IN THE MATTER OF RIGNAL W. BALDWIN, V - APPELLANT 1100 West Lake Avenue Baltimore, MD 21210	*	BEFORE THE BOARD OF APPEALS
	*	OF
RE: Citation Nos. P01527 --- Animal At Large P01528 --- Animal At Large P01532 --- Animal At Large P00083 --- Animal At Large AHB Case No.: 4375	*	BALTIMORE COUNTY
	*	Case No. CBA- 18-019

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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 Nos. P01527, P01528, P01532 and P00083 which charged that the dog at issue, "Scout" was an "Animal At Large" in violation of Baltimore County Code ("BCC"), §12-3-110, and ordered that a civil monetary penalty in the amount of $600.00 be paid within thirty (30) days. A hearing before the AHB was held on August 15, 2017 (the "AHB Hearing").

A hearing on the record was held before this Board on February 1, 2018. Rignal W. Baldwin, V, an attorney, represented himself ("Mr. Baldwin"). The County was represented by Jonny Akchin, Assistant County Attorney (the "ACA").

FACTUAL BACKGROUND

It was alleged by Park Rangers Elizabeth Kadow and Jonathan Wood ("Ranger Kadow" and Ranger Wood", collectively the "Rangers"), employees of Baltimore County Recreation and Parks, that the dog "Scout" was spotted *at-large* on four (4) separate occasions within a period of 20 days, as having escaped from the property known as 1100 West Lake Avenue (the "Property"), and having been spotted in and or around the area of Lake Roland. The Property is owned by Rignal W. Baldwin IV and his wife Mary Baldwin. The Appellant, Rignal W. Baldwin, V, the

son of the Property owners, also resided at the Property along with his 3 year-old son, Rignal W. Baldwin VI, at the time of the Citations issued here. [1]

The facts surrounding each Citation were alleged in corresponding Incident Reports written by the Rangers. The Citations and Incident Reports were submitted to Baltimore County Animal Services Division and were admitted into evidence at the AHB hearing:

> 1) Citation No. P01527: On April 4, 2017, at or about 12:40 p.m., a witness identified as "Colleen Lacy of 1000 Lakeside Drive encountered Scout at-large on Lakeside Drive and notified Rangers Kadow and Wood. The Incident Report states that Rangers Kadow and Wood observed Scout on Hollins Avenue, attempted unsuccessfully to apprehend the dog and then telephoned Mary Baldwin. A plain paper copy of a black and white photograph of a dog which copy paper has a date and time reading "Tuesday 12:58 p.m." was admitted into evidence.
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> 2) Citation No.: P01528: On April 9, 2017, at or about 11:06 a.m., Ranger Elizabeth Kadow observed Scout on Lakeside Drive. She attempted unsuccessfully to apprehend the dog. Ranger Wood telephoned Mary Baldwin. Mary Baldwin testified that, at the time of the telephone call, Scout was at home with Mrs. Baldwin, lying at her feet. A plain paper copy of a black and white photograph of a dog which copy paper has a date and time reading "Today 11:06 a.m." was admitted into evidence.
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> 3) Citation No.: P01532. On April 11, 2017, at or about 12:40 p.m., a witness named Anita Tyler observed Scout on Lakeside Drive. Ranger Kadow attempted unsuccessfully to apprehend the dog and then telephoned Mary Baldwin. A plain paper copy of a black and white photograph containing a dog which copy paper has a date and time reading "Today 5:47 p.m." was admitted into evidence.
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> 4) Citation No.: P00083. On April 23, 2017, at or about 1:32 p.m., Ranger Wood observed Scout on Lakeside Drive. He and another Ranger attempted unsuccessfully to apprehend the dog. Unable to reach the Baldwins, Ranger Wood left a telephone message at the telephone number on file as to this event. A plain paper copy of a black and white photograph of what appears to be trees and foliage was admitted into evidence. There was indication on the photocopied paper as to a date or time.

[1] Each of the Citations at issue were issued to "Rignal Baldwin" without distinction as to the generational suffix.

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:
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> 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).

AHB Rules of Procedure for Hearings

In accordance with BCC, 3-3-405(b), the AHB is charged with adopting Rules of Procedure to govern the conduct of its hearings. Pursuant to that Section, the AHB adopted the "Rules of Administrative Procedures for Hearings" which reads in pertinent part as follows:

> HEARING AND PRESENTATION OF EXHIBITS
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> * * * *
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> 2. The Animal Hearing Board will make every effort to limit hearing sessions to one (1) hour (one-half (1/2) hour each side). Should it be evident to the Board that the parties' presentation cannot be concluded in approximately one (1) hour, the session may be recessed and reconvened.
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> 4. Rules of Evidence in Contested Cases
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> a. The Board shall receive and may consider all relevant evidence, witnesses, and documentary evidence. Any statement submitted MUST BE NOTARIZED and becomes the property of the Animal Hearing Board's records. The Board may, in its discretion, refuse to give probative value to incompetent or repetitious evidence, or evidence inadmissible in a court of law.
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> b. All evidence (including records of documents) offered and received by the Board in any case, and not other evidence, shall

be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or be incorporated by reference.

c. Each party and member of the Board shall have the right of cross-examination of the witnesses who testify.

d. The Board may take notice of the facts of general knowledge and general technical or scientific facts within their specialized knowledge. Parties shall be afforded an opportunity to contest facts so noticed.

