Circuit Court for Calvert County
Case No. 04-C-17-000136

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 915

September Term, 2018

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MAURICE T. LUSBY, et al.

v.

BOARD OF COUNTY COMMISSIONERS
OF CALVERT COUNTY

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Reed,
Beachley,
Gould,

JJ.

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Opinion by Beachley, J.

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Filed: October 29, 2019

On November 1, 2016, the Calvert County Board of Commissioners (the "Board") suspended Maurice Lusby and Michael Phipps (the "appellants") from their respective positions as Chair and Deputy Chair on the Calvert County Planning Commission (the "Planning Commission"). Following a hearing in December 2016, on January 10, 2017, the Board officially removed appellants from their respective positions on the Planning Commission. Consequently, appellants filed a petition in the Circuit Court for Calvert County seeking: 1) a writ of certiorari, 2) a writ of mandamus, 3) judicial review, 4) declaratory relief, and 5) injunctive relief. The Board moved to dismiss, and after a hearing, the circuit court granted the Board's motion. Appellants timely appealed the dismissal of their petition and present the following issues for our review, which we rephrase as follows:[1]

1) Did the circuit court err in dismissing the counts seeking reversal of the Board's decision?

[1] Appellants presented the following three questions in their brief:

1) Did the [c]ircuit [c]ourt err when it granted the [Board]'s Motion to Dismiss by determining that the [Board] properly instructed the Planning Commission to utilize the County Attorney?

2) Did the [c]ircuit [c]ourt err in finding that the [a]ppellants' conduct amounted to misconduct within the meaning of [Md. Code (2012, 2019 Supp.), § 2-102(d)(2) of the Land Use Article ("LU")]?

3) Did the [c]ircuit [c]ourt erred [sic] in finding that the [a]ppellants were not entitled to review of the [Board]'s removal of [a]ppellants from the Planning Commission?[]

(Footnote omitted).

2) Did the circuit court err in rendering its declaratory judgment?

As we shall explain, the circuit court did not err in dismissing the counts seeking reversal of the Board's decision. Additionally, we conclude that the court did not err in rendering its declaratory judgment.

## FACTS AND PROCEEDINGS[2]

According to appellants' petition, beginning in December 2015, an adversarial relationship developed between the Board and the Planning Commission, stemming from the Board's implementation of a policy designed to undermine the Planning Commission's power. Apparently, the Planning Commission's use of private counsel played some role in causing the adversarial relationship.[3] Subsequently, in June 2016, the Board passed Resolution No. 18-16 (the "Resolution"), "A Resolution Pertaining To The Adoption Of A Policy Regarding The Processing Of Amendments To The Calvert County Zoning Ordinance." The Resolution modified procedures regarding the review and processing of proposed zoning amendments, and also created a mechanism for the removal of Planning

[2] It is well settled in Maryland that, "[i]n reviewing the underlying grant of a motion to dismiss, we must assume the truth of the well-pleaded factual allegations of the complaint, including the reasonable inferences that may be drawn from those allegations." *Williams v. Peninsula Reg'l Med. Ctr.*, 440 Md. 573, 578 (2014) (quoting *Debbas v. Nelson*, 389 Md. 364, 372 (2005)). In this case, appellants' complaint attached and incorporated seventeen exhibits.

[3] The petition does not explicitly describe the source of the adversarial relationship between the Board and the Planning Commission. Nevertheless, at the hearing on the Motion to Dismiss, it became apparent that part of the tension between the Board and the Planning Commission stemmed from the Planning Commission's insistence on hiring outside legal counsel and incurring significant legal bills when the Board had specifically instructed the Planning Commission to use the County Attorney as its legal representative.

Commission members. Namely, the Resolution allowed for the removal of Planning Commission members who failed "to meet the time objectives set forth" in the Resolution, as well as those who failed to make timely recommendations as required by State law. On July 25, 2016, the Planning Commission, through outside counsel, wrote a letter to the County Attorney for Calvert County, alleging that the Resolution was "both unlawfully enacted and unlawful on its face." The letter went on to request that the Board withdraw the Resolution.

Informal discussions between the Board and Planning Commission followed, but the parties were unable to resolve their respective concerns. On August 29, 2016, the Planning Commission delivered to the County Attorney's office a copy of a "near final draft" of a formal complaint it intended to file in court. The Board apparently withdrew the Resolution the same day it received the Planning Commission's letter and draft complaint.

