
IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2005
No. 327

MONTGOMERY COUNTY, MARYLAND

Appellant

v.

CARTER POST,

Appellee

On Appeal from the Circuit Court for Montgomery County, Maryland
(Eric M. Johnson, Judge)

BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This case involves an administrative appeal from a decision of the Montgomery County Animal Matters Hearing Board¹ after the board affirmed the decision of the Director of the Animal Services Division (ASD) declaring a dog owned by Carter Post to be “potentially dangerous.” (E. 4-9) The clerk of the circuit court mailed notice of the petition for judicial review to the agency, assigning a case number and triggering the time within which the agency must send notice of the appeal to all parties and transmit the administrative record to the court. (E. 10-11)

When the record was not filed, rather than contact the board to discern the reason for the delay or to provide payment of the cost of the hearing transcripts, Mr. Post filed a motion to reverse the board’s decision based on its failure to submit the agency record. (E. 10-12) The circuit court granted the motion without reviewing the agency record to determine whether it contained substantial evidence to support the board’s decision on the merits. (E. 14-18) After learning of the outcome, the County submitted the record and filed a motion to reconsider, requesting that the court review the record for substantial evidence and compliance with the law. (E. 19-22) The court denied the motion and the County noted this appeal. (E. 29-43)

¹The AMHB is created by County law and its authority and duties appear in the County Code. *See* § 5-104 Montg. Co. Code (2004).

QUESTION PRESENTED

Did the circuit court abuse its discretion when it denied the motion for reconsideration of its decision to reverse the administrative agency's decision without performing the correct standard of review?

STATUTES, ORDINANCES, AND CONSTITUTIONAL PROVISIONS

The full text of all relevant statutes, ordinances, and constitutional provisions appears in the appendix to this brief.

STATEMENT OF FACTS

When the Director of the Animal Services Division declared that Mr. Post's dog was "potentially dangerous" under the animal control law, Mr. Post sought review before the Animal Matters Hearing Board.² The board affirmed the director's decision and ordered that Mr. Post keep the dog muzzled and on a non-retractable leash whenever the dog was not on Mr. Post's property. (E. 7) Mr. Post filed a petition for judicial review in the circuit court seeking to overturn that result. (E. 9) The details upon which the board relied to reach its decision regarding Mr. Post's dog are not relevant to this appeal. Rather, the pertinent facts involve the remedy available to a petitioner when the agency fails to submit the administrative record to the court.

Although the clerk of the court mailed notice of Mr. Post's petition to the agency, the board's staff did not perform its responsibilities under the Rules to send notice to the parties

²The director and animal control officers have extensive enforcement authority on behalf of the County, and their decisions may be appealed to the board. *See* Montg. Co. Code § 5-301 and § 5-306, respectively.

and to transmit the agency record to the circuit court. (E. 19-20) On the other hand, Mr. Post did not perform his duty to supply the transcripts nor contact the board to inquire about the cost of the transcripts. (E. 21) The agency's legal adviser in the Office of the County Attorney did not learn of the petition until the circuit court issued its order reversing the decision of the board. (E. 20) The motion for reversal relied solely upon the board's inaction regarding the record and did not present the court with an argument either that the board's decision was unsupported by substantial evidence or failed to apply correct legal principles. (E. 10-12, 14-16)

Upon receipt of the order reversing the board's decision, the agency informed its counsel, who promptly ensured that the agency filed the administrative record. (E. 19-21) The agency assumed the cost of the transcript preparation even though Mr. Post bears that obligation. (E. 21) Having completed the record for the court's review, the County filed a motion to reconsider, asking the court to review the record in accordance with the judicial review standard. (E. 19-21)

ARGUMENT

The circuit court abused its discretion in denying the motion for reconsideration, because dismissal is the sole remedy for the failure to transmit the agency record timely, and the court may reverse the agency's decision only after reviewing the record to determine whether it contained substantial evidence to support the agency's findings and whether the agency applied correct principles of law.