* * * *

6. Order of Hearing Proceedings Before the Board

a. The Chairman of the Board or his/her designee shall preside at all hearings.

b. The Board will hear no charges that have not been presented to the Respondent prior to the hearing.

c. The parties may present their own case or be represented by legal counsel or a person of their choosing.

d. In any case, after the Complainant (appellant) has presented his/her case, the Respondent (appellee) shall, if he/she so desires, present his/her case. The Complainant (appellant) may then make a rebuttal presentation.

e. At the conclusion, the Complainant, followed by the Respondent, may make a closing argument if he/she so desires or is directed by the Board.

f. The decision of the Board shall be issued by the Chairman of the Board within a reasonable period of time.

DECISION

In our review of the AHB recording and evidence presented as a whole, this Board is highly alarmed by the course of the AHB hearing which occurred on August 15, 2017 as it was clear to this Board that a fair hearing was not afforded to Mr. Baldwin. There was a disregard for basic due process rights as well as a lack of orderly procedure afforded in an administrative hearing; a failure

to follow the AHB's own Rules of Procedure as set forth above; violations of sworn oaths by the Complainant Park Rangers through their coaching of each other during testimony; as well as a predetermined disposition on the part of the AHB, all of which are apparent from the recording. In addition, the Findings and Decision of the AHB in this case, was written by the ACA, who acted simultaneously as both a prosecutor and judge during the hearing, ruling on evidence and legal issues, was present for closed deliberation of the case by the AHB, and wrote the AHB Findings and Decision.

As set forth in the AHB Rules above, the AHB has established and adopted procedures by which both the Complainant and Respondent are instructed that they will each be afforded the opportunity for a fair hearing wherein each can present their case. (AHB Rule 6c). The order of proceedings is to mirror that of a judicial proceeding wherein the Complainant presents his/her case first, the Respondent then presents his/her case, followed by a rebuttal case by the Complainant. (AHB 6d).

In conducting the hearing, the AHB Rules state that the AHB shall receive all relevant evidence, witnesses and documentary evidence. (AHB Rule 4a). While the AHB may assign as necessary the appropriate probative weight to that evidence, relevant evidence as to the issues in the case must be received. (*Id.*). Even more so, the Board may only make a determination in the case based on evidence which is both offered and received at the AHB hearing, "*and not other evidence*". (AHB Rule 4b).

1. Conflicting Role of Assistant County Attorney at AHB Hearing.

During argument presented to this Board, and in our review of the recording in this case, this Board discovered that the AHB permits and encourages, the ACA to act in several conflicting capacities during AHB hearings. While we view the ACA's role as conducting the direct

examination of the Complainants on behalf of Baltimore County citizens, he/she has apparently been permitted by the AHB to act in an adjudicatory role during and after the hearing. If the ACA's job at an AHB hearing is to act as legal counsel to the AHB, then he/she should provide advice when requested by the AHB. On the other hand, if the ACA's job at an AHB hearing is to act as an attorney for the County through direct examination of County witnesses, then he/she should act accordingly. An ACA cannot do both simultaneously because, as seen here, this obvious conflict of interest caused repeated due process violations, warranting our decision to reverse the AHB's Findings and Decision and explained herein below.

In this case, the record reflects that, during this hearing, the ACA, with the encouragement of the AHB, acted in several conflicting roles: ruled on whether evidence would be admitted; ruled on whether the AHB should take judicial notice regarding an issue; ruled on whether Mr. Baldwin could cross examine a County witness; instructed Mr. Baldwin that he was not permitted to object to questions asked by the ACA; ruled on the objections raised by Mr. Baldwin as to questions asked by that same ACA; interjected questions and comments during Mr. Baldwin's cross examination of both Rangers and during Mr. Baldwin's presentation of his own case; demanded proffers from Mr. Baldwin regarding his legal arguments; acted as a fact finder; was present during AHB closed deliberations of this case; and wrote the AHB Decision.

We have found no authority (and none was provided at the hearing before this Board) as to the authority of ACA to do anything other than act as an attorney for Baltimore County by conducting direct examination of County witnesses; offering documents/photos as evidence in support of the County's case; conducting cross examination of Respondent's witnesses; and conducting a rebuttal case, if any. From the beginning of this case until the end, the recording here is replete with examples that the ACA acted simultaneously as both judge and attorney.

To the contrary, under BCC, §3-3-405(b)(3), the AHB has a statutory duty to: "Hear and decide all contested civil cases and all cases referred by the Health Officer concerning the enforcement of Article 12 of the Code." Further, under BCC, §12-1-110(e), the AHB is charged with conducting a "requested hearing and, guided by rules adopted by the [AHB], shall make findings of fact and conclusions of law."

Allowing an ACA to make rulings during an AHB hearing is an unlawful transfer of statutory authority entrusted to the AHB in BCC, Titles 3 and 12. Even if the AHB could transfer such authority, the ACA has an inherent conflict in acting as both judge and attorney at the same time. While we can appreciate that the AHB may be comprised of non-attorneys and that they are entirely volunteers (*i.e.* BCC, §3-3-404(c)), in this case, this obvious conflict resulted in a fundamental lack of fairness, lack of civil procedure, and lack of due process with an outcome that was predetermined by the AHB.

