

IN THE MATTER OF * BEFORE THE
JEROME AND MARY SACHS * BOARD OF APPEALS
5 HARNESS COURT, APT T3 * OF
BALTIMORE, MD 21208 * BALTIMORE COUNTY

RE: DECISION OF * Case No. CBA -15-010
ANIMAL HEARING BOARD

* * * * *

O P I N I O N

This matter comes before the Baltimore County Board of Appeals as an appeal from an Animal Hearing Board decision upholding civil monetary penalties in the amount of \$500.00 for Violation E46057 / Menacing Animal.

The Board convened for a hearing on Tuesday, April 28, 2015 at 10:00 a.m. Jonny Akchin, Assistant County Attorney, appeared on behalf of Baltimore County. Paul Newhouse, Esquire represented the Appellants, Jerome and Mary Sachs.

It was noted by the Board that this was an appellate hearing and that the Board was required to review the case based upon the testimony and record established at the Animal Hearing Board hearing below.

Background

At the hearing before the Animal Hearing Board, the Complainant, Diane Gensler, indicated that she had a business relationship with the Respondent, Mrs. Mary Sachs. Ms. Gensler testified that on January 30, 2014, she arrived at the Respondents' home at the agreed upon time of 7:00 p.m. Ms. Gensler knocked on the door and Mrs. Sachs answered and invited Ms. Gensler inside. Ms. Gensler testified that the Sachs' German Sheppard named "Jack" came into the room and jumped on her. She turned her back to the dog. Ms. Gensler testified that Mrs. Sachs told Ms.

Gensler to remain calm and talked to dog. Jack came at Ms. Gensler a second time, biting her left buttocks area, and a third time biting her thigh. Ms. Gensler testified that she shut herself in the bathroom and held the door shut as the dog hit the door. She stated that at some point, Mrs. Sachs came into the bathroom, looked at Ms. Gensler's wounds, and provided bandages. Ms. Gensler declared that she wanted to leave. She testified that she left the bathroom and Mrs. Sachs told her to look at the dog, he had been muzzled. Ms. Gensler stated she told Mrs. Sachs she didn't want to look at the dog and to pass her purse out the door of the apartment. Ms. Gensler was not sure how long the attack lasted or how long she was in the Sachs' home. She thought there were minutes between the three attacks by Jack.

Upon questioning, Ms. Gensler stated she had met the dog at one previous visit approximately 2 to 3 weeks before this incident. Ms. Gensler stated that the dog had growled at her. While Jack had settled down and nothing further happened on the first meeting, Ms. Gensler testified that Jack made her uncomfortable.

Respondent, Mrs. Sachs, testified before the Animal Hearing Board. She testified they got Jack on December 29, 2013 from Mid-Atlantic German Sheppard Rescue ("the Rescue") to be used as a service dog by her husband, who is deaf. The Rescue's adoption contract indicated that the dog did not have any known behavioral issues, however, the dog did not like cats. Mrs. Sachs testified that Jack was three to four years old, prior to the incident with Ms. Gensler, there had been no other issues with Jack. Mrs. Sachs testified that Jack was not aggressive and does not recall Jack playing roughly.

Mrs. Sachs testified that the attack happened all at once over a span of maybe 30 to 40 seconds. Mrs. Sachs testified that when Jack attacked, she called for her husband and got Ms. Gensler into the bathroom. Upon questioning, Mrs. Sachs stated that she called her husband

because she thought he would have greater command over Jack. Mrs. Sachs stated that her husband came and pulled Jack into a back room where the dog stayed until after Ms. Gensler left.

Ms. Gensler testified that the Respondent's husband was not present at any time, nor did Mrs. Sachs call for her husband.

The Animal Hearing Board noted that a police bite report was filed on March 3, 2014 regarding a second incident with another visitor to the Respondents' residence. On March 19, 2014 the Respondent notified Animal Services that the dog was euthanized. The Animal Hearing Board noted that if the second victim filed an affidavit of complaint, a second violation would be issued against the Respondents.

Subsequently, the Animal Hearing Board, in their decision dated January 13, 2015, upheld citation E46057, Menacing Animal and ordered a civil monetary penalty in the amount of Five Hundred Dollars (\$500.00).

Decision

Pursuant to § 12-1-114(g) of the *Baltimore County Code*, the Board of Appeals, in such cases, 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.

At the hearing before this Board, Respondents, through Counsel, advanced several arguments requesting that the citation be reversed or vacated. The first argument advanced was

that the Animal Hearing board was incorrect in finding a violation of BCC § 12-3-108. They argue that since the animal was inside their home they should be exempt from the statute which requires that the animal be adequately confined or restrained. We disagree. The victim was required to enter the home for a valid business purpose. As a business licensee the victim was due a higher standard of care and the Respondents have a corresponding higher duty to protect. This would include properly restraining and confining their animal in compliance with the County Code.

The second argument advanced by the Respondents is that the Animal Hearing Board should not impose strict liability in this instance as the animal had no prior episode of menacing behavior. We disagree. The fact that the animal did not have any prior history of biting is not relevant under the current statute. The County enacted the statute to override general tort principles and impose liability on the owner of an animal which is menacing and dangerous. Counsel's argument is not relevant as we find the intent of the statute and construction of the statute is clear, unambiguous and imposes liability on the Respondents for the actions of their animal.

Having reviewed the record below, and after hearing the arguments from the Appellant and Mr. Akchin for the County, it is clear the Animal Hearing Board had sufficient evidence to support its decision and the Board finds no cause to remand or reverse the decision. However, this Board has found sufficient evidence to modify the Animal Hearing Board's decision. The Respondents testified that having absorbed the cost of euthanizing the animal on March 19, 2014 that the fine imposed by the current Citation would be a financial burden.

O R D E R

Therefore, it is this 5th day of ^{June} May, 2015 by the Board of Appeals of Baltimore County

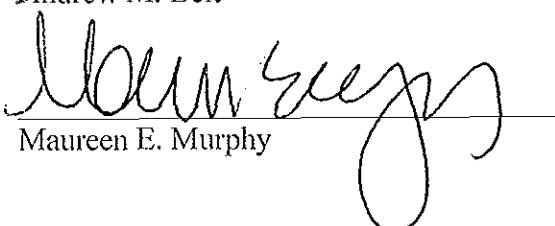
ORDERED that, for the reasons stated above, the decision of the Animal Hearing Board be and is hereby MODIFIED. The violation will be upheld and the civil monetary penalty in the amount of \$500.00 be and is hereby reduced to \$125.00. The civil monetary penalty must be paid within 30 days from the date 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**



David L. Thurston, Chairman


Andrew M. Belt
Maureen E. Murphy



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 5, 2015

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

Paul Newhouse, Esquire
4901 Roland Avenue
Baltimore, Maryland 21210

RE: *In the Matter of: Jerome and Mary Sachs*
Case No.: CBA-15-010

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

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Jerome and Mary Sachs
 Diane B. Gensler
 Bernard J. Smith, Chairman /AHB
 Thomas Scollins, Assistant Chief/Animal Control Division
 April Naill / Animal Control
 Nancy West, Assistant County Attorney
 Michael E. Field, County Attorney