

IN THE MATTER OF : BEFORE THE
ELIZABETH LINDENAU AND : HOWARD COUNTY
BRADY DECKER : BOARD OF APPEALS
: Case No. 770-D

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DECISION AND ORDER

The Howard County Board of Appeals (the "Board") convened on Tuesday, June 23, 2020, to hear the appeal of Appellants Elizabeth Lindenau and Brady Decker from a decision of the Animal Matters Hearing Board ("AMHB") issued on October 2, 2019, affirming the determination of the Animal Control Administrator to permanently impound 59 live animals and 42 deceased animals belonging to the Appellants.

Due to the COVID-19 pandemic, the hearing was held remotely using the Webex platform. Board members participating were Neveen Kurtom, Board Chair; William Santos, Board Vice Chair; Gene Ryan; Steven Hunt; and James Howard. Chairperson Kurtom presided over the hearing.

Appellants were represented by Steven M. Klepper, Esquire. Appellee, the AMHB, was represented by Louis P. Ruzzi, Senior Assistant County Solicitor. Cynthia G. Peltzman, Senior Assistant County Solicitor, served as legal advisor to the Board.

STANDARD OF REVIEW

This matter is an appeal on the record and the hearing was conducted in accordance with Section 2.210(b) of the Board's Rules of Procedure. In an appeal on the record, the appellant has the burden of establishing that the action of the administrative agency was supported by substantial evidence, was correct as a matter of law, and was not arbitrary and capricious.

The standard of review applied by the Board in an appeal on the record is the same standard of review employed by courts reviewing the decisions of administrative agencies. *Mortimer v. Howard Research & Devel. Corp.*, 83 Md. App 432, 443 (1990), *cert. denied*, 321 Md. 164 (1999) (describing applicable standard of review). In recognition of the expertise of administrative decision-makers, the decision of an administrative agency "is *prima facie* correct and presumed valid . . ." *Ramsay, Scarlett & Co. v. Comptroller*, 302 Md. 825, 834-35 (1985).

In reviewing the decision of the AMHB, the Board must apply the substantial evidence test to determine whether, in light of the record as a whole, "a reasoning mind reasonably could have reached the factual conclusion the [AMHB] reached." *Motor Vehicle Admin. v. Carpenter*, 424 Md. 401, 412 (2012) (quoting *Maryland Aviation Admin. v. Noland*, 386 Md. 556, 571-72 (2005)). If so, the decision is supported by substantial evidence. The agency's decision is entitled to deference and must be reviewed "in the light most favorable to it." *Id.* The reviewing body "may not substitute its judgment for the expertise of those persons who constitute the administrative agency." *Id.*

Review of an agency's legal conclusions is less deferential and the agency's decision should be reversed if premised on an erroneous interpretation of the law. *People's Counsel for Baltimore Cnty. v. Surina*, 400 Md. 662, 682 (2007) (internal citations omitted). Nevertheless, in recognition of the expertise of agency officials, "a degree of deference should often be accorded the position of the administrative agency' whose task it is to interpret the ordinances and regulations the agency itself promulgated." *Id.* at 682-83 (quoting *Marzulo v. Kahl*, 366 Md. 158, 172 (2001)).

Matters committed to an agency's discretion are reviewed to determine if they are arbitrary or capricious. *Spencer v. Maryland Bd. of Pharmacy*, 380 Md. 515, 529-30 (2004). Matters within the agency's discretion are "owe[d] a higher level of deference" than that afforded to an agency's fact-finding or legal interpretations. *Id.* at 529. "[A]s long as an administrative agency's exercise of discretion does not violate regulations, statutes, common law principles, due process and other constitutional requirements, it is ordinarily unreviewable. . . ." *Id.* at 530-31 (quoting *Maryland State Police v. Ziegler*, 330 Md. 540, 557-58 (1993)).