On August 30, 2016, the County Attorney sent a letter to the Planning Commission's outside counsel stating that he would "provide the Planning Commission necessary and appropriate legal services through in-house resources," and that outside counsel would "be provided on an as-needed basis going forward." Approximately two weeks later, on September 16, 2016, the Board sent a letter (the "September 16 letter") to Mr. Lusby, then chair of the Planning Commission, requiring a "plan" for the Planning Commission's expenses related to "contracted services" funds budgeted for that fiscal year. The September 16 letter further provided that:

> As a condition of expenditure pursuant to Land Use Article §2-105(b)(1)(i), until that financial expenditure plan is finalized and approved, you are to use services provided by the County Attorney's Office in an effort to preserve the unexpended balance. Once an approved financial expenditure plan is complete, if contracted legal services are necessary and part of the plan, the County Attorney will be responsible to contract for those services and ensure that the procurement and budgetary policies and procedures are followed.

At a Planning Commission meeting on October 19, 2016, the Planning Commission, through its privately-contracted counsel, informed the County Attorney that it was declining his representation and instead would continue to use outside counsel.

On November 1, 2016, the Board sent letters to appellants informing them of their suspension from the Planning Commission. In response, on November 30, 2016, appellants requested a public hearing pursuant to Section 2-102(d)(1) of the Land Use Article. Md. Code (2012, 2019 Supp.), § 2-102(d)(1) of the Land Use Article ("LU"). The Board responded approximately a week later, on December 7, informing appellants that a hearing would take place on December 20. The Board then provided notice in a local newspaper that a hearing would occur on December 20 regarding the removal of appellants from the Planning Commission.

The December 20, 2016 hearing lasted approximately five hours. During the hearing, the County Attorney apparently "testified" on behalf of the Board.[4] At the close of the hearing, the Board took the issue of appellants' removal under advisement. Then, on January 10, 2017, at a public hearing, the Board announced the removal of appellants

[4] We note that there was no transcript of this hearing in the record or record extract.

from the Planning Commission. Two days later, appellants received copies of the Board's opinions regarding their removal.[5]

On February 9, 2017, appellants filed a petition in the Circuit Court for Calvert County seeking equitable relief related to their removal from the Planning Commission. The petition alleged numerous procedural and substantive defects in the actions taken by the Board concerning appellants' removal. For example, appellants alleged that their due process rights were denied when the Board improperly indicated in its public notices that the hearing would be "legislative" in nature rather than "public." Additionally, appellants alleged that the Board's decision to remove them from the Planning Commission was unlawful.

The petition itself contained five counts. In Count 1, labeled "For Certiorari," appellants alleged that the Board's decision to remove them from the Planning Commission was an abuse of discretion that required reversal. In Count 2, labeled "For Mandamus," appellants claimed that the Board illegally removed them from the Planning Commission pursuant to LU § 2-102(d), and as in Count 1, requested reversal of the Board's decision. In Count 3, labeled "For Judicial Review," appellants sought judicial review of the Board's decision, specifically requesting that the circuit court reverse the Board's decision. In Count 4, labeled "For Declaratory Relief," appellants requested the circuit court to determine and adjudicate the rights of the parties with respect to the Board's actions,

[5] Whereas the Board removed Mr. Lusby from the Planning Commission, the Board offered Mr. Phipps a position as an alternate member. Mr. Phipps apparently rejected this offer and was consequently removed from the Planning Commission.

specifically regarding whether the Board properly removed them from the Planning Commission pursuant to LU § 2-102(d). Finally, in Count 5, labeled "For Injunctive Relief," appellants requested that the circuit court enjoin the Board from removing appellants from their positions, and reverse the Board's decision.

On March 24, 2017, the Board responded by filing a Motion to Dismiss, to which appellants timely responded.[6] In its response to the Motion to Dismiss, appellants voluntarily dismissed Count 3, "For Judicial Review," conceding that "there is no Maryland Statute authorizing judicial review of the [Board's] actions." The circuit court heard arguments on the motion on June 26, 2017. During the hearing, appellants' counsel candidly informed the court that Mr. Phipps's term on the Planning Commission would expire in March of 2018, and that Mr. Lusby's term would expire in February of 2019.[7] At the conclusion of the hearing, the circuit court took the matter under advisement.

