 Animal Control was scheduled to enter the Appellants' property to remove thirteen (13) cats and verify that the remaining three (3) cats were properly spayed or neutered. When she arrived at the property, Sanitarian/Inspector Hee Song alleged that Mr. Kline became combative and told her to get off his property and come back with a search warrant. The County, in its Motion, asked Judge Stahl to amend his October 29, 2012 Order, impose the civil penalty in full, and grant the Health Department's Environmental Health Services and Animal Control Divisions clear authority to enter and inspect the premises for the purpose of satisfying the conditions of the October 29, 2012 Order. A copy of the Motion was mailed to the Appellant on February 26, 2013. No response from the Appellant was received.

On March 29, 2013, Judge Stahl issued an Amendment to Final Order imposing the previously suspended civil penalty of One Thousand, Five Hundred (\$1,500.00) Dollars and ordering that the Baltimore County Health Department Environmental Health Services Division and the Baltimore County Division of Animal Control be authorized to enter the Appellant's premises and take whatever steps they deem necessary to bring the conditions on said property and any structures located on said property into full compliance with the October 29, 2012 Order. On April 15, 2013, Appellant sent a letter advising that he wished to file an appeal from the March 29, 2013 Order.

On May 23, 2013 the parties appeared before this Board for oral arguments. Pursuant to Section 3-6-301(b) of the Baltimore County Code and Section 3-6-303 (a) the hearing before this Board is an on the record appeal from the Administrative Law Judge, Lawrence Stahl's, decision. The owner of the subject property, Mr. Francis Kline, did appear at the hearing, pro se. His wife

and co-owner, Mrs. Dawn Kline, did not appear. Jonny Akchin, Assistant County Attorney, Office of Law, and Hee Song, Baltimore County Sanitarian/Inspector, Department of Health, Eastern Family Resource Center, appeared on behalf of Baltimore County. The arguments presented were considered and a non-public deliberation was held on May 29, 2013.

### **BACKGROUND**

As there was no appeal filed as to Judge Stahl's October 29, 2012 decision, this Board accepts his Findings of Fact and Conclusions of Law as set forth in that opinion. Testimony was presented to the Administrative Law Judge which showed that Hee Song of the Baltimore County Department of Health, Division of Environmental Health Services, acting upon a complaint from the Baltimore County Animal Hearing Board, went to the Appellant's house on September 21, 2012. When the Appellant opened the front door, she testified that she was assaulted by a strong odor of cat urine. She was not allowed in the house. Upon walking to the backyard she continued to smell a strong odor of cat urine. Ms. Song observed bowls of food and a litter box outside of the home as well as numerous piles of cat feces. Upon going into a neighbor's home, Ms. Cynthia Gibson, Ms. Song continued to smell a strong odor of cat urine, the worst was in the basement and along a common wall the neighbor shared with the Appellants. Upon returning to the Appellants' home on October 2, 2012, the conditions had not changed.

Ms. Gibson testified that she has lived next door to the Appellants for 26 years. The odor over the summer was so bad that she could not open her windows. She could not entertain in her home. There was run-off water from the Appellants' property which she described as "mucky and brown". The odor made her sick to her stomach.

Mr. Riborg Norman lives two doors down from the Appellants. He too smells the odor coming from the Appellants' home. When the Appellants use a window fan, the fumes blow into his home. He is allergic to cats and is forced to take medication and irrigate his eyes. He can not even walk on the sidewalk without being assaulted by the smell or seeing cat feces. Other neighbors also testified to similar experiences. Kathleen Sheesley testified that at feeding times she sees a parade of neighborhood feral cats going towards the Appellants' home.

There was an Animal Control Board hearing in March of 2011. At that time the Respondent was ordered to cease and desist the outdoor feeding, watering and sheltering of neighborhood cats, to cease providing outdoor shelter to these cats, and to cease from providing any type of outdoor animal care.

Francis Kline testified before Judge Stahl and described his "cat protection and safe house of services". At one time he had upwards of sixteen (16) cats residing in his house and basement. He provides feeding facilities outside of his house for the neighborhood cats. Several of his cats are in need of spaying or neutering. He apologized for the difficulties he caused his neighbors. Dawn Kline testified that she empathizes with her neighbors and the cats need to be removed.