As this Court well knows, judicial review of an administrative decision requires the court to determine whether “there was substantial evidence on the record as a whole to support the agency’s findings of fact and whether the agency’s conclusions of law were correct.” *Motor Vehicle Administration v. Atterbeary*, 368 Md. 480, 490-491, 796 A.2d 75, 81 (2002). The reviewing court will not substitute its judgment for the expertise of the agency or make its own findings of fact when the record contains substantial evidence to support the administrative decision. *Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 450-451, 800 A.2d 768, 774-775 (2002). The court may substitute its judgment only as to an error made on an issue of law. *Relay Improvement Association v. Sycamore Realty Co.*, 105 Md. App. 701, 714, 661 A.2d 182, 188 (1995), *aff’d.*, 344 Md. 57, 684 A.2d 1331 (1996). Even for issues of law, the court extends a degree of deference to the agency and often gives considerable weight to the agency’s interpretation and application of the statute that the agency administers. *Annapolis Market Place, LLC v. Parker*, 369 Md. 689, 703, 802 A.2d 1029, 1038 (2002).

Decisions of agencies are entitled to great weight and a presumption of validity, viewing the decision in the light most favorable to the agency. *Board of Physician Quality*

Assurance v. Banks, 354 Md. 59, 68-69, 729 A.2d 376, 381 (1999). Substantial evidence has been described as “more than a ‘scintilla of evidence,’ such that a reasonable person could come to more than one conclusion.” *Relay Improvement Association*, 105 Md. App. at 714, 661 A.2d at 188. Moreover, the agency resolves any conflicting evidence, as well as any inconsistent inferences from the evidence. *Gigeous v. Eastern Correctional Institution*, 363 Md. 481, 497, 769 A.2d 912, 922 (2001).

To conduct this review, it is imperative that the circuit court receive the agency record containing all of the evidence considered by the agency along with its decision. The logical results of the agency’s failure to transmit the record would be either dismissal as permitted by the Rules or an order to the agency to transmit the record within a certain period of time, effectively extending the 60-day time-frame. Md. Rule 7-206(d). The circuit court failed to apply the proper standard of review in the present case, and abused its discretion by then denying the motion for reconsideration once the record had been filed with the court.

***The Rules contemplate dismissal for failure
to submit the administrative record.***

The Court of Appeals has described the Maryland Rules as precise rubrics established to promote the orderly administration of justice—they are to be read and followed, and not treated as mere guides or suggestions to the practice of law. *Johnson v. State*, 355 Md. 420, 447, 735 A.2d 1003, 1018 (1999). The Rules specify the manner in which a petition for judicial review will be handled by the circuit court. For review of administrative agency decisions, the agency from which a petition for judicial review is taken has the responsibility

of transmitting a complete record to the circuit court, including the transcript of testimony, while the petitioner must pay the cost of any transcription. Md. Rule 7-207. *See also Town of New Market v. Frederick County*, 71 Md. App. 514, 517, 526 A.2d 623, 624 (1987). To meet its obligation, the agency must transmit the record within 60 days of receiving the petition for judicial review. Md. Rule 7-206(c). The Rule allows the court to extend the time for transmittal where an act or omission of the agency caused the failure to transmit the record, but the language does not suggest that the court may reverse or modify the agency's decision when the record is not transmitted timely.

The sole penalty for the agency's failure to submit the record is dismissal of the petition:

Upon motion by the agency or any party, the court may shorten or extend the time for transmittal of the record. The court may extend the time for no more than an additional 60 days. The action shall be dismissed if the record has not been transmitted within the time prescribed unless the court finds that the inability to transmit the record was caused by the act or omission of the agency, a stenographer, or a person other than the moving party.

Md. Rule 7-206(d). The appellate courts have construed this language in a manner that avoids dismissal for substantial compliance and considers whether the failure to file the administrative record is solely attributable to the petitioner. For example, in *Wormwood v. Batching Systems, Inc.*, the court found that the petitioner substantially complied with the rules, even though some of the responsibility for the delay in transmitting the record to the court was attributable to the petitioner. 124 Md. App. 695, 723 A.2d 568 (1999). In that case, the petitioner did not pay the court reporter timely, failed to ask the court to extend the

time for filing the transcript, and neglected to follow up with the agency. *Id.* at 701, 723 A.2d at 571. This Court held that the circuit court abused its discretion when it refused to accept the late filing and review the case for substantial evidence and compliance with the law. *Id.* at 705, 723 A.2d at 573. On the other hand, in *Jacobson v. High Hill Realty, Inc.*, the circuit court properly dismissed a petition where the petitioner did not substantially comply with rules—the petitioner did not request preparation of the transcript immediately, which resulted in the agency being unable to transmit the record within the permissible maximum period of time under the Rules. 22 Md. App. 115, 122, 321 A.2d 838, 843 (1974).

