



Board of Appeals of Baltimore County

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February 18, 2016

Jonny Akchin, Assistant County Attorney
Department of Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Rita Timmons
5 Strawbridge Court
Gwynn Oak, Maryland 21207

RE: *In the Matter of: Rita Timmons*
Case No.: CBA-16-019

Dear Mr. Akchin and Ms. Timmons:

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 Ham".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: 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

IN THE MATTER OF
RITA TIMMONS - APPELLANT
5 Strawbridge Court
Baltimore, MD 21207

RE: Citation Nos. E46736 – Cruelty (Prohibited Acts)
AHB Case No.: 4157

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA- 16-019

* * * * *

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 E46736 (Cruelty) and imposed a civil penalty of \$1,750.00.

A hearing before this Board was held on December 8, 2015. Ms. Timmons represented herself. The County was represented by Jonny Akchin, Assistant County Attorney.

Background

On April 30, 2015, Kayla Smith, Animal Services Officer (“Officer Smith”) issued a citation, (Citation No.: E46736) to Rita Timmons (the “Appellant”) who at the time of the alleged violation resided at 6719 Townbrook Drive, Apartment A, Baltimore, Maryland 21207 (the “Prior Residence”). Officer Smith claimed that the Appellant violated Section 12-3-103(b)(1) (Cruelty) of the Baltimore County Code (the “Code”) by confining a stray cat in a utility closet located next to the Prior Residence, 6721 Townbrook Drive, Baltimore, Maryland 21207. Officer Smith claimed that the Appellant’s confinement of the stray cat in the utility closet at 6721 Townbrook Drive caused it to die from dehydration and starvation. As a result, the Appellant was levied a fine in the amount of \$1,750.00, which was calculated by multiplying a fine of \$250.00 times the alleged number of days, February 17, 2015 through February 24, 2015, the stray cat was held in confinement. A hearing was held on July 21, 2015 (the “Hearing”) before the Baltimore County Animal Hearing Board (the “AHB”). Following the testimony of Officer Smith; Tom Scollins

(“Scollins”), Assistant Chief of Animal Services Division (“ASD”); Eileen Sturdavant (“Sturdavant”), dispatcher for Animal Services Division; and the Appellant, and introduction of certain exhibits, the AHB concluded that:

“it was more likely than not that the Appellant caused the cat to be trapped within the storage shed. However, regardless of whether Ms. Timmons personally trapped the cat, an action she vehemently denies taking, the Board finds that she was aware that the cat was present in her building, heard it make noises for approximately two weeks, and took no action to release it or to provide food or water.”

The AHB further concluded that:

“Section 12-3-103(b) is clear in its application to any person and prohibits cruel treatment of any animal. It [Section 12-3-103(b)] is not limited to owners cruelly treating their pets they own or even willingly harbor. The Board finds that the cruelty of animals need not be an affirmative act, such as beating or torturing an animal. The facts of this [the Appellant’s] case indicate that an intentional omission can rise to the level of cruel treatment given the levels of suffering involved with death by dehydration and starvation over the course of weeks.”

The AHB held that there was sufficient evidence to support the charge that the Appellant cruelly treated, or otherwise abused an animal in violation of Section 12-3-103(b)(1) of the Code and upheld the fine in the amount of \$1,750.00.

Facts

At the Hearing, Officer Smith testified that on March 10, 2015 she was assigned to visit the Prior Residence of the Appellant to investigate the whereabouts of a stray cat. She also testified that the telephone call about the stray cat was initiated by the Appellant. Upon her arrival at the Appellant’s Prior Residence, Officer Smith testified that she could not locate a stray cat in the utility closet at 6719 Townbrook Drive, Baltimore, Maryland 21207. However, upon further investigation, she saw the paws of a cat protruding from under the door of the utility closet located at 6721 Townbrook Drive. In an Inspection Detail Report dated March 10, 2015, Officer Smith wrote that she asked the dispatcher to call the Appellant to ask her to clarify when she allegedly confined the cat in the utility room. Officer Smith wrote in the report that she spoke with the

Appellant by telephone and confirmed that the Black and White cat found in the utility room was the “correct cat” and that the Appellant locked the utility room on February 17, 2015.

Without objection, Scollins testified that an autopsy report was prepared by Jodie A. Gerdin, DVM DACVP, who opined that the cat died from dehydration and starvation. Scollins testified, that according to the report, the estimated time of death of the cat was between the periods of February 24, 2015 through March 3, 2015. Without objection, Scollins testified that based upon the suspected date of confinement offered by the Appellant, February 17, 2015, a normal cat would have died sometime between February 24, 2015 and March 3, 2015.

In an Investigation Detail Report dated March 10, 2105 at 2:04 p.m., Sturdavant wrote that she spoke with the Appellant who allegedly stated that “her mother dropped off the cat on February 17TH for her to watch, when her mother’s cat got there a black and white cat kept coming up to her patio window and begging for food as she was feeding the [her mother’s] cat. She advised that the cat [was] alive outside this past Sunday. She advised that the door to the utility shed was left open so that she could run in and out.”