On December 26, 2017, the circuit court issued two opinions. In the first opinion, the circuit court dismissed the counts for certiorari, mandamus, and injunctive relief, essentially deciding that certiorari and mandamus were not appropriate, and that the Board

[6] The Board would also go on to file a counterclaim on April 17, 2017. Following the circuit court's grant of its Motion to Dismiss in December 2017, the Board voluntarily withdrew its counterclaim on June 27, 2018.

[7] In the appendix to its brief, the Board provided copies of the reappointment letters it sent to appellants outlining their respective terms. Mr. Phipps's letter indicated that his term would expire on February 28, 2018, not in March 2018 as Mr. Phipps's attorney indicated at the hearing on the Motion to Dismiss.

did not engage in any illegal or wrongful conduct.[8] In the second opinion, the circuit court addressed Count 4, "For Declaratory Relief." There, the court determined and adjudicated the rights of the parties—namely, whether the Board properly removed appellants from the Planning Commission. In this opinion, the court found that the Board acted within its statutory authority when it instructed appellants "to stop expending public funds by contracting outside legal services." The court concluded that the Board's decision was statutorily authorized, noting that appellants conceded that after the Board instructed them to cease expending public funds for outside counsel, they continued to do so, incurring legal expenses. As stated above, appellants timely appealed.

## DISCUSSION

We discern two issues on appeal: 1) whether the circuit court erred in dismissing appellants' claims seeking reversal of the Board's decision, and 2) whether the circuit court erred in issuing its declaratory judgment. As we shall explain, the claims concerning reversal of the Board's decision are moot. Additionally, the circuit court did not err in rendering its declaratory judgment.

### I. The Counts Seeking Reversal of the Board's Decision (and Reinstatement)

At oral argument, appellants acknowledged that because their terms on the Planning Commission have expired, the only relief they may still seek is a declaration that the Board acted improperly in removing them. Appellants conceded that their requests for a writ of

[8] The court noted in its opinion that appellants conceded the dismissal of Count 3 "For Judicial Review."

certiorari (Count 1), for a writ of mandamus (Count 2), and for injunctive relief (Count 5) are "superfluous" in light of their request for declaratory relief (Count 4). In any event, we conclude that these claims are moot. Because both Mr. Phipps's and Mr. Lusby's respective terms on the Planning Commission have since expired, we cannot reverse the Board's decision and reinstate appellants to the Planning Commission.

In *Clark v. O'Malley*, 186 Md. App. 194 (2009), our Court applied the mootness doctrine to dismiss several counts on appeal. There, in February 2003, then Mayor Martin O'Malley appointed, and the Baltimore City Council approved, Kevin Clark as Police Commissioner for Baltimore City. *Id*. at 197, 199-200. Mr. Clark and the Mayor executed a memorandum of understanding ("MOU") outlining the terms of Mr. Clark's employment. *Id*. at 200. The MOU provided that Mr. Clark's term would last until June 30, 2008. *Id*. Approximately a year and a half into his term, however, the Mayor and City Council informed Mr. Clark that his employment would terminate in forty-five days pursuant to the terms contained in the MOU. *Id*. at 201. In response, Mr. Clark filed a ten-count complaint in the Circuit Court for Baltimore City. *Id*. at 202. Many of the counts requested the equitable relief of reinstatement, but others sought damages. *Id*. at 202-203. The circuit court ultimately granted the Mayor and City Council's motion for summary judgment. *Id*. at 204.

On appeal to our Court, we held that Mr. Clark's removal was improper. *Id*. at 205. The Court of Appeals affirmed our decision. *Id*. at 206. On remand, Mr. Clark filed a "Motion for Writ of Mandamus or Injunction for Reinstatement to Office Forthwith," which the circuit court denied on June 17, 2008. *Id*. at 199. Approximately one month

later, the court granted summary judgment to the Mayor and City Council regarding all of Mr. Clark's claims, including his claims for damages. *Id*. at 199, 213-14.

Mr. Clark again appealed the dismissal of his claims to our Court. *Id*. at 199. This time, however, we rejected Mr. Clark's requests for reinstatement as moot. In reaching this conclusion, we noted numerous Maryland cases illustrating the mootness principle.

