

November 2, 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

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V21012379-A21003571**

QIAN ZHANG

Animal Services Enforcement Appeal

Activity no.: A21003571

Appellant: **Qian Zhang**

[REDACTED]
Bellevue, WA 98006

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. After Qian Zhang's dog escaped and accosted a neighbor, Regional Animal Services of King County (Animal Services) cited Ms. Zhang for her dog running at large and qualifying as vicious. Ms. Zhang appealed the viciousness designation. After hearing witness testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we grant her appeal.

Background

2. In 2020, after Gracie entered neighbor Jeff Bowlby's garage and injured his dog, Animal Services issued Ms. Zhang violation V21010958 for Gracie trespassing on private property, qualifying as vicious, and needing to be confined. We went to hearing in September 2020, but Mr. Bowlby did not participate. As Animal Services could not meet its burden of proof without its eyewitness, we issued a Summary Order in October 2020, granting Ms. Zhang's appeal.
3. This July, after Gracie escaped her house and ran at Mr. Bowlby, Animal Services issued Ms. Zhang violation V21012379 for Gracie running at large, qualifying as vicious, and again needing to be confined. Ex. D4. Ms. Zhang appealed. Ex. D6. We went to hearing last month, providing Ms. Zhang with an interpreter.

Evidence

Hearing Testimony of Jeff Bowlby

4. Mr. Bowlby is one of Ms. Zhang's neighbors, sharing a common driveway.
5. Several years ago, one of the Zhang children was walking past Mr. Bowlby's home, with Gracie off-leash. When Mr. Bowlby opened his front door, Gracie lunged at him. Gracie touched Mr. Bowlby, but did not bite. He did not report that incident.
6. Last year, he was working in his garage, with his dog (Penny) nearby. He left the garage for no more than fifteen seconds, returning to his garage to witness Penny's head inside Gracie's mouth. He took photographs showing blood in Penny's eye, and submitted a vet bill from that incident.
7. In the latest incident, he was walking home from the mailbox when Gracie ran out of the Zhangs' open front door. He testified that Gracie had her ears pinned back, with snarling teeth, behaving aggressively, and that she lunged within inches of him, but fortunately he dodged the attack. He yelled for Ms. Zhang to get Gracie, and when she came out, they had a verbal interaction.
8. Mr. Bowlby described Gracie behaving in a similarly aggressive manner on other occasions, even when she is restrained. When he walks by their home, Gracie senses his presence and snarls and scratches at the window. He also notices that when the Zhang children walk Gracie, they have difficulty restraining her.
9. Mr. Bowlby is fearful of Gracie and finds himself in a protective mode.

Hearing Testimony of Qian Zhang

10. Ms. Zhang testified that in the doorbell video of the latest incident, Gracie was not aggressive and was not making noise or barking. She thinks the video shows Mr. Bowlby shooing Gracie off with his hand, and Gracie then walking to the neighbor's front yard

to sit down. When Ms. Zhang came outside, she saw Gracie sitting in the yard and she told her son that he needs to close the door more closely.

11. Ms. Zhang admitted that in the past five years, Gracie has escaped about five or six times and interacted with Mr. Bowlby three times. Regarding the 2020 garage incident, Ms. Zhang does not believe that Gracie hurt Mr. Bowlby's dog. Gracie is five years old, friendly, never bites people or dogs, and is good with everyone else. On one occasion when Gracie escaped, another neighbor just walked Gracie back to the Zhang home.

Post-Hearing Submittals

12. In our notice of our recent hearing, we wrote under “**Exhibits**” (emphasis in original) that:

By **September 22, 2021**, each party shall email to each other and to hearingexaminer@kingcounty.gov any exhibits it intends to present at hearing.... Appellant notes there is video of the incident; that should be submitted as an exhibit.

Towards the end of our hearing, however, Ms. Zhang requested that she be allowed to submit that video. Over Animal Services' objection, we allowed her to belatedly submit the video. As a “makeup” to allowing Ms. Zhang to submit evidence incident well past the exhibit cutoff date, we allowed Animal Services and Mr. Bowlby to submit their own rebuttal video and images. We also made it clear that we were leaving the record open only to allow commentary on what we were seeing in those videos/images, not to provide new testimony.

