



Board of Appeals of Baltimore County

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May 12, 2016

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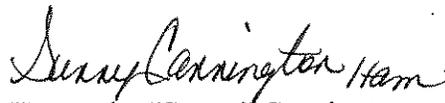
RE: *In the Matter of: F&S Properties, LLC*
Case No.: CBA-16-034

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

KC/tam
Enclosure
Duplicate Original Cover Letter

c: Susan Shaffer/F&S Properties, LLC
Lawrence M. Stahl, Managing Administrative Law Judge
Justin Olszewski, Inspector/Code Enforcement
Lionel Van Dommeleon, Chief/Code Enforcement
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: * BEFORE THE
F&S PROPERTIES, LLC * BOARD OF APPEALS
7916 Eastdale Road * OF
Baltimore, MD 21224 *
Re: Code Enforcement Citation * BALTIMORE COUNTY
* Case No: CBA-16-034

* * * * *

OPINION

This case comes before the Baltimore County Board of Appeals as a record appeal of Administrative Law Judge, Lawrence Stahl’s (“ALJ Stahl”) February 18, 2016 decision. In that decision, ALJ Stahl ordered payment of a civil penalty in the amount of \$250.00 against Appellant F&S Properties, LLC (“F&S”) arising from a Code Enforcement Citation for violations under Baltimore County Code (“BCC”) section 13-4-201(d). That section requires the storage of garbage in approved containers with tight-fitting lids. The Board held a hearing on this matter on April 27, 2016. Dennis J. Shaffer, Esquire appeared on behalf of Appellant. R. Brady Locher, III, Assistant County Attorney, appeared on behalf of Baltimore County.

BACKGROUND

As the case comes before the Board as a record appeal, the Board’s review is based on the audio record of the hearing provided to the Board, documents entered at that hearing and the parties’ oral argument presented to the Board at the April 27th hearing. This review established that on January 12, 2016, County Inspector Justin Olszewski conducted an inspection of a property located at 7916 Eastdale Road in Baltimore County (“the Property”). Following the inspection, which was documented by photographs, Inspector Olszewski issued a Code Enforcement Citation. That Citation, and a fine of \$250.00, was based on the presence of garbage not stored in containers with tight fitting lids, in violation of BCC §13-4-201(d).

On February 18, 2016, ALJ Stahl held a hearing on this matter. The recording of that hearing indicates that Appellant did not dispute the inspector's observations as to the garbage cans without proper lids. Appellant did however, argue that the violation was the tenant's responsibility rather than the landlord's. To this end, Appellant directed the ALJ's attention to BCC §13-4-202 regarding tenant and owner responsibilities for solid waste disposal, testified that the Property was leased to a tenant and offered a copy of the lease as proof thereof. According to the ALJ, the existence of a tenant was of no consequence and that the tenant and landlord are jointly responsible under the regulations for the violation on the Property. The ALJ subsequently stated that the owner is responsible as far as Baltimore County is concerned for this type of violation.

On February 18, 2016, ALJ Stahl issued his Findings of Fact Conclusions of Law and Final Order. According to ALJ Stahl's Order, "evidence was presented that in the course of a ticket sweep on 1-12-16, an inspection of the subject property revealed the presence and use of garbage cans without proper lids" (Order at 1). The Opinion states further that Appellant "offered an explanation but did not contest the allegation." (*Id.*). The Order did not address the issue of whether a tenant or landlord is responsible for the violation. He affirmed imposition of the \$250.00 civil penalty against the landlord, F&S Properties, LLC.

On appeal, Appellant contends that the ALJ erred in imposing a civil fine against it. According to Appellant, §13-4-202(a) of the Code compels a conclusion that the tenant, not the landlord is solely responsible for the alleged violation. At the hearing before this Board the County did not dispute the fact of the tenancy but argued essentially that the County's collection efforts are easier and more successful when fines are imposed against the landlord/property owner.