> In *Nat'l Collegiate Athletic Assoc. v. Tucker*, 300 Md. 156, 158-59, 476 A.2d 1160 (1984), the Court of Appeals addressed a dispute regarding collegiate athletic eligibility. The circuit court granted an interlocutory injunction allowing two lacrosse players at Johns Hopkins University to play their final season of lacrosse until the lawsuit was resolved. *Id.* at 158, 476 A.2d 1160. The NCAA appealed, but the Court held that the case became moot once the season was over. *Id.* at 159, 476 A.2d 1160. It explained: "[A] controversy no longer exists over whether the appellees will be allowed to play lacrosse for the remainder of the season because, simply put, the season is over." *Id.*

*Id*. at 217.

We then explained that:

> The same analysis applies when an employee seeks reinstatement to a former position pursuant to a fixed term contract that has expired. *See Muir v. County Council of Sussex County*, 393 F. Supp. 915, 935 (D. Del. 1975) (although plaintiff's employment was terminated improperly, court declined to grant injunctive relief because the expiration of employee's contract rendered "plaintiff's demand for reinstatement for breach of his contract . . . moot"); *DeWitt v. Sch. Bd. of Sarasota County*, 799 So. 2d 322, 324 (Fla. Dist. Ct. App. 2001) (assistant high school principal's claim for reinstatement was moot because "[h]is contract expired . . . he was paid in full according to the terms of his contract, and he was not entitled of right to a renewal of his contract"); *Heaney v. Board of Trs*., 98 Idaho 900, 575 P.2d 498, 499 (1978) (because the plaintiff's contract expired . . . shortly after his mandamus suit was filed, his suit for reinstatement was moot); *Richardson v. Hardin-Central C-II Pub. Sch. Dist.*, 884 S.W.2d 53, 55 (Mo. Ct. App. 1994) (suit, which alleged termination of employment in violation of due process and sought reinstatement, was moot when teacher's contract had expired).

*Id*. at 218. Because Mr. Clark's contract to serve as Police Commissioner had expired by the time his case reached our Court, his requests for reinstatement were moot. *Id*.[9]

Based on *Clark*, we readily conclude that, because appellants' terms on the Planning Commission have since expired, their requests seeking reversal of the Board's decisions are moot.

II. Declaratory Relief

Although appellants' claims seeking reversal of the Board's decision are moot, their request for declaratory relief is not. *See Carroll Cty. Ethics Comm'n v. Lennon*, 119 Md. App. 49, 60 (1998) (stating that requests for declaratory relief may not be moot when "the parties continue to assert adverse legal positions in which they maintain a concrete interest" (citing Md. Code (1973, 2013 Repl. Vol.), § 3-409(a)(3) of the Courts and Judicial Proceedings Article ("CJP")). Turning to the declaratory judgment action, we note that the parties essentially agree that the Board instructed appellants to stop using Board-provided funds to pay for outside counsel and instead use the County Attorney's legal services. The parties further agree that appellants disregarded those instructions and continued to pay for outside counsel using Board-provided funds.

In its declaratory judgment, the circuit court found that:

> The Board was acting within its statutory authority when it instructed [appellants] to stop expending public funds by contracting for outside legal services. The Board made a legislative determination, which was entirely within its powers, when it instructed the Planning Commission to utilize the services of the County Attorney's Office. The direction to [appellants],

[9] We noted, however, that Mr. Clark's claims for damages were not moot. *Clark*, 186 Md. App. at 218.

> constituted an exercise of a statutorily-authorized legislative function the effect of which was to place conditions on how the Planning Commission was to make expenditures. It is uncontroverted that after these conditions were placed on the expenditure of funds, [appellants] defied the [Board] and continued to utilize outside counsel and incur legal expenses. These actions constituted "misconduct" within the meaning of [LU § 2-102(d)(2)].

In their brief, appellants dispute the finding that the Board acted within its statutory authority in instructing them to stop expending funds for outside legal counsel and instead rely on the County Attorney for legal representation. Appellants claim that because the County Attorney represented the Board's interests, a conflict of interest existed whereby only outside counsel could properly represent the Planning Commission's interests. Lastly, appellants argue that their actions did not amount to "misconduct" within the meaning of LU § 2-102(d)(2). We reject these arguments.

