

IN THE MATTER OF

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BEFORE THE

TERRY AND LAURIE STANZIONE
1926 WESTCHESTER AVENUE
BALTIMORE, MD 21228

*

BOARD OF APPEALS

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OF

RE: APPEAL OF DECISION OF
ANIMAL HEARING BOARD #3871

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BALTIMORE COUNTY

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Case No. CBA-13-033

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OPINION

This matter is before the Board on an appeal from a decision of the Animal Hearing Board (AHB) dated May 15, 2013 in which that Board upheld the violation and assessed a monetary penalty in the amount of \$25.00. There was one citation at issue during the AHB hearing, citation E 44961, nuisance animal, excessive barking.

Oral argument was held before the Board of Appeals on Thursday, August 15, 2013. Ashley Hofmeister, Assistant County Attorney, represented Baltimore County, and the Appellants appeared pro se.

Subsequent to the hearing, the Board reviewed the arguments of both parties, the documents which were in the file, and listened to the recording of the hearing before the Animal Hearing Board(AHB)

A non-public deliberation was held on September 17, 2013.

Testimony and Evidence before the Animal Hearing Board

A hearing was held before the Animal Hearing Board on May 7, 2013. The Animal Control Division was represented by Animal Control Officer John Markey. He read from the business records maintained by the Animal Control Division. On December 26, 2012 the

Animal Control Office received a complaint from Dr. Stanley McGhee regarding a dog owned by the Appellants, Laurie and Terry Stanzione. Dr. McGhee stated that the dog barks excessively seven hours at a time. The Appellants were mailed a letter and a copy of the applicable laws regarding excessive barking. On January 13, 2013, the Animal Control Office received another complaint regarding the Appellants' dog continuing to bark excessively, one to two hours at a time. As a result, Animal Control Officer Joyce Barnett responded to the Complainant's home and provided him with an affidavit of complaint. Officer Barnett went to the Appellants' residence but no one was home. She observed two dogs in the yard. The laundry room door was left open so the dogs could go in and out. A notice of complaint and a copy of the applicable animal control laws were left at the side door of the laundry room.

On February 6, 2013 the Animal Control Office received a notarized affidavit of complaint from the Complainant regarding the dog's excessive barking. On February 7, 2013 Animal Control Officer Tony Maxwell responded to the Appellant's home. The Appellant identified one dog, Mia, as his dog and said the other dog belongs to his sister. Animal Control Officer Maxwell issued citations to the Appellant, including citation #E44961, nuisance animal, and a fine of \$25.00 was assessed. On February 12, 2013 the Animal Control Office received a letter of appeal from the Appellants regarding that citation.

First to testify before the Animal Hearing Board was Dr. Stanley McGhee. He lives next door to the Appellants. He testified that the barking has been going on for years. Other neighbors have complained as well. It is difficult for them to entertain in the summertime on their deck because of the noise. On Christmas day the dog barked from two in the afternoon until nine at night. He can hear it in his house with the windows and closed. His neighbor on the other side of him can also hear the dog barking. It has woken him up at night.

Next to testify was Terry Stanzione. In response to the complaint which complained of excessive barking on Christmas Day, he testified that he was home with family and friends until 6:00. He presented notarized statements from them. On January 22, 2013, he was home and the dog was not barking for two continuous hours. He was also home on the day in February during the hours Dr. McGhee said the dog was barking. When he and his wife went out later that night they placed the dog in a room. She did not have access to go outside while they were gone. He presented notarized statements from family members who were with them on that day. He also presented notarized statements from other neighbors who do not have a problem with the dog. His house is extremely buffered. Mr. Stanzione theorized that perhaps Dr. McGhee is hearing a different dog.

In response to questioning, Dr. McGhee stated that the barking he hears is extremely loud and has a high pitch to it. When he is out on his deck, he can see the dog. The buffer should subdue the barking but it doesn't.

Mr. Stanzione testified that when they are not home, the dog stays in a room or in the yard with access to the room so she can go in or out. Although there is no way for him to know whether the dog is barking while he is not home, he had notarized statements from neighbors who say it is fine and they don't have any buffer between their homes and his.