In an Investigation Report, dated March 10, 2015 at 10:28 a.m., in which the Appellant is identified as the Complainant, Sturdavant wrote that the *type of complaint* is a “strayed animal confined” and the *description* is “try to P/U a stray kitten inside the utility room. The door is unlocked, the Complainant is not home. The utility room is outside the apartment at Gwynn Oak Landing APTS (Bottom Floor).”

In an undated Affidavit of Complaint, which was not notarized, submitted by Sturdavant, she wrote that the Appellant told her that “she put the cat inside the utility room because it kept trying to get into her apartment. Sturdavant also wrote that the Appellant “stated that the Kitten had been in there for approximately 3 weeks. The first 2 weeks the cat meowed, but she did not feed it in the 3RD week there wasn’t any sound coming from the closet. In said affidavit, Sturdavant

also wrote that the Appellant stated that “she had a table in front of the closet, but the kitten could get out if it wants” and that someone kept locking the closet door and she stopped opening the utility closet. After there wasn’t any more sound she decided to call ACS.”

Sturdavant also testified at the Hearing. Sturdavant testified that on March 10, 2015, she spoke with the Appellant who told her that she had confined a stray cat because it was trying to get into her apartment. Sturdavant testified that Appellant said that she had put a table in front of the door to keep it cracked. Sturdavant testified that the Appellant said that she heard the cat make noises for two weeks but by the third week she did not hear any sounds.

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

At issue in this case is the alleged act of animal cruelty. The AHB concluded that the alleged act of animal cruelty is the confinement of a stray cat that died during its confinement due to dehydration and starvation. Section 12-3-103(b)(1) (Prohibited – Cruelty) of the Code states that a person may not "beat, cruelly treat, torment, overload, overwork, or otherwise abuse any animal." The Board agrees with the AHB that if one confines an animal and denies it food and water until it dies of starvation, it would be a violation of Section 12-3-103(b)(1) (Prohibited – Cruelty) of the Code. However, based upon the evidence and testimony presented at the Hearing, ACD has not shown that the Appellant actually confined the stray cat. The Board acknowledges

that the Appellant vehemently denies that she confined the stray cat that Officer Smith found in the utility room located at 6721 Townbrook Drive. Notwithstanding her denial, Sturdavant testified at the Hearing, wrote in the Investigation Report dated March 10, 2015 and averred in her Affidavit that the Appellant left the door of the utility door open such that the “kitten could get out if it wants”. She testified that the Appellant told her that she propped a table in front of the utility door to keep it cracked. Clearly, from the testimony and documents prepared by Sturdavant, there was no substantial evidence from which the AHB could conclude that the Appellant intended to confine the stray cat.

As a part of its reasoning to conclude that the Appellant violated Section 12-3-103(b)(1) (Prohibited – Cruelty) of the Code, AHB held that she was aware that the cat was present in her building, heard it make noises for approximately two weeks, and took no action to release it or to provide food or water. The facts show that the stray cat was not found in her building but the utility room of the apartment building next door. Additionally, the AHB appeared to impute a duty upon the Appellant to provide assistance to an animal that she knew or should have known needed help when she heard the stray cat making noises. Assuming, *arguendo*, that Appellant actually confined the animal and failed to provide it food and water, then she should be held responsible. However, there are no facts to suggest that she actually confined the stray cat. The Board can find no cases where the Appellant can be found in violation of Section 12-3-103(b)(1) (Prohibited – Cruelty) of the Code for failure to act as a “Good Samaritan.” There is no duty for an individual to come to the rescue of an animal, no matter its particular hardship.

Based on the evidence presented, we find that the decision by the AHB was arbitrary and capricious, not supported by substantial evidence, and/or premised on an erroneous application of the law. As such, the decision of the AHB is reversed.

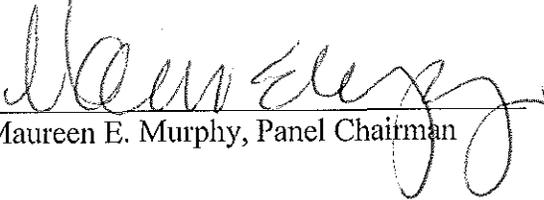
ORDER

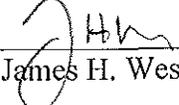
THEREFORE, IT IS THIS 18th day of February, 2016, by the County Board of Appeals of Baltimore County,

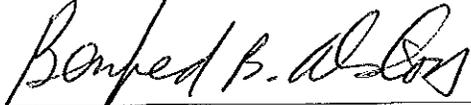
ORDERED that the decisions of Animal Hearing Board in the above captioned case, that Ms. Timmons committed an act of animal cruelty in violation of Section 12-3-103(b)(1) (Prohibited – Cruelty) of the Code be, and the same are hereby, **REVERSED**, as it is not supported by competent, material and substantial evidence in light of the entire record as submitted.

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


James H. West


Benfred B. Alston