

April 29, 2021

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

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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21011760-A21000975**

TINA TRIPLET

Animal Services Enforcement Appeal

Activity no.: A21000975

Appellant: **Tina Triplet**

[REDACTED]
SeaTac, WA 98198

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. Regional Animal Services of King County (Animal Services) served Tina Triplet with a notice of unredeemable animal, and impounded two of her dogs, Diamond and Shay. Ms. Triplet timely appealed. After hearing the witnesses' testimony, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law—especially that past final decisions cannot be belatedly challenged—we deny her appeal, and Animal Services may now rehome the dogs, but we set several other directives.

Background

Initial 2020 Events

2. At some point in early 2020, Animal Services received a complaint about Ms. Triplet's dogs running at large, and an Animal Services officer spoke to Ms. Triplet. Upon receiving another complaint, a different Animal Services officer spoke with Ms. Triplet on April 25. Ms. Triplet explained that Shay and Diamond tended to bolt out. Ex. D35 at 018 n.4.
3. After receiving additional complaints, on August 26, Animal Services issued Ms. Triplet two notices and orders.
4. V20011081 related to Ms. Triplet's pit bull, Ivory, involving a July 26 incident. Ivory has not been the subject of any later enforcement actions and only tangentially plays into today's discussion.
5. V20011089 declared Ms. Triplet's other pit bulls, Shay and Diamond, vicious in light of an August 22 incident where Animal Services found that they trespassed and killed the neighbors' (the Molmens') cat. It required that Ms. Triplet:
 - Secure [Shay and Diamond] 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....
 - Restrain [Shay and Diamond] using a leash with a collar or harness when taking it off your property. Your leash can extend no longer than 8' in length. A competent and capable person must handle the animal at all times when attended outside....
 - Microchip [Shay and Diamond] and provide the microchip number to [Animal Services] within 14 days....
 - Vaccinate [Shay and Diamond] for rabies, if not current....

Ex. D35 at 016.

6. The notices and orders closed with the standard language that:

YOU MAY APPEAL this Notice and Order to the King County Hearing Examiner. Such an appeal must be received by Regional Animal Services of King County by September 20, 2020. Appeals should be mailed to the Manager of Regional Animal Services of King County Attn: Appeals, 21615–64th Ave. S., Kent, WA 98032.

And then, after providing appeal specifics and penalty information, it advised:

Failure to file an appeal in accordance with King County Code shall constitute a waiver of your right to an administrative hearing and shall render this Notice and Order a final determination that you have violated animal care and control laws specified in this Notice and Order and that you are liable for the civil penalties and the abatement/corrective actions described herein.

Ex. D14 at 002 (V20011264); Ex. D22 at 002 (V20011265); Ex. D27 at 002 (V20011266).

7. Ms. Triplet understood the appeal process sufficiently to, on September 18, timely appeal both V20011081 (related to Ivory and the July 26 incident) and V20011089 (related to Shay and Diamond and the August 22 incident).
8. On October 14, Ofc. Nickelson handed Ms. Triplet three more notices and orders. Ex. D10 at 003 n.5.
 - V20011264 found, in light of Dee Abasute’s complaint and accompanying photo and video, that on September 6, Shay and Diamond trespassed on the Abasute property and (in light of their August 26 designation as vicious) were vicious dogs running at large. Exs. D10-D14.
 - V20011265 asserted that on September 15, Diamond again trespassed and was again a vicious dog running at large, based on a complaint from Carol Molmen. Ex. D17 at 003, n.1 & n.2; Exs. D18 & D22.
 - V20011266 asserted that on October 12, Diamond was still unlicensed, trespassed again, and was a vicious dog running at large, after receiving a complaint and picture from Marcus Millsbaugh. Exs. D23-27.

All three notices and orders closed with the standard boilerplate appeal language quoted above. Ex. D14 at 002 (V20011264); Ex. D22 at 002 (V20011265); Ex. D27 at 002 (V20011266).

9. Ms. Triplet had been able to file an appeal of the August 26 notices and orders. And she apparently had a friend who was, as of September 24, helping her with appeal paperwork. Ex. D17 at 003, n.3. However, she did not appeal any of the October 14 notices and orders.
10. That is unfortunate because Ofc. Nickelson had explained to her the appeals process, given her another examiner guide, and even offered that she could email an appeal, if that was easier for her. Ex. D23 at 002, n.1. The guide is the one Animal Services provides with its notices and orders, which contains our following counsel:

If you are not sure about exactly what to say, make sure you still get an appeal, even if imperfect, delivered to [Animal Services] by the deadline. If you get your initial appeal to [Animal Services] on time, the examiner has authority to later allow you, before the hearing, to modify to the issues

you originally raised. But, the examiner has no authority to hear an appeal if your original appeal statement did not arrive at [Animal Services] on time. **Whatever you do, make sure [Animal Services] receives your appeal by the deadline!**¹

