

**CEPHUS M. MURRELL
and
C. MURRELL BUSINESS
CONSULTANT, INC.**

Appellants

v.

**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Appellee

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**IN THE
CIRCUIT COURT
BALTIMORE CITY**

Case No.: 24-C-04-005608

MEMORANDUM OPINION

This is an appeal from a decision of an Administrative Hearing Examiner from the Department of Housing and Community Development (“DHCD”) finding that DHCD properly razed Appellants property. Appellants argue that the issue presented is “whether the [DHCD] may seize and demolish real property and then place liens on a private citizen’s real property without judicial due process in non-emergency situations.” The City argues that the issue is “Was the decision . . . supported by substantial evidence and therefore correct?” As discussed below, this Court concludes that neither of those issues are properly before this Court and that the case must be remanded for further proceedings.

PROCEDURAL HISTORY

The administrative hearing that is the subject of this appeal was a hearing on remand pursuant to the mandate in *Cephus Murrell v. Mayor and City Council of Baltimore*, 376 Md. 170, 170 (2003). In *Murrell* the Court held that the judgment of the Circuit Court for Baltimore City upholding an administrative decision of DHCD to raze Appellants’ buildings

was appealable. Relying on Cts. and Jud. Proc. § 12-302(a) , the Court of Special Appeals had held that there was no appeal from the circuit court’s judgment. Section 12-302(a) provides that “[u]nless a right to appeal is expressly granted by law,” there is no appeal to the Court of Special Appeals of a “final judgment of a [circuit] court . . . reviewing the decision of . . . an administrative agency. . . .” Section 123.7 of the Building Code of Baltimore City states that a person aggrieved by a decision of DHCD may appeal to the Circuit Court for Baltimore City but does not provide for an appeal to the Court of Special Appeals. The Court of Appeals reversed.

In reversing the Court of Special Appeals, the Court of Appeals pointed out that Cts. and Jud. Proc. § 12-302(a) does not “preclude appeals in actions, however styled or captioned, which are essentially common law actions.” *Murrell*, 376 Md. at 191. *See also Gisriel v. Ocean City Election Board*, 345 Md. 477, 485-96 (1997), *cert. denied*, 52 U.S. 1053 (1998). The Court held that although it was styled an administrative appeal, *Murrell* was in fact in the nature of a common law mandamus action because Appellants were alleging non-compliance with “ministerial procedural duties which were mandated by the Baltimore City Code and principles of Maryland administrative law.” *Murrell*, 376 Md. at 196 (citing *Maryland Transportation Authority v. King*, 369 Md. 274, 287 (2002)) (holding that mandamus may lie to enforce an administrative agency to comply with required administrative procedures).

The gist of the petitioner's complaints . . . concern the failure to give required notices, failure to render findings of fact and conclusions of law after the hearing, the failure of the designated “Building Code Official” who presided at the hearing to render the decision, and the failure to make an adequate “record” of the hearing.

376 Md. at 196. The Court held that there could not have been any judicial review because “there was no proper final administrative decision to be judicially reviewed.” *Id.*

There could be no issue at this stage of the case as to whether the administrative findings of fact were supported by substantial evidence because, in a real sense, there were no such findings of fact. There was also no record of the evidence introduced at the hearing in order for a reviewing court to determine whether findings of fact, if they had been made, were supported by substantial evidence. There were no real conclusions of law for a reviewing court to determine if errors of law had been made.

Id. After deciding that the decision of the circuit court was appealable, the Court addressed the merits and held that DHCD’s actions had failed to “comply with the procedures mandated by law.” *Id.* at 199.

The Court ordered that the case be remanded to DHCD for “further proceedings consistent with [its] opinion.” *Id.* at 199.

THE ADMINISTRATIVE HEARING

The Hearing Officer stated that “[her] understanding from the [Murrell] opinion by Justice Eldridge [was] that [they were there] for the administrative hearing which is outlined in the city code which is to say that [they were there] to talk about why [Appellants] feel like, in this case, the property should not have been razed and the city [was there] to support their position.” In her decision the Hearing Officer stated that there were three issues presented:

- Whether the Administrative Hearing Officer should have recused herself?
- Whether the Code Violation Notice and Orders, 5 day Final Notice, Condemnation Notices, and consequent razing of the properties, were proper?
- Whether the Department of Housing of (sic) Community Development has authority to provide [Appellants] with a post deprivation remedy?

In answer to the first question the Hearing Officer concluded that she did not need to

recuse herself and in answer to the third she concluded that she did not have the authority to determine a request for post deprivation remedies. There is no appeal from her resolution of either of these issues. In answer to the second question the Hearing Officer stated:

Murrell received adequate and proper notification from HCD regarding the impending implications of his failure to remedy the conditions at the Gold Street Properties and 2201-2203 Pennsylvania Avenue. He spoke with several pertinent employees of HCD regarding the notices and his responsibilities regarding his properties. Murrell's conscious neglect resulted in HCD taking actions to demolish the properties in accordance with the regulations outlines in the Baltimore City Building Code of 1997 § 119.7. I find that HCD did so with proper consideration relative to the scope of the community's health and condition.

Appellants filed a timely appeal.

