



COUNTY OF LOS ANGELES

CONTRACT CITIES LIABILITY TRUST FUND CLAIMS BOARD

500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARD

Curtis Morris
City Council Member
Dennis Courtemarche
City Manager
Jesse Duff
City Manager
Margaret Finlay
City Council Member
Jerome Groomes
City Manager
John McTaggart
City Council Member
Sam Olivito
California Contract
Cities Association

April 7, 2004

Honorable Board of Supervisors
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Re: **Barbara Ballard and Sydney G. v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 262 956

Dear Supervisors:

The Contract Cities Liability Trust Fund Claims Board recommends that:

1. The Board authorize settlement of the above-entitled action in the amount of \$150,000.00.
2. The Auditor-Controller be directed to draw a warrant to implement this settlement from the Sheriff's Department Liability Trust Fund - Duarte.

Enclosed is the settlement request and a summary of the facts of the case.

Also enclosed, for your information, is the Corrective Action Report submitted by the Sheriff's Department.

Return the executed, adopted copy to Georgene Salisbury, Suite 648
Kenneth Hahn Hall of Administration, (213) 974-9910.

Very truly yours,

Curtis Morris, Chair
Los Angeles County Contract Cities
Liability Trust Fund Claims Board

CM/gs

Enclosures

MEMORANDUM

March 25, 2004

TO: THE COUNTY OF LOS ANGELES CONTRACT CITIES
LIABILITY TRUST FUND CLAIMS BOARD

FROM: RICHARD S. KEMALYAN
Dwyer, Daley, Brotzen & Bruno, LLP

JOHANNA M. FONTENOT
Principal Deputy County Counsel
General Litigation Division

RE: Barbara Ballard and Sydney G. v. County of Los Angeles
Los Angeles Superior Court Case No. BC 262956

DATE OF
INCIDENT: December 6, 2000

AUTHORITY
REQUESTED: \$150,000

COUNTY
DEPARTMENT: Sheriff's Department - Duarte

CLAIMS BOARD ACTION:

Approve

Disapprove

Recommend to Board of
Supervisors for Approval

..... City Council Member
MARGARET FINLAY

..... City Council Member
SUSAN DEVER

..... City Council Member
CURTIS MORRIS

..... City Manager
DENNIS COURTEMARCHE

..... City Manager
JEROME GROOMES

..... City Manager
JESSE DUFF

..... California Contract Cities Association
SAM OLIVITO

on _____, 2004

SUMMARY

This is a recommendation to settle for \$150,000, a civil rights lawsuit filed by Barbara Ballard and her minor daughter, Sydney G., who allege that Sheriff's Deputies illegally entered their apartment and used excessive force.

LEGAL PRINCIPLES

A public employee can be held liable for a violation of civil rights for entering a person's home without a warrant, or without the existence of exigent circumstances. It is also a violation of civil rights to use more force than is necessary to effect an arrest, prevent escape, or overcome resistance.

A prevailing plaintiff in a civil rights case is entitled to an award of reasonable attorney fees.

SUMMARY OF FACTS

On December 6, 2000, Sheriff's Deputies responded to an apartment complex in the City of Duarte to investigate allegations of embezzlement and fraud made by the owner of the apartments, against Barbara Ballard, the resident manager.

Two Sheriff's Deputies, along with employees of the owner of the apartment complex, went to the door of Barbara Ballard's apartment, and David Lowe answered the door. Barbara Ballard then came to the door, and the Sheriff's Deputies asked her if she was the manager of the apartments. She told them that she had recently resigned as the manager. During the conversation with Barbara Ballard, the Sheriff's Deputies smelled the odor of burning marijuana coming from inside the apartment, and observed a small child in the apartment. The child was Barbara Ballard's 14-month-old daughter.

Barbara Ballard tried to close the door on the Sheriff's Deputies. One of the Sheriff's Deputies, concerned for the health and safety of the child, placed his foot inside the door jam to prevent the door from being closed. Eventually, the Sheriff's Deputies entered the apartment where they were confronted by David Lowe, who took a combative stance. Following a short struggle, he was restrained and handcuffed.

Barbara Ballard, who had picked up her daughter, began to run around in the apartment screaming for the Sheriff's Deputies to leave. Eventually, Barbara Ballard sat on the sofa yelling obscenities at the Sheriff's Deputies. As Barbara Ballard became more upset, she held her daughter very tight with one of

her hands near her daughter's neck, causing the Sheriff's Deputies to be concerned about her ability to breathe. When Barbara Ballard refused to put her daughter down, the Sheriff's Deputies attempted to remove her daughter from her grasp. By this time, four Sheriff's Deputies were on the scene.