11. On October 15, Ofc. Steve Nicholson issued an order (V20011267) to remove Shay and Diamond from King County, given that on September 6 Shay and Diamond had violated their August 26 confinement order (the bulleted items listed in paragraph six). Ex. D15 at 005.² A removal order's appeal language is a little different than other notice and order's appeal language, but it still makes plain:

if you wish to appeal, you must complete and file the enclosed appeal form at Regional Animal Services of King County, 21615–64th Ave. S., Kent, WA 98032, within twenty-four (24) days from issuance of this Notice and Order. Failure to appeal within this twenty-four (24) days will constitute a waiver of all right to administrative hearing and determination of this matter.

Ex. D15 at 003.

12. On October 15, Animal Services received a complaint from Rebekah Millsbaugh, alleging a dog charged at her and then a neighbor on September 24. Ex. D19. This complaint did not result in another violation.
13. On October 17, Animal Services received a complaint from Kerry O'Grady that a dog, identified as Diamond, chased him down, forcing him to pepper spray the dog three times to prevent being bitten. Ex. 28 at 003, n.1; Ex. D29 at 002. Mr. Grady included video. Ex. D30.
14. On October 18, Ofc. Silvia Reyes personally hand delivered to Ms. Triplet an updated removal order (V20011285) for Diamond, incorporating Diamond's September 15 (V20011265) and October 12 (V20011266) transgressions. Exs. D32 at 004 & D33. This removal order had identical appeal language to the October 15 removal order. Exs. D32 at 002.
15. On October 25, a different officer, Silvia Reyes hand delivered the violation (V20011284) for the October 17 incident involving Mr. O'Grady. Ofc. Reyes had a conversation with Ms. Triplet where she inquired whether Ms. Triplet had filed her appeal of her other removal order. When Ms. Triplet explained that some of her paperwork might be missing, Ofc. Reyes volunteered to print out copies of various notices and orders and give them to Ms. Triplet to pick up. Ex. D28 at 003, n.3. (Ms. Triplet stated in our April 16, 2021, hearing that she was unable to arrange a ride last fall to pick up the documents.)

¹ <https://kingcounty.gov/~media/independent/hearing-examiner/documents/2021/RASKC-1-2021.ashx?la=en> at 1-2 (bold, underscore, and color in original).

² Ofc. Nicholson sent the removal order by certified mail because the front door to the Triplet residence was inaccessible. Exs. D10 at 004, n.7, D16.

16. Ms. Triplet did not appeal any of the 2020 notices or orders after her combined September 18 appeal of the August 26 notices and order (V20011081 related to Ivory, and V20011089 declaring Shay and Diamond vicious and requiring them contained after the fatal August 22 attack of the Molmens' cat).

Truncated October 28, 2020, Examiner Proceedings

17. Having received Ms. Triplet's September 18 appeal of the August 26 notices and orders (V20011081 related to Ivory, and V20011089 declaring Shay and Diamond vicious and requiring them contained after the fatal August 22 attack of the Molmens' cat), on September 30 we mailed—and then on October 6 followed up with an email—notice of our October 28 hearing. Ex. D36.
18. Animal Services provided its staff report and exhibits to us and Ms. Triplet on October 14, two weeks before the hearing. That is something we require two weeks before every hearing.
19. On October 28, Animal Services and its witnesses promptly called in. We waited 10 minutes to see if perhaps Ms. Triplet would join the call. Although we had received no word from Ms. Triplet that the hearing date or time were unworkable, Ms. Triplet elected not to participate. Having abandoned her appeal, we announced that we would dismiss her appeal, without taking any testimony or argument. Ex. D36. Since we heard no testimony that day, we did not learn that there had been further activity since those listed in the materials Animal Services' prepared for its October 14 submittals.
20. Having still not heard from Ms. Triplet, on October 30 we issued a dismissal. (Ms. Triplet explained in her March 2021 appeal that she had overlooked the October 28 hearing. Ex. D9 at 007.) Sympathizing with Ms. Triplet, who lost her son at the end of 2019, we offered steps—licensing each of her three dogs by November 30, and microchipping and installing a gate with a padlock by December 31—to reduce the penalty. Ex. D36. None of those steps were taken in 2020.