The present case involved a combination of missteps. Aside from the agency failing to contact its legal adviser for assistance in complying with the Rules, Mr. Post did not obtain the transcripts of the hearings. (E. 20-21) The Rules specify that the petitioner must cover the cost of the transcripts if required by the agency, but Mr. Post did not contact the agency to determine whether the transcripts were being prepared or otherwise raise the issue. Nor did he file a motion with the court seeking additional time for the agency to file the record. Instead, he filed a motion to reverse the agency decision. (E. 10-12) The petitioner's actions supported dismissal, but based on his contribution to the absence of the record and the lack of any indication that the petitioner suffered prejudice from the delay, the court should have accepted the late filing of the record and reviewed the case in accordance with the proper standard of judicial review.

Further complications derived from Mr. Post's mailing the motion only to the director and not to the Office of the County Attorney.³ (E. 12) While the director attended the hearing before the board, an assistant county attorney presented the case on behalf of the County. (E. 14-15) When the board failed to send notice to the parties, the oversight included notice to the attorneys of record, who were in a better position to ensure compliance with the Rules. The additional failure of the petitioner to send the motion to the Office of the County Attorney caused the County to lose its opportunity to respond to the motion to reverse the board's decision and to request that memoranda be filed with the court for consideration of the board's decision in relation to the administrative record. Md. Rules 7-207 and 7-209. The grant of the motion for reconsideration would have corrected this error, and the denial reflects an abuse of the court's discretion.

³Even if Mr. Post had sent the motion to the board, the problem would have remained the same. The agency was not a party to the circuit court proceeding, because a quasi-judicial body like the board "has no interest, personal or official, in the matters which come before it other than to decide them according to the law and the proved fact, and it is in no sense a party to the proceedings." *Board of Zoning Appeals v. McKinney*, 174 Md. 551, 560-61, 199 A. 540, 544 (1938). An exception exists when a case has "significance in terms of the agency's broader responsibilities," in which case, "the agency must be free to intervene in judicial review actions and contest in the appellate courts judgments that may hamper it from effectively implementing the policies ordained by the Legislature." *Calvert County Planning Commission v. Howlin Realty Management, Inc.*, 364 Md. 301, 319, 772 A.2d 1209, 1219 (2001).

***The circuit court abused its discretion when it
denied the motion for reconsideration.***

The appellate courts often have avoided dismissing petitions for judicial review where a delay in filing the administrative record results from actions of individuals or entities other than the petitioner and where no prejudice occurs to the petitioner. In the present case, upon learning of the matter, the board transmitted the administrative record to the circuit court along with the filing of the motion for reconsideration. To do so, the board assumed the cost of transcribing the hearing testimony, because the petitioner did not obtain the transcripts and file them with the agency. (E. 2, 19-22) The petitioner did not show any prejudice that weighed against the court conducting the proper review of the record. Although the circuit court has broad discretion regarding a motion for reconsideration, the denial in this case reflected an abuse of that discretion by the circuit court.

This Court has made clear that it will reverse the circuit court only based on a grave error and considers the “nature of the error, the diligence of the parties, and all surrounding facts and circumstances” to make its determination. *Wormwood*, 124 Md. App. at 700, 723 A.2d at 570-571. Not only has this Court approved of reasonable extensions of time for an agency to file the complete record, but it has acknowledged that the Rule does not mandate dismissal for an untimely transmittal. *Hahn Transportation, Inc. v. Gabeler*, 156 Md. App. 213, 221-222, 846 A.2d 462, 467 (2004); *Town of New Market v. Frederick County*, 71 Md. App. at 519, 526 A.2d at 625. Judicial discretion must reflect sound judgment and an abuse of that discretion occurs when the court’s decision is “manifestly unreasonable, or exercised

on untenable grounds, or for untenable reasons.” *In re Don Mc.*, 344 Md. 194, 201, 686 A.2d 269, 272 (1996). Based on this standard, the present case shows an abuse of discretion by the circuit court.

An inexperienced agency neglected to file the record, but the petitioner failed to supply the transcripts or otherwise alert the agency to the need for preparation of the transcripts and the record. (E. 19-22) The board admitted its oversight and later supplied the record after expending the required funds to obtain the transcripts as well. (E. 2, 20-21) Yet, the circuit court refused to conduct the proper review and, instead of simply dismissing the appeal for lack of the record, reversed the agency decision based on the view that “the message has been sent, the harm has been abated, and it’s happened at some cost to the petitioner.” (E. 41) The court found no wrongdoing on the part of the County and, in fact, accepted some of the responsibility for not contacting the County to obtain the record and the transcripts. (E. 41) But the reversal of the board’s opinion ignores the importance of the underlying case.

