

November 12, 2021

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21011887-A21001537**

DESIREE KING

Animal Services Enforcement Appeal

Activity no.: A21001537

Appellant: Desiree King
represented by **Henry Warren**
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King County: Regional Animal Services of King County
represented by **Mari Isaacson**
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Seattle, WA 98104
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FINDINGS AND CONCLUSIONS:

Overview

1. Desiree King appeals an Animal Services of King County (Animal Services) notice of violation for her dog running at large, being unlicensed-unaltered, qualifying as vicious, and needing to be confined. After hearing witness testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we deny her appeal but we reduce the monetary penalty.

Background

2. Animal Services issued Desiree King a violation notice for her Akita, Amyia, qualifying as vicious, running at large, being unlicensed, and needing to be confined. Ex. D5. Ms. King, through counsel, timely appealed. Ex. D10. She requested a reduction in fines for the licensing and vaccine violation, as Amyia had by then met these requirements. She challenged the running at large violation (asserting that Amyia remained on her property) and viciousness violation (asserting there was no proof Amyia bit anyone).
3. We held pre-hearing conferences on May 27, June 9, July 15, August 24, and September 9. We went to hearing on October 28. Ms. King's representative participated, but Ms. King did not.

Evidence

Testimony of Allison Reid

4. Ms. Reid was sitting in her home office when she heard multiple dogs barking and a woman hysterically shouting for help. Ms. Reid stood up and looked outside her window, which was about 30 feet away from the commotion. She saw a woman [Anne Higuera] on the street with two leashed dogs, tangled up in the leash. Ms. Higuera was trying to pull her dogs closer to her. There was another unleashed dog that seemed to be darting at Ms. Higuera's dogs in an aggressive and quick manner, though Ms. Reid did not witness any biting or see any blood. That dog looked larger than Ms. Higuera's dogs, like a Labrador breed, dark brown and golden light, with husky like fur, broad shoulders, and agile.
5. Ms. Reid lives on a bluff with stairs directly down from her house, where she assumed the dog came from. About five minutes elapsed between the time Ms. Reid heard the barking noise to when a man finally came out to get the dog. When Ms. King came out from the stairs to the road, Ms. Reid noticed her dog was about as tall as Ms. King's thighs. Both the man and Ms. King had difficulty getting control of Amyia. The man finally got control of Amyia. She heard Ms. Higuera tell them, "He bit my dogs."

Testimony of Anne Higuera

6. Ms. Higuera typically walks three times a day on the road down Dock Street. On April 2, she was walking on the road with Sparky and Roman, both on leashes and head/body

- harnesses. Sparky pooped and she stopped to pick it up. She saw Roman’s head lift up and down the street, with his ears pinned up. She did not think much of it, so they continued walking. Roman and Sparky typically sniff along the grass, but that day they did not.
7. As Ms. Higuera approached the front of Ms. Reid’s home, she saw a dog come out from the bushes with his teeth bared and methodically walking towards them. As soon as she saw the dog, she began shouting. Ms. Higuera quickly pulled the leashes to get her dogs closer to her. Since they were wearing their head harnesses, Sparky’s and Roman’s heads also moved in her direction, putting their backs towards the approaching dog. Her dogs were not barking or acting aggressively.
 8. The dog grabbed Sparky’s tail and thrashed him back and forth “like a shark.” The dog let go and then bit Roman’s tail. Ms. Higuera does not recall her dogs yelping, but perhaps they did—she was yelling hysterically, so she might have missed the barking.
 9. Two people then came out from the stairs of the property below the road. One was a man with gray hair and partial beard and the other was a younger woman with blonde hair and colored highlights. When the man got control of the Akita, he walked over to their side of the street, adjacent to their property and apologized, stating, “This has never happened before.”
 10. As Ms. Higuera walked home, she talked with two other neighbors, who told her that it was not the first time Amyia had bit. Ms. Higuera then felt that Amyia’s owners had lied to her. When Ms. Higuera arrived home, she checked her dogs and saw that Roman was bleeding and had superficial lacerations, bites, and scabs in different places. He had to take antibiotics, but the injuries were not serious. The vet examined blood on the tip of Roman’s tail, but did not think it was a puncture wound. Ex. D6.
 11. Ms. Higuera decided not to confront Amyia’s owners, instead writing a letter to the property owner, asking him to pay for the vet bills. She got no response, so she filed a complaint with Animal Services several days later. Ex. D2. Roman recovered in a couple of weeks.
 12. Sometime in June, Ms. Higuera was driving home when she noticed a woman on the side of the road, looking like she was trying to get someone’s attention. Ms. Higuera turned around, stopped, noticed that she was calling for a dog, and asked the woman if she needed help. The woman replied that she was just trying to get her dog. Ms. Higuera realized that the dog was an Akita. Since she was not aware of any other Akitas in the neighborhood, she assumed it had to be Amyia.
 13. Ms. Higuera knew that Amyia was supposed to be contained, so she took a photograph. Ex. D9. Though the dog looked like Amyia, Ms. Higuera is unsure if the woman that day was the same woman she saw on April 2. In July, Ms. Higuera’s son saw an Akita running after a jogger and the jogger yelling, questioning why the dog was running after him.

