

IN THE MATTER OF
CATHERINE GRASSO - APPELLANTa
8218 North Boundary Roada
Dundalk, MD 21222a

* BEFORE THEa
* BOARD OF APPEALSa
* OF
* BALTIMORE COUNTYa
* Case No.: CBA-18-014a

RE: Citation Nos. (1) E45939A --- License Require
(2)E45939B --- Animal At Largea *
(3)E45939C --- Dangerous Animala
AHD Case No. DD4430a *

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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”) in which the AHB upheld Citation E45939B (Animal At Large) and E45939C (Dangerous Animal). Citation E45939A (License Required) was dismissed by the AHB. The AHM dismissed the fines originally imposed, but ordered that the animal at issue, “Readi”, a female pit bull, become the property of Baltimore County and be humanely euthanized. No monetary penalties were imposed, but Ms. Grasso was required to pay the daily boarding fees of \$15.00 per day with a two month payment in advance.

A hearing before this Board was held on January 10, 2018. Ms. Grasso appeared *pro se* with her daughter, Heather Robinette. The County was represented by Jonny Akchin, Assistant County Attorney.

Background

On September 28, 2017, the complainant, Shannon Swayney, let her dog Bella out into her fenced yard. Readi was inside the adjoining Grasso home. Readi was at a window that overlooked the yard where Bella was. The two dogs were barking at each other. Readi knocked the screen out of the window and attacked Bella. The dogs began fighting. Ms. Swayney and Ms. Robinette unsuccessfully attempted to pull the dogs apart. Ms. Grasso came out and, with a garden

hose, squirted Readi until Readi released the other dog. Bella had substantial injuries, including lacerations on her head, eye, and ear. Ms. Grasso paid the vet expenses.

Readi had been the subject of two prior complaints. On or about September 14, 2013, Readi escaped from Ms. Grasso's yard and attacked a dog across the street at 4123 Beechwood Road. Readi bit three people in the course of being separated from the other dog. The police were called, but there was no other official action. The police report reflects Ms. Grasso as saying that she wanted to have Readi "put down".

On or about August 9, 2014, Readi jumped the fence at his own yard and bit a neighbor residing at 4124 Beechwood Road, in the hand. Again, the police were called and a report filed. On August 13, 2014, an Animal Control inspector visited Ms. Grasso and formally informed her of the complaint. A citation was issued to Ms. Grasso for having an unlicensed dog.

All of the above information was presented at the AHB hearing, held on November 7, 2017. In addition, Ms. Grasso testified that she and her daughter had moved, or were about to move, from the residence on North Boundary Road to another Baltimore County residence. This new residence apparently had a backyard which had high fences on three sides. The fourth side was the house itself. Ms. Grasso attempted to call a couple of witnesses, but the AHB, without explanation, refused to hear them.

As indicated above, following the hearing, the AHB upheld the citation for Animal At Large and upheld the citation for Dangerous Animal. The AHB did not impose any civil monetary penalty; it did order that Readi be impounded at the Baltimore County Animal shelter and be humanely euthanized.

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:
 - 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).

Decision

Based on the evidence presented at the AHB, this Board of Appeals unanimously affirms the AHB decision as to the two citations. The evidence regarding the attack, with which Ms. Grasso essentially agrees, justifies both citations.

While this Board affirms the decision from the AHB as to the citations, the Board has no alternative but to remand this case back to the AHB with respect to the order directing that Read be euthanized because the AHB's Findings and Decision fails to identify what evidence, if any, it used to justify this aspect of its Decision. While the AHB **also** did not identify the evidence it used to justify its findings on the two citations themselves, this Board easily finds that ". . . there is substantial evidence in the record as a whole to support the [AHB's] findings and conclusions." *Columbia Road Citizens' Ass'n v. Montgomery Cnty.*, *supra.* at 698. Indeed, the record evidence of the attack was largely uncontested. Accordingly, even though the AHB did not specify its findings on the merits, the AHB's conclusion that Read was an animal at large and a dangerous

animal can be, and is, justified by facts in the record which, as stated above, were essentially conceded. If there had been a serious challenge to those facts, however, we would have no choice but to reverse on those issues because, again, the AHB did not make explicit factual findings.