The board had conducted a hearing and determined that Mr. Post’s dog was potentially dangerous. Based on the board’s view of the witnesses’ credibility and the evidence presented, the board agreed with the director that the dog must be kept under control, which included the use of a leash and a muzzle whenever the dog was off Mr. Post’s property. (E. 7) These findings and conclusions are eligible for review based on whether reasoning minds could reach that result based on direct proof or permissible inferences from the record before the agency. *Mid-Atlantic Power Supply Association v. Maryland Public*

Service Commission, 143 Md. App. 419, 432, 795 A.2d 160, 167 (2002). It is for the administrative agency to resolve any conflicting evidence and, where inconsistent inferences can be drawn from the same evidence, it is for the agency to draw those inferences. *Gigeous v. Eastern Correctional Facility*, 363 Md. at 497, 769 A.2d at 922. Finally, “the court may not uphold the agency order unless it is *sustainable on the agency’s findings and for the reasons stated by the agency.*” *Sweeney v. Montgomery County*, 107 Md. App. 187, 197, 667 A.2d 922, 926 (1995) (emphasis in original; citations omitted).

The court’s view that Mr. Post had “abated” the problem is not the standard. Rather, if the evidence supported the board’s findings and its decision did not contain an error of law, the circuit court must affirm the board’s decision. Without considering the evidence before the agency, it is not for the circuit court to declare that the petitioner complied sufficiently with the board’s order and that reversal is warranted.

CONCLUSION

The circuit court could have dismissed the petition for judicial review based on the absence of the administrative record. To reverse an agency’s decision on the merits, however, the court must review the agency’s opinion based on the contents of the record and discern that the agency failed to apply the correct law or that the evidence did not support the findings made by the agency. Regardless of whether all parties participate in the judicial review process, the standard of review remains unaltered. The court’s failure to grant the motion for reconsideration in order to apply the correct standard of judicial review reflects an abuse of discretion and should be reversed.

Respectfully submitted,

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Statement pursuant to Maryland Rule 8-504(a)(8): This brief was prepared with proportionally spaced type, using Times New Roman font and 13pt type size.

APPENDIX

Maryland Rules	
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7-207	App. 1
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Montgomery County Code (2004)	
§ 5-104	App. 2
§ 5-301	App. 4
§ 5-306	App. 5

Excerpts of Maryland Rules

Rule 7-206. Record.

(a) *Contents; expense of transcript.* The record shall include the transcript of testimony and all exhibits and other papers filed in the agency proceeding, except those papers the parties agree or the court directs may be omitted by written stipulation or order included in the record. If the testimony has been recorded but not transcribed before the filing of the petition for judicial review, the first petitioner, if required by the agency and unless otherwise ordered by the court or provided by law, shall pay the expense of transcription, which shall be taxed as costs and may be apportioned as provided in Rule 2-603. A petitioner who pays the cost of transcription shall file with the agency a certification of costs, and the agency shall include the certification in the record.

(b) *Statement in lieu of record.* If the parties agree that the questions presented by the action for judicial review can be determined without an examination of the entire record, they may sign and, upon approval by the agency, file a statement showing how the questions arose and were decided and setting forth only those facts or allegations that are essential to a decision of the questions. The parties are strongly encouraged to agree to such a statement. The statement, any exhibits to it, the agency's order of which review is sought, and any opinion of the agency shall constitute the record in the action for judicial review.

(c) *Time for transmitting.* Except as otherwise provided by this Rule, the agency shall transmit to the clerk of the circuit court the original or a certified copy of the record of its proceedings within 60 days after the agency receives the first petition for judicial review.

(d) *Shortening or extending the time.* Upon motion by the agency or any party, the court may shorten or extend the time for transmittal of the record. The court may extend the time for no more than an additional 60 days. The action shall be dismissed if the record has not been transmitted within the time prescribed unless the court finds that the inability to transmit the record was caused by the act or omission of the agency, a stenographer, or a person other than the moving party.

(e) *Duty of clerk.* Upon the filing of the record, the clerk shall notify the parties of the date that the record was filed.

