



October 15, 2024

Kel L. Berg
Board Administrator, Howard County Board of Appeals
3430 Courthouse Drive
Ellicott City, MD 21043

**Re: Cardone Capital/BA 808-D
Hearing Date Oct 17, 2024**

Ms. Berg:

We ask the Board to accept the attached Opposition to Motion to Dismiss. The Motion to Dismiss was filed on September 19, 2024. We note the Office of the County Attorney has indicated it has no objection to this being filed at this time.

Thank you for your assistance in this regard.

Respectfully submitted,

Edward I. Donohue

Copies to:

David Moore, Office of the County Atty
Justin Tyler, Dept. of Public Service & Zoning

OPPOSITION TO THE MOTION TO DISMISS

I. Preamble

In response to the September 19, 2024 Administrative Agency's Motion to Dismiss, Appellant is submitting this Opposition to the Motion to Dismiss. Per the appeal filed April 1, 2024, on behalf of Columbia 531, LLC, Counsel requests the Board of Appeals to overrule the Department of Inspections, Licenses and Permits' (DILP) 2021 refusal to renew rental housing licenses for the years 2021-2023, and to backdate those licenses to cover that time period.

Howard County, through DIP purports to operate an extensive and logical system of issuing licenses and permits that is intended to work for large, multi-unit properties such as this. In practice, and in particular as applied during the very challenging period of time in question here, there are occasional gaps, omissions and failures to this system. This appeal represents one of those cases.

As a result of the County's failure to properly update its inspection reports for the fourteen rental properties in question, most of these properties appear to be unlicensed for portions of 2021 to 2023. It is not the case that these licenses weren't issued because of outstanding fire code, housing and maintenance requirements. Rather, it is because the County did not issue the licenses in a timely manner. As a result, the Appellant is now subject to class actions lawsuits as a result of insufficient or expired licenses.

This appeal should not be dismissed for the reasons outlined below. Columbia 531, LLC has been deemed the sole Appellant by the Hearing Examiner and has standing with respect to the rental housing licenses in question. The appeal should not be dismissed for lack of jurisdiction because there was no administrative decision, and no notice of a gap in licenses to be challenged before March of 2024. Appellant challenges the County's failure to issue the rental

licenses. Finally, the Appellant was aggrieved by the County's inability to issue the rental licenses, and the County has not provided adequate reason for its failure to renew these licenses. We ask the Hearing Examiner to order these rental licenses be backdated to cover the period of 2021 to 2023.

II. Naming Issue

In the Motion to Dismiss, the County Attorney argues that Cardone Capital, LLC is not an aggrieved person with respect to the subject property because the properties are owned by Columbia 531, LLC. Columbia 531, LLC is licensed in the State of Maryland and has the same registered agent (Corporate Creations Network Inc.) as is named in the litigation with Columbia 531, LLC. All three entities also have the same mailing address of 18909 N.E. 28th Avenue, Aventura, Florida 33180. Furthermore, the Securities and Exchange Commission names Columbia 531, LLC as a subsidiary of Cardone Equity Fund VI, LLC.

The Hearing Examiner already granted the request that the Petition substitute Columbia 531, LLC for Cardone Capital, LLC as the sole Appellant on July 9, 2024, and we thank her for allowing this substitution. Columbia 531, LLC is the owner of the properties in question and was aggrieved by DILP actions, therefore they do have standing for this appeal.

III. Timing Issue

The County Solicitor argues that the appeal should be dismissed because it was filed more than 30 days from the administrative decisions the Appellant claims were erroneous (Howard County Code 2-206). In this instance, however, there is no written administrative decision to challenge. There was no notice of revocation or expiration of the rental licenses that would have informed the Appellant of the situation.

IV. Aggrievement

The Appellant was aggrieved by the failure of the County to issue the rental licenses on time, directly leading to class action lawsuits that have harmed the Appellant. The County Solicitor claims that “DILP refused to issue the license renewals until a variety of proper maintenance and other renting housing licensure requirements were met, including repair and certification of the sprinkler system that serves the various rental properties.” Appellant is well aware of the importance in ensuring its rental properties are properly licensed and thereby ensuring the safety of all of its tenants. But it is not the case that the licenses were not renewed due to any fault of the Appellant, rather, it was due to the failure of County inspectors to properly update their inspection reports.