Initial 2021 Events

21. Animal Services received a March 2, 2021, complaint from Rachel Molmen about a February 28 incident involving Shay and Diamond trespassing (discussed in further detail, below), along with a picture. Exs. D2 & D3.
22. Having learned that Shay and Diamond were still in King County long after the orders to remove them from King County became final, on March 9 Animal Services and the SeaTac police served a search warrant and removed Shay and Diamond for violating their removal orders. Exs. D1 at 001, D4 at 002 & 003 n.5, D5.
23. Animal Services served a March 5 Notice of Unredeemable Animal(s) for Ms. Triplet failing to comply with the order to remove Diamond and Shay from King County. Ex. D9 at 003. (Unlike the other notices and orders discussed here, it did not have a "V2xxxxxx" number.) Ms. Triplet timely appealed that notice on March 17. Ex. D9 at 004-09.

24. On March 18, Animal Services personally delivered to Ms. Triplet what it slated a Criminal Misdemeanor Violation (V21011760), with appeal information but no appeal date. Ex. D9.
25. On March 20, Animal Services mailed a notice and order (V21011778) to Ms. Triplet related to the February 28 incident, asserting trespass, vicious-related, and licensing-related violations. Ex. D7 at 001, Ex. D8. It contained the same appeal language block-quoted above, with an April 14 appeal deadline. Ex. D7 at 002.
26. Ms. Triplet did not appeal either the March 18 or March 20 documents.

April 16, 2021 Examiner Hearing

27. On April 16, we went to hearing on Ms. Triplet's appeal of the notice of unredeemable animal.

Rachel Molmen

28. Rachel Molmen testified that on February 28, 2021, she was in her kitchen looking at her deck and backyard through her sliding glass door, when she saw movement out of the corner of her eye. She looked and saw on her deck two dogs belonging to her neighbor, nosing around. She then saw the (Molmen) cat on her deck streak across the yard and up a tree. The dogs went over to the tree and started barking. Ms. Molmen called her husband and advised him the dogs were back in the Molmen yard.
29. Ms. Molmen saw Mr. Molmen go outside and try to scare the dogs away. The dogs started to move and then they turned back around and growled and lunged at him. Mr. Molmen got more vocal and was able to get them out of the yard and onto the street. Since the dogs did not go back in their own yard, the Molmens stayed vigilant to see if the dogs would come back. Mr. Molmen went outside, and Ms. Molmen went to grab her phone to take pictures. Ms. Molmen went outside and saw her husband taking pictures (exhibit D3) of the dogs in the Molmens' front yard.
30. Ms. Molmen also described the August 22, 2020, event where her cat was killed. She explained that her backyard neighbor, Joan Longnecker, witnessed Ms. Triplet's dogs kill her cat. Ms. Molmen described Ms. Longnecker as having a clear view to Ms. Molmens' backyard because a tree had fallen and taken out two parts of the fence. After Ms. Longnecker told Mr. Molmen what she had seen, Mr. Molmen filed a report online.
31. The other day that Ms. Molmen experienced something was when her mother-in-law was over and talking loudly outside. Ms. Molmen went outside to ask her mother-in-law what had happened. Her mother-in-law told her that the neighbors' dogs had charged at another neighbor who was getting the mail.

Rick Molmen

32. Rick Molmen testified that on February 28, 2021, his wife yelled at him that the dogs were back in the yard. He went to check it out. The dogs had the (Molmen) cat up in a

tree. When he first yelled at the dogs, they turned at him and were very aggressive and coming towards him. He then yelled louder and ran towards the dogs to scare them. The dogs ran past him, down his driveway, out onto the street, and to another neighbors' yard.

33. Mr. Molmen went inside and things quieted down. He then heard barking out front again. He grabbed his phone, went back out front, and took pictures of the dogs advancing towards him. He had to stop taking pictures and physically kick one of the dogs in the chest to defend himself and keep it away from him. The dogs were growling, had their hackles up, and were approaching him slowly.
34. As to the August 22, 2020, incident, there was someone honking in his driveway. He went outside to see who it was. It was his backyard neighbor, Ms. Longnecker. She was yelling at him to check on his cat. His cat was old and enjoyed sleeping in the sun in the yard. He went to where she usually was in the yard. From about 15 feet away he could see his cat sprawled at an unnatural angle, not breathing. He then walked to his neighbor's house and told them their dogs had killed his cat. His neighbor seemed puzzled. Mr. Molmen then went home, called 911, and then called Animal Control.
35. Ms. Triplet's dogs have been out and about in the neighborhood and up and down the street. He does not report every time they are in his yard. Ms. Triplet's dogs have attempted to bite him. If he did not defend himself, they would have bitten him.

Dee Abasute

36. Dee Abasute testified that she came to know the dogs' names because she often heard the dogs' owners walking down her street and calling their dogs. Prior to her reporting the dogs to Animal Services, she and her neighbors had seen the dogs loose in the neighborhood. They have been on her property before. The grey one has been outside her car door, waiting for her to come out.
37. Prior to the Triplet fence being erected, Ms. Abasute would always have to be aware when she came out of her car, because the dogs could be ready to come and nip at her heels. She has never been bitten by them, and they have never come close enough to bite her, but they have presented aggressive behavior. Ms. Triplet's dogs act completely different than other dogs that get loose in the neighborhood. She mentioned a Husky and a German Shepherd that get out but do not act like Shay and Diamond. And she owns a large bully breed dog. She was unable to get the dogs on video until September 6, 2020, when the dogs were in her backyard.

