

October 24, 2019

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V19009269**

**MARY LINARES**

Animal Services Enforcement Appeal

Activity no.: A19001381

Appellant: Mary Linares  
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## FINDINGS AND CONCLUSIONS:

### Overview

1. Regional Animal Services of King County (Animal Services) declared Mary Linares’s dog Ronin “vicious,” after Ronin bit Orestis Lykourpoulos’s dog, Chiara. Ms. Linares timely appealed, asserting that Ronin was provoked to react. After hearing the witnesses’ testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties’ arguments and the relevant law, we sustain the viciousness designation but reduce the penalty.
2. We went to hearing on October 9. Unless directed to by law—and no special directive applies to today’s case—the examiner does *not* grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is a true *de novo* hearing. For those matters or issues raised in an appeal statement, Animal Services bears “the burden of proving by a preponderance of the evidence both the violation and the appropriateness of the remedy it has imposed.” KCC 20.22.080.G; .210.

### Preliminaries

3. Our inquiry is whether Animal Services has proven that Ronin is “vicious,” which KCC 11.04.020.BB defines as:

Having performed the act of, or having the propensity to do any act, endangering the safety of any person, animal or property of another, including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation.

KCC 11.04.230.H declares as a nuisance, “Any animal that has exhibited vicious propensities and constitutes a danger to the safety of persons or property off the animal’s premises or lawfully on the animal’s premises.” The meaning of the word “vicious” in the animal control context is thus somewhat broader than the word’s everyday usage (which might be “mean–spirited or deliberately hurtful; malicious”).

4. Ms. Linares does not dispute that Ronin bit Chiara as the two dogs crossed paths on a hiking trail. Instead, she asserts that Ronin was provoked to act. Per the above definition, an attack must be unprovoked to legally “count,” and it is Animal Services’ burden to prove the attack was without provocation.
5. The parties spent a fair amount of time debating what happened *after* Ms. Linares and Ronin left the immediate scene and continued with their hike. What occurred anytime beyond a few seconds after Ronin bit Chiara is not directly relevant to the alleged violation. By that point, Ronin’s behavior either qualified him as “vicious” under the legal standard, or it did not.
6. Similarly, the focus of a viciousness designation is on the dog, not on the owner. A viciousness designation is not a proxy for how much or how little care an owner is exercising. Such items are relevant to the penalty *amount*, if we sustain a viciousness

designation, but not to whether we sustain that viciousness designation. For example, how diligent Ms. Linares was being *before* the bite, or what if anything she could have done differently to avoid it, are not relevant to the violation. The violation question is whether *Ronin* qualifies as vicious, not whether *Ms. Linares* meets some standard.

### Testimony

7. Turning to the relevant testimony, Mr. Lykouropoulos described his greyhound, Chiara, as the timid, friendly with humans, and not very interested in non-greyhound dogs. On March 23, as Mr. Lykouropoulos and his hiking party approached Ms. Linares and Ronin, he saw Ms. Linares chatting with a friend. Ms. Linares was not looking at Ronin or them, but instead at her hiking companion.
8. Ronin did not initially do anything as Mr. Lykouropoulos and Chiara began crossing Ms. Linares's and Ronin's path. He estimated there were maybe 4 feet between them. He kept Chiara close to him as they passed. Chiara was walking straight, and did not sniff or approach Ronin; Chiara did not seem interested in Ronin. As they crossed, without warning Ronin bit at Chiara on her left side, on her ribs midway down her body. Chiara squealed and jumped a few steps forward.
9. Mr. Lykouropoulos took Chiara to the vet after getting off the mountain. As there was no doctor available that day, the office gave Chiara some painkillers and sent her home. Chiara was in too much pain to lie down or to sleep that night. Mr. Lykouropoulos brought Chiara back for surgery the next day. Chiara got stitches and a tube to aid the flow of fluids. The vet was worried that, with the detached flap of skin, infection could be an issue.<sup>1</sup>
10. Ms. Linares described Ronin as a muscular, two-year-old Chow Chow, tolerant of other dogs but not social. She explained that Chow Chows are never outwardly friendly, bred to be loyal to their family, and aloof and suspicious of others. She took Ronin to puppy kindergarten, and she actively socializes him so he does not become aggressive. Ronin has never bitten another person or dog. Ronin typically retreats from interactions. The trail was very crowded that day, but Ronin had no other aggressive interactions with other dogs. Ronin was on Ms. Linares's chest harness, which reduced the effective leash length to 2 ½ feet.
11. Ronin was ahead of her, with people in front and behind, and the rock to their right side. She agreed that when the altercation started, she was talking to her friend, who was behind her. Ms. Linares started paying attention when Ronin backed up to her leg. She saw Mr. Lykouropoulos and Chiara pause near them. She tried to pull Ronin to her. Mr. Lykouropoulos initially let the lead out, but then he pulled Chiara back. Ms. Linares also pulled back on Ronin, but there was nowhere to go. She said Chiara was perpendicular to Ronin, and approaching Ronin's side. Ronin quickly barked and "nipped" Chiara. She did not see any injury.

