

IN THE MATTER OF
EDWARD COOK - APPELLANT
8245 Longpoint Road
Dundalk, MD 21222

RE: Citation Nos. (1) E41243A --- Animal At Large
(2) E41243B --- Dangerous Animal
AHB No.: DD4310

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA- 17-021

* * * * *

OPINION

This case comes to the Board on appeal of the final decision of the Animal Hearing Board of Baltimore County (“AHB”) wherein the AHB upheld Citation E41243A (Animal At Large) and E41243B (Dangerous Animal), dismissed the fines originally imposed, but further ordered that the animal at issue, “Buddy”, not be returned to Appellant Edward Cook (“Mr. Cook”).

A hearing before this Board was held on January 5, 2017. Mr. Cook represented himself. The County was represented by Jonny Akchin, Assistant County Attorney.

Background

On October 15, 2016, Laura Day was visiting family that resided on or near Longpoint Road in Dundalk. Ms. Day was out walking her two leashed dogs and stopped at a community yard sale. Mr. Cook’s dog, the aforementioned “Buddy,” ran out of Mr. Cook’s residence (8245 Longpoint Road) and viciously attacked one of Ms. Day’s dogs, “Max.” Mr. Cook issued verbal commands to Buddy to stop the attack, but Buddy did not comply. Several neighbors, including Mr. Cook, tried to separate Buddy from Max. Max sustained traumatic injuries and unfortunately, succumbed after extensive attempts to save Max’s life. Mr. Cook suffered numerous wounds to his hands and had to be treated at the hospital for his injuries sustained in trying to separate Max from Buddy.

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Mr. Cook did not deny the events reported by Ms. Day. Mr. Cook explained to the investigating officer that he normally had the storm door latched, but on this occasion, he believes he must have forgotten to do so. Mr. Cook also relayed that Buddy was up to date with his shots and that Buddy had previously been to a professional trainer and that shortly after the attack, Mr. Cook contacted the trainer again. Buddy was considered a dangerous dog and Mr. Cook was cited for Buddy's attack upon Max. On October 24, 2016, Buddy was removed from Mr. Cook's home without incident.

At the Animal Hearing Board hearing, held on November 15, 2016, Ms. Day testified to the events that occurred on October 15, 2016. Mr. Cook generally agreed with the course of events described. Mr. Cook offered that he would undertake additional measures to make sure that an attack like the one at issue would not occur again. Included among those measures, Mr. Cook indicated he would put in a gate on the front porch, changing the storm door so Buddy's view of the outdoors was obstructed, multiple latches on the storm door, and would enroll Buddy in intensive dog aggression training with an outfit called "K-9 Koncepts" in Catonsville, if Buddy was returned. It was also revealed that Mr. Cook paid for all of the medical treatment and measures to try to save Max's life. It should be noted that Ms. Day did not want Buddy to be euthanized, but also did not want Buddy being returned to live the neighborhood, or any neighborhood, with children and other dogs.

Following the hearing, the Animal Control Board upheld the citation for Animal At Large and upheld the citation for Dangerous Animal. The AHB ordered that all fines originally imposed were to be dismissed, that no civil monetary penalty needed to be paid, but also that Buddy not be returned to Mr. Cook so that Animal Services could determine Buddy's disposition.

Standard of Review

BCC §12-1-114 (f) and (g) requires that all hearings before this Board from the AHB be heard on the record from the AHB hearing. Upon review of the transcript and evidence in the AHB record, this Board has the authority to:

- (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 and capricious.

When assessing a factual finding of an agency, the appropriate standard of review is whether there is substantial evidence from the record as a whole. *Eller Media Co. v. Mayor of Baltimore*, 141 Md. App. 76, 84 (2001). If reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then the agency's findings are based on substantial evidence and the reviewing court has no power to reject that conclusion. *Columbia Road Citizens' Ass'n v. Montgomery Cnty.*, 98 Md. App. 695, 698 (1994). Judicial review of an agency decision does not involve an independent decision on the evidence instead, a court is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cnty.*, 336 Md. 569 577 (1994).

When considering whether an agency erred as a matter of law, the reviewing court decides the correctness of the agency's conclusions and may substitute the court's judgment for that of the

agency. *People's Counsel for Baltimore Cnty. v. Prosser Co.*, 119 Md. App. 150, 168 (1998). The "substantial evidence test" also applies when there is a mixed question of law and fact. In other words, the agency has correctly stated the law and the fact finding is supported by the record, but the question is whether the agency has applied the law to the facts correctly. *Cowles v. Montgomery Cnty.*, 123 Md. App. 426, 433 (1998). Therefore, the order of an administrative agency must be upheld on review if it is not premised upon an error of law and if the agency's conclusions on questions of fact or on mixed questions of law and fact are supported by substantial evidence. *Kohli v. LOCC, Inc.* 103 Md. App. 694, 711 (1995).