On October 29, 2012, Judge Stahl issued his written opinion and ordered that the civil penalty in the amount of One Thousand, Five Hundred (\$1,500.00) Dollars be imposed, however he further ordered that the entire penalty be suspended if the Appellant brought the property into compliance as follows:

1. That the Appellants cease and desist immediately any outdoor feeding of or providing litter for any and all cats.

2. That any cats remaining in the Appellants' possession be spayed or neutered as appropriate within thirty (30) days of the Order.
3. That although the Appellants will be allowed to retain three (3) spayed or neutered cats in their home, all other cats must be removed from the premises within thirty (30) days of the Order.
4. That the Baltimore County Department of Health is immediately authorized to enter upon the subject premises to inspect the conditions both in the residence and on the grounds to determine what steps (including removal of any affected furnishings) the Appellants must take and complete within sixty (60) days to ameliorate and remove all cat-related offensive odors.
5. That the Baltimore County Department of Health be permitted to inspect the Appellants' premises at its discretion to ensure the Appellants continued compliance with the Order.

On December 6, 2012, Sanitarian/Inspector Hee Song attempted to enter the Appellants' property to remove the thirteen (13) cats and verify that the Appellants were complying with the Order. When Mr. Kline refused to allow her to in his home, the County filed the Motion to Amend. Appellants failed to respond to the Motion and on March 29, 2013, Judge Stahl issued an Amendment to Final Order. The appeal before this Board is just on the Amendment to Final Order.

**HEARING**

At the hearing before this Board, the County argues that they only want access to the property to remove the cats. They want to obtain an Administrative Search Warrant from a District Court Judge based upon Judge Stahl's Amendment to Final Order.

Appellant argues that all of his cats are properly licensed. Some of them were late in getting their licenses because of issues with the vet. It was a money issue and it was more important to Mr. Kline to take care of their health issues before worrying about getting them licensed. He is not willing to give up his cats if they are going to end up being euthanized. He acknowledges that at one time he may have had as many as twenty-four (24) cats. Today he has two (2) kittens and maybe eleven (11) or twelve (12) cats. He is not sure how many cats he currently has. Some of his cats have been adopted, some were unhappy and left.

He has tried to correct the problem. He has had three sinus surgeries which have left him with no sense of smell so he doesn't notice any odor. He is not sure all the odor is a result of the cats. He suggests that the odor of ammonium might come from the fertilizer used around the rose bushes. The Health Department said he had too many litter boxes and he had to get rid of them. That might be the reason the cats pee in the neighbors' yards and on the floor. He has a cleaning service and he bought equipment with charcoal filters to help with the cleaning.

Mr. Kline is a retired Department of Corrections supervisor. He has lived in his house for over thirty (30) years. If cats show up at his home, he takes them in. His objection is not to Judge Stahl's Order, he objects to what is going to happen to the cats if he lets the County take them. The County shelters will euthanize the cats if they are not adopted in four (4) days. He cannot agree to let that happen.

The County responded that they have right to come onto his property, enter his home and inspect the premise. They had a valid Animal Control Order from 2011. The instant citation was issued after the animal control order because when Ms. Song went to inspect the premises she was not allowed in. The Administrative Law Judge's Order set forth five (5) things Mr. Kline had to do which would result in the suspension of the civil penalty. They are seeking the right to enter the property to enforce the conditions. Under Section 13-7-113 of the Baltimore County Code, a health officer can enter the premises if there is a public health issue. An administrative search warrant can be issued by a District Court Judge. Judge Stahl's first Order was not clear enough which is why the County filed the Motion to Amend.

As to the suspension of the fine, the conditions precedent in the first order was not met. Mrs. Kline agreed to assist in the enforcement of all of the terms of the Order. Judge Stahl was cognizant of the fact that the cleaning and the repairs took money. The problems began when Mrs. Kline stopped assisting.

Mr. Kline reiterated his position that his problem is not with Judge Stahl's order but with the way it would be effectuated. He does not agree with his cats being turned over to BARCs as they would keep the cats in unheated outdoor barns where they could be exposed to wild animals. Baltimore County does not have any real "no kill" shelters for cats. He does not have the money for a private shelter and the ones he could afford are too crowded. He refuses to turn the cats over to a place that will not guarantee that they will not do anything to shorten a cat's natural life.

**DECISION**

An appeal to the Board of Appeals for a code violation is on the record made before an Administrative Law Judge. The responsibility of this Board in Code Enforcement cases has been set forth in Baltimore County Code § 3-6-304, which states:

In a proceeding under this subtitle, the Board of Appeals may:

- (i) Remand the case to the Administrative Law Judge;
- (ii) Affirm the final order of the Administrative Law Judge; or
- (iii) Reverse or modify the final order if a finding, conclusion, or decision of the Administrative Law Judge:

1. Exceeds the statutory authority or jurisdiction of the Administrative Law Judge;

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.

