

August 26, 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](mailto:hearingexaminer@kingcounty.gov)  
[www.kingcounty.gov/independent/hearing-examiner](http://www.kingcounty.gov/independent/hearing-examiner)

**SUMMARY ORDER**

SUBJECT: Regional Animal Services of King County file no. **V19009669**

**MARK CASE**

Animal Services Enforcement Appeal

Activity no.: A19004674

Appellant: **Mark Case**

[REDACTED]  
Auburn, WA 98001

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](mailto:raskcappeals@kingcounty.gov)

Animal Services designated the Cases' dog "Lucy" as "vicious." The Cases timely appealed. Normally we set such appeals for a full hearing on the merits, where we swear in witnesses, allow testimony and cross-examination, and receive documents into evidence. However, a hearing here seems unnecessary. Even relying entirely on the Cases' version of events, Lucy meets the viciousness criteria.

According to the Cases, on July 25 Lucy accidentally got out of her yard. Lucy was surprised by a child passing by. The child ran away from Lucy, screaming. Lucy then ran down the child and nipped him.

KCC 11.04.020.BB defines vicious 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.”

Courts in the dog bite context have interpreted the term “provocation” rather narrowly, especially when the victim is a child. If the child had been running at Lucy, and Lucy stood her ground, that would have raised a question requiring a hearing as to whether Lucy was reasonably defending herself and the bite was “provoked.” But here the child was running away from Lucy, and Lucy chased the child down. That is nowhere near the ballpark of legal provocation.

The Cases discuss the responsible steps they take with Lucy, and how Lucy getting out that day was an aberration. And we accept that. However, a viciousness designation is not a proxy for an owner’s lack of (or exercise of) care. The focus is on the dog, not on the owner. For example, in one memorable case, an appellant was walking her dog down the sidewalk, on a harness, with her body between her dog and other pedestrians. She was acting exactly like a responsible dog owner should. Despite the care she was taking, without warning her dog suddenly darted behind her, lunged, and bit a passerby. We reduced the monetary penalty significantly, but still upheld the viciousness designation, not because the owner was culpable but because the dog bit a person without legal provocation and met the criteria for a viciousness designation.

This scenario sounds similar. Holding a hearing seems designed only to cause witnesses to have to testify about and relive a terrible experience, when—unless there is some dramatic fact we are not privy to—the outcome is clear.

We thus DENY the Cases’ appeal as to Lucy’s vicious designation, but REDUCE the penalty from \$500 to \$200.

If for some reason we have misunderstood the situation, by **September 25, 2019**, either party is free to file, with the examiner, a motion for reconsideration explaining why the examiner should not be dismissing this appeal. Filing a timely motion for reconsideration postpones the deadline (described below the signature line) for lodging an appeal.

DATED August 26, 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 *September 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.

DS/jo

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V19009669**

**MARK CASE**

Animal Services Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **SUMMARY ORDER** 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 August 26, 2019.



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Jessica Oscoy  
Legislative Secretary

**Case, Mark**

Hardcopy

**Eykel, Chelsea**

Regional Animal Services of King County

**Yang, Nancy**

Hardcopy