

IN THE MATTER OF:

* BEFORE THE

MICHAEL RUBY –
Owner/Landlord/Appellant
8046 Bank Street
Baltimore, MD 21224-2123

* BOARD OF APPEALS

* OF

* BALTIMORE COUNTY

Re: Code Enforcement
Citation No.: 1700594

* Case No: CBA-17-036

* * * * *

OPINION

This case comes before the Baltimore County Board of Appeals as a record appeal of the February 28, 2017 Amended Final Order issued by Lawrence M. Stahl, Administrative Law Judge for Baltimore County (the “ALJ”). In that Order, the ALJ ordered payment of a civil penalty in the amount of \$200.00 against Appellant Michael Ruby arising from a Code Enforcement Citation for a violation under Baltimore County Code Section 13-4-201(d). The Board held a hearing on this matter on May 4, 2017 at which Mr. Ruby appeared *pro se* and Marissa L. Merrick, Esquire, Assistant County Attorney, appeared on behalf of Baltimore County.

BACKGROUND

Because the case comes before the Board as a record appeal, the Board’s review is based on the audio record of the hearing before the ALJ, exhibits and other documents filed in connection with the hearing before the ALJ, and the parties’ oral argument presented to the Board at the May 4 hearing. This review established the following: On January 12, 2017, Phillip Mills, an inspector with the Code Enforcement Bureau of the Baltimore County Department of Permits, Approvals, and Inspections issued a Code Enforcement Citation (Civil Citation No. 1700594) to Michael Ruby, the owner of the property located at 8046 Bank Street,

Baltimore, Maryland 21224-2123 (the "Property"). The Citation imposed a fine of \$300.00 on Mr. Ruby as a result of a violation of Section 13-4-201(d) of the Baltimore County Code as a result of "[g]arbage not stored in container(s) with tight fitting lids."

The County scheduled a hearing before the ALJ on February 2, 2017 in connection with the Citation issued to Mr. Ruby. Mr. Ruby and a representative of the Code Enforcement Bureau appeared and testified at the February 2 hearing. Following the testimony of the parties, the ALJ orally rendered his decision, finding a violation of BCC § 13-4-201(d) and imposing on Mr. Ruby, as owner of the Property, a \$200.00 fine (reduced from the \$300.00 fine included in the Citation). Over the four weeks following the hearing, the County issued four separate iterations of the written Final Order from the ALJ. The ALJ finally issued an "Amended Final Order" on February 28, 2017 that (a) corrected various errors in prior versions of the Order that Mr. Ruby identified to the County and (b) memorialized the ALJ's prior ruling at the February 2 hearing. In his Amended Final Order, the ALJ specifically ruled as follows: "Based on the testimony, photographs, document and other exhibits I find for the reasons stated at the conclusion of the hearing Baltimore County has proven by a preponderance of the evidence Respondent(s) is in violation of one or more of the statutes and/or regulations as charged in the civil citation."

On February 28, 2017, the same day that the ALJ issued his Amended Final Order, Mr. Ruby appealed the decision to the Board.

DISCUSSION

A. Standard of Review

BCC § 3-6-304(a) sets forth options available to the Board in rendering a decision on an appeal from a Code Enforcement hearing:

(a) Disposition options. In a proceeding under this subtitle, the Board of Appeals may:

- (1) Remand the case to the Hearing Officer;
- (2) Affirm the final order of the Hearing Officer; or
- (3) Reverse or modify the final order if a finding, conclusion, or decision of the . . . Hearing Officer:
 - (i) Exceeds the statutory authority or jurisdiction of the . . . Hearing Officer;
 - (ii) Results from an unlawful procedure;
 - (iii) Is affected by any other error of law;
 - (iv) . . . is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (v) Is arbitrary or capricious.

In reviewing the ALJ's factual findings, "the standard of review is whether the finding is 'unsupported by competent, material, and substantial evidence in light of the entire record as submitted,' also known as substantial evidence review." *Charles County Dep't of Soc. Servs. v. Vann*, 382 Md. 286, 295 (2004) (citations omitted).

B. Relevant Statutes

In upholding the County's Citation and imposing a \$200.00 fine against Mr. Ruby, the ALJ made a finding that Mr. Ruby had violated Section 13-4-201(d) of the Baltimore County Code. Section 13-4-201(d) provides that "[a]ll *garbage* shall be stored in approved rodent-resistant, watertight containers with tight-fitting lids." (Emphasis added). The Baltimore County Code further defines "garbage" as "the animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of foods." BCC § 13-4-101(h).

The “Photographic Record” introduced by the Code Enforcement Bureau at the hearing before the ALJ, and on which the ALJ relied in rendering his decision, depicts a motorcycle, pieces of wood, a fire pit, and sundry other items in the Property’s backyard. There is no evidence, however, of “animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of foods” on the Property. Nor was there any testimony presented to the ALJ that the Code Enforcement inspector had observed any “animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of foods” on the Property. As a result, the Board concludes that the ALJ’s finding of a violation of Section 13-4-201(d) of the Baltimore County Code “was unsupported by competent, material, and substantial evidence in light of the entire record” and was “arbitrary and capricious.”

Based on the foregoing, the ALJ’s Amended Final Order, imposing a civil penalty against Mr. Ruby in the amount of \$200.00, must be reversed. Under Section 3-6-304(a) of the Baltimore County Code, the Board does not have the authority to grant the additional relief requested by Mr. Ruby at the hearing, including the waiver of the appeal fee. In addition, the Board does not have the authority to issue a declaration regarding the constitutionality of the Code Enforcement Bureau’s conduct in performing neighborhood “sweeps,” nor did Mr. Ruby produce sufficient evidence at the hearing to support such a claim.

ORDER

THEREFORE, IT IS THIS 17th day of May, 2017

by the Board of Appeals of Baltimore County

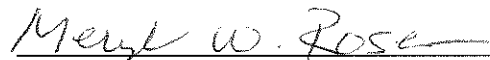
ORDERED that the February 28, 2017 Amended Final Order of the Administrative Law Judge in this matter be and the same is hereby **REVERSED**; and it is further

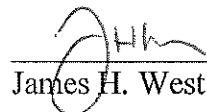
ORDERED that the civil penalty of \$200.00 imposed by the Administrative Law Judge in connection with Civil Citation Number 1700594 be and the same is hereby **DISMISSED**.

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


Meryl W. Rosen


James H. West



Board of Appeals of Baltimore County

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May 17, 2017

Marissa L. Merrick, Assistant County Attorney
Department of Permits, Approvals & Inspections
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Michael Ruby
7 Florida Road
Towson, Maryland 21204

RE: *In the Matter of: Michael Ruby*
Case No.: CBA-17-036

Dear Ms. Merrick and Mr. Ruby:

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/tam".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Lawrence M. Stahl, Managing Administrative Law Judge
Phillip Mills, Inspector/Code Enforcement
Lionel Van Dommeleon, Chief/Code Enforcement
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law