Tina Triplet

38. Tina Triplet testified that this is her first-time having dogs. The dogs were getting out and she was trying a lot of things to keep the dogs in. The dogs are not violent or vicious; they are very playful dogs. Shay used to get out a lot, as he is a roamer. When he got out, neighbors would bring him home. Ms. Triplet never got any complaints at that point, so she believed it was okay. She did not get any complaints until Ivory started to get out. Diamond is now one year old. Diamond is boisterous like her dad, Shay. Her

dogs talk a lot, but they have never bit anyone. Shay is a lover boy and would never bite anyone. She has never heard them growl at anyone.

39. In one of the videos, Ms. Triplet says she can hear the man who is going to his mailbox whistling at her dogs. She does not think the man is being chased. Shay got over to the neighbor's yard because a fallen tree had knocked down the fence. The neighbor told Ms. Triplet that if she did not get the dog out of his yard, he would shoot it. She told him that Shay is the sweetest dog and would never hurt anyone. Diamond is the dog with more white on her chest.
40. A lot of the accusations were before she put the fence up. She had to wait until she received enough money to build the fence. She spent \$4,000 on the fence; it helped a lot with the dogs running away. Once the fence was up, the door was not always secure. Once, one of Ms. Triplet's girlfriend's left the gate open and the dogs got out. She did not know that the dogs got into someone's yard. Ms. Triplet must have missed the requirement that her fence had to have a padlock. The dogs have only gotten out maybe two times since she got the fence. She knows she needs to get the dogs trained.
41. Ms. Triplet recalls Officer Nickelson coming to her house, talking to her, and giving her advice. Some of the paperwork issued to her said that she had to put up a fence and have a padlock, and that there was no option not to. Ms. Triplet also recalls speaking with Officer Reyes, who offered to print all the documents out for Ms. Triplet. Ms. Triplet was unable to make it to Animal Services' office because she did not have a ride. Officer Reyes advised her to file appeals in all of the cases, but there was so much going on and she was overwhelmed. Ms. Triplet's son died on December 31, 2019, so she was going through a lot.
42. Ms. Triplet knows for a fact that her dogs did not kill that cat. If two pit bulls played tug-a-war with a cat, it would have been a bloodbath, and Ms. Triplet has never seen any blood on her dogs.
43. Ms. Triplet still has Ivory. Ivory was having puppies during some of these incidents. The puppies have all had their rabies shots. Diamond and Shay have both been licensed. Ms. Triplet initially was unable to get the dogs licensed or microchipped for financial reasons.

Darren Christian

44. Darren Christian, Ms. Triplet's brother, testified that he has been around Shay and Diamond since they were puppies. Before the incident with the cat, he believes that someone was shooting them with paintballs, since he had seen Shay come home with paint on him and Diamond with a hip issue. He had bought the dogs furry stuffed toys, so he does not believe the dogs were being vicious with the cat but were just playing with it. One of the officers who came to their house did not see the dogs as vicious, because they came right up to the officer and were friendly. Since Ms. Triplet's son passed away, the dogs have been a comfort to her.

Analysis

Standard of Review

45. We do 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 has 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.B.

Scope of Examiner Jurisdiction

46. As described above, an initial thrust of Ms. Triplet’s argument at our April 16 hearing was that Shay and Diamond are sweet dogs, would never hurt anyone, and did not kill the Molmens’ cat.
47. As to Shay and Diamond’s disposition, we have entertained 747 animal appeals in the last five years. One common thread is how difficult it often is for families, who love their dog and in whose calming presence the dog is so good-natured, to grasp that outside their company the dog can display a dramatically different side. There is no question Shay and Diamond seemed to behave well when under care. *See also* Ex. D4 at 004, n.10. But past appeals have illustrated, again and again and often with very violent results, that a dog’s behavior in a controlled environment does not necessarily predict how that dog will behave when running loose without that comforting anchor. The behavior the neighbors reported from Ms. Triplet’s dogs (a topic we return to in paragraphs 69-70) sounds very different from what Ms. Triplet experienced. The videos and pictures we viewed do not show the playful, gentle behavior Ms. Triplet has observed. While the whole situation has been traumatic to Ms. Triplet, it also seems to have been traumatic to at least five sets of neighbors—Ms. Abasute, Ms. Longnecker, the Millspaughs, the Molmens, and Mr. O’Grady.³
48. As to Ms. Triplet’s theory about the cat’s injuries, the cat’s autopsy—blood, hemorrhaging in the head and lungs, bruising, blood clots, tears to organs, hemorrhaging in the lungs—not to mention the twisted unnatural position of the corpse (especially the back legs), shows nothing inconsistent with Ms. Longnecker’s statement that Diamond and Shay killed the cat. Exs. D9 at 11-12. The cat died from great violence. Mr. Christian’s theory about Diamond and Shay just playing with the cat like they had with a furry, stuffed chew toy, seems plausible.
49. More fundamentally, those were issues we would have tackled at our October 28 hearing, had Ms. Triplet elected to participate. The most critical piece would have been Ms. Longnecker’s eyewitness testimony; we would have put her (and thus Animal Services’ case) to the proof. We could have probed Ms. Longnecker on what exactly she saw on August 26, what her vantage point was for seeing it, whether both dogs actively participated in the fatal attack (versus one having a more minor role), how she knew

