

IN THE MATTER OF  
TATIANA ROWAN  
33 GORSUCH ROAD  
TIMONIUM, MD 21093

RE: APPEAL OF DECISION OF  
ANIMAL HEARING BOARD /#3835

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA-13-021

\* \* \* \* \*

OPINION

This matter is before the Board on an appeal from a decision of the Animal Hearing Board dated December 4, 2012 in which that Board upheld two violations and assessed a monetary penalty in the amount of \$1,100.00. There were three citations at issue during the AHB hearing. The first citation, E 43353 , failure to have a holding facility license was reduced to a warning and no fine was assessed. The second citation, E 43353, failure to have a valid holding Facility License was upheld and a fine of \$100.00 assessed. The third citation, E 41623, failure to have a valid Holding Facility License was upheld but the fine was reduced from \$2,000.00 to \$1,000.00.

Oral argument was held before the Board of Appeals on Thursday, April 25, 2013. Ashley Hofmeister, Assistant County Attorney, represented Baltimore County, and Steven Simms represented the Appellant, Ms. Rowan.

Subsequent to the hearing, the Board reviewed the arguments of both parties and the documents that were in the file, and listened to the recording of the hearing before the Animal Hearing Board.

**Testimony and Evidence before the Animal Hearing Board**

The Animal Control Division, represented by Animal Control Officer Anthony Maxwell, testified that the defendant has operated a bird selling and grooming business out of her home and does not possess a valid Baltimore County holding facility license. The defendant's residence is located in a residential area not zoned for this type of commercial activity. Therefore, it is not possible for her to obtain the required holding facility license. The defendant is also required to have an exotic bird permit issued by the State of Maryland. Ms. Rowan performed talon clipping and wing clipping for a fee at her residence and also advertised the sale of her birds on the Internet.

Officer Maxwell was at the residence of the defendant's neighbor on December 3, 2012, and could hear what sounded to him like a large number of birds in the large shed situated in the defendant's back yard.

The defendant then testified. She stated that she has birds and she was not aware that she needed a license. Animal Control has inspected her residence and found that she is not abusing her birds. She stated that she considered her activity a hobby and not a business. In order to find a home for her baby birds, she created a website back in 2008. She built a shed in her back yard to house some of her birds and made it sound proof. She denied that she had forty baby birds at her house as stated in the Animal Control statement.

Her neighbor frequently complains that she is operating a business selling and breeding birds. These complaints have become overwhelming to her. Ms. Rowan was told that she must keep a log of birds she sells when she was selling them. She has kept this log and has provided it to Animal Control.

Upon questioning by members of the Board, the defendant stated that she had 20 breeding pairs. She further stated that these birds were pets and that they were not breeding. She has terminated her web site. She has attempted to rent a place where she could sell her birds but could not afford the monthly rent. People still come to her home occasionally and bring their birds to have their talons and wings clipped. These people are her friends and she does not charge them a fee.

The defendant stated that she doesn't sell birds from her house but that she takes the bird from her home and drives to a parking lot somewhere and makes the exchange. The defendant further stated that the last time she sold a bird was in July 2012.

Officer Maxwell stated that the defendant's neighbors have noticed that the number of people visiting the defendant has diminished over the last several months.

Witness Carroll Cordell then testified. She stated that the defendant has been selling birds since 2008. Ms. Cordell then testified that the Ms. Rowan continues to sell birds up to the present time.

### Law and Decision

Appellant claims the AHB ruled in error under BCC 12-101 (r) (1), because the holding of birds does not meet the definition of the relevant provision of the statute.

The BCC Section 12-101 (r) (1) provides:

(r) Holding Facility

(1) "Holding Facility" means any animal shelter, commercial kennel, commercial stable, grooming parlor, humane animal shelter, or pet shop.

We disagree. The facts clearly show that the Appellant housed and maintained over 20 pairs of birds and frequently sold and groomed the birds at her home. We feel the size, scope

and activities of the Appellant meet the intent and content of the statute. We therefore uphold the decision of the AHB for Citation E 43353, E 43353 and E 41623.

The Appellant further claims that the fine under BCC 12-1-110 (f) is improper and excessive. Ms. Rowan claims she was not selling birds on the day in question and had ceased all activities on the day cited. Appellant further argues that this is her first citation and as such the statute limits the fine to Twenty-Five (\$25.00) dollars.

BCC Section 12-1-110 (f) provides:

(f) Penalties.

(1) (i.) Except as provided in subparagraph (ii) and (iii) of this paragraph and paragraph (2) of this subsection, on adjudication, the penalty for:

1. A first violation of this article is \$25; and
2. Repeated violations of this article is \$100.

(ii) The penalty for cruelty to animals is \$100 per occurrence and \$100 per day as long as the conditions exist.

(iii) The penalty for failure to obtain a license for a dog or cat, as required by 12-2-201, is \$100

(iv) Each day of violation shall be considered a separate offense.

Ms. Hoffmeister, Attorney for Baltimore County, argued on appeal that the fines were appropriate; 12-1-110 (f)(1)(iv) clearly states that repeated violations of this article results in a One Hundred (\$100.00) Dollar per violation fine. The AHB approved a fine of One Hundred Dollars (\$100.00) per day for twenty (20) days as the facts demonstrate that the Appellant continued to advertise for sale, through a website, from June 8, 2012 to June 28, 2012. Appellant testified she attempted to terminate the website on June 12, 2012.

Although this Board finds the County is well within their statutory rights to assess the maximum fine, this Board will reduce the fine for Citation E 41623 from \$1,000.00 to \$400.00. We will accept Ms. Rowan's testimony that she attempted to terminate the website four days after the issuance of the citation on July 8, 2012.


**ORDER**

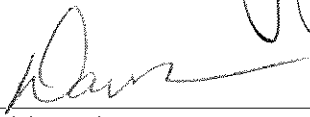
Therefore, it is this 31<sup>st</sup> day of ~~June~~ <sup>May</sup>, 2013 by the County Board of Appeals of Baltimore County

**ORDERED** that the decision of the Animal Hearing Board in Citation # E 43353, Citation # E 43355, and Citation # E 41623 is hereby **AFFIRMED**; The civil monetary penalty in the amount of \$100.00 for Citation E 43355 is hereby **AFFIRMED**; and it is further **ORDERED**, that the civil monetary penalty in the amount of \$1,000.00 for Citation E 41623 is hereby reduced to an amount of \$400.00.

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, Panel Chairman

  
\_\_\_\_\_  
David L. Thurston

  
\_\_\_\_\_  
Wendy A. Zerwitz



## Board of Appeals of Baltimore County

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May 31, 2013

Tatiana Rowan  
33 Gorsuch Road  
Lutherville, MD 21093

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

RE: *In the Matter of: Tatiana Rowan – Respondent/Appellant*  
Case No.: CBA-13-021

Dear Mses. Rowan 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 "Theresa Shelton/kc".

Theresa R. Shelton  
Administrator

TRS/kle  
Enclosure  
Duplicate Original Cover Letter

c: Hamilton Rowan  
Bernard J. Smith, Chairman /AHB  
John Markley /Animal Control  
April Naill / Animal Control  
Michael E. Field, County Attorney