THE PROCEEDINGS BELOW

On July 29, 2019, Animal Control Administrator Deborah Baracco issued a letter to Appellants Elizabeth Lindenau and Brady Decker stating that Howard County Animal Control had received a complaint alleging cruelty to animals in their care. After Animal Control was unable to make contact with the Appellants to investigate the matter, despite multiple attempts, the Police Department obtained and executed a search and seizure warrant at their property located at 9466 Hundred Drums Row in Columbia, Maryland. The letter stated that "[a]nimals were being housed in filthy conditions and not receiving proper care." Pursuant to section 17.310 of the County Code, Animal Control impounded 59 live animals and 42 deceased animals found in multiple freezers. Ms. Baracco stated that, pursuant to Howard County Code section 17.309, 59 live animals consisting of 11 dogs, 39 birds, 5 cats, 2 turtles, and 2 snakes, and the bodies of 42 deceased animals were being permanently impounded. The letter advised the Appellants of their right to appeal the decision to the AMHB. Ms. Lindenau filed a notice of appeal on August 2, 2019.

On September 17, 2019, the AMHB heard the appeal in case number 19-042. The AMHB was provided with a history of prior contacts with the Howard County Department of Police and Howard County Animal Control going back to 2012.

The AMHB heard testimony from Ms. Baracco, which she provided to support her decision to permanently impound the 59 live animals and 42 dead animals found at the property. Brandi Forgrave, an Animal Control Officer, testified about the conditions found in the Lindenau / Decker house. Both were subject to cross examination by Mr. Justin Lake, the attorney for Ms. Lindenau and Mr. Decker. Ms. Lindenau testified on behalf of the Appellants and was cross examined by Ms. Baracco.

On October 2, 2019, the AMHB issued its Decision and Order, which provided a synopsis of the testimony and the finding that 59 live animals and 42 dead animals found in freezers were impounded, that the animals were not provided with proper housing, sanitary conditions, food and water, or veterinary care. Based on the substantial evidence in the record, the AMHB concluded that Ms. Lindenau and Mr. Decker violated section 17.305(a) of the Howard County Code, which prohibits subjecting an animal to cruelty or neglect, where cruelty and neglect are defined in Howard County Code sections 17.300(k) & (v), respectively. Based on the findings of fact and conclusions of law, the AMHB affirmed the decision of the Animal Control Officer to permanently impound the living and dead animals.

THE PROCEEDINGS BEFORE THE BOARD

The Board members were provided with the entire record of the proceedings before the AMHB prior to the hearing.

On January 31, 2020, Mr. Klepper, counsel for the Appellants, filed a Memorandum with the Board. On March 3, 2020, Mr. Ruzzi filed a Reply Memorandum on behalf of the AMHB.

On March 3, 2020, and Mr. Klepper filed a Reply to the AMHB's Reply. Both Mr. Klepper and Mr. Ruzzi made oral argument to the Board at its hearing on June 23, 2020.

Appellants made the following arguments:

1. The AMHB did not make findings of fact on the issue of whether or how the health or safety of animals was endangered by owner neglect;
2. The MMHB did not resolve conflicts in the evidence, including the weight given to Ms. Lindenau's testimony and a remand was appropriate;
3. The Administrator did not enter the house, yet testified that she permanently impounded the animals because she concluded she was unable to mandate conditions that would ensure the future safety of animals in the Appellants' care;
4. Evidence in the record indicates that the medical condition of the dogs was minor, such as flea infestation and matting of fur, and permanent impoundment was unnecessary because the home was cleaned up by the time of the hearing before the AMHB;
5. Evidence did not support permanent impoundment of cats, turtles, and snakes because a veterinarian found one cat to have only a respiratory infection and four other cats were unremarkable, and no veterinarian examined the turtles and snakes;
6. Evidence did not support permanent impoundment of birds because, while their living conditions were "messier," no veterinarian was called to testify to link the birds' physical conditions to their living conditions;
7. There was no evidence showing that the 42 deceased animals found in several freezers died because of cruelty or neglect and no basis to show that the dead animals in the freezer threatened the health of other animals and no legal basis to impound them;
8. The AMHB did not consider veterinary records that were not available at the hearing, but

which Ms. Lindenau promised to provide;

9. The AMHB erred in allowing the Animal Control Administrator to deny Ms. Lindenau's offer to provide evidence at a later date; and

10. The AMHB failed to consider the bond between the Appellants and the animals impounded.

Appellee, the AMHB, made the following arguments:

1. Photographs of the inside of the Appellants' residence showed that it was not unfit for habitation not only for humans but for domesticated animals and Animal Control Officer Forgrave found it difficult to breathe in certain areas of the house because of the overpowering smells of feces and urine and lack of ventilation, the animals were housed in filthy conditions and some without proper food, water, or lighting, and the birds' cages had a build-up of feces and seeds, in some cases up to six inches deep, resulting in some animals experiencing health conditions;

2. Appellants presented virtually no evidence contradicting the conditions of the home as depicted on photographs and in the testimony; instead, Ms. Lindenau tried to explain the reasons for the conditions of the animals and the residence and the Appellants' devotion to the animals;

3. In its Decision and Order, the AMHB included a lengthy summary of the testimony and evidence, which was sufficient to support the findings of fact and conclusions of law; and

4. The AMHB was not required to make specific findings as to each animal that impoundment was appropriate and the AMHB looked at impoundment as protecting the animals as a whole.

DISCUSSION

In reviewing the factual findings of the AMHB, the role of the Board is to determine if "reasoning minds could reasonably reach the conclusion reached by the agency from the facts in the record. . . ." *Liberty Nursing Ctr., Inc. v. Dep't of Health & Mental Hygiene*, 330 Md. 443, 443 (1993) (citing *Snowden v. Mayor & City Council of Baltimore*, 224 Md. 443, 448 (1961)). Appellants are correct that administrative agencies engaged in a quasi-judicial process must make findings of fact. See, e.g., *Walker v. Dep't of Housing and Community Develop.*, 422 Md. 80, 106 (2011). However, as the Appellee, the AMHB points out, the Court of Appeals has instructed that this obligation can be satisfied by referring to evidence in the record to support its findings, which is sufficient to allow for meaningful judicial review. See *Critical Area Comm'n v. Moreland, LLC*, 418 Md. 111, 134 (2011).

Here, the Decision and Order of the AMHB included a detailed eight-page summary of the evidence in the record and the testimony. As the Court of Appeals made clear in *Moreland*, when an agency "refers to evidence in the record in support of its findings, meaningful judicial review is possible." *Id.* As was the case in *Moreland*, here the AMHB "explicitly summarized evidence presented by several witnesses supporting its conclusions, albeit in a separate section, enabling meaningful judicial review. That evidence, intellectually and logically, can be viewed only as bearing on what persuaded the [agency] to conclude as it did." *Id.*

The cases cited by the Appellants are not persuasive. Some are inapposite because they deal with review of agency decisions that are so bare bones or conclusory that judicial review is virtually impossible. For instance, in *Walker v. Dep't of Housing and Community Devel.*, 422 Md. 80, 106 (2011), the Court of Appeals determined that a hearing examiner's findings were woefully inadequate where it consisted only of the sentence "[t]he testimony and evidence in this

matter indicates that the decision of the Local Housing Authority should be upheld." In *Bucktail, LLC v. Cnty. Council of Talbot Cnty.*, 352 Md. 530, 557-58 (1999), the Court concluded that the findings were deficient because they were little more than a reference to conclusory statements premised on "the evidence in the record."

Notably, the *Moreland* Court specifically distinguished *Bucktail* as involving inadequate findings of fact from those in *Moreland*, where because of the summary of evidence, the factual findings were deemed sufficient to enable meaningful judicial review. *Moreland*, 418 Md. at 130, 134 (citing *Bucktail*, 352 Md. at 558). Other cases cited are decisions of the Court of Special Appeals, while *Moreland* was decided by the Court of Appeals. And, with the exception of *Walker*, which is inapposite, all of the cases cited by the Appellants pre-dated the 2011 *Moreland* decision.

There is substantial evidence in the record to support the conclusion that the Appellants violated section 17.305(a) of the Howard County Code, which prohibits a person from subjecting an animal to cruelty or neglect. Cruelty is defined in pertinent part as:

an act of commission or omission whereby unjustified physical pain, suffering, or death is caused or permitted, including failure to provide proper drink, air, space, shelter, shade, protection from the elements, sanitary conditions, veterinary care, or nutritious food in sufficient quantity.

