

October 7, 2019

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V19009656**

SVETLANA MARAR

Animal Services Enforcement Appeal

Activity no.: A19002503

Appellants: **Svetlana and Ben Marar**

[REDACTED]
Auburn, WA 98092

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by Chelsea Eykel
Regional Animal Services of King County
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) asserts that Svetlana Marar's three adult dogs did not have their required rabies vaccination and that one puppy was neglected. The Marars vaccinated their adult dogs, and challenged the neglect violation. 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 uphold the neglect violation but reduce the penalty.

Background

2. After some back-and-forth texting with the Marars, Taylore Brandt arrived at the Marar home on May 25 to purchase a bloodhound-German Shepherd mix puppy. Ex. 5. Ms. Brandt testified that she noticed the puppy was stiff, with eyes squinty and ears pinned back. The Marar daughter informed Ms. Brandt that the puppy's condition might be due to the rain, the puppy having just woken up, and/or being nervous around someone new. Ms. Brandt paid \$400 for the puppy.
3. Ms. Brandt stated that the puppy was stiff the whole ride home, drooling and hot and unable to open its mouth. He could only waddle to walk and could barely move his legs. He could not make it up the stairs, so she carried him. He could not lift his head to lap from the water bowl.
4. She arranged for a speedy trip to the veterinarian. Ms. Brandt described the puppy struggling to walk across the examining table and unable to eat even a crumpled treat. When the vet tried to open his mouth, the puppy let out the largest yelp Ms. Brandt had heard, which she described as "heartbreaking." The vet's office estimated it would cost about \$1,600 for the necessary testing. Without such testing and blood work, the vet was unable to say exactly what the puppy was suffering from.
5. Ms. Brandt texted the Marars and told them she wanted her \$400 purchase price either back or put towards the vet care Ms. Brandt was willing to undertake. Ms. Brandt brought the puppy back to the Marars and showed them the vet's paperwork. The Marars assured her they would take care of the puppy and refunded her purchase price. Ms. Brandt left concerned that something did not seem right about the situation, so she called Animal Services.
6. Ofc. Diana Fowler went to the Marar home, and was taken to the puppy by the Marar daughter. Ofc. Fowler described seeing the puppy on a blanket, drooling, panting excessively, and periodically stiffening and yelping. His entire body seemed rigid and stressed, and he could not stand or walk. She thought it was necessary to get the puppy medical care immediately. She spoke by phone with Ms. Marar, the upshot of which was the Marars surrendered the puppy to Ofc. Fowler. Ofc. Fowler took the puppy to Animal Services' vet.
7. That vet noted the puppy's difficulty opening his jaw, pupils partially constricted, ears pulled up tight and crimped together, muscle spasms, drooling, tense jaw, a small wound on the jawline, and urine and feces on his fur. The puppy was unable to manually extend his shoulder or flex his elbow, unable to extend his hips, and in general displayed a limited ability to flex. His neck was stiff and extended. He was unable to get into a sitting or standing position. He could stand stiff-legged if placed in that position, but was unable to walk. She diagnosed him with a progressive neurological disease and a guarded to grave prognosis. Due to the animal's suffering, Animal Services euthanized the puppy. Ex. 6 at 1.
8. Ms. Marar testified that her daughter sells puppies to help fund college. Ms. Marar checked the puppies each night. The puppy was fine except for a muddy nose. Her daughter did not tell her there was anything unusual about the puppy, so she was surprised when Ms. Brandt contacted her. She went online and based on what she read

and the puppy's small nose abrasion, she concluded the puppy had tetanus. She was shocked that the first vet had not done anything, and she was worried a new vet would be costly and not help.

9. The family decided against taking the puppy to another vet and that the family would handle it themselves. She acquired and administered a tetanus shot to the puppy. She thought the puppy was getting better; he could eat. From her Google reading, she expected recovery to take three to four weeks. They “walked” him (meaning supporting and moving him in an upright position) to get him to pee.
10. “Ben” Marar testified that, because the puppy had been to a vet and that vet had not done anything, he elected not to return to a vet. He searched lots of internet forms, and everything came back to tetanus. He massaged the puppy to soften its muscles, fed it fresh eggs, and worked with the puppy to get the puppy to move. He thought the puppy was getting better.
11. Mr. Marar was really sad to learn that the vet had put the puppy to sleep, and emphasized that they would have fought for the puppy if the puppy had stayed with them. He explained that he did not trust that a vet would feed, massage, or bathe the puppy like the family would. The family is from the Ukraine, where they take care of their own animals. He does not trust vets or doctors. They feed their livestock the best food they can find. They give their animals de-wormers, but did not know about vaccination requirements.
12. Mr. Marar emphasized that they did not know the puppy was sick; if they had they would never have sold him. He was shocked when Ms. Brandt returned the puppy ill, because, as far as he knew, the puppy was healthy when they sold it