³ There was an April 2020 complaint from yet another neighbor, Cathea Stanley, but that was apparently only about trespassing, running-at-large, and not aggression. Ex. D35 at 018, n.4.

those dogs were Diamond and Shay, and any potential bias (a topic we return to in paragraphs 69-70).

50. However, Ms. Triplet did not appear at her hearing, nor contact us afterwards to explain that perhaps there was some misunderstanding. (She would explain last month that she overlooked the hearing. Ex. D9 at 007.) Thus, we dismissed her appeal two days later, providing further appeal information. Ex. D36. Once the deadline for challenging our dismissal came and went, our dismissal became final and conclusive. KCC 20.22.270.B. In our April 16, 2021, hearing, Ms. Triplet could not legally dispute that Shay and Diamond killed the Molmens' cat on August 22, 2020, qualified as vicious, and that—from the point Animal Services' served its August 26 notice and order onward—to remain in King County they needed to be contained in their yard or let off the property only on a leash.
51. Moving through the list, V20011264 related to Dee Abasute's complaint and accompanying photo and video showing that on September 6, Shay and Diamond trespassed on the Abasute property and (in light of their August 26 designation as vicious) were vicious dogs running at large. Exs. D10-D14. And V20011265, related to Diamond again trespassing September 15, and thus again qualifying as a vicious dog running at large, in relation to complaints from Carol Molmen. Ex. D17 at 003, n.1 & n.2; Exs. D18 & D22. Ms. Triplet did not challenge that during the appeal window last fall and did not directly discuss these at our April 16 hearing.
52. V20011266 asserted, in light of a complaint from Marcus Millsbaugh, along with his video and a still shot, that on October 12, Diamond was still unlicensed and again trespassed and was a vicious dog running at large. Exs. D23-27. Ms. Triplet did not challenge that during the appeal window last fall, and did not directly discuss these at our April 16 hearing. However, after the hearing, Ms. Triplet emailed that exhibit D26 was in fact not her dog, but a dog that looks exactly like her dog. Ex. A1. She followed up by saying the pictured dog has a penis (while Diamond is female). Ex. A2.
53. We do not see a penis in the videos or pictures, exhibits D25-27, but if Ms. Triplet had raised that during last week's hearing, we certainly could have asked Animal Services for a response. One reason we require the parties to submit their exhibits two weeks before the hearing is so that everyone (including the examiner) can be prepared to discuss things at the hearing. Witnesses can be examined (either by us or by a party) under oath, and parties can offer rebuttal, explanation, and argument.
54. The much more fundamental problem, and one that carries well past V20011266, is that time to challenge whether Diamond was trespassing and running at large on October 12 was during last fall's appeal window. Had Ms. Triplet done so, we would have set a hearing, reviewed the video and pictures, and (at hearing) probed Mr. Millsbaugh on why he thought the dog was Diamond.
55. However, Ms. Triplet did not challenge that during the appeal window last fall. And, "If a person fails to timely deliver the appeal statement...., the office of the hearing examiner does not have jurisdiction to consider the appeal and the decision of the

department or division becomes final and unreviewable. KCC 20.22.080.H. Thus, it being Diamond trespassing and running at large on October 12 is not something Ms. Triplet could challenge in the current proceedings.⁴ The same is true about the October 25 notice and order (V20011284) related to the October 17 incident with Mr. O’Grady.

56. More importantly, the October removal orders for Shay and Diamond (V20011267 and V20011285) also became final and unreviewable once those appeal periods ran out last fall. They cannot now be challenged.
57. We have empathy for Ms. Triplet. Her son passing at the end of 2019 was a terrible hardship. And the sheer number of times her dogs got out last summer and fall led to a slew of notices and orders to keep up with. Animal Services repeatedly gave her appeal-related information, encouraged her to get her appeals in on time, offered to print out all the paperwork she had misplaced, and provided her the option of emailing appeals. However, Ms. Triplet was not able to take advantage of that, which, unfortunately, has consequences. At this point we only have jurisdiction to entertain her March 17 appeal of the March 5 notice of unredeemable animal.