A physical confrontation ensued, and Barbara Ballard struck and kicked at the Sheriff's Deputies. Barbara Ballard continued to refuse to release her daughter, and during the struggle a female Sheriff's Deputy struck Barbara Ballard two or three times in the facial area, while other Sheriff's Deputies tried to free the child to secure her safety. During the struggle, Barbara Ballard fell onto a glass coffee table and was struck a number of times by Sheriff's Deputies, who were eventually successful in freeing the child from her mother's grasp. Barbara Ballard was arrested for assault on a peace officer and child endangerment.

The District Attorney did not file charges against Barbara Ballard. A petition was filed in the Dependency Court with respect to the child endangering allegations, and Barbara Ballard's daughter was placed with her father for 45-days before being returned to her mother.

DAMAGES

Barbara Ballard sustained bruising to her face, a non-displaced nasal fracture, a chipped tooth, a fracture of the orbit of the eye, and a laceration on her breast when she fell through the glass coffee table. She claims she will require future surgery to remove nasal polyps, and to reset her nose. She is also alleging emotional distress.

Barbara Ballard also claims that her daughter sustained emotional distress from witnessing the incident.

If this matter should proceed to trial, we estimate the potential damages to be as follows:

Barbara Ballard's Emotional Distress	\$200,000
Barbara Ballard's Medical Expenses	\$ 10,000
Barbara Ballard's Future Medicals	\$ 10,000
Emotional Distress of Daughter	\$100,000
Attorney Fees	<u>\$150,000</u>
Total	<u>\$470,000</u>

The proposed settlement calls for the County to pay Barbara Ballard and her daughter a total of \$150,000 for all of their claims for damages, costs, and attorney fees.

STATUS OF CASE

The trial in this matter is still on calendar for May 26, 2004. The owners of the apartment complex, who are also defendants in the case, are going to proceed to trial. David Lowe's claims against the County have been dismissed and he is no longer a plaintiff in the case.

Expenses incurred by the County in defense of this action are attorney fees of \$21,576 and \$3,244 in costs.

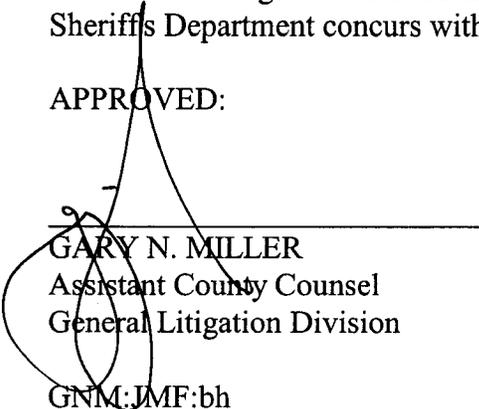
EVALUATION

This is a case of disputed liability. It does not appear that the claim for unlawful entry into the apartment poses a threat of liability. While the Sheriff's Deputies did not have a warrant, they did observe a 14-month-old child in an apartment where they smelled burning marijuana. Further, the child's mother was acting erratically and appeared to be hiding something. It is likely a jury would conclude that the entry of the Sheriff's Deputies into the home was based on exigent circumstances.

However, the claim for use of excessive force may subject the County of Los Angeles to liability. While the Sheriff's Deputies were using force to overcome Barbara Ballard's resistance, a jury could conclude that four Sheriff's Deputies should have been able to control Barbara Ballard, without causing the numerous injuries that she sustained. A reasonable settlement at this time avoids the risk of a jury verdict, along with an award of attorney fees, that could exceed the proposed settlement, as well as conserve further litigation costs.

We join with our private counsel, Dwyer, Daly, Brotzen, & Bruno, in recommending settlement of this matter in the amount of \$150,000. The Sheriff's Department concurs with the recommendation.

APPROVED:



GARY N. MILLER
Assistant County Counsel
General Litigation Division

GNM:JMF:bh

Los Angeles County Sheriff's Department

CORRECTIVE ACTION REPORT

LAWSUIT OF: David Lowe, Barbara Ballard and Sydney G. v. COLA
LASC Case No. BC 262956

INCIDENT DATE: December 6, 2000

INCIDENT LOCATION: 2222 E. Huntington Drive, Apt.#23, Duarte

RISK ISSUES: A public employee can be held liable for a violation of civil rights for entering a person's home without a warrant, or without the existence of exigent circumstances. It is also a violation of civil rights to use more force than is necessary to effect an arrest, prevent escape, or overcome resistance.

A prevailing plaintiff in a civil rights case is entitled to an award of reasonable attorney's fees.