As to the ACA's role as a "fact finder" and judge, when Mr. Baldwin questioned the ACA's multiple conflicting roles, the Chairman unequivocally stated that the ACA "was doing what he always does here, acting as a fact finder". [Rec. 10:19:39-10:19:49]. To this point, the ACA responded that he "was only counsel". [Rec. 10:19:48]. Yet, this response contradicted the ACA's previous statement that "We'll review your case when we make our deliberations and determine whether it has any merit". [Rec.10:19:21].

2. Lack of Civil Procedure, Due Process and Fairness.

During this hearing, the pattern of conduct by the ACA set forth above was entirely supported by the AHB. As a result, Mr. Baldwin was prevented from presenting his case and from cross examining witnesses. Given the alleged location of Scout was in and/or around Lake Roland, and its proximity to the Baltimore City line, Mr. Baldwin logically attempted to cross examine

Rangers Kadow and Wood regarding their statutory authority to issue the citations on land he believed was owned by Baltimore City. AHB Rule 4a requires the AHB to receive all relevant evidence. Whether or not the AHB would ultimately agree with the merits of Mr. Baldwin's position, he should have been permitted to present evidence on this relevant issue.

Toward this end, Mr. Baldwin asked Ranger Wood whether he was a sworn officer, and when he was designated with the authority to issue citation on land which Mr. Baldwin alleged was owned by Baltimore City. [Rec.9:48:04]. The ACA interrupted this line of questioning and testified for Ranger Wood by repeating what he recalled Ranger Wood's direct testimony to be, and then demanding a proffer from Mr. Baldwin as to his legal theories [Rec. 9:46:21], only to then "rule" that the Ranger could not testify regarding questions about legal jurisdiction. [Rec. 9:52:13].

While Mr. Baldwin was in the process of his cross examination and contrary to the prior "ruling", the ACA then proceeded to ask Ranger Wood, through a series of leading questions, whether Scout was observed within the jurisdiction and/or geographic boundaries of Baltimore County. [Rec. 9:54:42]. When Mr. Baldwin objected on the basis that he was not permitted to ask jurisdictional questions, the ACA and the Chairman instructed that Mr. Baldwin was prohibited from objecting to any questions asked by the ACA:

> County Attorney: You can't object to my questions. You cannot object. This is a fact finding operation.
>
> Chair AHB: You can not object to our counselor asking questions.
>
> Mr. Baldwin: I absolutely can object. It is his burden to establish a prima facie case.

[Rec. 9:45:44].

At another point in the proceeding when the ACA interrupts Mr. Baldwin's direct testimony to make legal arguments, the Chair instructs Mr. Baldwin not to interrupt the ACA when he is answering. [Rec. 10:38:20-10:38:30]. Under the AHB Rules and in accordance with basic due process rights afforded in an administrative proceeding, both parties have the right to raise objections to questions asked. For the ACA and Chair to state that Mr. Baldwin is powerless to object is egregious.

On the issue of jurisdictional/geographic boundaries of Baltimore County/Baltimore City line, which the ACA had previously ruled was not relevant because the Rangers were not "experts" [Rec. 9:55:03; 9:55:28], the ACA, over the objection of Mr. Baldwin, asked Ranger Kadow leading questions as to whether Baltimore County paved Lakeside Drive and whether it was a Baltimore County public right-of-way. [Rec. 10:03.27-10:03:41].

These questions are not only procedurally out-of-turn and provided obvious answers to Ranger Kadow, but are far beyond asking a park ranger whether he/she is a sworn officer, or the date when he/she was designated with the authority to issue dog citations. Not only did the ACA previously rule that the scope of such questions were beyond the knowledge of either Ranger, but there was no foundation laid for Ranger Kadow's knowledge about Baltimore County's paving operation or her knowledge of whether Lakeside Drive was a legally designated public right-of-way. This line of questioning was highly prejudicial to Mr. Baldwin.

On the jurisdictional issue, the record also reveals that the ACA then instructed the AHB to take "judicial notice" that the Rangers are authorized to issue citations in Lake Roland and in a Baltimore County right-of-way". [Rec.10:27:57-10:28:40; 10:28:42-10:28:53]. Mr. Baldwin then responded to this ruling by asking where the authority to issue citations is promulgated. [Rec. 10:28:40; 10:28:52]. To this, the ACA ruled that there was no citation but rather "it will be judicial

notice of a fact and if Mr. Baldwin does not like that ruling then he can appeal". [Rec. 10:28:55-10:29:08].

If judicial notice is to be invoked regarding an issue in a contested, administrative hearing, then it must be correctly applied. It cannot credibly be asserted, on the one hand, that the MD Rules of Evidence do not apply to administrative proceedings while at the same time invoking a Rule of Evidence. MD Rule 5-201(b) explains that the kind of facts subject to judicial notice:

> ..... must be ones "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

The jurisdictional authority of park rangers to issue Baltimore County citations on property owned by Baltimore City was being raised by Mr. Baldwin. It was a contested issue which was neither generally known, nor capable of accurate and ready determination during the course of the AHB hearing. Accordingly, for the ACA to make a "ruling" that judicial notice applied and then to subsequently ask the AHB whether the AHB members agreed, is an error of law and highlights why an ACA cannot simultaneously act as both attorney and judge.

