



## Board of Appeals of Baltimore County

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July 13, 2016

Jonny Akchin, Assistant County Attorney  
Department of Permits, Approvals and Inspections  
County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Gary R. Maslan, Esquire  
Maslan, Maslan & Rothwell, P.A.  
7508 Eastern Avenue  
Baltimore, Maryland 21224

RE: *In the Matter of: Darby Grey*  
Case No.: CBA-16-033

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,

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

Krysundra "Sunny" Cannington  
Administrator

KLC/tam  
Enclosure  
Duplicate Original Cover Letter

c: Darby Grey  
Toni Cruz  
Bernard J. Smith, Chairman / AHB  
April Naill / Animal Control Division  
Nancy C. West, Assistant County Attorney/Office of Law  
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF  
DARBY GREY - APPELLANT  
814 Jeannette Avenue  
Baltimore, MD 21222

RE: Citation Nos. E47378 – Menacing Animal  
AHB Case No.: 4219

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. CBA-16-033

\* \* \* \* \*

**OPINION**

This case comes to the Board on appeal of the final decision of the Animal Hearing Board of Baltimore County (“AHB”) wherein the AHB upheld Citation E47378 (Menacing Animal) and imposed a civil penalty of \$100.00.

A hearing before this Board was held on April 27, 2016. Mr. Darby Grey (sometimes herein referred to as the “Appellant”) was represented by Gary R. Maslan, Esquire. The County was represented by Jonny Akchin, Assistant County Attorney.

**Facts And Background**

On November 10, 2015, Animal Services received a notarized affidavit from Ms. Toni Cruz, the Complainant (“Ms. Cruz”), alleging that her dog (the “Cruz Dog”), while confined to her backyard at 7456 Edsworth Road, Baltimore, Maryland 21222 (the “Cruz Residence”), suffered physical injuries to its neck after it was attacked by Mr. Grey’s dog (the “Grey Dog”) on October 12, 2015. Ms. Cruz did not witness the attack; however, her 14 year old son, Michael, testified at the AHB that he was home at the time of attack. He testified that he heard dogs barking which caused him to look out of his window and he saw the dogs engaged. As he approached the dogs he could see that the Grey Dog had his dog’s neck in its mouth. Michael

testified that even though Mr. Grey's dog was on a leash, it was somewhat in his backyard when Mr. Grey pulled his dog off of the Cruz Dog.

Ms. Cruz testified that her dog was tethered to a 40-foot chain which allows the dog to run around the backyard; however, the 40-foot chain prevents her dog from leaving the backyard. She stated that her dog barks loudly and constantly as it runs back and forth along the fence line in the backyard. She testified that on the day of the attack her backyard gate was closed when she left for work; however, it was fastened and kept closed by a bungee cord. On cross-examination, Ms. Cruz testified that she was not a home when the dog attack occurred; therefore, she cannot say whether the gate was opened or closed at that time. She also stated that even if the gate is open the 40-foot chain tether prevents her dog from physically leaving the backyard. Ms. Cruz went on to testify that after the Grey Dog's attack, she had to take her dog to the veterinarian to treat injuries to its neck.

Mr. Grey testified that he frequently walks his dog down the alley adjacent to the Cruz Residence. He testified that on the day of the incident he had his dog attached to a retractable leash. He stated that his dog could not have been more than 3 ½ to 4 feet from him at any given time during his walk down the alley. He also testified that as he walked his dog down the alley adjacent to the Cruz Residence he could not see that the backyard gate was open and as soon as he crossed in front of the gate the dogs engaged one another. Mr. Grey also testified that he may have been distracted as he approached the gate because suddenly, without his awareness, his dog was engaged in a dog fight with the Cruz Dog. Mr. Grey testified that when he noticed that dogs were involved in a dog fight they were inside of the property line of the Cruz Residence. Mr. Grey also testified that his dog also suffered some minor injuries but did not require veterinarian care.

In an opinion dated February 2, 2016, the AHB found that pursuant to Section 12-3-108 (a)(2) of the Baltimore County Code (the "BCC") the Grey Dog was declared a menacing animal and imposed a civil penalty in the amount of \$100.00 upon Mr. Grey.

**Standard of Review**

BCC §12-1-114 (f) and (g) requires that all hearings before this Board from the AHB be heard on the record from the AHB hearing. Upon review of the transcript and evidence in the AHB record, this Board has the authority to:

- (i) Remand the case to the Animal Hearing Board;
- (ii) Affirm the decision of the Animal Hearing Board;
- (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;
- 4. Subject to paragraph (2) of this subsection, is unsupported by competent, material and substantial evidence in light of the entire record as submitted; or
- 5. Is arbitrary and capricious.