Howard County Code sect. 17.300(k). Neglect is defined as:

an act of omission or commission whereby an animal is deprived of access to adequate water, food, shelter, shade, air, or sanitary conditions, or is chained or otherwise confined, lacking freedom of movement adequate to ensure access to any of the above.

Howard County Code sect. 17.300(v). The AMHB's Decision and Order recites record evidence that the house was "overflowing with items and debris piled to the ceiling in some areas . . . [and] strong odors of dust, stale urine and waste were easily detected." (AMHB D&O

p. 3). Birds were found in "filthy cages with a buildup of feces and discarded seed," in some cases "up to six inches deep," and "snake cages were buried under mounds of debris. (AMHB D&O p. 4). Multiple animals had physical or medical issues, such as a dog with "severe dental disease and chronic skin issues," birds with "vitamin D deficiency, feather plucking, and long nails." (AMHB D&O p. 4). Animal Control Administrator Baracco testified that animals found in the residence "were not provided proper housing, sanitary conditions, food and water, and medical care." (AMHB D&O p. 5). The fact that Ms. Baracco did not personally enter the Appellants' residence does not undercut her testimony – photographs in the record depict conditions in the home and she can rely on the investigation and conducted by Animal Control Officer Forgrave, who works under her supervision, in support of that finding. (AMHB D&O p. 5). *See* Howard County Code sect. 17.309(a)(2) (permitting Animal Control Administrator to take enforcement action based on "the observation of an Animal Control Officer or Police Officer").

The AMHB Decision and Order referenced testimony by Ms. Lindenau and evidence she submitted to the AMHB, including photographs of her residence after it had been cleaned. (AMHB D&O p. 7-8). It is the province of the AMHB to weigh the evidence. As is clear from the finding that "[t]he animals were not provided proper housing, sanitary conditions, food and water or veterinary care," (AMHB D&O p. 9), the countervailing evidence presented by Ms. Lindenau was not sufficient to warrant a different conclusion. As the *Moreland* Court recognized, evidence summarized in an agency's decision demonstrates what "persuaded" the AMHB to "conclude as it did." *Moreland*, 418 Md. at 134.

It is well-settled law that a body reviewing the factual findings of an administrative agency may not substitute its judgment for that of the agency. *Bullock v. Pelham Woods Apts.*,

283 Md. 505, 512-13 (1985). It is also the job of the agency – not the reviewing body – to weigh conflicting evidence. *Id.* This deferential standard acknowledges the expertise of administrative decision-makers. *Id.* Thus, even if the Appellants – or even the Board members – believe the evidence should have been weighed differently, the AMHB's factual findings may not be overturned if supported by substantial evidence. The AMHB decision, with its recitation of the evidence setting out the basis of the factual findings, provides a meaningful basis for review, and the Board concludes those factual findings are supported by substantial evidence.

Review of an agency's conclusions of law involves an examination of whether the agency properly interpreted the applicable legal principles. While a review of an agency's interpretation of the law is less deferential than review of its factual findings, nevertheless "an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight" and "the expertise of the agency in its own field should be respected." *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 69 (1999) (internal citations omitted).

Here, the determination of whether the factual findings supported the conclusion that Appellants violated Howard County Code section 17.305(a), which prohibits cruelty or neglect of animals, is a mixed question of law and fact, and an administrative agency's application of the law to the facts of the case is entitled to "great deference." *Travers v. Baltimore Police Dep't*, 115 Md. App. 395, 420 (1997). At the very least, the evidence in the record supports the conclusion that the animals found in Appellants' residence were not provided with proper sanitary conditions, which fits squarely within the definition of both cruelty and neglect. *See* Howard County Code sect. 17.300(k) & (v). The Board concludes that the AMHB correctly interpreted the law and properly applied the facts supported by substantial evidence to that law to reach its

conclusion.

The AMHB did not commit an error of law or abuse its discretion by not keeping the hearing open to allow Ms. Lindenau to present evidence after the fact. The AMHB Rules of Procedure state that "[t]he hearing shall be conducted in accordance with evidentiary rules and procedures contained in the Howard County Administrative Procedure Act (Section 2.100 *et seq.* of the Howard County Code)" (AMHB Rules of Procedure C.5). The County Administrative Procedure Act provides that "an Agency or Agency member *may* seek additional evidence" or "*may* grant a motion by any party . . . to hold the record open to receive such evidence for a specified period of time following the close of the hearing." Howard County Code sect. 2.117(c) (emphasis added). By the plain language of the ordinance, holding a hearing open for additional evidence is purely discretionary.