DISCUSSION

Appellants argue that the Hearing Officer simply "rubber-stamped the May 1999 decision . . . to raze Plaintiffs' properties without prior notice." More specifically Appellants argue that the Hearing Officer's decision finding that it was proper to raze the property without a pre-deprivation hearing is erroneous because she "did not find that there was an emergency condition that constituted an imminent danger to the safety and health of the public so as to warrant emergency destruction of the . . . properties." Thus Appellants argue that the Baltimore City Building Code does not authorize the razing of property without a pre-deprivation hearing absent an emergency and since there was no emergency in this instance, the razing of their property denied them rights under the Maryland and United States Constitutions. Alternatively, Appellants argue that if the Baltimore City Code does authorize a pre-deprivation hearing absent an emergency, it is unconstitutional under both Maryland and United States Constitutions.

Appellees argue that the Hearing Officer was directed to conduct a hearing that satisfied the procedural defects that the Court noted. Specifically the defects were: (1) not giving some required notices; (2) contrary to the requirements in § 123.6 of the Building Code, the same person who presided at the hearing did not render the written decision; (3) the written administrative decision did not contain any findings of fact or conclusions of law that a Court could review; and (4) the record was not “complete” as required by § 123.6.7 of the Building Code, so even if there had been findings of fact, a court would not have been able to determine if they were supported by substantial evidence. *Murrell*, 376 Md. at 199. Appellee argues that the hearing that was conducted on May 17, 2004 did comply with the proper procedural requirements and that the decision is supported by substantial evidence and is legally correct.

This Court begins its analysis by pointing out that the Court of Appeals decided that the pre-deprivation requirements of the Building Code were not met.

Governmental action razing privately owned buildings is serious business, often implicating important constitutional rights. It is important that such governmental action comply with the procedures mandated by law. *In this case, the governmental action did not comply with such procedures.*

Id. at 199 (emphasis added)(citation omitted). Thus the remand was not to conduct a “pre-deprivation” hearing as if the properties had not been razed. In fact, it is clear from footnote five of the Court’s Opinion that the scope of the remand was to determine the status of the liens and whether the City or the Appellant is responsible for the costs of demolition:

The respondent did not argue that the razing of the buildings has rendered this case moot, pointing out that there is still a controversy between the parties over “the liens which were imposed by the City for the cost of demolition of the properties” and whether the petitioner is responsible for “the cost of demolition.”

Id. at 184 n.5 (citation omitted).

The Hearing Officer did not decide either of those questions; thus, the case must be remanded to the Hearing Officer to determine if the liens imposed were valid and whether Appellant is responsible for the costs of demolition. Those issues cannot be decided in the first instance by this Court. “[J]udicial review of an administrative agency's decision is narrow.” *Eastern Outdoor Advertising Co. v. Mayor and City Council of Baltimore*, 146 Md.App. 283, 327 (2002)(citing *Total Audio-Visual Systems, Inc. v. Department of Labor, Licensing and Regulation*, 360 Md. 387, 394 (2000) and *Meadows of Greenspring Homeowners Ass'n v. Foxleigh Ent. Inc.*, 133 Md.App. 510, 514 (2000)). When reviewing an agency’s decision, the Court considers “(1) the legality of the decision and (2) whether there was substantial evidence from the record as a whole to support the decision.” *Eastern Outdoor Advertising Co.*, 146 Md. App. at 300. When reviewing an agency’s legal conclusions, the court “must determine whether the agency interpreted and applied the correct principles of law governing the case” *Richmarr Holly Hills, Inc. v. American PCS*, 117 Md. App. 607, 652 (1997) (citing *Lee v. Maryland Nat’l Park & Planning Comm’n*, 107 Md. App. 486, 492 (1995)).

Here there is no decision on the only issue before the Hearing Officer and thus no findings of fact or legal conclusion on those issues for this Court to review. Thus the case must be remanded for the Hearing Officer to issue an Opinion that addresses the issues that the Court of Appeals found were the issues to be decided on remand. On remand, it is important for the Hearing Officer and the parties to keep in mind that (1) the Court of Appeals has already decided that there was not a pre-deprivation hearing; (2) the Hearing Officer must decide if there was a legal and factual basis for razing the property *without* a

pre-deprivation hearing;¹ and (3) if there was no legal and/or factual basis for razing the property without a pre-deprivation hearing then it is difficult to fathom a basis for the lien and/or holding the Appellants responsible for the costs of the demolition.²

The Hearing Officer is correct that it was not her role to “determine damages, if any, owed to Murrell as a result of the demolition of his properties,” but she must determine if the liens are proper and whether Murrell is responsible for the costs of the demolition.

CONCLUSION

For all these reasons, this Court will issue an order remanding this case to DHCD for further proceedings consistent with this Opinion. Because of the confusion in what was required on remand, it will be in the Hearing Officer’s discretion whether to open the hearing for new evidence or simply to issue a revised decision. *See Eastern Outdoor Advertising Company v. Mayor and City Council of Baltimore*, 146 Md. App. at 302-7.

Dated: November 17, 2004

JUDGE EVELYN OMEGA CANNON

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¹In making this decision, the Hearing Officer will have to address the issue of whether an emergency, or any other legal basis existed to justify razing the properties without a legal or factual basis.

²If the properties had not been razed, the hearing that was held on May 17, 2004 would have been appropriate and this Court would review the Hearing Officer’s decision to determine if is based on substantial evidence and is legally correct. If there were not any issues concerning the liens and the costs of the demolition, the case would have been moot once the properties were razed. *Murrell*, 376 Md. at 184 n. 5.