

IN THE MATTER OF  
AMERICAN POOL SERVICESe  
9305 GERWIG LANE, SUITE E  
COLUMBIA, MARYLAND 21046

RE: Code Enforcement Citation  
Nos. 1700001349-P1-17 and  
1600006039-P5-17

\* BEFORE THEe  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTYe  
\* Case No.: CBA-18-009 ande  
\* CBA-18-010e

\* \* \* \* \*

### **OPINION AND ORDER**

This matter comes before the Board of Appeals of Baltimore County as an appeal of the September 20, 2017 Order of the Administrative Law Judge, Lawrence Stahl, ordering a \$3,500.00 fine for Citation Nos. 1600006039-P5-17 and 1700001349-P1-17 for violations of Code of Baltimore County Regulations (COBAR, Section 1.05.02.31.L.1(a) - failure to provide a certified pool operator on site during all times of operation). Mr. Christopher Snyder, Vice President of Management for American Pool Services, appeared on behalf of the Appellant, with Assistant County Attorney, Marissa Merrick, appearing on behalf of Baltimore County. Oral arguments before this Board on the Appellant's record appeal were heard on February 6, 2018.

The evidence presented before the ALJ Stahl described that inspectors from the Baltimore County Division of Environmental Health Services, Department of Health inspected a swimming pool located at 11 Cinnamon Circle, Brenbrook Apartments, Randallstown, Maryland on August 25, 2017 and determined that a certified pool operator ("CPO") was not on duty. A citation for this violation was issued in the amount of \$5,000.00. After hearing the evidence regarding this violation, ALJ Stahl sustained the violation and ordered a \$1,500.00 fine. Additionally, in conjunction with civil citation 1700001439-P1-17, evidence was heard before the ALJ that on August 17, 2017 inspectors were called to another location operated by the Appellant at the

Canterbury Apartments, 9206 Oswald Way, Rosedale, Maryland and again observed a pool being operated without a certified pool operator on site. It was further determined that no CPO was present at this location on 14 different occasions. The ALJ sustained these violations imposing a maximum penalty of \$2,800.00, \$200.00 per occurrence. \$1,800.00 of that fine was suspended leaving a remainder of a \$1,000.00 fine to be imposed.

#### MOTION TO DISMISS

Prior to the hearing before the Board of Appeals on this matter, Counsel for Baltimore County filed a Motion to Dismiss the Appellant's appeal, alleging that the Appellant had failed to post the required security in the amount of a penalty assessed when filing its appeal. The County argued that the Appellant was notified via a September 20, 2017 correspondence regarding the procedure for posting the required security and that the process for filing the necessary security for an appeal is clearly enunciated on the back of the citations issued by the County Inspectors. Appellant's representative, Christopher Snyder alleged that he did not receive the County's Motion to Dismiss until the morning of arguments before this Board. Mr. Snyder further testified that he personally attempted to file the necessary security but was confused as to where he was to send the money.

In hearing the explanations provided by the County as to where the necessary security is to be filed and the testimony of Mr. Snyder regarding his experience with attempting to file such security, this Board finds that the process for doing such is somewhat confusing to the lay person, thus the Board finds that the Appellant made a good faith effort to comply with the requirements of the appeal. Consequently, the County's Motion to Dismiss is denied.

STANDARD OF REVIEW

BCC §3-6-304 states as follows:

- (a) Disposition options. In a proceeding under the 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 of 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.

“With regard to agency factual determinations, 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 Department of Social Services V. Vann*, 382 Md. 286, 295 (2004) (citations omitted). A reviewing body gives less deference to an agency’s legal conclusions, and will not uphold an administrative decision premised solely upon an erroneous conclusion of the law. *HNS Dev. LLC v. People’s Counsel*, 425 Md. 436, 449 (2012).