Decision

Based on the evidence presented at the Animal Hearing Board and on review by the Board of Appeal, the decision reached by the Animal Hearing Board is unanimously affirmed by this Board as to the citations and the dismissal of the fines. The evidence regarding the attack, with which Mr. Cook agreed, justifies both citations. There is no reason to disturb the findings and conclusions made by the Animal Control Board with respect to the citations and with respect to the dismissal of the fines.

While this Board affirms the decision from the AHB as to the citations and dismissal of fines, the Board remands this case back to the AHB with respect to the order directing that Buddy not be returned to Mr. Cook. The AHB's Findings and Decision fails to identify what evidence, if any, it used to justify this aspect of its Decision. The record below illustrates that Mr. Cook took care of his dog and at least illustrates some evidence of responsibility as an owner. There is evidence that Mr. Cook is willing to undertake significant additional measures to help ensure that an attack like this would never occur again. There is no explanation as to why these measures

and/or other conditions could not be imposed upon Mr. Cook and Buddy to help facilitate a reunion and help prevent other attacks. Having said that, the audio recording of the AHB hearing revealed some hints and whispers of other conduct or concerns that may have a bearing on this issue. To be clear, that evidence was not received by the AHB, though identified to some degree.

Without an explanation to justify the permanent separation of Buddy from Mr. Cook identified in AHB's Findings and Decision and the presence of evidence that Mr. Cook was willing to undertake substantial measures and accept conditions for Buddy's return to prevent an attack in the future, this Board cannot affirm this part of the AHB's decision at this time. At the same time, the Board concludes that reversing the AHB's decision on this issue at this time is not appropriate either.

Due to the apparent presence of other witnesses and/or evidence on this point and related issues not being received into evidence below, in an abundance of fairness to all concerned parties, the best course of action is to remand this case for an evidentiary hearing on the sole issue of whether Buddy can and/or should be reunited with Mr. Cook, which includes any and all necessary and satisfactory measures and/or conditions that can and/or should be imposed upon Buddy and Mr. Cook to help ensure that an attack like the one at issue here can never occur again. If there is a determination that the combination of Mr. Cook and Buddy poses a potential risk to public safety or is otherwise problematic, and that setting of remedial and protective measures and/or other conditions would not alleviate that risk or problem(s), there needs to be evidence that supports that decision.

For these reasons, the Animal Board Hearing decision is AFFIRMED as to the citations, the dismissal of the fines, and further order that no civil monetary penalty be imposed. The decision as to whether Buddy can and/or should be returned to Mr. Cook is REMANDED for an

evidentiary hearing on the sole issue of the propriety of reunifying Buddy with Mr. Cook, including a consideration of the significant remedial and protective measures identified by Mr. Cook and/or other conditions as outlined above.

ORDER

THEREFORE, IT IS THIS 10th day of March, 2017, by the Board of Appeals of Baltimore County, it is:

ORDERED that the decisions regarding Citations E41243A (Animal At Large) and E41243B (Dangerous Animal) are **AFFIRMED**. Dismissal of the fines originally imposed is also **AFFIRMED**. Therefore, no civil monetary penalty is imposed; and

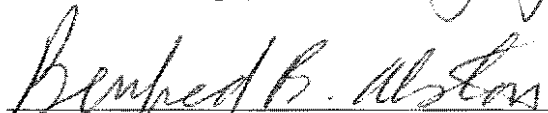
It is further **ORDERED** that this case be **REMANDED** for an evidentiary hearing on the sole issue as to whether Buddy can and/or should be reunited with Mr. Cook, including a consideration of the significant remedial and protective measures identified by Mr. Cook and/or other conditions deemed to be necessary and satisfactory for public safety.

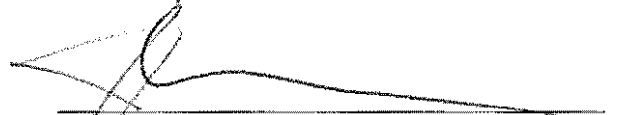
In the matter of: Edward Cook/CBA-17-021

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


Benfred B. Alston


Jason S. Garber



Board of Appeals of Baltimore County

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March 10, 2017

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RE: *In the Matter of: Edward Cook*
Case No.: CBA-17-021

Dear Messrs. Akchin and Cook:

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,


Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

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