

January 13, 2020

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**  
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**REPORT AND DECISION**

SUBJECT: Regional Animal Services of King County file no. **V19010064**

**STEVE JOHNSON**  
Animal Services Enforcement Appeal

Activity no.: A19007738

Appellant: **Steve Johnson**  
[REDACTED]  
Redmond, WA 98053  
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  
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**FINDINGS AND CONCLUSIONS:**

Overview

1. Animal Services asserts that Steve Johnson's dog, Bruno, ran at large. Mr. Johnson timely appealed. 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 grant Mr. Johnson's appeal.

## Context

2. This is our fourth appeal of a 2019 violation notice asserting that Bruno was running at large.
  - The first involved an alleged March 9 incident. Animal Services withdrew the violation notice before we reached a hearing to resolve the merits.
  - The second involved an April 24 incident where, as Mr. Johnson engaged in an argument, Bruno wandered off and trespassed on a neighbor's yard. As Animal Services had alleged the wrong violation (running at large versus trespass), we overturned the notice.
  - The third involved an April 26 incident where Bruno was in the traffic lane as a car began approaching. We determined that Animal Services had met its burden of proving a violation.
  - Today's case relates to an interaction on October 23. We went to hearing on January 8.
3. 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, Regional Animal Services of King County (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.
4. Our substantive inquiry is whether Animal Services has proven that on October 23 Bruno was “off the premises of the owner and not under the control of [Mr. Johnson], either by leash, verbal voice or signal control.” KCC 11.04.020.W. “Under control” is defined as:

the animal is either under competent voice control or competent signal control, or both, so as to be restrained from approaching any bystander or other animal and from causing or being the cause of physical property damage when off a leash or off the premises of the owner.

KCC 11.04.020.W.

## Evidence

5. Boneca Hain testified that, on October 23, she was inside finishing lunch when she heard her dogs go off. She called to them, but they did not respond, so she went outside. She observed Mr. Johnson riding past. She did not initially see Bruno, but then she observed him following alongside Mr. Johnson's bicycle. Her dogs followed her inside. One of them had a gash that looked like a bite. Ex. 5. She explained that she concluded that Bruno caused the gash because she had seen Bruno come up on their property and

approach her fence and her dogs on previous days, and thus she assumed Bruno was doing this again on October 23. She added that she had also seen Bruno go up a neighbors' driveway to interact with the neighbors' dog at some point in December.

6. Her husband, Robert Hain, testified to the bad blood that exists between the dogs. He described an April 2018 altercation between one of his dogs and Bruno. He was showing his son how to skip rocks at a retention pond when Bruno approached, and a fight ensued between one of the Hain dogs and Bruno. Mr. Hain volunteered that he did not see how the fight started, but that it did, and his dog was injured. He explained that he did not complain about that altercation because Mr. Johnson controlled Bruno and Mr. Hain was not sure which dog was the aggressor. He theorizes that this altercation explains his dogs' heightened reaction to Bruno.
7. As to his property, Mr. Hain explained that their fence line is well inside their property line. So, if another dog is at the fence line, that dog is well onto the Hain property. He tries to get his dogs inside if Mr. Johnson is walking Bruno, to avoid an incident. He agreed his two dogs play roughly with each other.
8. Mr. Johnson testified that he frequently walks Bruno on the road behind the Hain house. When he and Bruno approach and pass the Hain house, the Hain dogs go crazy. They almost seem to be fighting each other to slow each other down in order to be the first to get close to Bruno. On October 23, Bruno did not approach the fence; instead he stayed with Mr. Johnson on the road. As to the Hain dog's wound on October 23, he thinks the other Hain dog could have inflicted it. He submitted video, from a different day, of the Hain dogs going at each other while Bruno sits quietly in the foreground. Ex. 13.

