

August 24, 2021

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21012071-A21002274**

OMER BAR-YOHAY

Animal Services Enforcement Appeal

Activity no.: A21002274

Appellant: **Omer Bar-Yohay**

Woodinville, WA 98077

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. Omer Bar-Yohay appeals a Regional Animal Services of King County (Animal Services) notice and order asserting Mr. Bar-Yohay's dog, Toffi, was running at large and qualified as vicious, and needs to be contained. After hearing the witnesses' testimony and observing their demeanor, studying the exhibits, and considering the parties' arguments and the relevant law, we deny the appeal but clarify the remedy and reduce the fine.

Hearing Evidence

Karen Gahrns Testimony

2. Ms. Gahrns testified that on April 30 she was walking her leashed dog, Quincy, down the street. She saw two dogs out front of the [Bar-Yohay] house with young kids. She was initially hesitant to walk past, because the owner had previously had to hold one of the dogs [Toffi] back while she passed by.
3. Ms. Gahrns continued down the road, on the opposite side of the street from the Bar-Yohay house. Toffi ran out of the yard and charged at her and Quincy. Toffi bit Quincy on the neck and kept at it until Ms. Gahrns was able to get Quincy away, which took a few seconds. Toffi did not draw blood; Quincy has thick fur. Quincy ran away from Toffi. The older Bar-Yohay daughter came out and grabbed Toffi.
4. Ms. Gahrns did not initially report the incident because the Bar-Yohay family was very apologetic, and she did not think much about it. Once Ms. Gahrns heard from neighbors Linda [Park] and Megan [Worsley] about additional attacks, she decided to report.

Linda Park Testimony

5. Ms. Park testified she was walking past the Bar-Yohay house with her leashed dog, Leo. When they were in front of the driveway, a dog [Toffi] ran straight out of the yard, through the invisible fence, and started barking and yapping. The yard had flags indicating there was an invisible fence.
6. Toffi went straight to Leo and started biting at Leo's mouth and neck. Leo defended himself. The attack continued and they spun in circles, as Ms. Park tried to get Leo away from the house. Leo has a furry neck so there were no bite marks on him. Ms. Park was scared that either Leo was going to be injured or Toffi would go after her. The owners, who were in the front yard, came and grabbed Toffi. Ms. Park could not recall the date of the incident. She did not initially report it, because she thought it may have been a one-time incident. Once she spoke with her two neighbors, she decided to report.

Megan Worsley Testimony

7. Ms. Worsley testified that on May 12 she took her leashed dog, Sophie, on the same walk they have regularly done for the past three years. There are no sidewalks, so they walk in the street. She and Sophie were about three to four feet from the Bar-Yohay yard when she saw a large grey dog [Toffi] charging down the driveway, straight towards Sophie.
8. Toffi ran through the invisible fence and was growling, barking, and baring his teeth. Sophie is a timid dog, so she was trying to get away. Toffi started going to Sophie's neck and face. As Ms. Worsley was trying to pull Sophie away, Ms. Worsley was driven to the ground, even though she is generally sturdy on her feet. Once on the ground, she immediately knew she had injured her left arm.

9. A near-by gardener came over to check on Ms. Worsley. She asked him to make sure Toffi was gone. Ms. Worsley is not certain how Toffi was put away. She checked over Sophie and did not see any blood, although Sophie was whimpering. Her husband came and helped her. They spoke with Mr. Bar-Yohay, who was kind and accommodating.
10. She went to the emergency room, who confirmed she had a broken elbow. She had a fractured capitellum, with a piece of the radial head broke off, and torn ligaments. Ex. D5-D6. She required surgery, had some post-surgery complications, is still in physical therapy twice a week, and may have an arthritic elbow going forward. Sophie will no longer walk with her kids, and Ms. Worsley still has images of Toffi's teeth in her mind.

Omer Bar-Yohay Testimony

11. Mr. Bar-Yohay confirmed that it was his older daughter who retrieved Toffi in the incident with Ms. Gahrns' dog. All three incidents occurred in the span of twelve days. This spate of aggression caught them by surprise, because Toffi had operated with no real restraints for six years with no problems.
12. He installed an invisible fence after the first signs, and has since put up a metallic fence with a lock, a fence Toffi now stays behind and from which Toffi cannot see the street. To unlock the gate from the outside, a tall person would need to reach over and bring up the latch. He is reticent to put a padlock on it, because they use it daily to access the backyard, and because people can forget to attach a padlock. He also has an additional electric fence loop near the gate and fence, and one across the front door. All told, he has spent about \$5500 in protection measures.

Legal Standards

13. Animal Services asserts that Toffi was "running at large" on May 12, 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.
14. More seriously, Animal Services asserts that Toffi qualifies as "vicious," meaning 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

and "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." KCC 11.04.020.BB; .230.H.
15. 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

