

IN THE MATTER OF
TRAYANA N. THOMAS - APPELLANT
8931 Liberty Road, Apt. 1
Randallstown, MD 21133

RE: Citation Nos. (1) E45946A --Animal at Large
(2) E45946B -- Dangerous Animal

AHB Case No. DD4467

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA- 18-023

* * * * *

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 E45946A (Animal at Large) and E45946B (Dangerous Animal). The AHB ordered that the animal at issue, "Jazz", a female black Cane Corso, become the property of Baltimore County and be humanely euthanized. No monetary penalties were imposed, but the owner, Ms. Thomas was required to pay the daily boarding fees of \$15.00 per day for every day the case is under appeal.

A hearing before this Board was held on April 19, 2018. Ms. Thomas appeared *pro se*. The County was represented by Jonny Akchin, Assistant County Attorney.

Background

On the evening of December 28, 2017, the complainant, Myelle Anderson, let her dog Taylor out into her fenced yard. Reverend Herbert Thomas, Jr., Ms. Thomas' father, was walking Jazz when Jazz broke loose. Though there is some factual dispute whether Taylor escaped the yard or whether Jazz snatched Taylor out of the yard, the dogs began fighting. Reverend Thomas and Ms. Anderson unsuccessfully attempted to pull the dogs apart. Only after Reverend Thomas used a stick and an electronic leash and force was he able to get Jazz to release Taylor. It took between 15 and 30 minutes for the parties to separate the dogs. Taylor sustained substantial injuries, including lacerations on her throat. Taylor succumbed to her injuries three days after the incident.

Jazz had been the subject of many prior complaints, for barking, for running in the

neighborhood unattended, for fighting with other dogs, and for biting a neighbor's son, whose injuries required a trip to the hospital and stitches. Ms. Thomas appeared before the AHB in April, 2017, and stated that she would be relocating to Georgia in the near future. However, subsequent complaints about Jazz were filed in Baltimore County in June and July, 2017.

The AHB hearing concerning the December 28, 2017 incident was held on February 6, 2018. Ms. Anderson, Reverend Thomas and Ms. Thomas were permitted to testify at that time.

As indicated above, following the hearing, the AHB upheld the citation for Animal At Large and upheld the citation for Dangerous Animal. The AHB then turned to the question of Jazz's fate. In doing so, the AHB considered the question of euthanasia, first analyzing whether the owner, Ms. Thomas, properly understands the danger Jazz poses. It was clear from correspondence in connection with prior complaints and Ms. Thomas' testimony before the AHB, that she does not view her dog as a danger, despite multiple prior incidents, but complained that her neighbors had a problem with the Thomases. Ms. Thomas was not living with Jazz, and she did not propose a plan of action or restrictions on Jazz that would prevent the dog from attacking or injuring persons or animals in the future. Even after repeated complaints, no effective measures were taken or proffered by Ms. Thomas, or if any such measures were contemplated, they were clearly ineffective. She continued to be absent from the home where Jazz was staying. As this Board has seen in other cases, a pet suffers the consequences of its owner's failings.

After its analysis, the AHB determined that Jazz should be impounded and 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 citations. The evidence regarding the attack justifies both citations based on the findings of the AHB as stated in its minutes. 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. The AHB’s conclusion that Jazz was an animal at large and a dangerous animal can be, and is, justified by facts in the record.

The question of the appropriate disposition of Jazz was analyzed and considered by the AHB and is reflected in the AHB’s findings. The record below illustrates that Ms. Thomas had not taken responsibility for her pet, but allowed the dog to remain in a situation where Jazz was not effectively controlled. Ms. Thomas clearly does not understand the danger the dog presents.

For these reasons, the Animal Board Hearing decision is AFFIRMED as to citation E45946A (Animal at Large) and citation E45946B (Dangerous Animal) and AFFIRMED as to the AHB decision to not impose a civil monetary penalty. This Board further unanimously affirms the AHB’s disposition that Jazz shall become the property of Baltimore County Animal Services and be humanely euthanized.

ORDER


THEREFORE, IT IS THIS 15th day of May, 2018, by the Board of Appeals of Baltimore County, it is:

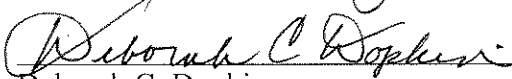
ORDERED that the decisions regarding Citations E45946A (Animal At Large), E45946B (Dangerous Animal) and that decision that Jazz become the property of Baltimore County Animal Services and be humanely euthanized are **AFFIRMED**. No civil monetary penalty was imposed, and that decision is also **AFFIRMED**.

In the matter of: Trayana Thomas
Case No: CBA-18-023

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 1, 2018

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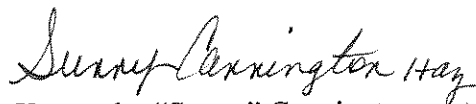
RE: In the Matter of: *Trayana Thomas*
Case No.: CBA-18-023

Dear Ms. Thomas and Mr. Akchin:

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: Myelle Anderson
Rev. Herbert Thomas, Jr.
Bernard J. Smith, Chairman / AHB
April Naill / Animal Control Division
Michael E. Field, County Attorney/Office of Law