Analysis

13. Animal Services served a violation notice to Ms. Marar for failure to vaccinate the adult dogs and for neglecting the puppy. Ex. 9. Ms. Marar vaccinated the dogs and timely appealed the neglect violation. Ex. 11. Animal Services sent most of its exhibits to us and to the Marars two weeks before the hearing. It also sent some photos and videos, but apparently only to us and not to the Marars, and it did not introduce these at hearing; we exclude these from the record.
14. 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.
15. The pertinent legal standard is KCC 11.04.250.A.2, which makes it unlawful to:


By reason of neglect or intent to cause or allow any animal to endure pain, suffering or injury or to fail or neglect to aid or attempt alleviation of pain, suffering or injury the person has so caused to any animal.

16. We emphasize that this is not a case about cruelty or an “intent to cause” the puppy any suffering. The Marars are clearly loving owners. Ofc. Fowler noted that the other dogs looked to be in fine condition and the Marars were cooperative. Neither adult Marar knew the puppy was sick before it was sold.
17. However, our question is whether, by reason of neglect, the Marars allowed the puppy to endure pain or suffering. Neglect being undefined in the code, we look first to the normal dictionary definition of “fail to care for properly.” <http://www.oxforddictionaries.com/definition/english/neglect>. As a legal term, it is typically an objective inquiry of whether a person has done that which was the person’s duty to do. *Neglect*, BLACK’S LAW DICTIONARY (16th ed. 2014). The puppy was obviously in substantial pain, and the Marars had a duty to keep the puppy from needlessly suffering. By failing to seek timely veterinary care, the puppy was allowed to suffer.
18. Ms. Brandt had offered to keep the puppy and to pony up for extensive vet work, if the Marars would put the \$400 purchase price towards the Brandts’ medical costs. Instead, the Marars took the puppy back, and thus took back responsibility for keeping the animal from enduring unreasonable pain. Taking the puppy to their own vet would not have meant the Marars would have needed to *accept* everything that vet suggested. For example, perhaps the vet could have prescribed pain medication to reduce the puppy’s suffering while the Marars tried nursing the puppy back to health after getting a tetanus shot. But under the circumstances here, not seeking medical attention for a clearly-suffering animal amounts to neglect.
19. We uphold the neglect violation but reduce the penalty. The Marars put in a lot blood, sweat, and tears trying to help the puppy. They were not neglectful in the sense of “they just didn’t care.” They cared a lot. They just did not *properly* care for the puppy.
20. Looking to the future, if the Marars are thinking of continuing to breed puppies, they need to establish an ongoing relationship with a vet, make sure the dogs are up on their legally-required vaccinations, and figure vet care expenses into the cost-profit ledger for their business.

DECISION:

1. We DENY Ms. Marar’s appeal as to the violation
2. We REDUCE the penalty from \$500 to \$300.

ORDERED October 7, 2019.



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 6, 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 SEPTEMBER 18, 2019, HEARING IN THE APPEAL OF
SVETLANA MARAR, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE
NO. V19009656**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Tayloree Brandt, Svetlana Marar, Ben Marar, and Diana Fowler. 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 June incident by Tayloree Brandt, dated June 1, 2019 |
| Exhibit no. 3 | RASKC investigation report no. A19002503 |
| Exhibit no. 4 | Statement from Taylore Brandt, dated June 14, 2019 |
| Exhibit no. 5 | Text messages between Taylore Brandt and Sventlana Marar |
| Exhibit no. 6 | Medical history for Marsik from RASKC vet, dated August 29, 2019 |
| Exhibit no. 7 | Necropsy results from Phoenix Lab |
| <i>Exhibit no. 8</i> | <i>Videos/photograph of Marsik; excluded from the record.</i> |
| Exhibit no. 9 | Notice of violation no. V19009656, issued A19002503 |
| Exhibit no. 10 | NVOC mailing/tracking history |
| Exhibit no. 11 | Appeal, received August 11, 2019 |
| Exhibit no. 12 | DS/jo |

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V19009656**

SVETLANA MARAR
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 7, 2019.



Jessica Oscoy
Legislative Secretary

Brandt, Taylore

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Fowler, Diana

Marar, Svetlana/Ben

Hardcopy