

IN THE MATTER OF
SALVATORE AND DENISE FILI - APPELLANTS
15329 TANYARD ROAD
SPARKS, MD 21152

RE: AHB DECISION/CASE NO. 3466

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-10-038

* * * * *

OPINION

This case comes to the Board on an appeal of the final decision of the Animal Hearing Board ("AHB") of Baltimore County, dated April 20, 2010. The following Violations of the Baltimore County Code were upheld namely: Violation E 34939/animal at large, "Lou" and Violation E 34941; menacing animal, "Lou". A fine in the amount of \$125.00 was imposed by the Animal Hearing Board and ordered to be paid by Salvatore and Denise Fili, Appellants, within thirty (30) days of April 20, 2010. The fine was based on \$25.00 for finding that the dog was an animal at large and \$100.00 on the finding that the animal was menacing.

The Appellants filed a timely appeal to this Board. This case comes before the Board of Appeals ("BOA") as a Record Appeal. The Board's review of the Hearing Officer's decision is based on the information provided and argument at the March 16, 2010 AHB hearing, and the oral argument presented before the BOA at the hearing held on Tuesday, August 10, 2010. Salvatore and Denise Fili, Appellants appeared *pro se*. The County was represented by Michael Field, Assistant County Attorney. The hearing concluded and the matter was deliberated by the Board's Panel.

Factual Background

At the Animal Hearing Board hearing, on March 16, 2010, the record indicated that Lisa Hudson, appeared and testified as the Complainant in this case. Ms. Hudson testified that on

September 13, 2009 she came upon her neighbor, Ms. Price, who was walking her neighbor's dog. Ms. Price was being confronted by the Appellant's dog "Lou", who was snarling and barking at her. Ms. Hudson stated that Ms. Price was very fearful of "Lou" and she went to Ms. Price's aid. At that point a man arrived on the scene and indicated that he would block "Lou" while Ms. Hudson escorted Ms. Price from the area. As the man continued to block "Lou", a young girl from the Appellant's home came out and took the dog "Lou" back into the Appellant's yard.

Ms. Price testified that she was walking her neighbors dog and as she was returning home "Lou" bounded up the road and blocked her way. He walked back and forth in front of her growling all the time and she feared he would bite her if she proceeded further. She also testified that a man came and offered to help block "Lou", and at that point Ms. Hudson arrived and escorted her away from the area, while the man blocked "Lou" from coming any further. The episode lasted approximately 10 – 15 minutes.

Mrs. Fili testified that "Lou", is owned by her daughters. The dog is always kept inside, except upon occasion when it has gotten out of the house, when a baby-sitter or one of the children has left the door open. When her daughter heard the dog "yapping", she immediately ran out to find the dog and bring it back into the house.

Mr. Fili testified that he was aware of the incident, but that his daughter did not agree that the dog was behaving aggressively. He stated that his daughter reacted immediately and went out to bring the dog back in the house. Neither of Mr. and Mrs. Fili's daughters testified at the hearing.

The major basis for the appeal by Salvatore and Denise Fili is that two (2) of the affidavits submitted to the AHB were not properly notarized. They contend that this violated the

RULES OF ADMINISTRATIVE PROCEDURES FOR HEARINGS - RULES OF ADMINISTRATIVE PROCEDURE, paragraph 4, Rules and Evidence in Contested Cases.

The Rules of the Animal Control Division which stated in part: " if the Complainants file an affidavit with our office fines will be issued."

The Appellants contend that the Notice with the filing of an affidavit in proper form is a necessary procedure to the instituting of proceeding in this matter. Since the affidavit was not properly dated, they contend that no citations can be issued and that the whole hearing was improper.

The Board of Appeals has reviewed the two (2) affidavits in question and notes that the particular date in each affidavit is not set forth. One affidavit sets forth the date of "Oct, 2009". The second affidavit sets forth a date "Monday 10, 2009". Both affidavits were signed by Lisa Hudson, who testified at the hearing that she signed the affidavits.