This Board is not entitled to substitute its judgment for that of the Administrative Law Judge, and deference is due the totality of the Administrative Law Judge's decision in examining the Appellant's petition for appellate review and considering the oral arguments.

Section 13-7-201 of the Baltimore County Code states that a person may not:



(1) Throw, discharge, or cause to flow into streets, lanes, alleys, or streams of the county blood, foul or nauseous liquid or other liquid, or offensive matter that is likely to become a nuisance or a menace to public health after exposure to the atmosphere; or

(2) Keep, collect, use, or allow to remain on the person's premises nauseous liquid, stagnant water, or other offensive matter.

Appellant was found to be violation of this section for his failure to eliminate cat urine odors from the interior and exterior of his property and from any conditions that contribute toward the nuisance. He did not appeal that finding. His appeal was to the Amendment of Final Order. Even if he cleans up after his cats, the cats still exist so the problem still exists. The only way to eliminate the problem is to eliminate the source, in this case the cats. His objection is that he does not agree with what might happen to the cats once they leave him. For that reason he refuses to cooperate with the County. The County has a valid Order. They are within their right to take whatever steps are necessary to effectuate the intent of that order. The Baltimore County Code Section 3-6-402 provides the County with the authority to enforce an Order.

(a) *Notice.* Reference to the authority of the county to undertake the measures provided under subsection (b) of this section may be included in:

- (1) An injunction or other order for equitable relief issued by a court;
- (2) A final order issued by the Code Official, the Director, or the Hearing Officer;
- (3) The order of the Board of Appeals affirming or modifying the finding of a Hearing

Officer

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(b) *Securing compliance.* Subject to subsection (a) of this section, the county may procure the performance of the work by county employees or by contract to correct a violation if a property owner fails to comply with an order to correct a violation within the time limited by the order.

(c) *Cost.*

(1) Subject to paragraph (2) of this subsection, the cost and expense of work performed under this section shall be:

(i) Certified to the Director of Budget and Finance;

(ii) If applicable, a lien on the property of the owner on which the violation exists in the same manner as taxes; and

(iii) As applicable, collectible:

(1) In the manner provided for the collection of real estate taxes; or

(2) In the same manner as any civil money judgment or debt may be collected.

(2) The costs and expenses are to be considered benefit charges and may not exceed a reasonable estimate of the special benefit conferred on the property.

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(e) *Authority to enter property.*

(1) A county employee or contractor authorized by the county may enter on private lands for the purpose of correcting a violation in accordance with an order issued under this section.

(2) An owner, occupant, or agent may not obstruct, impede, or harass an employee, or contractor or their agents or employees, in the performance of their work under this section.

If Appellant will not cooperate and allow the Baltimore County Health Department Environmental Services Division and the Baltimore County Division of Animal Control on his property, the County is allowed to apply for an Administrative Search Warrant in order to effectuate the terms of Judge Stahl's Order.

**CONCLUSION**

The decision of the Administrative Law Judge was neither arbitrary nor capricious and was supported by competent, material and substantial evidence. The Board does not find any error of law or unlawful procedure. The Administrative Law Judge did not exceed his authority or jurisdiction.


**ORDER**

**THEREFORE, IT IS THIS 13<sup>th</sup> day of June, 2013, by the County Board of Appeals of Baltimore County**


**ORDERED** that the decision of the Administrative Law Judge dated March 29, 2013 be same hereby is **AFFIRMED**.

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**

  
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Andrew Belt, Panel Chairman

  
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Wendy A. Zerwitz

  
\_\_\_\_\_  
Wendell H. Grier



## Board of Appeals of Baltimore County

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June 13, 2013

Dawn and Francis Kline  
1846 Edgewood Road  
Baltimore, MD 21234

Jonny Akchin, Assistant County Attorney  
Dept of Permits, Approvals & Inspections  
Real Estate Compliance Section  
111 W. Chesapeake Avenue  
Towson, MD 21204

RE: *In the Matter of: Dawn & Francis Kline – Respondents/Appellants*  
Case No.: CBA-13-027

Dear Mr. and Mrs. Kline and Mr. Akchin:

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: Cynthia Gibson  
Riborg Norman  
Kathleen Sheesley  
Tom Scollins/Animal Control Division  
Charlotte Crenson/Animal Control Division  
Hee Song, Environmental Health Services, Dept of Health MS 1102V  
Gregory Wm. Branch M.D., MBA, CPE/Director, Dept of Health  
Lionel VanDommelen, Chief of Code Enforcement/PAI  
Arnold Jablon, Director/PAI  
Lawrence Stahl, Managing Administrative Law Judge  
Michael Field, County Attorney