



Board of Appeals of Baltimore County

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June 8, 2016

Renee Phillips-Farley, Assistant County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204

Albert Matthew Miller, Esquire
223 E. Patapsco Avenue
Baltimore, Maryland 21225

RE: *In the Matter of: Omega Grocery, LLC*
Case No.: CBA-16-039

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

KC/tam
Enclosure
Duplicate Original Cover Letter

c: Juan Nunez/Omega Grocery, LLC
Lawrence M. Stahl, Managing Administrative Law Judge
Fahad Chughtai, Health Enforcement Officer/Health and Human Services
Vicki Pfammenstein, Prevention and Tobacco Services Manager/Health and Human Services
Gregory Wm. Branch, M.D., MBA, CPE, FACP, Director/Health and Human Services
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF
OMEGA GROCERY
222 North Point Blvd
Baltimore, Maryland 21224

Tobacco Enforcement ID: TE3210

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. CBA-16-039
*

* * * * *

OPINION

This matter comes before the Board of Appeals for Baltimore County (the "Board") as a Record Appeal from Code Enforcement Hearing on March 23, 2016 and Administrative Law Judge's ("ALJ") Findings of Fact and Conclusions of Law dated March 25, 2016 regarding a Tobacco Enforcement Citation at the Omega Grocery, 222 North Point Blvd, Baltimore, Maryland 21224 which the business owner was found to be in Violation of Baltimore County Code Article 13, Title 12, Section 13-12-103, for the distribution of tobacco products and/or paraphernalia to a minor. Albert Matthew Miller, Esq. appeared on behalf of Omega Grocery and Assistant County Attorney, Renee Phillips-Farley, appeared on behalf of Baltimore County. As a result of the hearing before the ALJ, the business owner was fined Five Hundred Dollars (\$500.00.)

BACKGROUND

As this case comes before the Board as a Record Appeal, the Board's review of the Hearing Officer's decision is solely based on the audio record of the March 23, 2016 Code Enforcement Hearing that the Board was provided and the oral argument presented before the Board at the May 24, 2016 Appeal Hearing.

In the matter of Omega Grocery, LLC/CBA-16-039

The record reflects that on February 23, 2016, pursuant to Section 13-12-103, and 13-12-103.1 of the Baltimore County Code, Health Enforcement Officer (HEO) Fahad Chunghati issued a Code Enforcement Citation to the Omega Grocery. The citation came as a result of a Tobacco Compliance Assistant (TCA) under the age of 18, acting under the direct supervision and observation of HEO, Chughtati, entering the Omega Grocery and attempting to buy a tobacco product. The clerk sold tobacco products to the TCA without requesting identification and a citation was issued. Omega Grocery proprietor, Juan Nunez did not contest the allegations, but stated that his clerk was distracted due to personal problems and that he would be vigilant in preventing tobacco from being sold to minors in the future.

BOARD'S OPINION

As the evidence presented by the County was uncontested at both the Code Enforcement Hearing before the ALJ and the Hearing before this Board, we will assume that the Appellant is basing his appeal on BCC § 3-6-304 (a)(3)(iv) that states that the Board of Appeals may “reverse or modify the final order if a finding, conclusion, or decision of the Code Official, the Director, or Hearing Officer . . . is unsupported by competent, material and substantial evidence in light of the entire record as submitted . . .”. It is clear from the record that Omega Grocery violated Baltimore County Code Article 13, Title 12, Section 13-12-103, for the distribution of tobacco products and/or paraphernalia to a minor the premises. These facts are not disputed.

CONCLUSION

Based the findings stated above, the Board finds that the ALJ's decision of March 25, 2016 in this matter was supported by competent, material and substantial evidence and is therefore is AFFRIMED and additionally this Board AFFIRMS the \$500.00 civil penalty.

ORDER

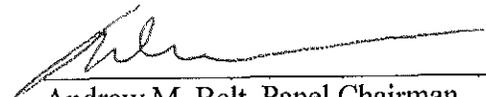
THEREFORE, IT IS THIS 8th day of June, 2016, by the Board of Appeals of Baltimore County

ORDERED that the decision of the Administrative Law Judge dated March 25, 2016, be and the same is hereby **AFFIRMED**; and it is further

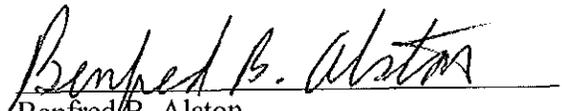
ORDERED that the civil penalty imposed in the amount of Five Hundred Dollars (\$500.00), be and the same is hereby **AFFIRMED**.

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**


Andrew M. Belt, Panel Chairman


Meryl W. Rosen


Benfred B. Alston