DECISION

County regulations, which are found in COBAR, under Title 01, Subtitle 5, Chapter 2, Subsection (.31)(L), states:

- “L. Lifeguards
- (1) Each facility shall provide on the premises during all hours of operation the following:
    - (a) At least one certified pool operator must be on site; and
    - (b) A minimum of one lifeguard on duty observing the pool while any individual is in the pool
  - (2) An additional lifeguard is required for each additional 50 bathers, or fraction thereof, above the first 50 bathers
  - (3) The single responsibility of a solo guard is to watch swimmers;

**In the matter of American Pool Services**  
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- (4) When the guard must leave his or her station the swimmers shall vacate the pool water
- (5) The solo guard shall take hourly breaks of 5 to 10 minutes.
- (6) Conspicuously posted pool rules shall state that the pool is to be vacated by all swimmers when the guard leaves his or her station.

As previously stated above, Appellant was cited by the County in August of 2017 with failure to comply with this regulation at two swimming pools for which they provide management. Christopher Snyder of American Pool Services appeared before the Board without counsel. When asking Mr. Snyder whether he had arguments that would question the findings of the Administrative Law Judge, Mr. Snyder informed the court that he admitted to the behavior alleged, however was confused as to the amount of the fine.

As to the citation issued under number 1600006039-P5-17, Mr. Snyder argued that the maximum fine that may be imposed for such a violation was \$1,000.00. Assistant County Attorney, Marissa Merrick confirmed that the evidence presented before the ALJ regarding this violation dealt only with a single occurrence and conceded that the proper maximum penalty for this matter was in fact \$1,000.00. Mr. Snyder further stated on the record that American Pool Services also admitted the behavior alleged in citation 1700001349-P1-17 and were not appealing that \$1,000.00 fine amount.

Based on the clarifications presented by Assistant County Attorney, Marissa Merrick, and Mr. Snyder's concession of the accuracy of the record below, this Board finds that the violations of COBAR Section 1.05.02.31.L.1(a) are upheld, however the penalties are revised in that, for citation 1600006039-P5-17, a fine of \$1,000.00 is being imposed. For citation 1700001349-P1-17 a civil penalty of \$2,800.00 is imposed with \$1,800.00 being suspended, leaving a remaining fine of \$1,000.00 to be imposed.

**ORDER**

THEREFORE, IT IS THIS 21<sup>st</sup> day of February, 2018, by the Board of Appeals of Baltimore County,


**ORDERED** that the decision of the Administrative Law Judge dated September 20, 2017 on Citation numbers 1700001349-P1-17, and 1600006039-P5-17, be and the same are hereby **AFFIRMED**; and it is further,

**ORDERED** that the however the penalties are revised in that citation 1600006039-P5-17 with a fine of \$1,000.00 being imposed. For citation 1700001349-P1-17 a civil penalty of \$2,800.00 is imposed with \$1,800.00 being suspended, leaving a remaining fine of \$1,000.00 to be imposed.

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 Chair

  
Kendra Randall Jolivet

  
Andrew M. Belt



## Board of Appeals of Baltimore County

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February 21, 2018

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

Christopher Snyder  
Vice President of Management  
American Pool Services  
9305 Gerwig Lane, Suite E  
Columbia, Maryland 21046

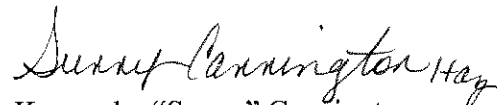
RE: *In the Matter of: American Pool Services*  
Case Nos.: CBA-18-009 and CBA-18-010

Dear Ms. Merrick and Mr. Snyder:

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/taz  
Enclosure  
Duplicate Original Cover Letter

c: Quest Management Group/Brenbrook Apartments  
Canterbury Apartments  
Lawrence M. Stahl, Managing Administrative Law Judge  
Tyler Kelly, Environmental Health Specialist/Health Department  
Donald House, Inspector/Environmental Health Specialist/Health Department  
Gregory Wm. Branch, M.D., MBA, CPE, FACP, Director/Health and Human Services  
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