

April 15, 2020

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

King County Courthouse
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V19010171 and V19010173**

CARLOS AND MARIA AGUAS
Animal Services Enforcement Appeal

Activity no.: A19009063

Appellants: **Carlos and Maria Aguas**

[REDACTED]
Kent, WA 98031

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. This case involves a Regional Animal Services of King County (Animal Services) order that Carlos and Maria Aguas must remove their dog, Dory, from King County. 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 two of the three violations and sustain the removal order, but we provide the Aguases with an extended period to rehome or relinquish Dory. We also reduce the monetary penalty.

Background

2. On November 8, 2018, Animal Services received a complaint concerning one of the Aguas dogs running loose. The following day, an officer advised Ms. Aguas of the need to contain and to license their dogs. A warning is not a final decision, but it shows the Aguases were unaware of their need to license their dogs and keep them from running loose.
3. On July 21, 2019, the Aguases received a violation notice because their dogs, Dory and the dog later identified as Daisy, were running at large, trespassing onto a neighbor's property, and unlicensed. Ex. 10. That notice was not appealed, making it final and unreviewable at the point the appeal window ran out in August. KCC 20.22.080.H. In addition, the notice served as a warning that the dogs were acting in a vicious manner. A warning is not a final decision, but it shows the Aguases were again made aware not only of their continuing need to license their dogs and keep them from running loose, but that their dogs were at least perceived to be threatening their neighbors.
4. The message did not take. On July 28, Daisy was running loose again, still unlicensed, and behaving viciously. Ex. 14. Animal Services declared Daisy vicious and set confinement terms for the Aguases to meet to keep Daisy in King County. *See also* KCC 11.04.290.A.1 and .2. Most pertinent was the requirement to secure Daisy in a fenced, locked area when unattended and outside the home. The Aguases did not appeal that, making Daisy's viciousness designation and confinement terms final and unreviewable, once the appeal window ran out.
5. On August 5, it was Dory running loose again, trespassing, still unlicensed, and exhibiting vicious behavior. Ex. 12. Animal Services declared Dory vicious, and it placed similar confinement terms for the Aguases to keep Dory in King County, including the same requirement to secure Dory in a fenced, locked area when unattended and outside the home. The Aguases did not appeal that, making Dory's viciousness designation and confinement terms final and unreviewable, once that appeal window ran out.
6. Per the video and testimony produced at hearing (discussed below), Dory was out running loose again on December 17, first in the road and approaching a mail carrier and then right at the entrance of the complainant's garage.
7. On December 19, Animal Services served Ms. Aguas with two documents. The first was a violation notice related to a December 17 incident, asserting that Dory was trespassing, a vicious animal running at large, and behaving viciously. Ex. 6. The other was a removal order for failing to meet Dory's confinement order. Ex. 5. Ms. Aguas appealed the removal order. Exs. 15.

Analysis

8. 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. 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.

9. The violation notice erroneously listed December 19 as the violation date, when December 19 was the date the violation notice was issued, not the date of the infraction. The notice was based on two videos taken from a neighbor’s dash cam on December 17.¹
10. The later video, taken about 12:20 p.m., is the simplest, showing Dory on the complainant’s property, right at the edge of her garage. Ex. 4, video 1, 1:35 mark. Dory was thus a “domesticated animal that enters upon a person’s property without the permission of that person,” KCC 11.04.230.K. The trespass violation was warranted.
11. The earlier video, from about 11:58 a.m., shows a mail carrier delivering mail to a house across the street. As the carrier walks back to his truck, Dory approaches. Ex. 4, video 2, 3:40 mark. By the time Dory gets to the truck, the mail carrier has already gotten into the truck. Dory walks around a bit and then exits. Animal Services asserts that this qualifies as vicious behavior, that Dory was charging the postal carrier, and points to Dory’s past aggressive behavior. Dory’s viciousness status was established in August 2019 and is discussed below. However, a violation of KCC 11.04.230.H requires that Dory undertook some qualifying behavior on December 17.
12. Reviewing the December 17 video, we find insufficient evidence that Dory performed any act endangering the safety of the mail carrier. KCC 11.04.020.BB. The video has no sound (which might have provided insight) but there is nothing visually showing Dory in an agitated or aggressive state. We would not categorize Dory as “charging” the mail carrier. The mail carrier apparently did not even notice Dory until after he was in the truck. It is fair to speculate that, had that mail carrier not gotten into the truck before Dory arrived, Dory might have tried to attack him. However, here that is speculation and not evidence. Animal Services has not met its burden a showing that Dory behaved viciously on December 17. We thus overturn the KCC 11.04.230.H violation and associated \$1,000 fine.
13. The other vicious-related violation Animal Services asserted was KCC 11.04.230.I., which declares as a nuisance:

Any vicious animal or animal with vicious propensities that runs at large at any time it is off the owner’s premises and not securely leashed on a line or confined and in the control of a person of suitable age and discretion to control or restrain the animal.

“Control” itself means to be “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

¹ The Department submitted its materials two weeks before the hearing, setting out the correct day in question, December 17, and including the videos bearing the “2019/12/17” stamp. So, there was no confusion what day was in question. And Ms. Aguas’ appeal only addressed the removal order, not the violation notice. Ex. 15; KCC 20.22.080.G.

the premises of the owner. Evidence that a bystander or other animal was approached by the dog, or evidence that the dog caused physical property damage, is prima facie evidence that the dog was not *under control*.” Kent City Code 8.03.030.G (italics in original). That is a much easier violation for Animal Services to prove; there is no requirement that Dory did anything vicious on December 17. Dory was a vicious dog by virtue of her August 2019 viciousness designation, and on December 17, she was not secured or under any form of control when she ran at large. We sustain the violation.

14. Turning to the removal order, Exhibit 5, the code mandates that:

An animal, declared by the manager of the regional animal services section to be vicious, may be harbored, kept or maintained in King County only upon compliance with those requirements prescribed by the manager.

15. KCC 11.04.290.A.1 (underline added). Thus, when Animal Services issued Dory’s viciousness designation in August 2019, it set several terms of compliance including, “Secure your animals in a fenced area suitable for the size of the animal when your animal is unattended and outside your home. Lock all passages with a padlock to prevent accidental release.”

16. Animal Services’ removal order, exhibit 5 at 003, cites KCC 11.04.290.A.3, which states:

Failure to comply with any requirement prescribed by the manager in accordance with this section constitutes a misdemeanor. Such an animal shall not be kept in unincorporated King County after forty-eight hours after receiving written notice from the manager. Such an animal or animals found in violation of this section shall be impounded and disposed of as an unredeemed animal and the owner or keeper of the animal or animals has no right to redeem the animal or animals.

17. In conjunction with the requirement that a vicious animal be kept in King County “only upon compliance with” the requirements set forth in the confinement order (here, the order issued for Dory on August 6), we look not just at Dory’s escape on December 17 but at the pattern of noncompliance. The Aguases eventually constructed a pen in the backyard, but only in January, five months after they received Dory’s—and also Daisy’s—confinement orders, and well after the December 17 incident and December 19 removal order.

18. Ms. Aguas testified that she never saw her dogs attacking people or barking at people, and that they were just being playful. That is possible, and that would have been a reason to challenge Daisy’s or Dory’s August viciousness determinations. However, the Aguases elected not to appeal those, and so by late August for Dory, and early September for Daisy, those viciousness determinations, and the requirements for keeping either dog in King County, were set in stone. Ex. 12 at 002, Ex. 14 at 002.

19. Animal Services is correct that December 17 is not an isolated incident but an overarching pattern of the Aguases ignoring repeated requests for compliance. In addition to the July violation and the August confinement orders, they were on notice

since November 2018 of the need contain and to license their dogs, and yet they only licensed Dory in January 2020 and had still not (as of our April 1 hearing) licensed Daisy. Ms. Aguas' reasoning that licenses are expensive is a little hard to square. Between June and December 2019, the Aguases received a cumulative total of \$1,000 in licensing-related fines (separate and apart from the fines for nuisance violations) for failing to obtain licenses. The licenses themselves would only have cost them \$60 each. Exs. 10, 12, 14 at 001; KCC 11.04.035.A.1.a.