The recording further reflects that Ranger Kadow was permitted to testify as to "her concern" about the dog being at-large. When Mr. Baldwin objected on the basis of relevancy, the ACA ruled, that Ranger Kadow's motivations for issuing a charging document were suitable and that she is allowed to state her concerns. [Rec. 10:02:43]. In addition, Ranger Kadow was permitted to testify (without being qualified as an expert in traffic engineering and without a factual foundation being laid) that there were skid marks in the roadway in April where Scout was allegedly seen. [Rec. 10:05:01].

We find that the personal concerns of Ranger Kadow to be irrelevant to the charge of whether Scout was at-large on specific dates. We further find that this was not harmless error in

admitting the testimony because the AHB's Findings and Decision identifies Ranger Kadow's concern: "Ranger Kadow testified that the first concern is the safety of "Scout," pointing out that his location on Lakeside Drive was near a curve in the road, and that he could be in danger of being hit by an inattentive drive on that road". (Decision, p. 2). As such, the Chair should have excluded such testimony and the failure to do so resulted in the AHB's reliance on immaterial evidence.

We further find that Ranger Kadow should not have been permitted to testify as to the alleged existence of marks on a roadway, as she was not qualified as an expert witness to render an opinion to whether skid marks existed, and if they did exist, to opine or suggest that such marks were caused by Scout standing in that location. At best, this testimony was speculation and prejudicial to Mr. Baldwin's case. The failure of the AHB to exclude such testimony was not the type of competent evidence.

While all this was going on at the hearing, Mr. Baldwin discovered that the Rangers had been testifying from four (4) Incident Reports which they had previously prepared, and which had already been admitted into evidence. (AHB Ex. 8). [Rec. 10:07:02]. However, such reports had never been provided to Mr. Baldwin either prior to or during the hearing. When Mr. Baldwin raised this issue, the ACA "ruled" incredibly that: "internal reports are admissible when presented with the charging documents". [Rec. 10:07:21]. Mr. Baldwin then asked for a recess to review the Incident Reports to which the Chair ruled that no recess would be granted and that Mr. Baldwin had to stand at the trial table and read them. [Rec. 10:08:10; 10:08;17]. This denial is contrary to AHB Rule 2.

Mr. Baldwin stated for the record that there was no notice of the Incident Reports provided to him and that the Reports should not be part of the record. [Rec. 10:16:32]. To this, the ACA

ruled that Incident Reports were fill-in-the-blank and not complex so therefore Mr. Baldwin should be able to read them at the hearing. [Rec. 10:16:52-10:17:21].

While Mr. Baldwin was attempting to read the Incident Reports in compliance with the Chair's instruction, Ranger Kadow asked, and the Chair permitted her to continue to testify in regard to a *prior citation* issued for Scout on February 5, 2017 (Citation No.: P01568) written by Ranger Markowitz, which had already been paid, and which was not at issue in this case. [Rec. 10:09:10]. Rule 6b states that: "The [AHB] will hear no charges that have not been presented to the Respondent prior to the hearing". When Mr. Baldwin objected that the prior paid charge was not at issue [Rec. 10:09:56-10:11:18], the ACA "ruled", inexplicably, that the payment of ticket "is an admission of culpability". [Rec. 10:10:49]. The Chair simply agreed with the ACA. [Rec.10:11:23].

The ACA's "ruling" is incorrect as a matter of law. Not only is there no admission of liability in the payment of a ticket, but allowing this testimony was an express violation of AHB Rule 6b. *Briggeman v. Albert*, 322 Md. 133 (1991) (the action of mailing the check is equivalent to plea of "no contest," which is also not admissible in a subsequent civil action). Under the holding in *Briggeman*, paying a traffic ticket does not necessarily mean that the driver admits guilt; it may have been more costly for the driver to fight the ticket than to pay it. There are many reasons a person may pay a citation even though he/she disagrees with its merits, especially if it would be more costly in terms of time away from work to fight a citation in court than to just pay it. In fact, if he/she goes to court and denies the charge and loses at trial, that is also not admissible. *See Aetna Casualty & Surety Co. v. Kuhl* , 296 Md. 446, 450 (1983); *Brooks v. Daley*, 242 Md. 185, 196 (1966). *See also Eagan v. Calhoun,* 347 Md. 72, 86 (1997).

The law notwithstanding, the AHB's Findings and Decision references this *prior* paid citation as follows: "As "Scout" was the subject of a prior at-large citation in February, 2017 (#P01568) the fine assessed was One Hundred and Fifty Dollars ($150.00)". (Decision, p. 1). By doing so, the AHB incorrectly relied upon the prior citation in rendering its Decision.

At this point in the hearing, although Mr. Baldwin still had not completed the reading of the Incident Reports, and objected to their inclusion in the record, was repeatedly denied the opportunity for a recess, the record reveals that Mr. Baldwin was compelled to not only read but to simultaneously object to testimony concerning charges unrelated to the ones at issue. Both the ACA and Chairman are heard on the recording instructing Mr. Baldwin to finish his cross examination. In the words of the Chairman: "Let's get it done. You are wasting time now". [Rec. 10:11:48-10:12:25; 10:12:26-10:12:38; 10:12:34]. Mr. Baldwin responded that he was reading the Incident Reports which were never provided. [Rec. 10:12:26].