The appropriate standard of review, when determining a factual finding of an agency, is whether there is substantial evidence from the record as a whole. *Eller Media Co. v. Mayor of Baltimore*, 141 Md. App. 76, 84 (2001). If reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record, then the agency's findings are based on substantial evidence and the court has no power to reject that conclusion. *Columbia Road Citizens' Ass'n v. Montgomery Cnty.*, 98 Md. App. 695, 698 (1994). Judicial review of an agency decision does not involve an independent decision on the evidence, instead, a court is limited to determining whether there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is

premised upon an erroneous conclusion of law. *United Parcel Serv., Inc. v. People's Counsel for Baltimore Cnty.*, 336 Md. 569 577 (1994).

When considering whether an agency erred as a matter of law, the reviewing court decides the correctness of the agency's conclusions and may substitute the court's judgment for that of the agency. *People's Counsel for Baltimore Cnty. v. Prosser Co.*, 119 Md. App. 150, 168 (1998). The "substantial evidence test" also applies when there is a mixed question of law and fact. In other words, the agency has correctly stated the law and the fact finding is supported by the record, but the question is whether the agency has applied the law to the facts correctly. *Cowles v. Montgomery Cnty.*, 123 Md. App. 426, 433 (1998). Therefore, the order of an administrative agency must be upheld on review if it is not premised upon an error of law and if the agency's conclusions on questions of fact or on mixed questions of law and fact are supported by substantial evidence. *Kohli v. LOCC, Inc.* 103 Md. App. 694, 711 (1995).

### **Decision**

At issue in this case is whether, pursuant to Section 12-3-108 of the BCC, Mr. Grey's dog is deemed a menacing animal.

Section 12-3-108 (a) states that

"An alternative to declaring an animal a dangerous animal, the Health Officer may declare an animal a menacing animal if the animal:

- (1) Attacks or injures a domestic animal; or
- (2) Exhibits aggressive or dangerous behavior and is not adequately confined or restrained".

Section 12-3-108 (b) of the BCC states "that the declaration shall be based on, among other thing, a citizen's affidavit concerning the citizen's personal experience with the animal".

The facts relied upon by the AHB clearly show that the Cruz Dog, a domestic animal, was attacked and injured by Grey's Dog on October 12, 2015. The testimony presented by Ms. Cruz and Michael, her son, corroborated the statements made in her affidavit filed with Animal Services on November 10, 2015. From the testimony presented at the AHB, the AHB concluded that dogs engaged each other on the Cruz's property, in large part, because Mr. Grey did not control his animal while it was attached to a retractable leash. Although Mr. Grey's undisputed testimony was that the gate to the Cruz's backyard was open and this incident would not have happened if the gate was properly closed, the AHB concluded that this was not dispositive to the outcome of this case. There was undisputed testimony at the hearing that indicated even if the gate were open, the Cruz Dog could not go beyond the boundaries backyard because it is tethered to a 40-Foot chain. As such, the Grey Dog attacked the Cruz Dog on Ms. Cruz's property. Under these circumstances the AHB, concluded that the Grey Dog exhibited aggressive or dangerous behavior by attacking the Cruz Dog inside of the Cruz's backyard. The AHB also found that the Grey Dog was not properly restrained on Mr. Grey's retractable leash. As such, the AHB found that the Grey Dog was a menacing animal and imposed a civil penalty upon Mr. Grey in the amount of \$100.00.

Based on the evidence presented, we find that the decision by the AHB was not arbitrary and capricious, and is supported by sufficient evidence. As such, the decision of the AHB is affirmed.

**ORDER**

**THEREFORE, IT IS THIS** 13<sup>th</sup> day of July, 2016, by the Board of Appeals of Baltimore County,

**ORDERED** that the decisions of Animal Hearing Board in the above captioned case, that the dog owned by the Appellant Mr. Darby Grey is in violation of Section 12-3-108 (a)(2) (Menacing Animal) of the BCC be, and the same are hereby, **AFFIRMED**, as it is supported by competent, material and substantial evidence in light of the entire record as submitted; and it is further

**ORDERED**, that the civil penalty imposed in the amount of \$100.00 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  
OF BALTIMORE COUNTY**

  
Benfred B. Alston, Panel Chairman

  
Meryl W. Rosen

Jane M. Hanley was a Board member at the hearing on April 27, 2016. She was not reappointed to the Board and her last day was June 30, 2016.