DILP records show gaps and inconsistencies that call to question the accuracy of the gaps in active licenses alleged in the litigation. According to Jessica Hill, Chief of the Licenses and Permits Division of DILP, all inspection notes pertaining to the property in question should be recorded in the Inspection Summary Report (ISR) for License T9501 (subsequently referred to as “Master ISR”). Throughout the period in question, Howard County inspectors failed to follow this protocol and did not record all building inspections in the Master ISR.

On June 7, 2021, Inspector Andy Teranto approved the Renewal Rental Inspection for T9468 ISR (Building #13), but failed to update the licensing records for any of the other buildings, and did not update the Master ISR. As a result, only the license for Building 13/License T9468 was marked by Howard County as “Ready for Issuance,” while the Master ISR and the Renewal Rental Inspections for the 13 other buildings on the property went untouched. There is no explanation for this oversight.

During the period in question, the ISRs for Buildings 1-10, 12, and 14 are identical. On May 9, 2021, each ISR was marked as “Renewal.” On August 1, 2021, these statuses changed to “Delinquent.” It was not until January 19, 2023, that these statuses were changed to “Ready for Issuance,” over 18 months after these licenses should have been issued. There has been no explanation from Howard County as to the reason for this delay.

The only two licenses to ever expire were Buildings 11 and 13 (T9496 and T9468). In both instances, the status of these buildings was marked as “About to Expire.” In both instances, 28 days later, the licenses were marked as “Expired.” At no point in time were Buildings 1-10, 12, or 14 either marked as “About to Expire,” or “Expired.” On January 17, 2024, DILP Director Robert Frances stated via email that Buildings 11 and 13 “went through a relatively normal renewal cycle and never expired.” In fact, Buildings 11 and 13 were the only buildings to have their licenses expire during this period. It is also unclear what constitutes a “normal” or “abnormal” renewal cycle.

More importantly, Director Frances stated that the licenses for Buildings 1-10, 12, and 14 were unable to be renewed because of “outstanding items.” However, no inspection took place between May 9, 2021, when the licenses for each of these buildings were marked as “Renewal,” and August 1, 2021, when they were marked as “Delinquent.” It is therefore unclear what “outstanding items” Director Frances is referring to. The delay in issuing these licenses is therefore due to the oversight shown by the County, and not due to any oversight on the part of the Appellant.

Counsel for the Appellant met with Howard County staff, with the Office of the County Attorney present on April 30, 2024 to discuss this appeal. When the Appeal was filed on April 1, 2024, Counsel explained how the gaps in renewal licenses exposed the Appellant to potentially

costly litigation. An email from Counsel dated May 9, 2024 further elaborated on the argument and again asked for relief from the County. At no point did the County adequately explain the reasoning for not issuing the rental licenses in a timely manner.

The County argues that the Appellant cannot be aggrieved by the granting of a license, seeming to suggest that only denial can be appealed. We reject this argument on principle.

Howard County Code , Sec. 14-904 is clear and unambiguous:

Any aggrieved person may appeal a decision of the Director to revoke, deny, suspend or approve a rental housing license under this subtitle". Emphasis added.

The January 8, 2024 email from Ms. Hill stated that the standard operating procedure of inspections staff is to treat apartment complexes like the one in question as a whole and not as individual buildings. Records from previous renewal cycles affirm this point. It is unclear what caused the sudden change to the County's operating procedure. The COVID-19 pandemic had a substantial impact on the County's daily operations. The pandemic disrupted the County's daily operations, including its inspection schedule. Recognizing these difficulties, we are asking the Board to reverse the decision of the Hearing Examiner, to grant the relief requested in this case and backdate the rental housing licenses for the period between 2021 and 2023. The County has not provided adequate reasoning why these licenses were not issued, and the onus is on the County to correct this error.