



Board of Appeals of Baltimore County

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January 27, 2016

Robert A. DiCicco
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12231 Harford Road
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R. Brady Locher, III, Assistant County Attorney
Dept of Permits, Approvals and Inspections
Real Estate Compliance Section
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Robert and Emily DiCicco – Legal Owner/Respondent*
Case No: CBA-16-022

Dear Messrs. DiCicco and Locher:

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
Administrator

Enclosure
Duplicate Original Cover Letter

c: Maria Cuisana-Guevara
Lawrence M. Stahl, Managing Administrative Law Judge
Kimberly Wood, Inspector/Code Enforcement
Lionel VanDommelen, 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:
ROBERT and EMILY DICICCO
7110 HEATHFIELD ROAD
BALTIMORE, MD 21212

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-16-022

RE: Citation No.: 1508051

* * * * *

OPINION

This matter comes to the Baltimore County Board of Appeals (the "Board") as a Record Appeal from the Administrative Law Judge's Findings of Fact and Conclusions of Law, Final Order issued on October 14, 2015 following a hearing concerning the above-referenced citation on October 7, 2015. A review of the procedural history is not only warranted, it is essential to understand the issue presented and the determination of the Board.

On July 9, 2015, Baltimore County Code Inspector Kimberly Wood responded to a complaint by the tenants living at the above-captioned address, a Rodgers Forge neighborhood rowhome owned by Appellants. As a result of that inspection, a Correction Notice was issued. The Correction Notice identified multiple County Code violations, including Code Sections: (1) Provide Carbon Monoxide Detectors, Art. 35-5-231.1; (2) Repair Exterior Structure, Art. 35-5-208(a) (namely, eliminate water leaking into house; clearing out basement drain; and clearing out gutters); (3) Repair Plumbing Defects, Art. 35-5-211(c) (namely, install sump pump discharge pipe and install missing exterior faucet); (4) Provide Fire and Safety Inspection, Art. 35-5-213 (namely, install working smoke detectors/carbon monoxide detectors); and (5) Repair Interior Structure, Art. 35-5-209(a) (namely: eliminate mold in basement closet area; eliminate water leak around

furnace in basement; eliminate water leaks in bedroom walls and ceilings; repair and repaint; repair damaged deteriorating bathroom floor; and repair deteriorating rear door sill).

Inspector Wood re-inspected the property on September 10, 2015. At that time, many of the initial Code issues identified by Inspector Wood on July 9, 2015 had been remedied. Nevertheless, three issues were determined to be a Code violation: (1) Repair heating/cooking equipment, Art. 35-5-212, namely, failure to repair furnace/AC unit from leaking into the basement; (2) Repair plumbing defects to structure, Art. 35-5-211(c), namely, failure to repair/replace sewer cap in basement; and (3) Repair to interior structure, Art. 35-5-209(a), namely, failure to eliminate all mold in the basement area. As a result, Inspector Wood issued the Citation giving rise to this case. Inspector Wood again inspected just prior to the Citation and determined that all Code violations had been remedied, except one: the presence of mold in the basement, which will be discussed below.

In the Final Order, the Honorable Lawrence M. Stahl, Managing Administrative Law Judge, ordered the following, as is relevant: (1) a civil penalty of \$2,000.00 be imposed; and (2) that the subject property be brought into immediate compliance with all applicable Code regulations. Appellants appealed. Appellant Robert DiCicco appeared *pro se*. Baltimore County was represented by Assistant County Attorney Brady Locher.

Record

Despite Herculean efforts from Judge Stahl, the transcript below reveals the hearing was littered with matters extraneous to the one remaining issue --- the presence of mold in the basement. As Judge Stahl concluded that Mr. DiCicco's testimony, on the whole, was not credible,

the relevant testimony by Inspector Wood, Maria Cuisana Geuvara (one of the tenants) and the undisputed facts relating to that issue will be summarized.

The transcript revealed that for the July 9, 2015 inspection visible mold was present in and around the sewer pipe, contained in a closet in the basement at a front corner of the house. The mold was also visible on the wall just behind the sewer pipe. It is undisputed that in mid-August, Appellants hired a company to remediate the mold and that, in addition, Appellants had the front wall repainted.

Mrs. Cuisana Guevara testified that even after the efforts in mid-August, the mold continued, as evidenced by the smell of the basement. (Transcript, pp. 86 (11) -87(7)). As such, Mrs. Cuisana Guevara hired a company to do mold testing. (Transcript, pp. 87 (8)-88(5)). The company took 1-2 samples of the air in the basement and compared those samples to the air outside. As Judge Stahl stated, the report indicated that “The initial conclusion is...consistent with mold activity. Front wall was saturated.” (Transcript, p. 22 (6-11)). There was much discussion about the report, particularly its completeness, and relatedly, its admissibility. The County offered into evidence the report, but Mr. DiCicco objected as the testing of the samples he contended were part of the original report and were not submitted with the report offered into evidence by the County. In any event, Judge Stahl’s Order acknowledged Mr. DiCicco’s testimony that testing of the samples occurred and that there was no conclusion as to the presence of mold, although it noted a “high” reading of two types of spores. (Order, p. 3).

There is no indication that Inspector Wood or Mrs. Cuisana Guevara saw any visible mold on September 10, 2015, the day of the first re-inspection and day the Citation was issued.

As for the October 5, 2015 inspection, Inspector Wood came back and, as is relevant, was told by Mrs. Cuisana Guevara that a section of wood paneling on the front basement wall was wet.

