

**IN THE MATTER OF:**

**David Blustein/Owner/Landlord  
1120 Ingleside Avenue  
Gwynn Oak, MD 21207**

**RE: Code Enforcement Citations**

**\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF**

**\* BALTIMORE COUNTY  
\*  
\* CASE NO. NOS: CBA-18-005  
\* and CBA-18-004**

\* \* \* \* \*

**OPINION**

This case comes before the Baltimore County Board of Appeals as a record appeal of Administrative Law Judge, Lawrence Stahl's ("ALJ Stahl") September 5, 2017 decision. In that decision, ALJ Stahl ordered the payment of a civil penalty of \$500.00 in which \$300.00 was suspended in Case No: CBA-18-005 arising out of a civil citation No: CC17108455 for violation of B.C.Z.R. §1B01.1D-Failure to remove open dump/junk yard and BCC §13-7-310(a) - Failure to remove all trash and debris from property. These citations were given for the alleged failure to remove dump/junk yard and all trash and debris from property, i.e. a couch located on the front porch of said property. In Case Number CBA-18-004, after a July, 27, 2017 hearing, ALJ Stahl ordered the payment of a civil penalty of \$150.00 for alleged violations under BCC §3-7-312: remove accumulations of debris, materials, etc. (failure to remove debris material from property/sofa and chair/interior furniture stored outside). The Board held a hearing on both of these matters on October 3, 2017. Property manager David Dressler appeared on behalf of the appellant. Marissa Merrick, Assistant County Attorney, appeared on behalf of Baltimore County.

**BACKGROUND**

As the case comes before the Board as a record appeal, the Board's review is based on the audio record of the hearing provided to the Board, documents entered at the hearing and the parties

oral arguments presented to the Board at the October 2, 2017 hearing. This review established that on May 31, 2017, as a result of a community sweep, the property in question was cited for violations of BCC §3-7-312; accumulation of debris materials, i.e. a sofa and chair on the front porch, and violation of BCC §13-4-201BD; the failure to keep lids on garbage cans. The compliant date of June 20, 2017 was given on this citation. A citation for violation of BCC §13-7-312 was issued on June 21, 2017 due to the landlord's failure to remove the couch and chair from the porch. A hearing was held on July 27, 2017 for CBA-18-004 on which a \$150.00 penalty was imposed. On July 12, 2017 a subsequent correction notice was issued regarding B.C.Z.R. §1B01.1D for failure to remove open dump/junk yard, and BCC §13-7-310(a) for failure to remove all trash and debris from property. Citation was then issued for violation of these statutes on July 28, 2017. And on September 5, 2017, Administrative Law Judge Stahl issued a civil penalty of \$500.00, of which \$300.00 was suspended, for violations of these statutes. During both hearings before ALJ Stahl, David Dressler, property manager for the property at issue, was present and testified on behalf of the landlord. It is Mr. Dressler's contention that the furniture at issue belongs to the tenants at the property who refuse to remove it. Mr. Dressler also notes that the furniture at issue is covered by a roof that is constructed over the front porch. While photographs were presented at the hearing showing the location of the furniture on the porch in question, there was no evidence presented before ALJ Stahl that the furniture in question had created any problems with rats or any other pet infestation.

## DISCUSSION

### A. 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 Dep’t of Soc. Servs. 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 law. *HNS Dev. LLC v. People’s Counsel*, 425 Md. 436, 449 (2012).

At issue in this matter is how we determine the difference between one man’s trash and one man’s treasure. The items that have drawn the ire of Baltimore County Code Enforcement are a sofa and chair placed on the exterior porch of the property of issue. Although it is clear from photographic evidence that this furniture was initially intended for indoor use, the Board has been presented with no statutory authority prohibiting such furniture to be used outside. Apparently, the furniture that has been placed on the porch is there for the use of the occupants and has not been

placed outside as garbage. The statutes on which the County bases the alleged violations are as follows:

**BCC §13-7-310. - GARBAGE; MANURE; ANIMAL AND BIRD FEED.**

- (a) *Dumping prohibited.* A person may not place, leave, dump, or allow to accumulate and garbage, rubbish, trash, or manure in improved or vacant building premises, or on any open lot or alley so that garbage, rubbish, trash, or manure may become food for rats or a rat harborage.

**BCC §13-7-301. - DEFINITIONS.**

- (i) *Rat harborage.*  
(1) “Rat harborage” means a condition that may construed a normal and ordinary rat habitat contusive to their multiplication and continued existence in, under or adjacent to a building.  
(2) “Rat harborage” includes burrows.  
(j) *Rat-proof.* “Rat-proof” means a building constructed in accordance with the provisions of the County Building Code to prevent the ingress of rats into the building from the exterior or from one building to another.  
(k) *Rodent.* “Rodent” includes rats and mice.