First, regarding whether the Board acted within its statutory authority, appellants contend that they "were not challenging the authority of the [Board] to legally control the expenditure of funds. Rather, [appellants] were challenging the illegal effect which resulted from the exercise of the [Board's] fiscal powers, specifically, the ability of the [Board] to restrict the representation of the Planning Commission . . . ." Specifically, appellants claim that the Board's restriction of the Planning Commission's funds was improper because it created a conflict of interest whereby the Planning Commission was to be represented by the Board's attorney. Without any citation to authority, appellants state that "even if the County Attorney represents the county government and all of the various county agencies, it must decline to represent a county agency if a conflict is determined to exist in that representation."

We reject this argument because the Land Use Article clearly allows the Board to impose conditions on the Planning Commission's expenditure of funds, and because the September 16 letter provided a mechanism for the Planning Commission to have outside counsel, which appellants never pursued. First, LU § 2-101 makes clear that a legislative body, such as the Board, may establish a planning commission. LU § 2-105(b) discusses the limitations that a legislative body, such as the Board, may make on a planning commission's expenditures. That section provides that:

> (b)(1) A planning commission's expenditures, other than gifts, shall be made in accordance with:
>
> (i) the conditions of the legislative body; and
>
> (ii) the amount appropriated by the legislative body.
>
> (2) The legislative body shall provide the funds, equipment, and accommodations necessary for the performance of the planning commission's functions.

The express and unambiguous statutory language leaves no doubt that the Planning Commission's ability to expend funds must be made in accordance with the conditions and amounts appropriated by the Board.[10] Appellants' argument that the Board improperly restricted their access to independent counsel by instructing them to rely on the County Attorney completely ignores the Planning Commission's obligation to expend its Board-provided funds in accordance with the Board's conditions. LU § 2-105(b)(1). Additionally, in its written opinion ordering Mr. Lusby's removal, the Board explained that

[10] We note that it does not appear that appellants contested the propriety of the process by which those conditions were imposed.

by employing outside counsel, Mr. Lusby violated competitive bidding restrictions imposed by the Calvert County Code.

We also reject the argument that the Board's restriction of outside counsel was improper because it created a conflict of interest for the County Attorney. Nowhere in their complaint do appellants allege that they received improper legal advice from the County Attorney, nor do they claim that the County Attorney declined to provide independent legal services as authorized in the September 16 letter. In fact, there is no evidence in this record showing that appellants even attempted to comply with the September 16 letter, either by seeking legal advice from the County Attorney or by requesting him to secure outside representation. On this record, appellants' claim that a conflict of interest existed is purely conjectural.

The speculative nature of this conflict of interest was underscored at the hearing on the Motion to Dismiss, where appellants' counsel relied on the mere existence of the September 16 letter to prove that a conflict existed, stating:

> And it was all part of one letter. I mean they said, look, we are going to represent you, Planning Commission. It wasn't even just we, the County Attorney's Office, is going to represent you. It was me, John Norris, the person that's representing the Board of County Commissioners is now going to represent you, the Planning Commission. The same person is going to represent both sides of this dispute. It was a clear example of a conflict of interest.

Because appellants never requested any services of the County Attorney pursuant to the September 16 letter, they failed to sufficiently allege that an actual conflict of interest existed. Put simply, based on this record, the allegation that the County Attorney could

not properly represent the Planning Commission's interests is purely hypothetical, and does not persuade us that the Board's condition on the expenditure of funds was unlawful.

Finally, we hold that the circuit court correctly found that appellants' actions constituted "misconduct" as that term is used in LU § 2-102(d). In their brief, appellants argue: 1) that they did not commit misconduct because they were simply individual members of the Planning Commission who could not be held responsible for the entire commission's actions, and 2) that their actions did not constitute "misconduct" pursuant to LU § 2-102(d).