20. While we have overturned more removal orders than we have sustained, Animal Services is correct that the Aguases were given many opportunities to come into compliance and failed to do so. We sustain Dory's removal order. However, we make two modifications.
21. First, the removal order sets various requirements for removal, including getting Dory out of King County within 48 hours. Ex. 5 at 003. That is unrealistic. How is someone to find an out-of-County home, disclose to that potential new owner that Dory was ordered removed as a nuisance and threat to public safety, get Dory microchipped, and get Dory to that new owner within 48 hours, especially with a statewide stay-at-home order in place for at least another few weeks? Courts have long been reticent to require someone to do that which is impossible, *Gustav v. Esary*, 94 Wn. 248, 250, 161 P. 1188 (1917), and so are we. We will give the Aguases 45 days to either meet the removal requirements *or* surrender Dory to Animal Services and let Animal Services find Dory a new home.
22. Second, the removal order lists a \$1,000 penalty. We have held that that the monetary penalty associated with the removal order only kicks in where the removal order itself is violated. If, by May 30, 2020, the Aguases either meet the terms set forth on Exhibit 5 at page 003 or surrender Dory to Animal Services, there will be no monetary penalty associated with the removal order. If the Aguases do not meet the deadline, then the \$1,000 penalty will come due.
23. Finally, Ms. Aguas asked whether the removal order pertained to Daisy as well. It does not. However, Daisy is also a vicious dog allowed in King County only in compliance with the requirements set forth in her confinement order, Exhibit 14 at 001. If they have not already, the Aguases should get Daisy licensed quickly and make sure that they meet Daisy's confinement terms, so Daisy can live a long and happy life with them in King County.

DECISION:

1. On December 17, Dory trespassed (KCC 11.04.230.K) and was a vicious animal running at large (KCC 11.04.230.I). However, Dory did not perform a vicious act on December 17 (KCC 11.04.230.H). Therefore, we reduce the \$1,600 penalty to \$600.
2. We sustain Dory's removal order, except that the Aguases have until **May 30, 2020**, to either:
 - A. Microchip Dory, find someone outside King County willing to take Dory, disclose to that potential new owner that Dory was ordered removed from King County as a nuisance and threat to public safety, get Dory out of King County,

and provide Animal Services with proof that the new owner lives outside King County, or

- B. Surrender Dory to Animal Services.
3. So long as the Aguases timely meet one of the above two options, there is no penalty associated with the removal order. If the Aguases fail to timely meet one of those options, the penalty for violating the removal order (as amended by our decision) is \$1,000.

ORDERED April 15, 2020.



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 *May 15, 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 APRIL 1, 2020, HEARING IN THE APPEAL OF MARIA AND
CARLOS AGUAS, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE
NOS. V19010171 and V19010173**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Maria Aguas, and Leslie Regier. 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 | Complaint form of December 17, 2019 incident by Regier Carol, dated December 19, 2019 |
| Exhibit no. 3 | RASKC investigation report no. A19009063 |
| Exhibit no. 4 | 2 videos from Mrs. Regier |
| Exhibit no. 5 | Notice and order for removal no. V19010173, issued December 19, 2019 |
| Exhibit no. 6 | Notice of violation no. V19010171, issued December 19, 2019 |
| Exhibit no. 7 | Photograph of door posting |
| Exhibit no. 8 | RASKC investigation report no. A185667 |
| Exhibit no. 9 | RASKC investigation report no. A19003149 |
| Exhibit no. 10 | Notice of violation no. V19009626, issued July 21, 2019 |
| Exhibit no. 11 | RASKC investigation report no. A19004824 |
| Exhibit no. 12 | Notice of violation no. V19009688, issued August 6, 2019 |
| Exhibit no. 13 | RASKC investigation report no. A19004643 |
| Exhibit no. 14 | RASKC investigation report no. A19009725 |
| Exhibit no. 15 | Appeal, received January 12, 2020 |
| Exhibit no. 16 | Translation of Appeal by Rocio Martinez |

DS/JO

April 15, 2020

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V19010171 and V19010173**

CARLOS AND MARIA AGUAS
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 April 15, 2020.



Jessica Oscoy
Legislative Secretary

Aguas, Carlos/Maria
Hardcopy

Enright, Tyler
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Regier, Leslie
Hardcopy