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<sup>1</sup> This is consistent with the vet's report that "clipped while sedated—after more extensive pocketing noted, contacted owner and STO to discuss change to tx plan—will need penrose drain and additional wound flushing rather than solely superficial laceration repair." Ex. 5 at 013.

12. Ms. Linares was slightly more credible than Mr. Lykouropoulos, although she lost some credibility by repeatedly downplaying Ronin’s attack as a “nip.” Since the beginning of 2017 alone, we have entertained 200+ vicious dog appeals, overturning many such designations. We have seen lots of nips, causing red marks or bruising. Here, Ronin actually tore into Chiara, leaving a sizable gash. Ex. 9, Ex. 4 at 005, Ex. 5 at 012.<sup>2</sup> Ms. Linares did herself no favors by trying to downplay the injury as a “nip.”
13. Neither Ms. Linares nor Mr. Lykouropoulos was nearly as credible as Yannis Katsoulit, who was in Mr. Lykouropoulos’s hiking party at the time of the attack.
14. While both Ms. Linares and Mr. Lykouropoulos were absolutely certain in the correctness of their memories and their positions, Mr. Katsoulit was far more open, measured, circumspect, and—ultimately—persuasive. He went out of his way to clarify what he remembered distinctly, and what he was not sure of five-plus months after the event. He volunteered that he could not recall the exact distance he was from Ronin when he first spotted Ronin or when Ronin bit Chiara. He would not even say for sure whether he was directly behind Mr. Lykouropoulos at the time of the altercation or whether there was an intervening person between them, or even whether he was walking single file or parallel to someone. Mr. Katsoulit clarified that while he remembered that both dogs stopped briefly near each other, he was not sure whether Ronin or Chiara stopped first.
15. The only thing in his entire testimony that he recalled vividly was Mr. Lykouropoulos clutching Chiara tightly—and Chiara right at Mr. Lykouropoulos’s knee—during the entire incident. We found Mr. Katsoulit more credible than Ms. Linares on this point. We do not accept her testimony that Chiara was perpendicular to Ronin and approaching Ronin’s side. Ms. Linares’s testimony is also inconsistent with the physical evidence. If Chiara’s wound was to her face or the front portion of her neck or to a front leg, it could be that Chiara was up in Ronin’s grill. But Chiara’s wound was in the middle of her left side, meaning Chiara was moving *past* Ronin at the time Ronin essentially T-boned Chiara.

### Analysis

16. We now turn to whether, under the facts as we find them, Animal Services has proven that Ronin’s bite was “provoked.” As our Supreme Court instructs, when analyzing “terms of art” we look to “well-established meanings” of words in their specific context. *State, Dept. of Ecology v. Theodoratus*, 135 Wn.2d 586, 589, 957 P.2d 1241 (1998). “Provocation” is a staple of animal jurisprudence, and numerous courts that have analyzed the term in depth have noted that although dictionary definitions of “provocation” can be quite broad, the term applies more narrowly in the dog bite context. Otherwise, animal control ordinances “could be interpreted to mean that provocation exists whenever any external stimulus has precipitated the attack or injury by an animal, *i.e.*, whenever the animal’s actions are not completely spontaneous.” *Robinson v. Meadows*, 203 Ill. App. 3d 706, 710, 561 N.E.2d 111 (1990). An action that merely

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<sup>2</sup> The vet described it as “laceration on left side of thorax—after clipping and cleaning noted erythematous bite wound marks around laceration and SQ fluid pocketing approximately 6 cm ventral to laceration.” Ex. 5 at 012.

stimulates or excites a dog, without more, cannot qualify as “provocation.” *Engquist v. Loyas*, 787 N.W.2d 220, 225 (Minn. App. 2010), *aff’d in relevant part*, 803 N.W.2d 400 (Minn. 2011).

