

IN THE MATTER OF:
SHIPPING PLACE II, LLC
1 Shipping Place
Baltimore, Maryland 21222

Re: Baltimore County Code Violation
Citation No: 132158

* BEFORE THE
* BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY
* CASE NO: CBA- 14-007

* * * * *

OPINION

This matter comes before the Board as an appeal from a Findings of Fact and Conclusion of Law issued by Administrative Laws Judge upholding the violations of BCC §13-7-305/306 for failure to cease rat infestation; BCC §13-7-310/312 for failure to remove junk, trash and debris, BCZR 1B01.D for failure to cease open dump; BCC §13-4-201 for failure to properly store trash; and BCC §13-7-112 for failure to remove graffiti and imposing a penalty of \$2,500.00 with all but \$250.00 suspended. A hearing on the record was held before this Board on August 28, 2013. A non-public deliberation was held on August 29, 2013. The Appellant appeared pro se, with David Lilley as its representative. Assistant County Attorney, Jonny Akchin appeared on behalf of Baltimore County. Phillip Mills, Baltimore County Code Enforcement Inspector was also present.

FACTS

This appeal involves a Baltimore County Code Enforcement & Inspection Citation issued on June 21, 2013 to the Appellant by Baltimore Code inspector, Phillip Mills. Testimony was received that the citation was sent to the Appellant by first class mail to the last known address listed in the Maryland Sate Tax Assessment files. The citation came as a result of a May 29, 2013 community sweep which led to the inspections of the Appellant's property

and which revealed the presence of rat holes, garbage on the ground near the dumpsters, graffiti as well as open dump conditions consisting of significant junk, trash and debris. Testimony was received that a Correction Notice was issued and a re-inspection took place on June 21, 2013 noting no change to the conditions on the site.

David Lilley testified on behalf of the Appellant and did not contest the conditions on the site, but rather explained that an employee at his office had received a Correction Notice from the County regarding another address that he does not own. He testified that his employee called the County and was told to disregard the notice. Mr. Lilley does not operate the business located at the property at issue in this case, and has since complied with the County's requirements regarding the condition of the property at 1 Shipping Place. Mr. Lilley, however, contends that he never received the Correction Notice and if he did, he would have rectified the problem. Mr. Lilley's agent was not present to testify at the hearing nor was he able to provide a name of the person in County with whom his employee spoke regarding the improperly addressed Correction Notice. Mr. Lilley also did not produce the improperly addressed notice itself.

DECISION

Appeals from Code Enforcement hearings are limited to the record created before the Hearing Officer. That record includes all exhibits and other papers filed with the ALJ/Hearing Officer, and the written findings and final order of the ALJ/Hearing Officer (Baltimore County Code Section §3-6-303). In deciding a code enforcement appeal, per Section 3-6-304, the Board of Appeals "may:

- (i) Remand the case to the Hearing Officer
- (ii) Affirm the final order of the Hearing Officer, or
- (iii) Reverse or modify the final order if a finding, conclusion, or decision of the Code

Official or Hearing Officer:

1. Exceeds the statutory authority or jurisdiction of the Code

Official or Hearing

Officer,

2. Results from an unlawful procedure;

3. Is affected by any other error of law;

4. Subject to paragraph (2) of this section, is unsupported by competent, material,

and substantial evidence in light of the entire record as submitted;

or

5. Is arbitrary or capricious.”

The focus of the Appellant’s argument in this matter is that the Correction Notice that was received by the Appellant’s agent was actually for a different address and when inquiries were made to the County regarding this correspondence, they were informed to disregard the Correction Notice. Mr. Lilley testified that if he had received the Correction Notice intended for his property that he would have rectified the problems. These arguments constitute questions of fact which were to be determined by the Administrative Law Judge to which this Board must defer unless such findings of fact are “unsupported by competent, material and substantial evidence.” While Mr. Lilley testified to these facts, no documents reflecting any correspondence from the County or any further testimony from the Appellant’s agent were put into evidence. Consequently, this Board must defer to the findings of the Administrative Law Judge and affirm his ruling. Though not part of the actual record, it is undisputed that Mr. Lilley has cured the alleged violations and the property at issue is now in compliance. In light of the factual circumstances in this matter, this Board will impose a penalty of \$2,500.00 with all but \$150.00 suspended.

CONCLUSION

The Board finds in reviewing the record of the July 3, 2013 hearing on this matter and the arguments heard before this Board on August 28, 2013, the Findings of fact and Conclusion of

Law issued by Administrative Laws Judge upholding the violations of BCC §13-7-305/306 for failure to cease rat infestation; BCC §13-7-310/312 for failure to remove junk, trash and debris, BCZR 1B01.D for failure to cease open dump; BCC §13-4-201 for failure to properly store trash; and BCC §13-7-112 for failure to remove graffiti is **AFFIRMED**. A penalty of \$2,500.00 with all but \$150.00 suspended is imposed.

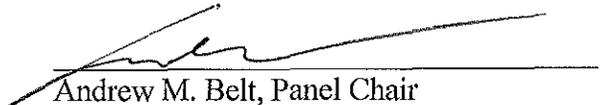
ORDER

THEREFORE, IT IS THIS 12th day of September, 2013 by the Board of Appeals of Baltimore County

ORDERED that the Findings of Fact and Conclusion of Law issued by Administrative Laws Judge upholding the violations of BCC §13-7-305/306 for failure to cease rat infestation; BCC §13-7-310/312 for failure to remove junk, trash and debris, BCZR 1B01.D for failure to cease open dump; BCC §13-4-201 for failure to properly store trash; and BCC §13-7-112 for failure to remove graffiti is **AFFIRMED**. A penalty of \$2,500.00 with all but \$150.00 suspended is imposed.

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**


Andrew M. Belt, Panel Chair


Wendell H. Grier


David Thurston



Board of Appeals of Baltimore County

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September 12, 2013

Shipping Place II, LLC
c/o David Lilley
Lehman Properties, LLC
5921 Belair Road
Baltimore, MD 21206

Jonny Akchin, Assistant County Attorney
Dept of Permits, Approvals & Inspections
Real Estate Compliance Section
111 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: Shipping Place II - Owner/Appellant*
Case No.: CBA-14-007

Dear Messrs Lilley and 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,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Acting Administrator

Enclosure
Duplicate Original Cover Letter

c: Lionel VanDommelen, Chief of Code Enforcement/PAI
Lawrence M. Stahl, Chief Administrative Law Judge
Phillip Mills, Code Enforcement Inspector
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
Michael Field, County Attorney