With regard to the Incident Reports, the copies submitted into evidence were neither signed nor sworn under oath. AHB Rule 4a requires that any statement submitted must be notarized. The Incident Reports contained the identities of other witnesses who were not present at the AHB hearing and also contain multiple hearsay references. Additionally, there are multiple copies of the reports in the file which contain differences between them. [Ex. 8A and 8B]. There were also inconsistencies between the Reports and the live testimony of the Park Rangers. Because Mr. Baldwin was not provided the reports until he asked for the same during the AHB hearing, he was denied the opportunity to thoroughly read them and cross examine the Park Rangers about the inconsistencies.

In addition, the photographs attached to the Incident Reports are illegible, black and white paper copies of photographs. It is unclear what is represented in those photos and as reflected in

the recording, Mrs. Baldwin could not positively identify Scout in at least one of the photos. [Rec. 10:46:05; 10:46:16]. In response to the ACA's question, Ranger Wood admitted that "it was hard to tell" whether Scout was in the photo. [Rec. 9:44:17]. Moreover, the AHB clearly relied upon the information contained in the Incident Reports because the Statement of Facts in the AHB's Findings and Decision refers to and repeats the facts alleged in the Incident Reports.

Before Mr. Baldwin had finished cross examination, or had finished reading the Incident Reports, the ACA interrupted Mr. Baldwin's cross examination by reading into the record the definition of "Animal at Large" from BCC and then immediately commented that, in his view, Mr. Baldwin's *mens rea* argument as supported by the case of *Slack v Villari*, 59 Md. App. 462 (1983) (which Mr. Baldwin was required by the ACA to proffer) was not, in the ACA's reading of the BCC, a requirement found therein. [Rec. 10:17:22]. Having done so, the ACA was instructing the Rangers how to answer cross examination questions and was also making legal arguments to the AHB. As a result, Mr. Baldwin was then forced to respond, rather than read the Reports. The Chair should have instructed the ACA to make this legal analysis and argument in Closing. To the detriment of Mr. Baldwin, there was no direction by the Chairman as to the correct course of procedure pursuant to AHB Rule 6A.

But yet, we note that the Chair instructed Mr. Baldwin that when he presented his case he was required to first testify himself prior to calling another witness to testify. [Rec. 10:29:50-10:30:01; 10:33:23]. The AHB Rules do not require that a Respondent testify prior to calling a witness. In fact, AHB Rules 6c and 6d state that "parties may present their own case". In any contested hearing, a party may present witnesses in the order which he/she deems appropriate or necessary to support their case, to lay foundations or as is necessary to make closing arguments.

In this case, we further note that the ACA was not similarly instructed as to order of witnesses. This ruling by the Chair was arbitrary and capricious and is another violation of due process.

During cross examination of Ranger Kadow as to her authority to issue dog citations, George Klunk of the Department of Animal Services, without being asked to do so, interjects and identifies himself, and then precedes to answer the question directed to Ranger Kadow replying: "Health Officer or his designee." [Rec. 10:21:36]. We also heard on the recording further interruptions by the ACA during the cross examination of Ranger Kadow. When Mr. Baldwin was asking Ranger Kadow the date when she was designated by the Health Officer, and what training she received, the Chair testified for her by asking Mr. Baldwin whether he: "understood what Mr. George Klunk said?" [Rec. 10:22:30].

Additionally, during cross examination when Mr. Baldwin asked Ranger Kadow if there exists a document showing her authority to issue citations and Ranger Kadow responded that she believed her supervisor has an email, but that she did not know how to answer that question [Rec. 10:25:00-10:25:11], the ACA then interjected a leading question as to whether Ranger Kadow is authorized to issue citations. [Rec. 10:25:13]. Ranger Kadow responded with one word "Absolutely." [Rec. 10:25:17]. The ACA then immediately asked: "Where did you acquire the foreknowledge that you were authorized to issue citations?" [Rec. 10:25:18]. Ranger Kadow was permitted to respond that she received her authorization for her supervisor Shannon Davis who received authorization from April [Naill]. [Rec. 10:25:23].

In review of the record as a whole, we find there was not substantial evidence to support the AHB Findings and Decision because the basic rules of civil procedure, due process and fairness should be afforded to Mr. Baldwin in the same way that they were afforded to the ACA.

Procedural due process requires agencies to "observe basic rules of fairness as to the parties

appearing before them. "[T]he requirements of procedural due process as guaranteed by the Fourteenth Amendment to the Constitution and Article 24 of the Maryland Declaration of Rights apply to an administrative agency exercising judicial or quasi-judicial functions." *Travers v. Baltimore Police Dep't*, 115 Md. App. 395, 407 (1997). Although the procedures for an administrative hearing need not be "as formal and strict" as in a judicial hearing, *Prince George's Cty. v. Harley*, 150 Md. App. 581, 595 (2003), an administrative agency must "'observe the basic rules of fairness as to parties appearing before them.'" *Kade v. Charles H. Hickey School*, 80 Md. App. 721, 726 (1989) (quoting *Dal Maso v. Bd. of Co. Comm'rs*, 238 Md. 333, 337 (1965)). This includes affording a "reasonable right of cross-examination" to the parties when the agency is called upon to "decide disputed adjudicative facts based upon evidence produced and a record made." *Hyson v. Montgomery Cty.*, 242 Md. 55, 67 (1966).

