



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

August 11, 2016

Michael J. Moran, Esquire
The Law Offices of Michael J. Moran, P.C.
3407 Eastern Boulevard, Suite A
Middle River, Maryland 21220

R. Brady Locher, III, Assistant County Attorney
Department of Permits, Approvals and Inspections
Real Estate Compliance Section
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Zulfiqar Cheema*
Case No.: CBA-16-036

Dear Counsel:

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/tam
Enclosure
Duplicate Original Cover Letter

c: Zulfiqar Cheema
Mohammed Ahmed
Lawrence M. Stahl, Managing Administrative Law Judge
Phillip Mills, Inspector/Code Enforcement
Lionel Van Dommelen, Chief of Code Enforcement/PAI
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF:
ZULFIQAR CHEEMA
17 Carroll Island Road
Baltimore, MD 21220

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-16-036

RE: Citation No.: 1600916

* * * * *

OPINION

This matter comes before the Board of Appeals as a Record Appeal from the March 9, 2016 decision of Baltimore County Administrative Law Judge regarding a citation for violations under the Baltimore County Code (BCC) section 13-4-201(b)(d); Baltimore County Zoning Regulations (BCZR) section 1B01.D; 428; 450; 410a; 405.4: Store garbage in containers with tight lids; Remove open dump/junk yard from residential property; Cease all outside storage of unlicensed and/or inoperative motor vehicles; Non permitted(s); Non permitted class II Trucking Facility; Failure to cease operation of illegal businesses. The ALJ found the property owner in violation and instituted a \$50,000.00 fine, suspending all but \$5,000.00 of it conditioned on remediation of conditions. The property owner appealed. Oral arguments were heard before this Board on May 17, 2016 with R. Brady Locher appearing on behalf of Baltimore County and Michael Moran, Esquire appearing on behalf of property owner, Zulfiqar Cheema. The Board requested that counsel for Baltimore County and Mr. Cheema submit closing briefs. A closing memorandum was received from Mr. Locher only.

Record

The record of the proceeding before the ALJ reflects that On February 24, 2016, pursuant to BCC, Section 3-6-205, Inspector Phillip Mills issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files. The citation proposed a civil penalty of \$50,000.00

Evidence was presented that upon citizen complaint, an inspection of the subject property was carried out on 2/24/16, revealing the presence of untagged motor vehicles, truck trailer containers, illegal open dumpsters, piles of crushed pavement, motor equipment, and miscellaneous junk, trash and debris on the site. The record noted that the property owner had been given prior citation for the same violations, which resulted in the imposition of a fine. An immediate Citation was issued, mailed and posted without the issuance of a correction notice. At the hearing, Mr. Mills testified that some improvement to the property had occurred since the Citation was issued but that contractor's equipment storage containers and considerable junk and trash still appeared in the property.

Decision

The Baltimore County Code § 3-6-304 states:

- (a) Disposition options. In a proceeding under this subtitle, the Board of Appeals may:
- (1) Remand the case to the Hearing Officer;
 - (2) Affirm the final order of the Hearing Officer; or
 - (3) Reverse or modify the final order if a finding, conclusion, or decision of the Code Official, the Director, or the Hearing Officer:
 - (i) Exceeds the statutory authority or jurisdiction of the Code Official, the Director, or the Hearing Officer;
 - (ii) Results from an unlawful procedure;
 - (iii) Is affected by any other error of law;
 - (iv) Subject to subsection (b) of this section, is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (v) Is arbitrary or capricious.

As required by Code § 3-6-303, the hearing in this matter is based solely on the record created before Judge Stahl, which includes the recorded testimony and any documents filed or received, as well as the written findings and Final Order of Judge Stahl.

The Appellant contends that the ALJ's findings are illegal and the fine imposed is "without either an intelligible standard or any legislative guideline to guide or otherwise channel the discretion of the ALJ, or alternatively, the fine imposed is arbitrary and capricious." The County has computed that the Appellant was in violation of the above-referenced code provisions from June 18, 2015 to March 24, 2016, a finding of fact made by the ALJ based on the testimony of Mr. Mills. Employing a fine amount of \$100.00 per day pursuant to Section 503.1, ALJ Stahl contemplated a total penalty of \$50,000.00 for the violations of open dump conditions and tight fitting lids.

This Board finds that based on the testimony received by ALJ Stahl it was within his authority to fine the Appellant for each day that he was found to be in violation of any of the previously mentioned violations. Alternatively, the ALJ fined \$50,000.00 for the violations, but agreed to suspend \$45,000.00 of the fine if the property was brought into compliance. The Appellant argues that such a fine is arbitrary and capricious and the measure as to whether the Appellant's property has been brought into compliance in the future unclear. While the Board is persuaded that the ALJ cannot exceed the maximum fine per day, it is within his discretion to reduce such a fine with conditions. To deny the ALJ such discretion would mandate the imposition of the maximum fine per day in all cases, no matter the circumstances. This Board believes that such a strict interpretation of the parameters of the ALJ's discretion would be contrary to public policy. If the Board were to find that the ALJ was prohibited from suspending part of the fine, then the remedy would be the imposition of the full per day penalty.

In the matter of: Zulfiqar Cheema/CBA-16-036

To reverse the decision of Judge Stahl, Appellant has the burden to show that the findings of fact and conclusions of law rendered by Judge Stahl: (1) exceeded his authority; (2) were the result of any unlawful procedure; (3) were affected by any other error of law; (4) were unsupported by competent, material, and substantial evidence in the light of the entirety of the record; or (5) otherwise were arbitrary and capricious. Appellant has failed to do so. Accordingly, there is no basis for reversing Judge Stahl's findings of fact and conclusions of law.

The Board AFFIRMS the Final Order issued by Judge Stahl in this case.

ORDER

THEREFORE, IT IS THIS 11th day of August, 2016, by the Board of Appeals of Baltimore County,

ORDERED that the Final Order of the Administrative Law Judge dated March 9, 2016 is hereby **AFFIRMED**, as follows:

- (1) The imposition of a civil penalty of \$50,000.00 is **AFFIRMED**;
- (2) The conditional suspension of 45,000.00 of that \$50,000.00 civil penalty, with an immediate \$5,000.00 fine is **AFFIRMED**;

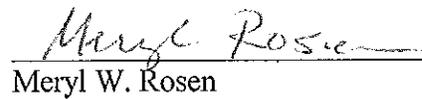
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Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Panel Chairman



Meryl W. Rosen

Jane M. Hanley was a Board member at the hearing on May 17, 2016 and participated in the decision-making process. She was not reappointed to the Board and her last day was June 30, 2016.