

**IN THE MATTER OF
ANIMAL HEARING BOARD
CASE NO.: DD4016
VICTORIA MARIE LOCKLEAR
2446 Keyway
Baltimore, Maryland 21222**

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* **CBA-14-040**

* * * * *

OPINION

This matter comes before the Board as an appeal from the Baltimore County Animal Hearing Board's May 20, 2014 decision regarding, Victoria Locklear, of 2446 Keyway and her dog, "Diamond". On April 7, 2014, the Animal Services Division received a notarized Affidavit of Complaint from William Hellen, of 2605 Yorkway, stating that on April 1, 2014, Diamond climbed over the Respondent's fence and bit the Complainant on his right shin. As a result of the information contained in the affidavit, the Respondent was issued Citation E45125, and assessed fines totaling \$1,000.00 pursuant to Section 12-8-107 (Dangerous Animal) of the Baltimore County Code. At the hearing, the Baltimore County Animal Hearing Board found that, on the date in question, the Respondent's dog, Diamond, attacked or injured a person, exhibited aggressive or dangerous behavior, was not adequately confined or restrained, has been subject to confinement or restraint orders from the Animal Hearing Board and those orders have not been followed, and is a dangerous animal as defined under the Baltimore County Code § 12-8-102 (a) (1), (2), and (4) and consequently ordered that the dog be humanely euthanized. This decision is now appealed to this Board. A record appeal was heard before this Board on August 7, 2014. Ms. Locklear appeared pro se, with Milana Vayner appearing for the County.

DISCUSSION

Did the Animal hearing Board's Decision fail to Comply with State Gov't 10-213c which requires adjudicatory decisions to be supported by substantial evidence and comport with due process?

At the hearing Ms. Locklear raised the issue that the Complainant bite victim did not appear before the Animal Hearing Board and she was not afforded the right to confront and cross examine her accuser. Consequently, Ms. Locklear alleges that the Animal Hearing Board erroneously based its decision solely upon unreliable hearsay statements and therefore the decision is not supported by substantial evidence. The Animal Hearing Board contends that the Animal Services Division acted on behalf of the Complainant, and its decision was legally based on the Police report and the Affidavit of Complaint from the bite victim requested that the case proceed. The dog, "Diamond," a brown and white female pit bull, had already been declared a dangerous animal for a prior incident and was under confinement orders by the Animal Hearing Board. At the hearing before the Animal Hearing Board, Ms. Locklear was represented by legal counsel. She testified that the reason that the Complainant was not present for the hearing was because he did not want to pursue this case before the Hearing Board, and that his only concern was verifying that "Diamond" had been vaccinated against Rabies. Ms. Locklear further stated said that she was not at home at the time of the incident, but that the dog is always locked in the kennel whenever she is outside. She confirmed that everyone in the household is aware of the restrictions that had been ordered by the board.

Ms. Locklear's cousin, Joseph Lee, who also lives at 2446 Keyway, testified that he took the dog out and put her in the kennel, and then realized that he had forgotten the key to the kennel lock. He ran into the house to get it. When he came out, the dog was sitting down

waiting for him to let her inside, and that is when he saw the complainant. The complainant said that he wanted papers to show that the dog had a Rabies vaccination.

The Board agrees with Ms. Locklear that it is alarming that the fate of Ms. Locklear's dog is left to evidence deduced by hearsay statements and without the opportunity to confront and cross-examine the Complainant in this matter. However, there are certain circumstances in which County and State agencies allow for hearings which hearsay evidence is admitted. For instance, in Administrative Hearings regarding the privilege to drive, police reports are often the only evidence put forth in the case presented by the Motor Vehicle Administration.

In the case at bar, Baltimore County has deemed dog ownership a regulated privilege, not an absolute right and by statute has created the rules and regulation in which pet ownership is regulated. See BCC § 12-2-201. Additionally the Baltimore County Code has provided the following authority for enforcement.

BCC § 12-1-107. ENFORCEMENT.

Same – Specified authority. In the interests of public safety, health, and general welfare and to interpret, implement, and further the intent of this article, the Health Officer may adopt rules and regulations and create, prepare, and implement any procedures The Health Officer considers appropriate and necessary.