DISCUSSION

A. Standard of Review

BCC §3-6-304 states as follows:

(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 ... Hearing Officer
 - (i) Exceeds the statutory authority or jurisdiction of the ... Hearing Officer;
 - (ii) Results from an unlawful procedure;
 - (iii) Is affected by any other error of law;
 - (iv) ...is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - (v) Is arbitrary or capricious.

“With regard to agency factual determinations, the standard of review is whether the finding is ‘unsupported by competent, material, and substantial evidence in light of the entire record as submitted,’ also known as substantial evidence review.” *Charles County Dep’t of Soc. Servs. v. Vann*, 382 Md. 286, 295 (2004) (citations omitted). A reviewing body gives less deference to an agency’s legal conclusions, and will not uphold an administrative decision premised solely upon an erroneous conclusion of law. *HNS Dev. LLC v. People’s Counsel*, 425 Md. 436, 449 (2012).

B. Relevant Statutes

As noted above, the parties do not dispute that the garbage can in question lacked a tight fitting lid at the time of inspection. That omission constitutes a violation of BCC §13-4-201(d) which states that “[a]ll garbage should be stored in approved, rodent-resistant, watertight containers with tight-fitting lids.” However, immediately following that section, the County Code also states as follows:

§13-4-202. – SAME – OCCUPANT AND OWNER RESPONSIBILITIES

a. *In general.*

- 1) The occupant of a premises, whether the occupant is the owner of not, is responsible for the sanitary condition of the premises occupied.
- 2) If a property is occupied by a tenant:
 - i) The tenant is responsible for the property assigned to the tenant; and
 - ii) The owner is responsible for the portions of the property not leased to the tenant.

The Code thus expressly provides for a division of responsibility for the sanitary condition of a property. Subsection 1 states that an occupant is responsible for a property's sanitary condition, regardless of whether the occupant is the owner of the property. Subsection 2 speaks directly to a property occupied by a tenant; it states that in a tenant-occupied property, "*the tenant is responsible for the the property assigned to the tenant.*" (emphasis added).

Regardless of Appellant's ownership of the Property, it is undisputed that at the time of the Citation, a tenant occupied the Property. While the County expresses concern with its ability to collect from tenants the fees imposed for violations, the Baltimore County Code explicitly assigns the responsibility for compliance with §13-4-201(d) to the tenant occupying the property at issue, not to the landlord. Compare County of Rockville Code of Ordinances Section PM-107.1 ("Whenever the code official determines that there has been a violation of this code or has reasonable grounds to believe that a violation has occurred, he shall give notice to the owner or the person or persons responsible therefor in the manner prescribed..."); Ocean City Code of Ordinances Section 70-46 ("Responsibility for compliance. The owners or agents, tenants or lessees, jointly and separately, of all residential units and commercial establishments shall be responsible for compliance with this article.").

The ALJ's Final Order, imposing a civil penalty against the landlord for the sanitary condition of a property occupied by a tenant, contravenes the clear language of §13-4-202(a), constitutes an error of law and cannot stand. The Board has thus determined to strike the Order in its entirety and reverse the imposition of the \$250 fine against Appellant.

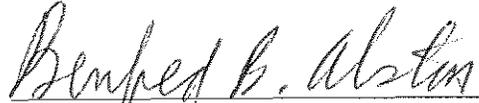
ORDER

THEREFORE, FOR THE REASONS STATED ABOVE, IT IS THIS 12th day of May, 2016 by the Board of Appeals of Baltimore County

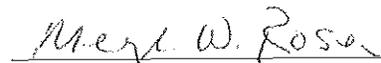
ORDERED that the February 18, 2016 Findings of Fact and Conclusions of Law Final Order of the Administrative Law Judge in this matter be, and is hereby **REVERSED**.

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*.

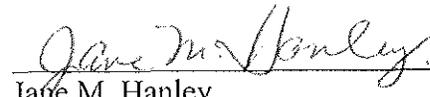
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Benfred B. Alston, Panel Chairman



Meryl W. Rosen



Jane M. Hanley