Mia is a Great Pyrenees and they have a very distinct, very deep bark. They have had her for about a year and she is about two years old. They got her from the breeder from whom they purchased their other two Pyrenees. She had been returned to the breeder by an elderly couple who found her to be too active. Mr. and Mrs. Stanzione had purchased a bark collar for Mia but it did not work. It was something they placed on the wall and it emitted a sound. A regular collar would probably not work on her because of her dense fur. Now when she barks, they

correct her. If they are home, they make her come inside. They took her to Coventry School and did clicker training but that is not going so well either. Regardless, Mr. Stanzione doesn't think that there is a problem with Mia's barking based upon the notarized statements they presented. The AHB questioned the notarized statements from Appellant's witnesses. They questioned how close attention the people at the brunch were paying to a dog outside.

Mrs. Stanzione testified that she did not think Mia was outside that much when they were not home. They are not both away from the house all that often. There are a lot of animals in their neighborhood. Besides other dogs, there are squirrels, foxes, possums and deer but she doesn't really bark at the other animals.

Dr. McGhee disagreed with Mrs. Stanzione's statement regarding the deer. Their property backs up to a state park so deer are frequently in the yards. The dog will bark at the deer. The deer come and go so the barking is not for long periods, but there is still barking.

When asked whether they have taken Mia back to the trainer, Mr. Stanzione testified that they take her to Camp Bowwow. They work with her but it is not very efficient. The AHB suggested that Mr. and Mrs. Stanzione get a hold of their trainer because a dog needs a lot of work. Dogs are going to bark but something needs to be done to settle Mia down. They told Mr. and Mrs. Stanzione that it is hard for them to say what the dog does or doesn't do when they are not home. In regards to the notarized statements from the people saying Mia was not barking during Christmas brunch, the dog was in the yard and the people were inside, they were not concentrating on the dog. People were going in and out of the house, a dog is going to bark. Every statement said the dog was in the yard. The AHB didn't suggest the people were lying in their statements, but they were in the house, at a party, not sitting quietly in the house watching the dog.

The AHB felt that Mr. and Mrs. Stanzione were aware of the problem, even if most of the time they were oblivious to it. They have been working on it. Mr. Stanzione stated that he does not want her barking either. He is training her to follow his commands. The AHB thought that Mr. and Mrs. Stanzione need to be a little more aggressive in their training.

On May 15, 2013 the Animal Hearing Board issued a written opinion finding that the Appellants allowed their dog to be a public nuisance animal by excessively making disturbing noises in violation of Baltimore County Code Section 12-3-109(a) (3) and are therefore in violation of Baltimore county Code Section 12-3-109(b). They upheld citation number E44961 and the fine of \$25.00. Appellants filed a timely appeal to this Board.

Law and Decision

Appellants claim a number of errors were made by the AHB. The AHB granted the Complainant's postponement request in spite of the fact that it was in violation of their own rules. The AHB accepted an incorrect complaint form as it was not signed by Mrs. McGhee. There was an inconsistent use of case numbers. In response to the three instances upon which the complaint was based, Appellants presented notarized statements to show that the dog was not barking. The Complainants have landscaped buffers around their property, other neighbors don't and they don't hear anything. Dr. McGhee said the bark he heard was high pitched. The AHB agreed that that breed of dog has a high pitched bark. There are other dogs in the neighborhood with a high pitch bark.

In response to Appellants' first argument, that the AHB should not have granted the Complainant's request for postponement, the County argues that the AHB's rule on postponements is a general rule. They can make exceptions. In this case, the Complainant had

already paid for a vacation out of the country. It was also pointed out that when the Appellants asked for a postponement, the AHB granted it. Regarding the incomplete complaint form, although Mrs. McGhee was written on the form, Dr. McGhee was the principal Complainant. There was no confusion caused by the incorrect case numbers. It was an mistake. There was an incorrect case number on one of the letters. There was no confusion by the AHB as to the case as they deliberated right after the hearing. The AHB accepted the notarized statements into evidence. They reviewed the statements and asked questions about the information contained in the statements. The AHB also accepted the photographs. Dr. McGhee admitted the mistake regarding the sound of the dog's bark but also said that he visually observed the dog barking.