We first reject appellants' argument that the circuit court erred in holding them individually responsible for the actions of the entire Planning Commission. Appellants never raised this argument in their opposition to the Board's Motion to Dismiss, nor at that hearing. Accordingly, the circuit court never considered this issue in rendering its declaratory judgment. We decline to consider an issue that was never raised in or decided by the circuit court. Md. Rule 8-131(a); *Bazzle v. State*, 426 Md. 541, 562 (2012) ("a principal purpose of the preservation requirement is to prevent 'sandbagging' and to give the trial court the opportunity to correct possible mistakes in its rulings" (quoting *Fisher v. State*, 367 Md. 218, 240 (2001))).[11]

[11] Assuming appellants had properly preserved this argument for appellate review, we would still reject it. In the Board's opinions wherein they removed Mr. Lusby and Mr. Phipps, the Board noted that at the hearing "Mr. Lusby testified that he did not feel obliged to comply with" the Board's instructions regarding hiring outside legal counsel. Although the Board found Mr. Phipps's conduct to be less egregious, it determined that he "refus[ed] to discharge outside counsel at the request of the County Attorney." Thus, the Board was

We further conclude that appellants' actions constituted "misconduct" under LU § 2-102(d). That section states, in relevant part, that a legislative body (such as the Board) "may remove a member of a planning commission for: . . . (ii) misconduct[.]" Initially, we note that the Land Use Article does not provide a specific definition for the word "misconduct," and our own research into the history of LU § 2-102 reveals no useful guidance in construing the term. Nevertheless, we may look to other statutes in existence at the same time to discern the legislature's intent. *See Balt. Typographical Union No. 12 v. Hearst Corp*., 246 Md. 308, 319 n.1 (1967); *cf. Deibler v. State*, 365 Md. 185, 199 (2001) (where term "willful" was undefined in wiretap statute, Court noted that its interpretation "comport[ed], for the most part" as Court had defined "willful" "in other Maryland criminal statutes").

In construing the term "misconduct," we find useful guidance from case law defining that term in the context of both the Labor and Employment Article and the State Personnel and Pensions Article. In *Public Service Comm'n v. Wilson*, 389 Md. 27, 77 (2005), the Court of Appeals was tasked with defining "misconduct" in the context of Md. Code (1993, 2004 Repl. Vol.), § 11-106 of the State Personnel and Pensions Article ("SPP"). Because the term is undefined in that article, the Court turned to the statutory scheme and related case law interpreting "misconduct" as set forth in Md. Code (1991, 2016 Repl. Vol.), § 8-1003 of the Labor and Employment Article ("LE"). *Id*. at 75. The

clearly focused on the actions of the individuals rather than the institutional action of the Planning Commission.

Court recognized that, although "misconduct" was not specifically defined in LE § 8-1003 either, corresponding case law had defined the term to mean: "a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction from duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship, during hours of employment, or on the employer's premises[.]" *Id*. at 77 (quoting *Dep't of Labor, Licensing and Regulation v. Hider*, 349 Md. 71, 85 (1998)). Interestingly, this definition of "misconduct" can be traced back to *Rogers v. Radio Shack*, 271 Md. 126, 132 (1974), where the Court of Appeals construed the term "misconduct" as used by the Board of Appeals of the Employment Security Administration. We note that this definition appears to have been inspired by the 1968 Fourth Edition of Black's Law Dictionary. There, "misconduct" was defined as "[a] transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior[.]" BLACK'S LAW DICTIONARY (4th ed. 1968).[12]

Applying this definition, we readily conclude that the circuit court did not err in finding that appellants' actions constituted "misconduct" for purposes of LU § 2-102(d). By willfully disregarding the Board's instruction to first consult the County Attorney before spending funds on outside counsel, appellants transgressed the Board's "established and definite rule," resulting in "a forbidden act." *Wilson*, 389 Md. at 77. As noted

[12] Notably, in their briefs, both parties cite to and rely upon this edition of Black's Law Dictionary to define "misconduct."

previously, the Board had the statutory authority to impose conditions on the Commission's expenditure of public funds. Accordingly, appellants' failure to comply with the Board's directives constituted misconduct within the meaning of LU § 2-102(d).[13]

**JUDGMENTS OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.**

[13] In their briefs, appellants define "misconduct" within the context of the misdemeanor "misconduct in office." *Sewell v. State*, 239 Md. App. 571, 607-08 (2018); *Leopold v. State*, 216 Md. App. 586, 604 (2014). Because the circumstances of this case concern employment rather than criminal conduct involving "corrupt intent," we find the definition from the case law emanating from *Rogers v. Radio Shack*, 271 Md. 132, more applicable.