INVESTIGATIVE REVIEW: Deputies responded to a call for service at the location regarding alleged embezzlement and fraud by the plaintiff during the time she was an apartment manager. The deputies went to her apartment to determine if the plaintiff was still residing at the complex. The deputies knocked on the door which was opened by David Lowe who advised the deputies that he did not live there. Ms. Ballard came to the door. While contacting Ms. Ballard, the deputies noted the strong odor of marijuana smoke emitting from the interior of the unit. They also saw a small child (approximately 14 months old) who had come to the door.

Ms. Ballard advised the deputies that she was no longer the apartment building manager and referred the deputies to the apartment building office if they had inquiries. Based on their observations of a small child being exposed to marijuana, the deputies declared their concern for the welfare of the infant. Ms. Ballard abruptly began to close the door and told the deputies they could not enter. In doing so, the child was struck by the door that Ballard was attempting to close. A deputy used his hand pressure against the doorway to prevent it from being closed and advised Ms. Ballard that he now needed to speak to her regarding the health and safety of the infant. Ms. Ballard thrust her body weight against the door in an effort to close it while the deputy resisted her efforts. Eventually, the deputies pushed the door open and entered into the location where they were confronted by Mr. Lowe. Mr. Lowe took a combative stance and was brought to the ground and handcuffed.

Ms. Ballard then grabbed the infant by one arm and pulled the child to her chest. While holding the infant in front of her, Ms. Ballard began to run through the apartment shouting at the deputies to leave. Eventually, she sat on the sofa holding the infant while screaming obscenities at the deputies. She refused to put her child down when requested to do so by the deputies. The deputies concern for the infant's welfare increased when they noted that Ms. Ballard was grasping the infant near its neck, that the child's eyes were bulging, its mouth was open and its tongue was protruding. Fearing the child was not able to breathe, a female deputy, in an effort to liberate the child, struck Ms. Ballard two to three times in the face. Deputies attempted to retrieve the child from Ms. Ballard's grasp. Ms. Ballard maintained a grip on the child's leg and began to fight with the deputies. During the fight between Ms. Ballard and the deputies, Ms. Ballard fell on and broke a glass coffee table. The

table had a fish bowl on it which also fell and broke. This caused the floor of the apartment to be wet, slippery and covered in glass.

Ms. Ballard continued to resist the deputies' efforts and the struggle continued on the floor. One deputy found himself on the floor, struggling with Ms. Ballard in the broken glass and water. Concerned by his inability to control Ballard's hand, the deputy struck Ms. Ballard twice in the face. These blows dazed Ms. Ballard, allowed the deputies to rescue the infant and also allowed the deputies to handcuff Ballard. Ms. Ballard was arrested for assault and battery on a peace officer, and child endangerment.

TRAINING ISSUES: All sheriff deputies must attend and successfully complete the Los Angeles County Sheriffs Department Training Academy. During academy training, deputies are given extensive instruction and training on search and seizure laws, laws of arrest, and use of force policies. Additionally, before any sheriff deputy is assigned to a patrol station, he or she must attend and successfully complete patrol school. During patrol school, deputies receive additional classroom instruction and training on search and seizure laws, laws of arrest, and force policies. This instruction and training is reinforced during patrol training with a training officer. Deputies also receive periodic unit level briefings, and recurrent Department training in these subjects.

POLICY ISSUES: The Department has sufficient policies and procedures in place that cover the issues raised by this incident. California law establishes that a peace officer may lawfully enter the residence of another when he has a warrant, consent to enter or there are exigent circumstances. Exigent circumstances include an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property. When considered collectively, the odor of marijuana smoke coupled with an individual that is acting confrontational, plus an infant being struck by a door, could establish sufficient exigent circumstances to support the deputies' actions. Once the deputies were inside the location and Ms. Ballard became combative, the deputies followed the Department's force policy which authorizes deputies to use that degree of force which is reasonably necessary to overcome resistance to their lawful actions.

CORRECTIVE ACTION: This incident was referred to the Department's Internal Affairs Bureau. The Bureau conducted a thorough investigation and referred its findings to the Executive Force Review Committee. The Committee determined that the use of force by the deputies was within Department policy and directed the Unit Commander to conduct a tactical debriefing with the involved personnel which was completed.

While the Department believes this case to be defensible, the Department also recognizes the financial exposure presented by this incident. As such, the Department does not oppose the business decision to settle this matter in the indicated amount.

The incident has been referred to the Office of Independent Review which has been invited to review this case and make recommendations regarding entries made by deputies under the same or similar circumstances, or any other matters they deem appropriate.