The Animal Hearing Board dealt with the objection presented by the Appellants in a footnote stating:

" Respondent, Ms. Fili, noted an objection to the citations based on flaws in the notarization of the original affidavit upon which the citations were issued. There are, in fact, two separate notarizations on the affidavit; in one, the date is listed as "Monday 10, 2009" and in the other, it is listed as "October, 2009" neither of which is complete. The Board decided that, inasmuch as it is not a court but an administrative agency and inasmuch as the respondents had substantial notice of the charges against them and the hearing date,

the errors were harmless and it continued the hearing. The Board notes that the notarization requirement is not a matter of county law or even written regulation but of county practice developed by the Animal Control Division for its own convenience. Because citations are issued based on affidavits filed by citizens, the notarization practice was implemented to ensure that the Complainant is serious about the allegations before he/she triggers action by county personnel."

DECISION

This case comes before the Board as a Record Appeal, under Section 12-1-114 of the *Baltimore County Code ("the Code")* covering the appeal of a decision of the Animal Hearing Board. Therefore it is the charge of this Board to review the information presented before the Animal Hearing Board and make an independent determination of the merits of the case. The Board of Appeals has certain limitations on its decision. Section 12-1-114(h) states:

**** (h) *Decision of the Board.***

(1) The Board of Appeals may:

- (i) Remand the case to the Animal Hearing Board;
- (ii) Affirm the decision of the Animal Hearing Board; or
- (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 or capricious.

A. THE IMPROPER AFFIDAVIT

It appears that the two (2) affidavits which were filed with the Animal Control Officer were not properly notarized. The law, as pointed out by the AHB, does not require that a complaint be supported by a notarized affidavit. The notarization of the affidavit evidently has been required in order to ensure that complaints are supported by the complainant and that the complainant is willing to attend the hearings required under the statute.

Section 12-1-110(a) states:

§ 12-1-110. CIVIL PENALTIES.

- (a) *Notice - Authority to Issue.* The Health Officer may issue a violation notice to any person found in violation of this article.
- (b) *Same - Content.* The notice shall impose a civil monetary penalty as provided in subsection (f) of this section.

The Rules of the Administrative Procedures for Hearing for the Animal Control Board state:

****"4. Rules of Evidence in Contested Cases**

a. The Board shall receive and may consider all relevant evidence, witnesses, and documentary evidence. Any statement submitted MUST BE NOTARIZED and becomes the property of the Animal Hearing Board's records. The Board may, in its discretion, refuse to give

probative value to incompetent or repetitious evidence, or evidence inadmissible in a court of law."

This Board interprets the AHB rules to require that any statement which is used, which is submitted in evidence, but is not supported by testimony before the AHB must be notarized. In the present case, the notarized affidavits were not used by the AHB to support their decision. Lisa Hudson, the individual who submitted the two (2) affidavits which were improperly notarized, gave oral testimony before the Animal Hearing Board. The AHB relied on this testimony in making its decision and did not rely on the two (2) questionable affidavits.

The Board of Appeals rejects the contention by Appellants that the charges before the Animal Hearing Board should be dismissed on the basis of faulty affidavits.

B. THE FINDINGS OF THE ANIMAL HEARING BOARD

The Appellants were charged with six (6) violations of the Code, and the Animal Hearing Board dismissed four (4) of the violations as being repetitive, and only found the Appellants in violation of two (2) Sections of *the Code*. The AHB violations found that the dog in question was an "animal at large" and also that the dog was a "menacing animal".

Section 12-1-101 of *the Code*, titled definitions states:

c) *Animal at large.*

(1) (i) "Animal at large" means any animal off the premises of its owner and not under the control, charge, or possession of the owner or other responsible person.

(ii) "Animal at large" includes any dog off the premises of its owner and not under the control of the owner or other responsible person by a leash, cord, or chain.

There does not appear to be any question that the Fili's dog "Lou" was off the premises at the time the incident in question occurred. Even the Appellants admit that the dog was out of the yard and that their daughter had to come out of the house and retrieve the dog. There is no question that the dog was off the premises and was considered an animal at large under the Code.

Section 12-3-108 of the Code, entitled menacing animals states:

§ 12-3-108. MENACING ANIMALS.