The Court of Appeals has repeatedly stated that procedural due process in an administrative hearing requires that the agency performing an adjudicatory function observe the basic principles of fairness. *Coleman v. Anne Arundel Police Department,* 369 Md. 108, 142, 797 A.2d 770 (2002); *Gigeous v. E. Corr. Inst.,* 363 Md. 481, 509, 769 A.2d 912 (2001); *Regan v. State Bd. of Chiropractic Exam'rs,* 355 Md. 397, 408, 735 A.2d 991 (1999); *Maryland State Police v. Zeigler,* 330 Md. 540, 559, 625 A.2d 914 (1993).

The Court of Appeals in *Sewell v. Norris*, 148 Md. App. 122, 811 A.2d 349, 357 (2002) has stated that in an administrative proceeding: "[d]ue process ... is not a rigid concept.... `[it] is flexible and calls only for such procedural protections as the particular situation demands.'" *Roberts v. Total Health Care, Inc.,* 349 Md. 499, 509, 709 A.2d 142, 147 (1998) (quoting *Dep't of Transp. v. Armacost,* 299 Md. 392, 416, 474 A.2d 191, 203 (1984)). We explained that "in determining what process is due, the Court will balance the private and government interests

affected." *Id.* (internal quotation marks omitted) (citation omitted). In this regard, we apply the following balancing test developed by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. at 903, 47 L.Ed.2d 18 [(1976)], to assist us in our endeavor:

> Identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In the instant case, the AHB failed to meet this bar and deprived Mr. Baldwin of due process of law and committed errors of law in the rulings made by both the Chair and ACA. The ACA was permitted to ask uninterrupted questions of the witnesses and Mr. Baldwin should have been allowed the same opportunity.

3. Violations of Sworn Oath by County Witnesses.

Mr. Baldwin argued in his Petition on Appeal that after Ranger Wood and Kadow had been sworn in as witnesses and testified, the recording reveals that they were coaching each other prior to answering questions. In our review of the transcript, we agree with Mr. Baldwin that coaching occurred between the Rangers during the hearing as follows:

> (a) During cross examination, when Mr. Baldwin asked Park Ranger Wood whether any of Scout's owners allowed the dog to roam at-large, Ranger Wood initially responded that he had multiple conversations with the owners of Scout, but that he could not remember the name of the owner to whom he spoke. [Rec. 9:53:13]. Park Ranger Kadow is heard on the record whispering the answer to him: "Mary Baldwin". [Rec. 9:53:18]. Ranger Wood then immediately blurted out that the owner he spoke with was "Mary Baldwin". [Rec. 9:53:19]. The AHB Findings and Decision referred to this coached answer in repeating that Ranger Wood had "been in frequent contact with Mrs. Mary Baldwin..." (Decision p. 2).

(b) Notwithstanding his "ruling" that the geography/jurisdictional issue would not be an issue, when the ACA goes back to ask questions on this subject, he asks Ranger Wood whether he spotted Scout in the "jurisdiction of Baltimore County or Baltimore City" [Rec. 9:54:25], Ranger Wood hesitates, and then Ranger Kadow is heard whispering to Ranger Wood the answer: "Baltimore County". [Rec. 9:54:36]. Ranger Wood then responds that he saw Scout within the jurisdiction of Baltimore County. [Rec. 9:54:39].

(c) During cross examination of Ranger Wood wherein Mr. Baldwin asks about documents, Ranger Kadow is heard on the record whispering "It's Lakeside Drive." Ranger Wood then responds that "It's Lakeside Drive." [Rec. 9:57:11-9:57:40].

(d) During the cross examination by Mr. Baldwin of Ranger Kadow in which the ACA read the definition of animal-at-large from the BCC and commented about the *mens rea* argument, Ranger Wood is heard on the recording telling Ranger Kadow to "mention that there is a sign posted in the park that dogs must be leashed." [Rec. 10:19:20-10:19:25].

(e) During cross examination of Ranger Wood, when asked whether a photo of Scout depicts the dog at the Baltimore City Aquaduct, Ranger Kadow prompted Ranger Wood that that was where the photo had been taken. [Rec. 9:57:46; 9:58:02].

(f) In response to a question from Mr. Baldwin as to whether she has had any training to issue citations, Ranger Wood whispered to Ranger Kadow to "Just say yes". Ranger Kadow responded that she did receive training. [Rec.10:20:19-10:20:52].

(g) While Ranger Kadow was testifying, Ranger Wood asks Ranger Kadow whether AHB is familiar with the blank citation which has the code citations on the back. [Rec. 10:08:28].

(h) When Mr. Baldwin was testifying on direct in his case, in anticipation of questions from Mr. Baldwin, Ranger Wood asks Ranger Kadow whether the citation was under oath and she responds that she thought it was. [Rec. 10:34:08-10:34:15].