14. After the April 2 incident, Ms. Higuera stopped walking her typical route, because she does not trust that Ms. King would contain her dog. She has walked the road on Dock Street only three or four times with a friend since then.

Closing Statement of Henry Warren

15. Mr. Warren argued that no one can identify the Akita's owner and it is not clear whether the Akita was Amyia or another neighborhood dog. Even if the attacking dog was Amyia, the incident occurred on the grass lawn area of the owner's property, not on the public road. Mr. Warren also argues that the date of the incident was not clear, as the notice of violation cited April 2, but the event occurred on April 6, so the attack in question could have been an entirely separate event.

Issues

16. Was Amyia "running at large," meaning "off the premises of the owner and not under the control of the owner, or competent person authorized by the owner, either by leash, verbal voice or signal control," with "under control" itself including "restrained from approaching any bystander or other animal" when "off the premises of the owner"? KCC 11.04.020.W, .AA; .230.B.
17. Does Amyia qualify as "vicious," defined as, "performing the act of... 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," with "[a]ny 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" qualifying as a nuisance? KCC 11.04.020.BB; KCC 11.04.230.H.
18. In answering those, 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 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.B.

Analysis

19. Counsel switching things up and questioning whether Amyia was the dog involved was a creative approach, given that he had little to work with, as his client failed to show up to offer testimony. However, that contention was completely inconsistent with the appeal statement, which focused on the location of the incident, what Ms. King saw when she came upon the incident and saw the lady holding her dogs and screaming at Amyia, and whether Amyia had done enough to qualify as vicious. Ex. D10. Doing a 180 would not have been successful anyway, but as our prehearing order noted, any amended appeal statement was due by October 8. A witness might have given an incorrect date, but there

is no question that Ms. Higuera, Ms. Reid, and Ms. King (in her appeal statement) were discussing the same April 2 altercation.¹

20. Running at large issues are sometimes difficult to parse out, such as when an incident happens at the edge of the dog's property and the road—where exactly was the property line and which side of that line was the dog on? But here Ms. Higuera and her dogs were on the *opposite* side of the street, in front of Ms. Reid's home. Amyia had to come across the public road to get at them. Amyia was off her premises and not restrained from approaching a bystander or other animal. We uphold the running at large violation.
21. Vicious cases often turn on whether the biting animal was provoked to do so. That can be difficult to parse out when dogs are face-to-face before things go south. However, here Ms. Higuera had turned her dogs so they were facing her, with their *tails* towards Amyia. There was nothing inciting about that. Yet Amyia proceeded to bite and thrash Sparky's tail back and forth, then let go and bit Roman's tail. Ms. Reid described Amyia continuing to aggressively dart at Ms. Higuera's dogs. And even after Ms. King and the man came up, they had trouble controlling Amyia. Amyia attacked Sparky and Roman without provocation and constitutes a danger.

DECISION:

We deny Ms. King's appeal as to all violations. However, as Ms. King has since complied with the licensing and rabies requirements, we reduce the licensing penalty from \$250 to \$100 and the rabies vaccination from \$50 to \$25.

ORDERED November 12, 2021.



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 *December 13, 2021*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

¹ April 6 was the date the *complaint* was filed, but that complaint listed the altercation as having occurred at 4:10 pm of April 2. Ex. D2.

**MINUTES OF THE OCTOBER 28, 2021, HEARING IN THE APPEAL OF
DESIREE KING, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V21011887-A21001537**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing Allison Reid, Anne Higuera, Mari Isaacson, and Henry Warren. 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 April 2, 2021 incident by Anne Higuera, dated April 6, 2021 |
| Exhibit no. D3 | Allison Reid’s witness statement |
| Exhibit no. D4 | RASKC investigation report no. A2100153701 |
| Exhibit no. D5 | Notice of violation no. V21011887-A21001537, issued April 13, 2021 |
| Exhibit no. D6 | Vet records and vet bill for Roman Higuera |
| Exhibit no. D7 | Scene photographs and email from Anne Higuera describing scene |
| Exhibit no. D8 | Aerial photograph |
| Exhibit no. D9 | Report of Amyia being at large after the incident |
| Exhibit no. D10 | Desiree King’s appeal |

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V21011887-A21001537**

DESIREE KING

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 November 12, 2021.



Lauren Olson
Legislative Secretary

Halstead Reid, Allison

Hardcopy

Higuera, Anne

Hardcopy

Isaacson, Mari

Prosecuting Attorney's Office

King, Desiree

Hardcopy

Warren, Henry

Bonin Law

Hardcopy