16. Toffi ran at large on May 12, exiting his premises and not under sufficient control so as to be restrained from approaching a bystander, Ms. Worsley, and her animal, Sophie.
17. Toffi qualifies as “vicious,” having—three times in a two-week period—performed an act endangering the safety of a person or animal, including attacking not one but three different dogs, all without provocation. Any one of those incidents might have been sufficient to earn Toffi a viciousness label, but all three make it a slamdunk that Toffi constitutes a danger to the safety of people and their animals off Toffi’s premises.
18. Mr. Bar-Yohay questions whether Toffi was really responsible for Ms. Worsley’s injuries or whether Ms. Worsley could have just walked around or away or dropped her leash when Toffi went at Sophie. Ex. D10 at 001. Where a dog is already attacking, and a person defends herself, another person, or a pet, such defensive actions (where proportionate) do not count as “provocation” for a later injury. Toffi attacked first, and Ms. Worsley trying to protect Sophie and pull her to safety was a justifiable response. *Cf. Giandalone v. Zepieri*, 86 Misc. 2d 79, 80, 381 N.Y.S.2d 621 (1976). A victim intervening to protect a pet does not make the victim’s subsequent injury “provoked.” *Koivisto v. Davis*, 277 Mich. App. 492, 493, 497, 745 N.W.2d 824 (2008). Instead, Ms. Worsley trying to protect Sophie was a “natural and inevitable reaction” to seeing Toffi attack Sophie. *McBride v. XYZ Ins.*, 935 So. 2d 326, 332 (La. Ct. App. 2d Cir. 2006).
19. The real dispute involves one of the terms of confinement, namely to padlock the fence gate. Mr. Bar-Yohay offered a variety of reasons he should not need to padlock the gate.
20. The padlock issue comes up frequently in our cases, though never, like today, proactively in an appeal of a confinement order as part of an initial viciousness determination. Instead, it arises not infrequently in appeals of a subsequent removal order, where an owner receives a viciousness determination and confinement order, fails to comply and padlock the gate, and the predictable happens. Usually, the failure is the dog getting loose—egress—and the only owner fights a removal order by blaming an outside party for forgetting to relatch a gate, when it was the owner’s responsibility to padlock the gate to prevent just such an accident.
21. Occasionally, a case reaches us in the opposite context—ingress—where an owner fails to padlock the gate in compliance with the confinement order and a visitor comes in and gets injured. In one case earlier this year, the appellant elected not to padlock the fence’s gate as the confinement terms had required, explaining that a padlock would have created a “severe inconvenience and hardship” for her.¹ An Amazon driver delivering a package to her door opened the unlocked gate and was viciously attacked by her dogs. We upheld the removal order, writing that:

¹ https://kingcounty.gov/~media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2021/March%202021%20/V20011431_V20011432_Newman.ashx?la=en.

That confinement term—that a dog be allowed outside without its owner in attendance only if in a fenced area with all passages padlocked—was not a suggestion or optional. It was a requirement of keeping [the dog] in King County. And, however inconvenient or hardship-producing it was for [appellant], that was not nearly as severe as the inconvenience and hardship her choice created for [the delivery driver] when he entered an unpadlocked gate and [the dog] viciously and repeatedly attacked him.

22. The actual text of the confinement order reads:

Secure your animal 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.

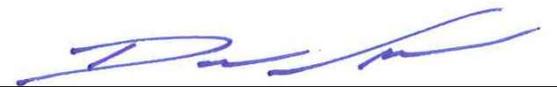
Ex. D9 at 001 (underscore added). Thus, it only applies where the dog has access to the fenced area *and* where an owner is not outside and actively attending the dog. It does not apply where, say, the dog is secured inside the house and someone goes out to take a load of garbage to the can, nor where someone is outside playing catch with the dog. So, while Animal Services as met its burden of showing the appropriateness of the padlock remedy, the remedy itself does not require a padlock on the gate 24-7.

23. That leaves only the penalty amount. While on first blush this seems like the type of scenario where no reduction is warranted—after all, Toffi attacked not one, not two, but three dogs on three different days—the scenario is a little more nuanced. First, as Mr. Bar-Yohay accurately pointed out, the three incidents occurred in less than two weeks, as he scrambled to identify and fix an aggression and boundaries problem that was an abrupt departure from Toffi's previous behavior. And while there were aspects of dismissiveness and even some blame-shifting in Mr. Bar-Yohay, they did invest heavily in containment systems. We think some reduction is in order.

DECISION:

We deny the appeal, except that we reduce the \$550 penalty to \$350.

ORDERED August 24, 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 *September 23, 2021*. 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 AUGUST 11, 2021, HEARING IN THE APPEAL OF OMER BAR-YOHAY, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012071-A21002274

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Karen Gahrns, Linda Park, Megan Worsley, and Omer Bar-Yohay. 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 May 12, 2021 incident by Megan Worsley, dated May 18, 2021 |
| Exhibit no. D3 | RASKC investigation report no. A21002274 |
| Exhibit no. D4 | Photograph of Ms. Worsley's dog |
| Exhibit no. D5 | Photographs of Ms. Worsley's injury pre and post-surgery |
| Exhibit no. D6 | Surgeon's notes regarding Ms. Worsley's injury |
| Exhibit no. D7 | Letters to and from the Worsley's HOA |
| Exhibit no. D8 | Email from Ms. Worsley, dated July 12, 2021 |
| Exhibit no. D9 | Notice of violation no. V21012071-A21002274, issued May 19, 2021 |
| Exhibit no. D10 | Appeal, received June 10, 2021 |
| Exhibit no. D11 | Map of subject area |

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CERTIFICATE OF SERVICE

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OMER BAR-YOHAY

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 August 24, 2021.



Lauren Olson
Legislative Secretary

Bar-Yohay, Omer

Hardcopy

Eykel, Chelsea

Regional Animal Services of King County

Gahrns, Karen

Hardcopy

Park, Linda

Hardcopy

Worsley, Megan

Hardcopy