When reviewing these two code sections, it is impossible for this Board, and most definitely more difficult for the average citizen, to ascertain from the plain meaning of this language, that a couch and chair on a porch are a violation of either. This furniture, although originally indoor in use, is not per se prohibited by Code. Consequently, further evidence of rat or pest infestation would have to be presented to transform these items from utilized outdoor furniture to a prohibited dumped item of a rat harborage. The Board is careful to note that this distinction is one that can change quickly with the conditions present at the property at issue. Subsequent inspections that reveal rat harborage will cause the property to continue to be cited and such citations would likely be sustained in the future. The Board finds that the prior ALJ’s decision involving the citations at issue for both CBA-18-004 and CBA 18-005 are unsupported by competent, material, and substantial evidence in light of the entire record as submitted and are therefore reversed.

The appellant also argued that the owner of the property at issue had no control over the tenant's furniture and, therefore, should not be held responsible for the citations resulting from the tenants' furniture. While, the Board reverses the ALJ's finding for the reasons previously stated, in prior cases before this Board, we have made distinctions between the liability of owners and tenants for Code violations. BCC §13-4-202 states:

§13-4-202. – SAME – OCCUPANT AND OWNER RESPONSIBILITIES

a. *In general.*

(1) The occupant of a premises, whether the occupant is the owner or not, is responsible for the sanitary condition of the premises occupied.

(2) If a property is occupied by a tenant:

i) The tenant is responsible for the property assigned to the tenant; and

ii) The owner is responsible for the portions of the property not leased to the tenant.

The Code thus expressly provides for a division of responsibility for the sanitary condition of a property. Subsection 1 states that an occupant is responsible for a property's sanitary condition, regardless of whether the occupant is the owner of the property. Subsection 2 speaks directly to a property occupied by a tenant; it states that in a tenant-occupied property, "*the tenant is responsible* for the property assigned to the tenant." (emphasis added). While the Board will not address this distinction in this matter, a strong argument may exist that it is the tenant who may be the proper party to be cited for future violations on this property involving alleged dumping of garbage or rat infestation.

**ORDER**

**THEREFORE, IT IS THIS** 18<sup>th</sup> day of October, 2017

by the Board of Appeals of Baltimore County

**ORDERED** that the July 27, 2017 Order of the Administrative Law Judge in CBA-18-004 in connection with Civil Citation No: CS1700515 for violation under BCC 13-7-312: Remove Accumulations of debris, materials, etc., be and the same is hereby **REVERSED**; and it is further

**ORDERED** that the civil penalty of \$150.00 imposed by the Administrative Law Judge in connection with Civil Citation Number CS1700515, be and the same is hereby **DISMISSED**; and it is further

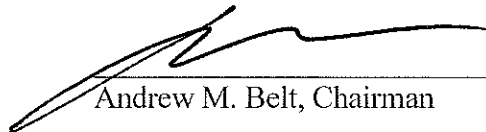
**ORDERED** that the September 5, 2017 Order of the Administrative Law Judge in CBA-18-005 in connection with Civil Citation No: CC17108455 for violation of BCZR BCZR 1B01.1D - Failure to remove open dump/junk yard and BCC 13-7-310(a) - Failure to remove all trash and debris from property, be and the same is hereby **REVERSED**; and it is further

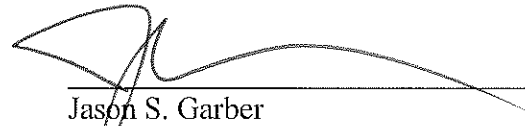
**ORDERED** that the civil penalty of \$500.00 imposed by the Administrative Law Judge in connection with Civil Citation Number CC17108455, be and the same is hereby **DISMISSED**.


In the matter of: David Blustein – Legal Owner  
Case No: CBA-18-004 and CBA-18-005

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**

  
\_\_\_\_\_  
Andrew M. Belt, Chairman

  
\_\_\_\_\_  
Jason S. Garber

  
\_\_\_\_\_  
James H. West



## Board of Appeals of Baltimore County

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October 18, 2017

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

David Dressler, Property Manager  
Phoenix Property Management  
36 Mallard Court  
Charles Town, West Virginia 25414

RE: *In the Matter of: David Blustein*  
Case No.: CBA-18-004 and CBA-18-005

Dear Ms. Merrick and Mr. Dressler:

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" followed by a stylized initial.

Krysundra "Sunny" Cannington  
Administrator

KLC/taz  
Enclosure  
Duplicate Original Cover Letter

c: David Blustein  
Lawrence M. Stahl, Managing Administrative Law Judge  
Lionel Van Dornmeleon, 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