Current Appeal

58. Animal Services issued its notice of unredeemable animal under 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.

59. In recounting the history, the notice misidentifies two dates. It states that Diamond and Shay were placed on a confinement order on August 22 and ordered removed on September 6 for violating that confinement order. Ex. D6. August 22 was actually the date Diamond and Shay killed the neighbors’ cat, not the date (August 26) the notice declaring them vicious and ordering them confined (V20011089) was served. Similarly, September 6 was the date Diamond and Shay were not contained and were videoed trespassing on the Abasute property (V20011264), in violation of that August 26 confinement order. September 6 was thus the event that *prompted* the October removal orders (V20011267 and V20011285), but it was not the date Animal Services ordered removal.

⁴ Assuming for the sake of argument that the single dog shown in the October 12 pictures and video was *not* Diamond, but a random pit bull that looks “exactly like” Diamond, Shay’s and Diamond’s September 6 trespass, captured on video, exhibit D13, was the violation of the August 26 confinement order that prompted Animal Services’ removal order for Diamond and Shay, and was what ultimately served as the basis of the currently-appealed notice of unredeemable animals. Exs. D6, D11, D13 & D15.

60. Still, the basic facts are correct, and their consequences are unavoidable. Shay and Diamond were ordered removed last fall. Once the appeal periods passed, they were no longer allowed in King County. When Animal Services discovered last month that they were still in King County, Animal Services impounded them. Ms. Triplet has no right to redeem them.
61. In her appeal statement, Ms. Triplet expressed a belief and fear that Diamond and Shay would be destroyed. Ex. D9 at 008. That is very serious indeed. In our 747 animal cases over the last five years, only one appeal involved Animal Services seeking to put down a (very violent) dog. That is not what is happening here. Animal Services emphasized that neither dog will be euthanized, but instead will be placed in a rescue or shelter outside King County. We will write that into our decision below, to ensure that it happens; but euthanasia is not on the table.
62. We do not discount the comfort Shay and Diamond have provided to Ms. Triplet, in light of the terrible loss of her son. Ex. D9 at 007. We grieve for her, and finding an emotional support replacement for Diamond and Shay may not come easy. But that does not change the basic posture of this case. We sustain Animal Services notice of unredeemable animals. Animal Services may now relocate the dogs somewhere outside King County.

Additional Items

63. After Ms. Triplet filed her March 17 appeal of the unredeemable animals notice, on March 18 Animal Services served what it styled a criminal misdemeanor notice (V21011760), with appeal information but no appeal date. Ex. D9 at 001. And on March 20, Animal Services mailed a violation notice (V21011778) to Ms. Triplet related to the February 28 incident, asserting trespass, vicious-related, and licensing-related violations. Ex. D7 at 001, Ex. D8. It contained the same appeal language block-quoted in paragraph six, with an April 14, 2021, deadline. Ex. D7 at 002. Ms. Triplet did not appeal either of those.
64. As to the notice and order for the February 28 incident—an incident the Molmens testified to at our hearing, stating that Diamond and Shay trespassed onto the Molmen property and chased a different Molmen cat, were aggressive to Mr. Molmen when he tried to chase them off, and then, after leaving his property, came back on and advanced towards him, growling with their hackles up—those violations became final and unreviewable when the appeal window closed on April 15. In addition, if there had not already been the outstanding October removal orders, the February 28 incident would have triggered a fresh removal order.
65. We are not sure what to make of Animal Services' criminal misdemeanor notice. An examiner has no jurisdiction over criminal matters. If Animal Services wished to file criminal charges, that would come outside the examiner's civil administrative process. But we do not see anything criminal here.
66. Because Ms. Triplet overlooked the scheduled October 28 hearing and we dismissed her appeal without swearing in witnesses or taking any testimony, we had only the

information in the October 14 staff report and exhibits to go on, information that did not include the intervening removal orders. So, when we issued our October 30 dismissal, we were unaware that Ms. Triplet had been ordered to remove the dogs. Thus, we offered steps Ms. Triplet could take (licensing Diamond and Shay, as well as Ivory, microchipping them, and installing a gate with a padlock) in the later portion of 2020 to reduce the fines. Although Ms. Triplet did not take any of those steps in 2020, we do not read in any intention or knowledge of wrongdoing when, as of February, her dogs were still in King County. Our upholding the notice of unredeemable animals does not cast any criminal-related shade on Ms. Triplet.

