

IN THE MATTER OF:  
TIMOTHY WAYNE COCKEY  
1013 Hook Road  
Westminster, MD 21157

RE: CODE INSPECTIONS & ENFORCEMENT  
VIOLATION/CIVIL CITATIONS

[Code Enforcement Citation  
No.: 17-C00675DZF]

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE No.: CBA-18-018

\* \* \* \* \*

### OPINION

The above captioned case comes before the Board of Appeals as a record appeal of Final Orders of the Code Enforcement Hearing Officer regarding violations under the Code of Baltimore County Regulations (COBAR), §1.01.01.30.B(1) and Code of Maryland Regulations (COMAR), §10.15.03.28(E)(1)(2), for failure to obtain a license for a food service facility. A civil penalty in the amount of \$7,500.00 was imposed.

A hearing on the record was held on April 19, 2018 before this Board during which the Respondent, Timothy Wayne Cockey (“Mr. Cockey”) was represented by Howard Miliman, Esquire. Assistant County Attorney, Marissa Merrick, represented Baltimore County.

### Factual Background

The ALJ heard testimony and received evidence from Cara Dunne, a Baltimore County Environmental Health Specialist, who issued a Code Enforcement citation to Mr. Cockey (Citation No.: 17-C00675DZF) for selling steamed crabs out of a truck and attached trailer, at the Winands/McDonogh Rd. location, on September 15, 2017. The testimony and photographs produced by Ms. Dunne indicated that Mr. Cockey was steaming and selling crabs along with Paul Albert Ziman (“Mr. Ziman”). Ms. Dunne verified through the State of Maryland Motor

Vehicle records that Mr. Cockey was the owner of both the truck and the trailer. (County Ex. 9).

Accordingly, Mr. Ziman was issued the same citation for the September 15, 2017 violation (Citation No.: 17-C00675DZFF) and Case No.: CBA 18-017 was assigned. The recording reveals that the ALJ ruled, over objection, that similar facts and circumstances warranted hearing the cases for Mr. Ziman and Mr. Cockey together. <sup>1</sup>

Ms. Dunne testified that on the evening of Friday, September 15, 2017, after receiving a complaint, she observed a truck and trailer parked along Winands Rd. She saw cars parked on both sides of the street and a line of 20-25 people alongside the truck. The truck had the word "CRABS" on it. Ms. Dunne stated that she recognized both Mr. Ziman and Mr. Cockey from the August 11, 2017 violation in which only Mr. Ziman was charged. When she approached, Mr. Ziman was on the truck selling crabs. He stated that he "was not doing anything wrong". She asked Mr. Ziman if he had a Baltimore County Food Service permit and he responded, "No." During this time she observed Mr. Cockey wearing oven mitts and standing next to a series of cooking pots from which steam was coming out. Ms. Dunne did not indicate whether she spoke with Mr. Cockey.

Ms. Dunne took photographs of the steam pot operation, the truck, the trailer and the license plate. (County Ex.3). Additionally, Ms. Dunne produced photographs of the August 11, 2017 violation in which Mr. Cockey was identified as the individual in the photographs operating the steam pots and is shown adding spice to one of the pots. (County Ex. 8).

On cross examination, Ms. Dunne admitted that previous complaints filed with Baltimore County related to selling crabs on a Friday, Saturday and/or Sunday and not for crab

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<sup>1</sup> A separate Opinion and Order as issued by this Board for Mr. Ziman in Case No.: CBA 18-017.

sales Monday through Thursdays. She further conceded that, in the 20-25 minutes she was there, she did not observe whether the crabs sold were live or steamed. She did not inspect any of the bags handed to the customers by Mr. Ziman or Mr. Cockey, nor did she attempt to purchase crabs.

Mr. Cockey did not testify before the ALJ. As of the date of the hearing before this Board, Counsel for the Respondent proffered that Mr. Cockey's application for the food service facility is in process with the County.

### **Decision**

In closing, Counsel for Mr. Cockey argued that the County failed to prove that any crabs (live or steamed) were sold on September 15, 2017. He contends that there was no evidence of the alleged violation on that date, other than the testimony of Ms. Dunne that she observed Mr. Ziman on the truck, and that Mr. Cockey was wearing oven mitts. The County sought a penalty of \$15,000.00. It was proffered in Closing that Mr. Cockey had a State of Maryland license to sell live crabs. Accordingly, it was Mr. Cockey's position that he was not in violation of the alleged offense and that no civil penalty should be assessed.

Weighing the evidence presented, the ALJ found that Mr. Cockey knew from the previous violation against Mr. Ziman on August 11, 2017, that he could not sell steamed crabs without a license; nevertheless, he took part in and continued to participate in that activity, at the same location, with Mr. Ziman. The ALJ found that the testimony of Ms. Dunne, along with the prior Order, photographs from both violations, customers waiting in a single line, the lack of signage identifying live versus steamed crabs for sale, and the lack of identification of two separate businesses that Mr. Cockey and Mr. Ziman maintained, was credible and convincing.

An appeal to this Board for a code violation is determined based on the record made before the ALJ. Section 3-6-303 (a) of the Baltimore County Code provides in pertinent part:

(a) Hearing on the record.