(i) When Mr. Baldwin was testifying on direct in his case, in anticipation of questions from Mr. Baldwin, Ranger Wood whispers to Ranger Kadow that they "are sworn officers and take an oath as park rangers". Ranger Kadow whispers and asks him: "What's

> that?" [Rec. 10:39:35-10:39:41]. Ranger Wood repeats what he said to her.
>
> (j) When the Chair asked Ranger Wood the following question: "When was the last time you saw the dog on State property?" Ranger Kadow is heard whispering to Ranger Wood "on County property". Ranger Wood then answered that he saw the dog "on County property" as of April 23rd, the date when he wrote the last citation. [Rec. 10:51:21-10:51:34].
>
> (k) When Mary Baldwin is testifying as to the distance the dog remains outside her home when he returns, Ranger Kadow is heard telling Ranger Wood that she doesn't know what [Mary Baldwin] is talking about, she probably has picture of her dog on her property. [Rec. 10:44:22-10:44:33].
>
> (l) When Mary Baldwin is answering questions from the AHB, Ranger Kadow asks Ranger Wood when was the last time he saw the dog, Wood responds, that the last time would have been that date, 4/23. [Rec. 10:48:49-10:48:55].

If Mr. Baldwin had not obtained, and paid for a copy of the AHB recording to pursue his appeal, it would have remained undisclosed that sworn witness were coaching each other during the hearing. In its Decision, the AHB relied upon these violations in rendering the Decision. These violations infringe upon basic due process rights afforded to Mr. Baldwin in an administrative hearing.

4. Predisposition of AHB.

The recording further reveals that the AHB Chair and members made comments during and after the hearing which reflected a predisposition of the case before evidence was presented and arguments made. In addition to the conflict of the ACA in acting as both prosecutor and judge, and lack of due process as described above, what occurred during this hearing was as follows:

> (1) At the commencement of the case, Mr. Baldwin informed the AHB that his witness was in the restroom, the Chair responded that he would not call another case and stated: "I'll give her another minute before we call your case". [Rec. 9:37:18-9:37:30].

(2) When Mr. Baldwin asks Ranger Kadow on cross examination if there exists a written designation by the Health Officer of Ranger Kadow's authority to issue dog citations, she did not know how to answer. Instead, the Chair answered for Ranger Kadow that such information would be in her personnel file and that she would have to review it. [Rec. 10:23:50-10:24:39]. Mr. Baldwin responded that he was not asking for her personnel file but whether she received a document designating such authority. [Rec. 10:23:56-10:24:16].

(3) When the ACA ruled that judicial notice would apply and that Mr. Baldwin could appeal if he did not like that ruling, Mr. Baldwin noted for the record that George Klunk from Animal Services Division nodded his head in answer to a question. Mr. Klunk responded that he was looking at another case because this one was taking longer than expected. To that the Chair stated that the AHB Rules only allow for a 1-hour case and that Mr. Baldwin had consumed 1-hour. [Rec. 10:29:10-10:29:38].

(4) When the ACA instructs the AHB to take judicial notice of the Ranger's authority to issue citations on Lake Roland and in a Baltimore County right-of-way and Mr. Baldwin asks where the "judicial presumption is promulgated?", an AHB member is heard commenting: "My God, this guy is too much". [Rec. 10:28:40-10:28:45].

(5) During the ACA's judicial notice ruling, an AHB member is heard telling the Chair, "Ask him if he objects. If he objects, just overrule the objection." [Rec. 10:28:55-10:29:01].

(6) When Mr. Baldwin was presenting his legal arguments on direct, an AHB member is heard having said two (2) times: "Just let him ramble." [Rec. 10:34:22-10:34:27].

(7) When Mr. Baldwin asks if he can address the facts of the case, an AHB member described the hearing as: "An hour and 10 minutes of legal jargon." [Rec. 10:41:2310:41:32].

(8) After the hearing was concluded, an AHB member is heard saying: "That was an hour and one-half of our life that we will never get back". [Rec. 10:53:43].

Contrary to the Chair's recitation of the AHB Rules, AHB Rule 2 actually permits the AHB to recess and reconvene a case that cannot be concluded within 1-hour:

> 2. The Animal Hearing Board will make every effort to limit hearing sessions to one (1) hour (one-half (1/2) hour each side). Should it be evidence to the Board that the parties' presentation cannot be concluded in approximately one (1) hour, the session may be recessed and reconvened.

This case contained issues that were admittedly not typical in AHB case. Consequently, the issues warranted a longer than normal hearing length. The recording reveals that the lack of procedure, interruptions by the ACA, improper rulings consumed the hour hearing time.

In our view, BCC, §3-3-405(b)(3) and §12-1-110(e) along with AHB Rules were designed to provide parties with a fair quasi-judicial hearing. Unfortunately, this record reflects a hostile hearing environment, in which the County witnesses were favored, in which the AHB did not want to entertain legal arguments by Mr. Baldwin and the AHB's comments reveal a predetermined outcome. For this reason, the AHB's Findings and Decision is arbitrary and capricious.

5. The Decision of the AHB.

During argument before the Board, we were informed that not only was the ACA the attorney and judge during the AHB hearing, but he was present during closed deliberations of the AHB when the case was decided. He also wrote the AHB's Findings and Decision. The ACA acknowledged his role in the closed deliberations in stating to Mr. Baldwin: "We'll review your case when we make our deliberations and determine whether it has any merit". [Rec. 10;19:21]. We can find no authority for the inclusion and participation of the ACA at closed deliberations of the AHB.

To the contrary, as we previously cited above under BCC, §3-3-405(b)(3), the AHB has a duty to: "Hear and decide all contested civil cases and all cases referred by the Health Officer concerning the enforcement of Article 12 of the Code" and under BCC, §12-1-110(e), the AHB is charged with making findings of fact and conclusions of law, not the ACA.