67. As to penalties, we have no jurisdiction over those fines attached to the various notices and orders that became final once the various appeal deadlines passed; we cannot disturb those. And a notice of unredeemable animal does not itself carry a direct penalty, so there is no fine there for us to waive or reduce. Ex. D9 at 003. However, the penalty associated with a *removal* order (\$1000) is slightly different. In past decisions, we have interpreted that the \$1000 penalty only kicks in if the dog is not relocated outside of King County by the deadline. Animal Services noted at hearing because Ms. Triplet did not get the dogs out of King County by the deadline, those penalties would now come due.
68. We disagree. Ms. Triplet is already on the hook for significant monetary penalties. And Shay and Diamond being permanently removed from King County is a serious blow for her. We do not think it right to pile on additional monetary penalties related to the removal orders.
69. Finally, in Ms. Triplet’s appeal, and then in her second post-hearing filing, she questioned the neighbors’ shifting reaction—from friendly to shunning—and noted that she feels targeted, perhaps because of her sexual orientation, race, and age. Exs. D9 at 006, A2. We take such concerns very seriously.⁵ Implicit bias is something that inflicts us all—most definitely the undersigned—and something we need to be constantly on guard for.
70. Looking at the timeline, we see the complaints only really started flowing in August, after word spread that Ivory had broken loose and attacked Ms. Abasute’s leashed dog and that Diamond and Shay had killed the Molmens cat. Ex. D35 at 008, 011-013.⁶ But that does not mean that bias could not have played a role. Witness bias—conscious or unconscious—is something we probe and weigh. Had Ms. Triplet appeared at her October 28 hearing to challenge Shay’s and Diamond’s viciousness designation and confinement order for killing the Molmens’ cat and for Ivory’s attack on another dog, or had she appealed any of the other notices and orders and we went to hearing on those,

⁵ See, e.g., https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/for-hire%20enforcement/2018/82636_Hennings_REPORT-upd.ashx?la=en at 4-5 (after hearing all the evidence, we called out an agency—not Animal Services—for the disparity between the favorable treatment a white, native-English-speaking applicant received, as opposed to what past applicants of color with limited English proficiency encountered). Here, Ms. Triplet’s concerns seemed focused on the neighbors filing all the complaints.

⁶ There was a complaint from another neighbor, Ms. Stanley, in April 2020, which was limited to trespass and running-at-large, and did not mention any aggression; there was also a reference to an even earlier complaint from an unidentified person. Ex. D35 at 008, n. 18. But the spigot really turned on in August.

we could have probed potential bias in figuring out the underlying facts.⁷ However, she did not, and those various notices and orders became final and unreviewable once the relevant appeal period ended. We cannot now go back and second-guess what a full hearing on the merits of those cases might have uncovered.⁸

71. Finally, as we were finishing this decision, we received an email from Ms. Triplet checking on the status of her case and asking if she could visit her dogs, noting how sick their absence was making her. Ex. A3. That seems a reasonable request. We cannot control what happens after Animal Services rehomes them outside of the county — a rescue or other custodian might, or might not, accept visitors. But while Diamond and Shay are still in King County and in Animal Services' control, Animal Services should allow her a visit. If nothing else, that would give her the opportunity say a more proper goodbye than she had on March 9, when the dogs were impounded pursuant to a warrant.

DECISION

1. We deny Ms. Triplet's appeal.
2. Animal Services may not issue additional penalties associated with Ms. Triplet failing to timely remove Diamond and Shay.
3. While Diamond and Shay remain in Animal Services' custody, Animal Services shall provide Ms. Triplet with a date and time that she may visit them.
4. Absent some future violent behavior, Animal Services may not euthanize Diamond or Shay. If Animal Services is not able to rehome them outside of King County, it should return the matter to our attention, and we will attempt, with Ms. Triplet's input, to sort it out.
5. If Ms. Triplet returns to Animal Services for training assistance for Ivory (or for another dog Ms. Triplet obtains), Animal Services should attempt to help her out.

ORDERED April 29, 2021.



David Spohr
Hearing Examiner

⁷ The April 16 hearing was not the opportunity for that. While we provided a forum for the witnesses, including Ms. Triplet, to share their stories about what happened on different dates, as described in the *Scope of Examiner Jurisdiction*, we did not have jurisdiction to litigate and re-decide what actually happened on those dates.

⁸ For example, Ms. Triplet questions why the neighbors took certain pictures, and whether that violates or private. Most of those appear to be photos of the neighbors describing various violations occurring, taken from well inside the neighbors' properties, but one is of Ms. Triplet herself. Exs. D20, D21, D25-26. If she had appealed the respective notices and orders, we could have drilled down with those witnesses exactly why they took each photo.

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 31, 2021*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW. A motion for reconsideration filed with us on or before the appeal deadline stays the appeal deadline.