Rule 7-207. Memoranda.

(a) Generally. Within 30 days after the clerk sends notice of the filing of the record, a petitioner shall file a memorandum setting forth a concise statement of the questions presented for review, a statement of facts material to those questions, and argument on each question, including citations of authority and references to pages of the record and exhibits relied on. Within 30 days after service of the memorandum, any person who has filed a response, including the agency when entitled by law to be a party to the action, may file an answering memorandum in similar form. The petitioner may file a reply memorandum within 15 days after service of an answering memorandum. Except with the permission of

the court, a memorandum shall not exceed 35 pages. In an action involving more than one petitioner or responding party, any petitioner or responding party may adopt by reference any part of the memorandum of another.

(b) When not required. Memoranda are not required in an action for judicial review of a decision of the Workers' Compensation Commission where the review is de novo.

(c) Modification of time requirements. The time for filing a memorandum may be shortened or extended by (1) stipulation of the parties filed with the clerk so long as the first memorandum and any answering memorandum are filed at least 30 days, and any reply memorandum is filed at least ten days, before the scheduled hearing, or (2) order of the court entered pursuant to Rule 1-204.

(d) Sanctions for late filing of memoranda. If a petitioner fails to file a memorandum within the time prescribed by this Rule, the court may dismiss the action if it finds that the failure to file or the late filing caused prejudice to the moving party. A person who has filed a response but who fails to file an answering memorandum within the time prescribed by this Rule may not present argument except with the permission of the court.

Rule 7-209. Disposition.

Unless otherwise provided by law, the court may dismiss the action for judicial review or may affirm, reverse, or modify the agency's order or action, remand the action to the agency for further proceedings, or an appropriate combination of the above.

* * *

Excerpts of Montgomery County Code (2004)

§ 5-104. Animal Matters Hearing Board.

(a) Membership.

(1) The Animal Matters Hearing Board consists of 5 members appointed by the County Executive and confirmed by the County Council. The Board must include:

- (A) a veterinarian or veterinary technician;
- (B) a representative of the Montgomery County Humane Society; and
- (C) 3 public members, including a representative of licensed animal

fanciers.

(2) The Executive must appoint, subject to Council confirmation, a qualified alternate for each member. The alternate may vote in place of the member when the member is absent.

(3) The Executive may remove a member who misses three meetings during a fiscal year without permission of the Chair.

(4) Each member and alternate serves for 3 years or until a successor takes office, whichever is later. A person appointed to fill a vacancy fills the remainder of the predecessor's term.

(5) The Board must elect a Chair each year from among its members.

(b) Duties. The Board must:

(1) decide complaints and appeals under this Chapter, including complaints alleging a violation of an animal shelter adoption contract;

(2) recommend standards to maintain regulated facilities;

(3) review the annual proposed budget for the animal shelter and make budget recommendations for the shelter to the Executive and the Council; and

(4) report annually to the Executive and Council on the Board's activities and any recommendations for improving animal control laws, regulations, and programs.

(c) Authority. The Board may:

(1) Order the Director to seize, impound, destroy, or take any other action the Board decides is necessary regarding an animal that is suffering cruelty, dangerous or potentially dangerous, or causing a public nuisance or other violation of this Chapter.

(2) Specify conditions under which an owner may keep an animal that the Board finds has suffered cruelty, is dangerous or potentially dangerous, or caused a public nuisance or other violation of this Chapter.

(3) Require an owner to forfeit an animal to the County or prohibit the owner from harboring an animal in the County.

(4) Impose conditions on an owner harboring other animals in the County.

(5) Revoke or suspend a facility's license for a violation of this Chapter.

(6) Appoint a person to mediate a case if the owner and each complainant (which may include the Division) agree. A consent order resulting from mediation is an order of the Board. If the mediator or the Board finds that the parties are not likely to agree to a mediated consent order within a reasonable time, the Board must decide the case.

(7) Order the owner of an animal to pay actual damages (including medical or veterinary expenses) not exceeding \$1,000 to a person injured or aggrieved by the animal's actions or behavior. This limit applies separately to each incident resulting in a violation of an animal control law.

(d) Procedures.

(1) The Administrative Procedures Act (Chapter 2A) applies to the Board's hearings and decisions, unless otherwise expressly provided in this Chapter. The Board may issue procedural rules to implement this subsection. The Board may hold an emergency hearing under Section 2A-9.