While the Appellants point out that Ms. Baracco stated that evidence of veterinary records "can not be provided at a later date," (AMHB Transcript p. 62-63), Ms. Lindenau, who was represented at the hearing, could have made a formal motion, but she did not, and any Board member could have asked for the hearing to be kept open for the receipt of new evidence, but did not. Since the ability to keep the hearing open for the receipt of new evidence is purely discretionary, there was no abuse of discretion and no error of law in not doing so.

Finally, the decision of the AMHB in affirming the action of the Animal Control Administrator to permanently impound both the 59 living and 42 dead animals was not arbitrary and capricious. Determination of a particular sanction is quintessentially within an agency's discretion. Even if a reviewing body believes the sanction is "'disproportionate' to the violation, the agency's determination of the amount or level of the sanction could not be second-guessed, unless the sanction 'was so extreme and egregious that the reviewing [body] can properly deem

the decision to be arbitrary and capricious" *Spencer v. Maryland State Bd. of Pharmacy*, 380 Md. 515, 531 (2004) (quoting *Maryland Transportation Auth. v. King*, 369 Md. 274, 291 (2002)).

The Animal Control Administrator is authorized to impound animals for a variety of reasons, including when animal's "health or safety is endangered through its owner's cruelty or neglect. Howard County Code sect. 17.310(a)(vii). The Animal Control Administrator to set conditions for redemption of an impounded animal and the owner may redeem the animal if those conditions are met and the owner can meet other requirements set out in Title 17, subtitle 3. Howard County Code sect. 17.310(d) & (e)(1). Here, the Animal Control Administrator advised the Appellants in the July 29 notice that "[d]ue to the nature and extend of the cruelty," she was unable to set conditions that would "insure the future safety of animals in [their] care." (July 29, 2019, letter of Administrator to Appellants). The AMHB Decision and Order summarized evidence that included the characterization of the living conditions as "deplorable, depicting hoarding conditions"; animals "housed in filthy conditions, some without water, food and proper lighting"; cages covered with "mounds of debris"; and bird cages with a build-up of feces and seeds in some cases "up to six inches deep." (AMHB D&O pp. 3-4).

In light of this evidence, and in deference to the expertise of the Animal Control Administrator, her decision to permanently impound the animals was not arbitrary and capricious. While the evidence also shows that the Appellants' residence was cleaned by the time of the hearing, that does not make the sanction to permanently impound the 59 live animals and 42 deceased animals "so extreme and egregious" to render it arbitrary and capricious.

For the reasons set out here, the Board concludes that the decision and order of the AMHB is supported by substantial evidence, is not clearly erroneous, and is not arbitrary and capricious.

ORDER

Based on the foregoing, it is this 5th day of October, 2020, by the
Howard County Board of Appeals hereby

ORDERED, that the Decision and Order of the Howard County Animal Matters Hearing
Board dated October 2, 2019, is AFFIRMED.

HOWARD COUNTY BOARD OF APPEALS


Robin Regner
Board Administrator

Robin Regner, Bd Admin. for
Neveen Kurtom, Esquire
Board Chair

Robin Regner, Bd Admin. for
William Santos, Vice Chair

Prepared by:

Howard County Office of Law
Gary W. Kuc, County Solicitor

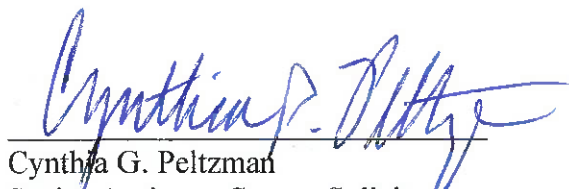
Robin Regner, Bd Admin. for
James Howard, Board Member

Dissent

Steven Hunt, Board Member

Dissent

Gene Ryan, Board Member


Cynthia G. Peltzman
Senior Assistant County Solicitor