



Board of Appeals of Baltimore County

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February 5, 2016

Jonny Akchin, Assistant County Attorney
Department of Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Melissa Ann Back Tamburo
83 Murdock Road
Baltimore, Maryland 21212

RE: *In the Matter of: Melissa Ann Back Tamburo*
Case No.: CBA-16-018

Dear Mr. Akchin and Ms. Tamburo:

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
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Nancy Rosenberg
Bernard J. Smith, Chairman / AHB
Thomas Scollins, Assistant Chief / Animal Control Division
April Naill / Animal Control Division
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF	*	BEFORE THE
MELISSA ANN BACK TAMBURO	*	BOARD OF APPEALS
83 Murdock Road	*	OF
Baltimore, Maryland 21212	*	BALTIMORE COUNTY
RE: Appeal of Findings and Decision of	*	Case No. CBA-16-018
Animal Hearing Board Upholding	*	
Citations for Animals at Large	*	
(Citation Nos.: E46704B and E46705B)	*	
AHB Case No.: 4138	*	

* * * * *

OPINION

This matter comes before the Board of Appeals (the “Board”) as a record appeal from the Animal Hearing Board’s September 18, 2015 Findings and Decision (a) upholding Citation E46704B and Citation E46705B issued to Appellant, Melissa Ann Back Tamburo (“Appellant”) and (b) upholding the \$300.00 civil monetary penalty imposed against Appellant as a result of the Citations. The decision was appealed to this Board for a hearing on the record that was held on December 8, 2015. Appellant appeared *pro se* and Assistant County Attorney, Jonny Akchin, appeared on behalf of Baltimore County.

BACKGROUND

As this case comes before the Board as a record appeal pursuant to *Baltimore County Code* §12-1-114(f)(1), the Board’s review of the decision below is based on the audio record of the July 21, 2015 Animal Hearing Board Hearing that this Board was provided and the oral argument presented before this Board at the December 8, 2015 record appeal hearing.

The facts as set forth in the record of this case are not complicated. Appellant resides in a rowhouse in the Rodgers Forge neighborhood. It is undisputed that Appellant owns two domestic cats that are orange and white in color. On February 5, 2015, Nancy Rosenberg, a neighbor of Appellant, filed an Affidavit of Complaint with the Baltimore County Animal Services Division asserting that Appellant’s “cat(s) [were] roaming the neighborhood” and had been in Ms. Rosenberg’s “yard on many

occasions,” including on January 1, 2015, January 26, 2015, and on January 30, 2015. Subsequent to Ms. Rosenberg’s submission of her Affidavit of Complaint, the Baltimore County Division of Animal Control issued Citation 46704B and Citation 46705B to Appellant for having two “animals at large”¹ in violation of Section 12-3-110 of the Baltimore County Code. Each Citation imposed a \$150.00 fine on Appellant. Appellant and Ms. Rosenberg were the only witnesses who testified at the hearing before the Animal Hearing Board.

Appellant appeals the Findings and Decision of the Animal Hearing Board, including the \$300 fine assessed against her, contending that there was a “lack of evidence/proof that the cats in question” belonged to Appellant.

BOARD’S OPINION

Pursuant to Section 12-1-114(g)(1) of the Baltimore County Code, the Board of Appeals, in cases such as this, 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 as submitted; or
 - 5. Is arbitrary or capricious.

The function of this Board, as outlined above in deciding Animal Hearing Board Appeals, is not to be a finder of fact or the judge or evaluator of the credibility of witnesses. Consequently, it is not the role of this Board to second guess the factual findings of the Animal Hearing Board unless such findings are arbitrary or capricious or unsupported by competent, material, and substantial evidence.

¹ Under Section 12-1-101(c)(1)(i) of the Baltimore County Code, an “animal at large” is defined as “any animal off the premises of its owner and not under the control, charge, or possession of the owner or other responsible person.”

At the hearing before the Animal Hearing Board, Ms. Rosenberg described Appellant's two cats as orange and white in color. Ms. Rosenberg further testified that the cats she had observed at large in her neighborhood did, in fact, belong to Appellant since she had seen the cats going into Appellant's property.

Significantly, however, the affidavit provided by Ms. Rosenberg to the Animal Control Division did not specify that she had seen both of Appellant's cats roaming the neighborhood on January 1, 2015, January 26, 2015, and on January 30, 2015. Moreover, at the hearing before the Animal Hearing Board, Ms. Rosenberg never made clear in her testimony that she had seen more than one of Appellant's cats on the loose in the neighborhood at any one time.

Appellant also testified at the hearing before the Animal Hearing Board. She clarified that she does her best to keep her two cats within her house but admitted that one of her cats was able escape to the outside approximately once per week. Appellant testified without contradiction that her other cat remains inside her house.

Because there was evidence, including testimony from Appellant, supporting that one of her cats has routinely escaped from her house and roams at large in the neighborhood, the finding that Appellant had violated Section 12-3-110 of the Baltimore County Code with regard to one of her cats was not arbitrary or capricious. Because, however, there was no evidence in the record to support the finding that Appellant's second cat had roamed the neighborhood at any time, including on January 1, 2015, January 26, 2015, and on January 30, 2015, the second "animal at large" finding against Appellant was arbitrary and capricious and unsupported by competent, material, or substantial evidence.

CONCLUSION

Based the findings stated above, the Board finds that the Animal Hearing Board's September 18, 2015 decision with respect to Citation 46704B and the associated fine of \$150.00 is AFFIRMED and the decision with respect to Citation 46705B and the associated fine of \$150.000 is REVERSED.

ORDER

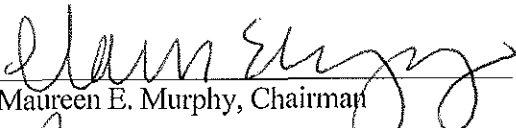
THEREFORE, IT IS THIS 5th day of February, 2016, by the Board of Appeals for Baltimore County,

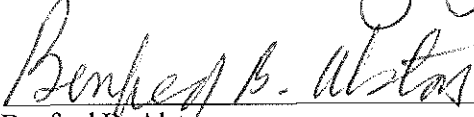
ORDERED that the decision of the Animal Hearing Board dated September 18, 2015 with respect to Citation 46704B, wherein the violation for Animal at Large was upheld and ordering a civil monetary penalty in the amount of One Hundred Fifty Dollars (\$150.00), shall be **AFFIRMED**; and

IT IS FURTHER ORDERED that the decision of the Animal Hearing Board dated September 18, 2015 with respect to Citation 46705B, wherein the violation for Animal at Large was upheld and ordering a civil monetary penalty in the amount of One Hundred Fifty Dollars (\$150.00), shall be **REVERSED**.

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, Chairman


Benfred B. Alston


James H. West