The authority cited in Titles 3 and 12 above, make clear that the AHB must decide, not only the facts based on the evidence received but, it must also reach legal conclusions. There is no exception in the BCC for laypersons who serve on the AHB to rely on the ACA's version of facts or interpretation of the law. As we previously stated, in this case, all of the AHB's statutory duties were unlawfully transferred to the ACA to the detriment of Mr. Baldwin. The AHB's dependence and deferral to the ACA to perform the adjudicatory functions assigned to the AHB was reaffirmed by the Chair's comments:

> (1) Chair told Mr. Baldwin that the ACA was "acting as he always does, as the fact finder." [Rec. 10:19:39-10:19:49].
>
> (2) Chair instructed Mr. Baldwin that "all legal arguments would be reviewed by counsel when he submits it." [Rec. 10:40:17-10:40:43].

Not only does the AHB's Findings and Decision rely on facts derived from a hearing devoid of due process, but attached to the Decision was a document entitled "License Agreement" between the Mayor and City Council of Baltimore and Baltimore County, Maryland dated December 16, 2009 as well as a multiple page exhibit entitled "Fixed Capital Record". The Decision relied upon and referenced the License Agreement in support of the finding by the AHB that the Rangers had the proper jurisdictional authority to issue the citations in this case.

As Mr. Baldwin highlighted at the hearing before this Board, that License Agreement was not presented as evidence at the AHB hearing and should never have been attached to, nor relied upon by the AHB in rendering the Decision. We agree and find that the inclusion of the License Agreement was a violation of AHB Rule 4b which reaffirms that only evidence "*offered and received by the [AHB] in any case, and not other evidence, shall be considered in the*

determination of the case." It is also a violation of BCC, §12-1-114(f) as the record of the AHB upon which this Board must review is limited to:

> (i) The recording of testimony presented to the Animal Hearing Board;
> (ii) All exhibits and other papers filed with the Animal Hearing Board; and
> (iii) The written findings of the Animal Hearing Board.

Accordingly, under BCC, §12-1-114(f), this Board may not consider the License Agreement as it is not part of the record. In addition, the inclusion of the License Agreement after the hearing underscores why *judicial notice* of the Rangers' jurisdictional authority to issue citations was not properly taken by the ACA at the AHB hearing. Clearly, if the License Agreement was not offered by the ACA at the AHB hearing, the authority of the Rangers to issue citations within City boundaries was not a generally known fact, nor could it have been readily determined without review of the License Agreement in comparison with Mr. Baldwin's evidence, as required MD Rule 5-201.

Moreover, as referenced above, the AHB's Findings and Decision relies upon facts derived from: (1) Incident Reports not provided to Mr. Baldwin and for which he had no opportunity to accurately examine or question; (2) illegible, black and white paper copies of photographs; (3) testimony of tainted County witnesses who violated their sworn oaths; and (4) a hearing of unlawful procedure including obvious conflicts of interest and violations of the AHB Rules. Because these deficits were part of the AHB Decision, it was not harmless error. As the Maryland appellate courts have held, when reviewing an agency's conclusion of law, we "may not pass upon for the first time issues not encompassed in the final decision of the administrative agency." *Cross v. Balt. City Police Dep't*, 213 Md. App. 294, 307 (2013). Indeed, "an appellate court will review

an adjudicatory agency decision solely on the grounds relied upon by the agency." *Dep't of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 123 (2001).

CONCLUSION

In reviewing the evidence and record as a whole, we find that the AHB's Findings and Decision shall be **REVERSED** as to all four (4) of the above referenced citations, and all associated fines shall be **DISMISSED** because the Decision: (1) exceeded the statutory authority of the AHB by the unlawful delegation of power to the ACA; (2) resulted from unlawful hearing procedure which were patently unfair to Mr. Baldwin's case as set forth above; (3) was affected by errors of law as described herein; (4) was unsupported by competent, material or substantial evidence in light of the entire record as submitted including the testimony of tainted witnesses; and (5) was arbitrary and capricious from its inception to the issuance of the Decision.

Finally, based on the record, it would be inconsistent with our findings to remand the case to the AHB.

ORDER

THEREFORE, IT IS THIS 16th day of March, 2018, by the Board of Appeals of Baltimore County, it is:

ORDERED, that the decision of the Animal Hearing Board dated November 7, 2017 regarding Citation Nos. P01527, P01528, P01532 and P00083 which charged that the dog at issue, "Scout" was an "Animal At Large" in violation of Baltimore County Code ("BCC"), §12-3-110 be, and it is hereby, **REVERSED,** and it is further,

ORDERED, that the total fine in the amount of $600.00 imposed as to Citation Nos. P01527, P01528, P01532 and P00083 be, and they are hereby, **DISMISSED**. No civil monetary penalty shall 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

Jason S. Garber, Chairman

Maureen E. Murphy

Andrew M. Belt

Board of Appeals of Baltimore County

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March 16, 2018

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RE: In the Matter of: *Rignal W. Baldwin, V*
Case No.: CBA-18-019

Dear Counsel:

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,

Sunny Cannington Hag

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Elizabeth Kadow, Park Ranger/Recreation and Parks
Jonathan Wood, Park Ranger/Recreation and Parks
Bernard J. Smith, Chairman / AHB
April Naill / Animal Control Division
Michael E. Field, County Attorney/Office of Law