(2) (A) Except as provided in Section 2A-9, the Board must send or deliver written notice of a matter before the Board to each person aggrieved by an action or proposed action of the Director, the Board, or an animal control officer at least 15 days (or shorter period if all parties agree) before holding a public hearing on the matter. The Board must hold a hearing at the request of a person aggrieved, and may hold a hearing at the

request of another party to the matter (which may include an animal control officer) or on the Board's own initiative.

(B) If the Board finds that the circumstances justifying an action or proposed action (including the seizure, impoundment, or humane euthanasia of an animal):

(i) constitute an immediate threat to the health or safety of an animal, a person, or the public, the Board may provide the notice and any requested hearing as soon as practical after the action; or

(ii) do not constitute an immediate threat, the Board must provide the notice and any requested hearing before ordering the action or modifying an action of the Director or an animal control officer.

(3) The Board must notify the Director and each party to a complaint by first class mail sent, or personal delivery made, at least 15 days (or shorter period if all parties agree) before a hearing, specifying the time and place of the hearing.

(4) Appeals to or from the Board are subject to the requirements of Section 5-306.

(e) Fee. The Executive may set by regulation a fee for filing a complaint with the Board. The filer must pay the fee to the Division when filing a complaint. The Board or the Animal Control Officer may waive the filing fee in response to a complainant's request. If the parties agree to a consent order after mediation, the Board may refund the filing fee. The Board may order the losing party to pay another party's filing fees or other reasonable expenses related to the hearing, in addition to ordering payment of damages.

(f) Support. The Chief Administrative Officer must provide the services and County facilities that are reasonably necessary for the Board to perform its duties. The County Attorney must provide legal counsel to the Board.

§ 5-301. General provisions.

(a) Who may enforce. The Director, an animal control officer, the Board, and any other person authorized by regulation issued under method (2) may enforce an animal control law. In this Article, an "animal control law" includes a State animal control law, this Chapter, and, for noise from an animal source, Chapter 31B.

(b) Forms of enforcement. The Director or an animal control officer may enforce an animal control law by issuing a citation or other lawful order. To exercise its authority, the Board must issue a written order that explains the factual and legal basis for the order.

(c) Types of enforcement.

(1) Except as provided in paragraph (2), the Director or an animal control officer may, to enforce an animal control law or protect the health or safety of an animal, a person, or the public:

(A) seize, impound, and dispose of an animal; or

(B) take any other action necessary (or order an owner to take any other action necessary) to enforce the law.

The Board may order the Director or an animal control officer to take an action described in this paragraph.

(2) The Director or an animal control officer must not destroy an animal under paragraph (1) unless:

(A) the Board has ordered the destruction of the animal; or

(B) destruction of the animal is necessary to prevent an immediate threat to public health or safety.

(3) A citation or order may require an owner to act or refrain from acting to prevent or stop a violation of an animal control law.

(d) Warrants. An animal control officer may enforce an animal control law by searching private property and seizing evidence or animals, under State law or a warrant issued by a court.

(e) Interference with enforcement. A person must not interfere or attempt to interfere with any County officer, employee, or agent enforcing an animal control law.

(f) Failure to follow or appeal an order. An owner who, without justification, does not follow or appeal a legal order issued under this Chapter has abandoned and forfeited to the County any animal that is the subject of the order.

(g) Concealing ownership. A person must not conceal or falsely deny ownership of an animal to any person authorized to enforce an animal control law.

§ 5-306. Appeal.

(a) Appeal to the Board. A person aggrieved by a decision of the Director or an animal control officer may appeal the decision to the Board within 5 days after the Director or the animal control officer notifies the owner about the decision. The Board may modify a decision of the Director or an animal control officer only if the appellant proves by a preponderance of the evidence that decision was arbitrary, illegal, or not based on substantial evidence. The Board must issue a written decision explaining the factual and legal basis for the decision.

(b) Appeal from the Board. A person aggrieved by an order of the Board may appeal the order under Section 2A-11 within 10 days after the Board issues the order.

(c) Requirements for appeal. If an owner appeals an impoundment, seizure, or disposition order issued or affirmed by the Board, the owner must board the animal at a facility approved by the Division. The owner must pay the cost of impounding the animal before and during the appeal, or if the Board allows, post a bond to pay these expenses if the owner does not prevail in the appeal. If the owner fails to meet these requirements, the animal is abandoned.