MINUTES OF THE APRIL 16, 2021, HEARING IN THE APPEAL OF TINA TRIPLET, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21011760-A21000975

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Rachel Molmen, Rick Molmen, Dee Abasute, Tina Triplet, and Darren Christian. A verbatim recording of the hearing is available in the Hearing Examiner’s Office.

The following exhibits were offered and entered into the record by Animal Services:

| | |
|-----------------|--|
| Exhibit no. D1 | Regional Animal Services of King County staff report to the Hearing Examiner |
| Exhibit no. D2 | Online Complaint form of February 28, 2021 incident by Rachel Molmen, dated March 2, 2021 |
| Exhibit no. D3 | Photograph of Diamond and Shaw in our jurisdiction and Running at Large |
| Exhibit no. D4 | RASKC investigation report no. A21000975 |
| Exhibit no. D5 | Search Warrant A21000975 |
| Exhibit no. D6 | Signed Notice of Unredeemable |
| Exhibit no. D7 | Notice of violation no. V21011778-A21000975, issued March 20, 2021 |
| Exhibit no. D8 | Proof of Service |
| Exhibit no. D9 | Appeal for A21000975, received March 17, 2021 |
| Exhibit no. D10 | RASKC investigation report no. A20013738 |
| Exhibit no. D11 | Online Complaint form of September 6, 2020 incident by Dee Abasute, dated September 13, 2020 |
| Exhibit no. D12 | Photograph of trespassing dogs |
| Exhibit no. D13 | Video of trespassing dogs, dated September 6, 2020 |
| Exhibit no. D14 | Notice of violation no. V20011264-A20013738, issued October 14, 2020 |
| Exhibit no. D15 | Notice and order for removal no. V20011267-A20013738, issued October 15, 2020 |
| Exhibit no. D16 | Proof of Service |
| Exhibit no. D17 | RASKC investigation report no. A20013897 |
| Exhibit no. D18 | Signed Complaint Form A20013897 |
| Exhibit no. D19 | Online Complaint form of September 24, 2020 incident by Rebekah Millspaugh, dated October 15, 2020 |
| Exhibit no. D20 | Photograph of from Molmen carport to Millspaugh house |

| | |
|-----------------|--|
| Exhibit no. D21 | Photograph of mailboxes where incident happened |
| Exhibit no. D22 | Notice of violation no. V20011265-A20013897, issued October 14, 2020 |
| Exhibit no. D23 | RASKC investigation report no. A20014299 |
| Exhibit no. D24 | Online Complaint form of October 12, 2020 incident by Marcus Millspaugh, dated October 15, 2020 |
| Exhibit no. D25 | Video of Diamond Charging, Growling, Barking, dated October 12, 2020 |
| Exhibit no. D26 | Photo of Diamond remaining in the yard until Ms. Triplet retrieved the dog |
| Exhibit no. D27 | Notice of violation no. V20011266-A20014299, issued October 14, 2020 |
| Exhibit no. D28 | RASKC investigation report no. A20014479 |
| Exhibit no. D29 | Online Complaint form of October 17, 2020 incident by Kerry O’Grady, dated October 17, 2020 |
| Exhibit no. D30 | Video of Diamond following and barking and growling, dated October 17, 2020 |
| Exhibit no. D31 | Notice of violation no. V21011284-A2014479, issued October 25, 2020 |
| Exhibit no. D32 | Notice and order for removal no. V20011285-A20014479, issued October 18, 2020 |
| Exhibit no. D33 | Proof of Service |
| Exhibit no. D34 | Map of subject area |
| Exhibit no. D35 | Previous Regional Animal Services of King County staff report to the Hearing Examiner from A20013480 and A20013137 |
| Exhibit no. D36 | Order of Dismissal, V20011081 and V20011089 |

The following exhibits were offered and entered into the record by the appellant:

| | |
|----------------|---|
| Exhibit no. A1 | Email from Ms. Triplet with copy of D26-004 photo attached, received April 16, 2021 |
| Exhibit no. A2 | Email from Ms. Triplet, received April 16, 2021 |
| Exhibit no. A3 | Email from Ms. Triplet, received April 28, 2021 |

DS/lo

April 29, 2021

**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

CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21011760-A21000975**

TINA TRIPLET

Animal Services Enforcement Appeal

I, Lauren Olson, 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 29, 2021.



Lauren Olson
Legislative Secretary

Abasute, Dee

Hardcopy

Anderson, Tim

Regional Animal Services of King County

Christian, Darren

Eykel, Chelsea

Regional Animal Services of King County

Longnecker, Joan

Millspaugh, Rebekah, Marcus

Hardcopy

Molmen, Rachel, Rick

Hardcopy

O'Grady, Kerry

Hardcopy

Triplet, Tina

Hardcopy