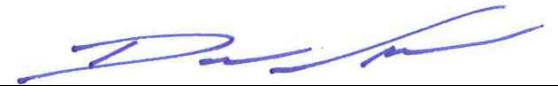
17. Mr. Linares’s explanation that Chow Chows are never outwardly friendly, bred to be friendly to their family, and aloof and suspicious of others does not alter the analysis. The “provocation” inquiry “focuses ‘on how an average dog, neither unusually aggressive nor unusually docile, would react to an alleged act of provocation.’” *Bradacs v. Jiacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (*citing Kirkeham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000)). So the question is not whether, given Ronin’s DNA, one would expect *Ronin* to react to another dog in close proximity by gashing the dog, but whether an average dog would have reacted in the same way.
18. Similarly, the question is not whether, given Chiara’s close proximity and Ronin’s lack of escape routes, that *some* response by Ronin—such as feinting an attack to get Chiara to flee, or snapping, or some other display of aggression was justified. Gashing Chiara was, under our circumstances, grossly out of proportion to any inciting act. *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995). Even assuming (contrary to our findings) that Chiara turned to Ronin and made a step towards Ronin’s exposed side, that does not justify Ronin then wounding Chiara on *Chiara’s* exposed side as Chiara walked past.
19. We conclude that Ronin’s attack was not “provoked.” We thus deny Ms. Linares’ appeal and sustain Ronin’s viciousness determination.
20. However, as noted above, Ms. Linares’s actions are relevant to the penalty amount. Mr. Lykouropoulos blamed Ms. Linares for a variety of actions before and after the attack. We mostly reject his assessment.
21. First, no one disputes Ms. Linares’s testimony that before the attack, Ronin had never bit another dog. So she might have know Ronin was reactive, but not that he was violent. At the time of the attack, she was holding Ronin on a fairly short leash, not letting him run amok.
22. Second, immediately after the attack, she did not know that Ronin had actually connected with Chiara. Even *Mr. Lykouropoulos* did not immediately know. Although there is some dispute to exactly what words Mr. Lykouropoulos said right after the attack, both parties are consistent that he said something along the lines of “keep your dog on a leash” and not “your dog just bit my dog.” It would have been better if she had at least paused to make sure there had been no damage before moving on, but we do not find it particularly irresponsible that she would continue on with her hike.
23. Similarly, we do not draw a negative an inference from her interaction further down the trail with Mr. Lykouropoulos. Mr. Lykouropoulos came across as somewhat argumentative and combative on the stand, and that was almost six months *after* his dog got attacked. Given how angry *any* owner would be after their dog got attacked, and given Ms. Linares’ past experience as a victim of domestic violent, we do not fault Ms. Linares for keeping her distance from an agitated Mr. Lykouropoulos and not wanting to give out her personal information. To the extent she could have handled it better, she is

*already* paying for that; Mr. Lykouropoulos testified that her lack of assistance was the main reason he called Animal Services to report the attack. Had she reacted differently, Animal Services likely would not have known about the incident, and Ronin would not have wound up with a viciousness designation. There is no reason to pile it on. We find a \$250 reduction in the default \$500 penalty is appropriate.

DECISION:

1. We deny Ms. Linares’s appeal of Ronin’s viciousness determination.
2. We waive \$250 of the \$500 penalty. The remaining \$250 is due to Animal Services by December 23, 2019.

ORDERED October 24, 2019.



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David Spohr  
Hearing Examiner

**NOTICE OF RIGHT TO APPEAL**

King County Code 20.22.040 directs the Examiner to make the County’s final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *November 25, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

**MINUTES OF THE OCTOBER 9, 2019, HEARING IN THE APPEAL OF MARY  
LINARES, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.  
V19009269**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Mari Isaacson, Orestis Lykouropoulos, Yanis Katsoulit, Andrew Carrington, and Mary Linares. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

The following exhibits were offered and entered into the record:

- |               |   |
|---------------|---|
| Exhibit no. 1 | Regional Animal Services of King County staff report to the Hearing Examiner                    |
| Exhibit no. 2 | Online Complaint form of March 23, 2019 incident by Orestis Lykouropoulos, dated March 26, 2019 |
| Exhibit no. 3 | RASKC investigation report no. A190001381   |
| Exhibit no. 4 | Photographs of Chiara's wound and Mary Linares's vehicle/license plate                          |
| Exhibit no. 5 | Vet bill (pink highlighted portion is not related to the injury sustained on the trail)         |
| Exhibit no. 6 | Notice of violation no. V19009269   |
| Exhibit no. 7 | NVOC mailing/tracking history   |
| Exhibit no. 8 | Appeal, received April 20, 2019   |
| Exhibit no. 9 | Photograph of dog injury, received May 27, 2019   |

DS/jo

October 24, 2019

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V19009269**

**MARY LINARES**  
Animal Services Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND DECISION** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED October 24, 2019.



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Jessica Oscoy  
Legislative Secretary



**Carrington, Andrew**

Carrington Law Offices, P.C.

**Isaacson, Mari**

Prosecuting Attorney's Office

**Katsoulit, Yannis**

**Linares, Mary**

Hardcopy

**Lykouropoulos, Orestis**

Hardcopy