### Analysis

9. We found the Hains measured and credible. We hear many witnesses embellish many things under oath, but such witnesses typically do not volunteer<sup>1</sup> information like Mr. Hain offering that at the time of the 2018 fight Bruno was under Mr. Johnson's control and Mr. Hain did not know which dog was the aggressor, or Ms. Hain describing how on October 23 she could only see Bruno walking by Mr. Johnson as Mr. Johnson continued down the road.
10. Ms. Hain offered a plausible explanation for why she concluded Bruno was at the fence—Bruno had been on her property before, and one of her dogs suffered what appeared to be a small bite wound when Bruno was in the vicinity. But that is just a theory, as she herself observed. Mr. Johnson offered a plausible counter-theory for the gash—the Hain dogs (play) fight with each other. The video he submitted backs this up. Mr. Johnson's written statements had some elements of drama, exhibit 12, but his testimony about what happened on October 23 was straightforward—Bruno never left the street as he and Mr. Johnson passed by the Hain property.

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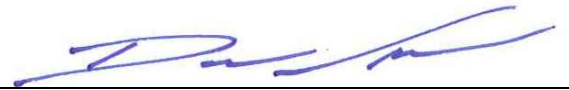
<sup>1</sup> By "volunteer," we mean not some admission a witness agreed to in response to a question, but something unilaterally presented during the witness's narrative.

11. In sum, there is insufficient evidence that Bruno left the street on October 23. That fact alone would not be dispositive if there had been another dog—or a car, or a pedestrian—on the street as Mr. Johnson traversed. In that scenario, it would take a more nuanced analysis to determine whether Bruno was under control so as to be restrained from approaching a person or animal or from potentially causing damage (as in the scenario of getting in the path of a car on April 26). But as the Hain dogs were behind a fence and off the street on October 23, it is dispositive here. Animal Services has not met its burden of proving a running at large (or trespass) violation.
12. Mr. Johnson’s presentation was more measured and persuasive here than in our previous hearing. And we do not disagree with his premise that when he is, for example, alone with Bruno in the woods, there is nothing requiring him to keep Bruno by his side unless or until someone else approaches. Conversely, if, for example, Bruno (while unleashed) approached another dog, the fact that Mr. Johnson *could* have controlled Bruno and prevented the approach would not matter. Mr. Johnson quickly recalling Bruno after such an approach would be locking the barn door after the horse is gone—the violation would have *already* occurred. But on October 23, the theoretical met the actual and there was no violation.

DECISION:

1. We GRANT Mr. Johnson’s appeal.

ORDERED January 13, 2020.



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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 *February 12, 2020*. 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 JANUARY 8, 2020, HEARING IN THE APPEAL OF STEVE  
JOHNSON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.  
V19010064**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, and Boneca and Robert Hain. 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  | E-mail, complaint from Boneca Hain, dated October 24, 2019                                |
| Exhibit no. 3  | Online Complaint form of October 23, 2019 incident by Boneca Hain, dated October 25, 2019 |
| Exhibit no. 4  | RASKC investigation report no. A190073801   |
| Exhibit no. 5  | Photographs   |
| Exhibit no. 6  | Notice of violation no. V19010064, issued November 16, 2019                               |
| Exhibit no. 7  | UPS tracking  |
| Exhibit no. 8  | Appeal, received November 20, 2019  |
| Exhibit no. 9  | Notice of Violation no. V19009356, incident date April 26, 2019                           |
| Exhibit no. 10 | Hearing examiner report case no. V19009356 and V19009375, dated July 5, 2019              |
| Exhibit no. 11 | Map of subject area   |
| Exhibit no. 12 | Appellant: Report, received December 30, 2019   |
| Exhibit no. 13 | Appellant: Video, received December 30, 2019  |

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V19010064**

**STEVE JOHNSON**

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 January 13, 2020.



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Jessica Oscoy  
Legislative Secretary

**Eykel, Chelsea**

Regional Animal Services of King County

**Hain, Boneca**

Hardcopy

**Johnson, Steve**

Hardcopy