(a) *Authority.* As an alternative to declaring an animal a dangerous animal, an animal control 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.

(b) *Basis for declaration.* The declaration shall be based on:

- (1) Personal observation;
- (2) Observations of animal control officers;
- (3) Citizen affidavits concerning the citizen's personal experience with the animal;
- (4) Animal control records; or
- (5) Other documented information.

It should be noted that an affidavit is not required to be notarized under § 12-3-108(b)(3).

There can be no question that the dog exhibited aggressive and/or dangerous behavior according to the testimony given by Ms. Lisa Hudson and Ms. Price.

Although Appellants testified that their daughter did not feel that the dog was exhibiting aggressive behavior, the daughter did not testify and the Animal Hearing Board credited the testimony of Ms. Price and Ms. Hudson. The Board of Appeals ("BOA") accepts the testimony as credited by the Animal Hearing Board ("AHB").

Section 12-1-110 of the Code sets forth civil penalties that may be assessed with respect to various violation of the Code. Section (f) states:

**** (f) Penalties.**

(1) (i) Except as provided in subparagraph (ii) and (iii) of this paragraph and paragraph (2) of this subsection, on adjudication, the penalty for:

1. A first violation of this article is \$25; and
2. Repeated violations of this article is \$100.

Appellants were assessed a penalty of \$25.00 for the "animal at large" violation. This Board would uphold that penalty.

Section 12-3-108 of the Code – menacing animals states:

**** (c) Citation.**

- (1) If an animal is declared a menacing animal, the animal control officer shall issue a civil citation to the owner declaring the animal a menacing animal.
- (2) The civil citation shall impose a civil monetary penalty of up to \$250.

In the instant case, the AHB assessed a penalty of \$100.00, which this Board feels is a reasonable penalty.

To uphold the decision of the AHB, this Board must merely find that the decision was not arbitrary in its findings and the decision in this matter was supported by competent, material

and substantial evidence. The Animal Hearing Board heard the testimony of the witness and viewed the exhibits that were admitted. By doing so it had the opportunity to competently assess the strength and credibility of each party's case.

Having reviewed the record below, and after hearing detailed arguments from both the Appellants and the Assistant County Attorney, it is clear that each party had the opportunity to present its case in detail at the hearing below. We find that the Animal Hearing Board acted lawfully and within its authority and jurisdiction. The Board of Appeals is persuaded that the evidence presented below and the arguments presented before this Board, support the findings of fact and conclusions of law cited in the opinion of the Animal Hearing Board; and that its decision was neither arbitrary nor capricious.

Consequently, based on the evidence originally heard by the Animal Hearing Board, this Board is satisfied that the April 20, 2010 decision was supported by competent, material and substantial evidence and therefore is upheld.

Therefore, the Board of Appeals will affirm the decision and penalties as assessed by the Animal Hearing Board in its decision below in AHB case number 3466.

ORDER

THEREFORE, IT IS THIS 30th day of September, 2010 by the Board of Appeals of Baltimore County

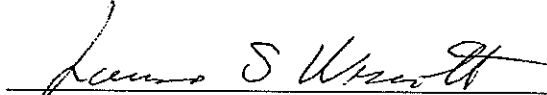
ORDERED that, for the reasons stated above, the decision of the Animal Hearing Board regarding Violation E 34939/animal at large "Lou" and Violation E 34941; menacing animal "Lou", are hereby **AFFIRMED**; and it is further

ORDERED that the decision of the Animal Hearing Board dismissing Violations E34940, E34942, E34943 and E34944 as duplicates is **UPHELD**; and it is further

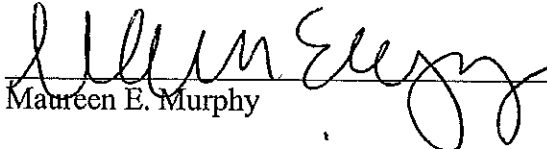
ORDERED that the civil monetary penalty in the amount of amount of One Hundred Twenty-Five (\$125.00), is to be paid within 30 days from the date of this Order.

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**



Lawrence S. Wescott, Panel Chairman



Maureen E. Murphy



Robert W. Witt