Mrs. Cuisana Guevara made a hole in the wet section of the paneled wall so that the conditions behind the wall could be viewed. (Transcript, p. 17 (7-13)). Inspector Wood discovered that the insulation was wet and black, and that, in her 16 years of doing inspections, including hundreds of occasions she saw mold, determined that mold was behind the front wall. (Transcript, pp. 18 (9)-19 (8)). Nothing in the record accepted by Judge Stahl contradicts the conclusion that the substance found behind the wall was mold.

When asked if the evidence of mold Inspector Wood saw in September and October at Appellants' house was limited to what she saw after the a hole was made in the wall in October, Inspector Wood testified: "No, Your Honor. There was --- the wall in the basement is wet and after it was supposedly sanitized and cleaned and repainted, there was still moisture leaking through the wall and there's water stains on the photographs to prove that." (Transcript, pp. 48 (20)-49(5)). On cross-examination, Inspector Wood conceded that a major rainstorm occurred 2-3 days prior to her October re-inspection, but noted that there were "water stains when I was there the first time and they're still continuing to come through the wall now." (Transcript, p. 51 (13-15)). It is undisputed that, there never was, at any time, water on the floor at the front wall. (Transcript, p. 49 (9-17); p. 50 (6-10)).

The sewage closet area in which visible mold was first detected, resulting in the July Correction Notice, is immediately adjacent to the area of the front wall determined in October to have mold behind it. (Transcript, p. 50 (11-20)). Inspector Wood testified that the closet area was "not wet" at the October re-inspection. (Transcript, pp. 50 (17) -51(2)). After the remediation efforts, there is nothing in the record that suggests the closet area itself presented any other mold issue. The record is silent as to the closet dimensions or the distance from the sewer pipe to the area identified in October as having mold behind it.

The record also reveals Appellants, in September, provided a dehumidifier to their tenants to help address the basement humidity, but Mrs. Cuisana Guervara testified that Appellants, at first, did not provide the hose to connect it with the drain. The record does not reveal whether the dehumidifier, once properly connected, helped mitigate any basement mold issues.

Opinion

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 section¹, 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 particular section of the Code for the sole violation remaining reads as follows:

§ 35-5-209. INTERIOR STRUCTURE.

(a) In general. The interior of a structure and its equipment and facilities shall be maintained in good repair, structurally sound, and in a sanitary condition so that the structure does not to pose a threat to the health, safety, or welfare of the occupants.

¹ Subsection (b) is not relevant to this Opinion.

The mold sampling and testing revealed a high level of one or more spores in the basement when compared to the air outside. The mold sampling and testing included a swab test, the result of which did not reach a conclusion as to whether mold was present. Following the remediation in the sewer closet, no mold was visible until the front wall was opened up.

The evidence in the record is that County Code Enforcement does not test for mold. (Transcript p. 58 (4-5)). County Code Enforcement takes action when there is visible mold. (Transcript p. 58 (6-8)). With respect to airborne mold, Inspector Wood testified she is not aware what the standard in Maryland is, or whether there is a standard at all. (Transcript p. 58 (9-15)). Here, however, Inspector Wood relied on the airborne test in issuing the Citation. She also, at least prior to the wall being punched through, identified moisture leaking through the wall and water stains in coming to her conclusion. (Transcript pp. 48 (21)-49(5)).

In light of the above, the presence of mold spores in combination with the wet conditions of the basement presented the possibility that mold could develop or already had developed, even if not visible, in areas behind the front wall. In fact, when the wall was opened, the record reflects that mold was, in fact, discovered. Moreover, there had been visible mold present in the area adjacent to the section of wall at issue as recent as one month prior to Inspector Wood's re-inspection. These conditions pose a threat to the health, safety and welfare of the occupants. Based on this set of circumstances, it cannot be said that the record fails to support the conclusion reached by Judge Stahl.

To be clear, this case is troubling from an evidentiary perspective. In short, the evidence could have resulted in a different conclusion. However, to reverse the decision of Judge Stahl, Appellants have 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. Appellants have 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 27th day of January, 2016, by the Board of Appeals of Baltimore County,

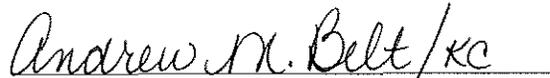
ORDERED that the Final Order is hereby **AFFIRMED**, as follows:

- (1) The imposition of a civil penalty of \$2,000.00 is **AFFIRMED**;
- (2) The conditional suspension of \$9,000.00 of that \$10,000.00 civil penalty, with an immediate \$1,000.00 fine is **AFFIRMED**;
- (3) This case is **REMANDED** so that the Final Order can be amended to conform to the Order as expressed by Judge Stahl issued at the hearing below, and
- (4) This case is **REMANDED** for an evidentiary hearing to determine a reasonable deadline by which Appellant can apply for a permit (or permits) for the work at issue and obtain such permit(s) in order to avoid the imposition of the \$9,000.00 presently suspended; and
- (5) The remaining parts of the Final Order are **AFFIRMED**.

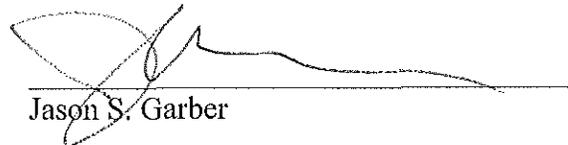
In the matter of: Robert and Emily DiCicco/CBA-16-022

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


Jane M. Hanley


Jason S. Garber