(1) (i) Except as provided in subsection (b) of this section, the Board of Appeals hearing shall be limited to the record created before the Hearing Officer, which shall include:

1. Except as provided in paragraph (2) of this subsection, the recording of the testimony presented to the Hearing Officer;
2. All exhibits and other papers filed with the Hearing Officer;  
and
3. The written findings and final order of the Hearing Officer.

(ii) If the violator requests a transcription of the recording, the violator shall pay the cost of the transcription...

All of the items delineated in § 3-6-303(a) are included in the record before the Board.

After hearing the argument on the record, this Board has the authority under BCC, §3-6-304 to do the following:

(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 Code Official, the Director, or the Hearing Officer:
  - (i) Exceeds the statutory authority or jurisdiction of the Code Official, the Director, or the Hearing Officer;
  - (ii) Results from an unlawful procedure;
  - (iii) Is affected by any other error of law;
  - (iv) Subject to subsection (b) of this section, 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 as an appellate Board, 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). The ALJ's fact-finding is based on substantial evidence if "supported by such evidence as a reasonable mind might accept as adequate to support a conclusion." *Kim v. Md. State Bd. of Physicians*, 196 Md. App. 362, 370 (2010), *aff'd*, 423 Md. 523 (2011) (quoting *People's Counsel v. Surina*, 400 Md. 662, 681 (2007)). "The [ALJ's] decision must be reviewed in the light most favorable to it; because it is the [ALJ's] province to resolve conflicting evidence and draw inferences from that evidence, its decision carries a presumption of correctness and validity." *State Bd. of Physicians v. Bernstein*, 167 Md. App. 714, 751 (2006). The Board does not make an independent evaluation of the facts "for to do so would require the Board to make credibility decisions without having heard the testimony." *Monkton Pres. Ass'n v. Gaylord Brooks Realty Corp.*, 107 Md. App. 573, 581, 669 A.2d 195, 199 (1996).

In the subject case, the ALJ had the opportunity to judge the credibility of the witnesses and found the County's witness, Ms. Dunne, to be credible. Mr. Cockey did not testify or present any evidence in his defense. Because we are hearing this case on the record, and not *de novo*, we are without authority to make an independent evaluation of the facts, and must defer to the ALJ's assessment of the witnesses' credibility. Here, the ALJ determined, and we find the record supports his decision, that the County met its burden of proof, by a preponderance of the evidence, that Mr. Cockey was involved in an unlicensed, crab steaming operation, even if such finding by the ALJ was based in part, on circumstantial evidence.

With regard to the fine imposed of \$7,500.00, we find this civil penalty to be arbitrary and capricious. The record indicates that the ALJ made an assumption that the violation continued for 37 days consecutively, between August 9, 2017 (although the first violation was actually on August 11, 2017) through and including the second violation on September 15,

2017. However, the record does not support this assumption. August 11, 2017 and September 15, 2017 were both Fridays. There was no evidence presented by the County, and Ms. Dunne admitted on cross examination, that she had no information that Mr. Cockey was in violation for each of those 37 days. The only violation before this Board is Friday, September 15, 2017.

Accordingly, we find the fine to be excessive and unsupported by the facts of this case. Pursuant to BCC, 3-6-304(a)(3)(v), we shall modify the fine and reduce it to Five Hundred Dollars (\$500.00) and suspend Two Hundred Fifty Dollars (\$250.00) to be consistent with the first civil penalty ordered to be paid by Mr. Ziman in Case No.: CBA-18-008.

**ORDER**

**THEREFORE, IT IS THIS** 3<sup>rd</sup> day of May, 2018, by the Board of Appeals of Baltimore County

**ORDERED** that the decision of the Administrative Law Judge dated November 28, 2017 finding that Timothy Wayne Cockey was in violation of COBAR, §1.01.01.30.B and COMAR §10.15.03.26(B-E) for operating a food service facility without a license, be, and the same is hereby **AFFIRMED**; and it is further,

**ORDERED**, that the civil penalty in the amount of \$7,500.00 be reduced to \$500.00 with \$250.00 suspended for the reasons set forth herein.

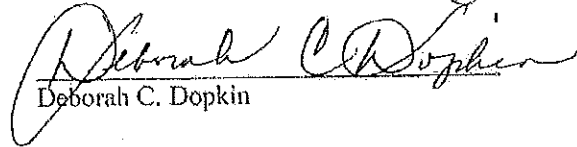
In the matter of: Timothy Cockey  
Case No: CBA-18-018

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



Deborah C. Dopkin

James H. West was a Board member at the time of the hearing of the Board. His term expired on April 30, 2018.



## Board of Appeals of Baltimore County

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May 3, 2018

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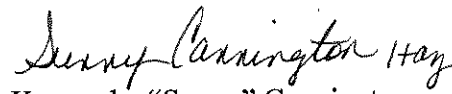
RE: *In the Matter of: Timothy Wayne Cockey*  
Case No.: CBA-18-018

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,

  
Krysundra "Sunny" Cannington  
Administrator

KLC/taz  
Enclosure  
Duplicate Original Cover Letter

c: Timothy Wayne Cockey  
Lawrence M. Stahl, Managing Administrative Law Judge  
Cara Dunne, Environmental Health Specialist/Department of Health  
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