Baltimore County Code Section 12-3-109 (a) defines a public nuisance animal as an animal that:

- “(1) Damages the property of a person other than its owner;
- (2) Causes unsanitary conditions in or on public property;
- (3) Excessively makes disturbing noises;
- (4) Chases passing vehicles; or
- (5) Is an animal at large that is female dog or cat in heat.”

The Baltimore County Code does not define excessive. Each case must be looked at objectively in order to determine whether the barking is excessive.

In the instant case, there were three separate complaints made by the Complainant. The first complaint was regarding an incident on December 25, 2012. The day after the incident, the Complainant called and Animal Control sent the Appellants a letter. On January 24, 2013, Animal Control received a telephone call from the Complainant and they sent an officer out to investigate. The officer observed two dogs outside, one of whom was identified as Mia. The dogs could go in and out of the house. There was no one home. Animal Control received a third complain on February 13, 2013 which was followed up by a written complaint.

As the Appellants' first issue, regarding the postponement, we do not find that the AHB acted in error. The Appellants do not argue that they were prejudiced by the postponement. The AHB subsequently granted the Appellants' request for postponement when they were unable to make a hearing date. Accordingly, we do not believe the granting of the postponement to be an error or an abuse of discretion.

As to the other errors alleged by the Appellants, we do not find the incorrect case number or the fact that Mrs. McGhee failed to sign the complaint to be substantive errors. There is no evidence that the incorrect case number on a letter confused the parties or the AHB. It is clear that everyone knew what case they were before the AHB. Regarding the evidence presented to the AHB, the AHB accepted all of the evidence presented by the Appellants. They reviewed the notarized statements objectively and found that there were some flaws in the Appellants' argument that the statements could not resolve. The AHB found that the Appellants were not home all of the time, nor were their other neighbors. No one can say whether Mia barks when they are not there. The people at the Christmas brunch were not sitting quietly watching the dog. The dog was outside while they were inside. The dog could have been barking and they might not have noticed it. The Appellants acknowledged that Mia barks, and they have taken steps to try and correct the problem, but they don't think the barking is as bad as the Complaint believe it to be. As there is no definition of "excessive", the AHB must listen to both sides and make an objective finding.

Pursuant to Section 12-1-114 of the Baltimore County Code, in case such as the instant one the Board of Appeals 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 Appellants 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.

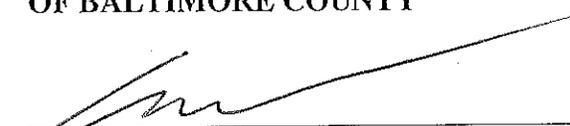
ORDER

Therefore, it is this 1st day of November, 2013 by the Board of Appeals of Baltimore County

ORDERED that the decision of the Animal Hearing Board in Citation # E 44961, is hereby **AFFIRMED**; and the civil monetary penalty in the amount of \$25.00 is hereby **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*.

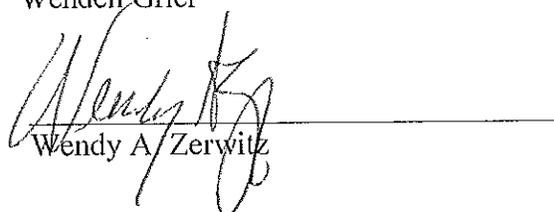
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew Belt, Chairman



Wendell Grier



Wendy A. Zerwitz



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

November 1, 2013

Terry & Laurie Stanzione
1926 Westchester Avenue
Baltimore, MD 21228

RE: *In the Matter of: Terry and Laurie Stanzione – Owner/Appellant*
Case No.: CBA-13-033

Dear Mr. and Mrs. Stanzione and Mr. Field:

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 "Sunny Cannington".

Krysundra "Sunny" Cannington
Acting Administrator

Enclosure

c: Dr. and Mrs. Stanley McGhee
Bernard J. Smith, Chairman /AHB
Tom Scollins/Animal Control Division
John Markley /Animal Control
April Naill / Animal Control
Jonny Akehin, Assistant County Attorney
Michael E. Field, County Attorney