The question of the appropriate disposition of Readi, on the other hand, was the subject of debate. The record below illustrates that Ms. Grasso had moved to an arguably safer location. Moreover, the witnesses that the AHB imperiously refused to hear may have offered relevant evidence on the question of disposition. There is simply no explanation as to why euthanizing Readi was the required result. Maybe Ms. Grasso's new living arrangement can justify returning Readi to her, perhaps not.¹ **But if not, then the AHB needs to say why by pointing to facts in the record.** Without an explanation to justify the euthanizing of Readi, this Board cannot affirm that part of the AHB's decision at this time. And, the AHB should also not impatiently cut off the presentation of evidence and witnesses by the Respondent. The entire hearing barely lasted fifteen minutes. A few more minutes to enable a full presentation of evidence is hardly unreasonable.

This Board has consistently remanded these matters back to the AHB on the question of disposition because the AHB continually errs in this fashion. It is a core principle of due process that a determining body cannot simply make a pronouncement; it is required to explain its thought process openly in at least a rudimentary fashion so that a respondent specifically, and the public generally, understands why and how a governmental agency is reaching its conclusions. Due process equally demands that a tribunal cannot hear the witnesses for one party and then refuse without any justification to hear witnesses for the other party. This Board will keep reversing the

¹ If returned, Readi would be living with Ms. Grasso, Ms. Robinette, and Ms. Robinette's newborn child.

AHB as long as the AHB keeps failing to justify its conclusions and refusing to hear witnesses presented by respondents.

In the absence of an explanation regarding its finding on a contested point coupled with the apparent presence of other witnesses presumably on this point whose testimony was not received into evidence below, the best course of action is to remand this case for an evidentiary hearing on the sole issue of whether Readi should be euthanized. At that time, after a careful consideration of all the evidence, the AHB can issue a decision and state explicitly the facts upon which it has relied to reach that conclusion.

For these reasons, the Animal Board Hearing decision is AFFIRMED as to citation E45939B (Animal at Large) and citation E45939C (Dangerous Animal); and AFFIRMED as to the AHB decision to not impose a civil monetary penalty. The decision as to whether Readi should be euthanized or returned to Ms. Grasso is REMANDED for an evidentiary hearing on the sole issue of the propriety of euthanizing Readi, including a consideration of whatever protective measures Ms. Grasso can present.

ORDER

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

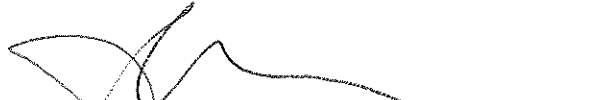
ORDERED that the decisions regarding Citations E45939B (Animal At Large) and E45939C (Dangerous Animal) are **AFFIRMED**. No civil monetary penalty was imposed, and that decision is also **AFFIRMED**; and

It is further **ORDERED** that this case be **REMANDED** for an evidentiary hearing on the sole issue of the propriety of euthanizing Readi, including a consideration of whatever protective measures Ms. Grasso can present.


In the matter of: Catherine Grasso
Case No: CBA-18-014

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



Deborah C. Dopkin



Joseph L. Evans



Board of Appeals of Baltimore County

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February 16, 2018

Jonny Akchin, Assistant County Attorney
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Catherine Grasso
8218 North Boundary Road
Baltimore, Maryland 21222

RE: In the Matter of: *Catherine Grasso*
Case No.: CBA-18-014

Dear Messrs. Akchin and Grasso:

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 Hay".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Shannon Lee Swayney
Bernard J. Smith, Chairman / AHB
April Naill / Animal Control Division
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law