In the interest of the Public Welfare and safety, the privilege to own a dog a weighed against any danger to the public such an animal may create. The BCC defines a “dangerous” animal with the following:

BCC § 12-8-102 DANGEROUS ANIMALS.

- (a) In general. An animal poses a threat to the public health or safety if the animal:
- (1) Attacks or injures a person or a domestic animal;
 - (2) Exhibits aggressive or dangerous behavior and is not adequately confined or restrained;

- (3) Is known or suspected to be an animal exposed to rabies and is not adequately confined or restrained; or
- (4) Has been subject to confinement or restraint orders from the Health Officer or the Animal Hearing Board and those orders have not been followed.

BCC § 12-8-102(b) provides the following criteria regarding what evidence a Health Officer may use to make a dangerous animal determination.

(b) *Declaration.*

- (1) The Health Officer may declare an animal a dangerous animal if the animal poses a threat to the public health or safety.
- (2) The declaration shall be based on:
 - (i) Personal observation;
 - (ii) Observations of animal control officers;
 - (iii) The affidavits of individuals concerning the individual's personal experience with the animal;
 - (iv) Bite contact or non-bite contact reports made to the Baltimore County Police, the Health Officer, or the Animal Services Division;
 - (v) Animal control records; or
 - (vi) Other documented information.

As clearly provided for in BCC § 12-8-102, it is proper and permitted for a dangerous animal determination to be made without the actual hearing testimony of a Complainant. As stated above the evidence provided in the case at bar in the form of affidavits and the police report are clearly permissible and contemplated sources of evidence to sustain the Health Officer's finding.

The standard of review for the Board in matters from the Animal Hearing Board states as follows:

BCC § 12-1-114(f) *Hearing on the record.*

- (1) The hearing before the Board of Appeals shall be limited to the record created before the Animal Hearing Board, which shall include:
 - (i) The recording of the testimony presented to the Animal Hearing Board;
 - (ii) All exhibits and other papers filed with the Animal Hearing Board; and
 - (iii) The written findings of the Animal Hearing Board.
- (2) If the violator requests a transcription of the recording, the violator shall pay the cost of the transcription.

(g) *Decision of the Board.*

- (1) The Board of Appeals may:

- (i) Remand the case to the Animal Hearing Board;
- (ii) Affirm the decision of the Animal Hearing Board; or
- (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;

Therefore, this Board has determined that the decision of the Animal Hearing Board is supported by competent, material, and substantial evidence in light of the entire record as submitted and is not arbitrary or capricious.

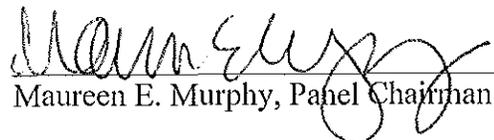
ORDER

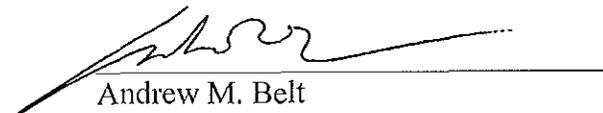
THEREFORE, IT IS THIS 30th day of October, 2014 by the Board of Appeals of Baltimore County

ORDERED that the decision of the Animal Hearing Board dated ~~November~~^{KC} May 20, 2014, upholding the violations herein discussed, is hereby **AFFIRMED**.

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
FOR BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Andrew M. Belt

Wayne R. Gioioso, Jr. was a Panel member on August 7, 2014. He resigned effective October 11, 2014.



Board of Appeals of Baltimore County

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October 30, 2014

Victoria Marie Locklear
202 Bayside Drive
Baltimore, Maryland 21222

Milana Vayner, Assistant County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, Maryland 21204

RE: *In the Matter of: Victoria Marie Locklear*
Case No.: CBA-14-040

Dear Ms. Locklear and Ms. Vayner:

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 Horn".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: William F. Hellen
Bernard J. Smith, Chairman/Animal Hearing Board
Thomas Scollins, Assistant Chief/Animal Control Division
April Naill/Animal Control
Nancy West, Assistant County Attorney
Michael E. Field, County Attorney