13. Mr. Bowlby submitted a photograph of Ms. Zhang's child holding Gracie on a leash. Ex. D8.
14. Ms. Zhang submitted three videos and an amended appeal statement with an additional document and photograph. We admit the video (<https://youtu.be/FEB7SdVrbA0>) of the recent incident as exhibit A1. We also admit, as exhibit A2, her description in paragraph 1. of what she thinks that video shows, as well as her description, in paragraph 5., of what she thinks the photograph Mr. Bowlby submitted shows (or does not show), since that was new information she was responding to. However, we do not admit the other videos and attachments submitted (which were due prior to the hearing) or her commentary in paragraphs 2., 3., 4., and 6 (which was testimony she had the opportunity to present at our hearing). Those go well beyond the limited scope of what we kept the record open for.
15. Mr. Bowlby submitted his description of what he believes the video in exhibit A1 shows. Ex. D9. Animal Services submitted their analysis of the video, and Penny's veterinarian's for the 2020 garage altercation, in response to Ms. Zhang's continuing argument that Gracie has not bitten. Ex. D10. We closed the record on October 19, the day of this final submission.

Legal Standard

16. Animal Services asserts that, on July 23, 2021, Gracie was “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” and “under control” itself including the need to be “restrained from approaching any bystander or other animal” when “off the premises of the owner.” BMC 8.04.060.W, .AA; .300.B. Ms. Zhang does not challenge this.
17. More seriously, Animal Services asserts that Gracie performed an 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 “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.” BMC 8.04.060.BB, .300.H. Ms. Zhang disputes this.
18. 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. Ms. Zhang is living in a state of denial. For the garage altercation, after Gracie trespassed into Mr. Bowlby’s garage and bit Penny’s face, Ms. Zhang tried to blame it on Penny being loose, chalked it up to an “accidental encounter,” claimed—against the weight of the physical evidence—that their “lovely Gracie” did not actually bite Penny, and tried to blame Mr. Bowlby for coming to his dog’s defense *in his own garage*. She continues to remain detached from reality, minimizing Gracie charging at Mr. Bowlby on the street, relying on a child to try to contain Gracie on a walk, and blaming that child for not containing Gracie in the house. Ex. D8.
20. However, the code criteria for a viciousness designation, quoted above, is framed entirely in reference to the animal, not to the owner. *Ms. Zhang’s* behavior does not mean that *Gracie’s* behavior satisfies the above code criteria. The garage incident, however troubling, legally cannot qualify as vicious, because after Mr. Bowlby did not appear at the 2020 hearing, we overturned that violation. That finding is fixed in stone.
21. The video of Gracie accosting Mr. Bowlby in the driveway is right on the line. Running at Mr. Bowlby is troubling. And Animal Services’ analysis that Gracie *would* have made contact with Mr. Bowlby and bitten him, had he not turned and chased her off is not an unreasonable prediction—after circling behind Mr. Bowlby, Gracie does turn and come back. Ex. A1. However, as we see it, Mr. Bowlby intervened *before* Gracie actually launched at him. To put it in human-human fight terms, Gracie invaded Mr. Bowlby’s space and behaved aggressively, but she had not yet taken a proverbial “swing.”

22. Gracie's aggression on a leash or from inside her house is alarming, but that too does not qualify as a vicious act.
23. Given the repercussions of a viciousness designation, and the burden of proof resting on Animal Services, we are reticent to uphold a viciousness designation on our current record. Ms. Zhang caught a break when Mr. Bowlby did not appear for the hearing on the garage incident where Gracie actually bit, the video from the recent altercation is inconclusive, and Gracie acting aggressively on other occasions *while* contained is not definitive. Because Animal Services bears the burden of proof, we overturn the viciousness designation.
24. That in no sense exonerates Ms. Zhang. Minimizing the threat Gracie poses, blaming Penny and Mr. Bowlby, and trying to shift responsibility for walking or otherwise containing Gracie on a child, are not hallmarks of responsible pet ownership. Ms. Zhang needs to do better in the future, or next time the result may be very different.

DECISION:

1. We sustain the running at large violation.
2. We overturn the viciousness designation.

ORDERED November 2, 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 2, 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 OCTOBER 6, 2021, HEARING IN THE APPEAL OF QIAN
ZHANG, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO.
V21012379-A21003571**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Jeff Bowlby, Chelsea Eykel, Xiangming Li, and Qian Zhang. 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 July 23, 2021 incident by Jeff Bowlby, dated July 24, 2021
Exhibit no. D3	RASKC investigation report no. A21003571
Exhibit no. D4	Notice of violation no. V21012379-A21003571, issued August 5, 2021
Exhibit no. D5	Proof of Service
Exhibit no. D6	Appeal, received August 30, 2021
Exhibit no. D7	Map of subject area
Exhibit no. D8	Photograph from Jeff Bowlby on Appellant's child holding Gracie, submitted October 7, 2021
Exhibit no. D9	Jeff Bowlby's response to July 23 video, submitted October 12, 2021
Exhibit no. D10	Animal Services' response to July 23 video, submitted October 18, 2021

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

Exhibit A1.	Paragraph 1., including video link of the July 23 incident, submitted October 8, 2021: https://youtu.be/FEB7SdVrbA0
Exhibit A2.	Paragraph 5., response to Exhibit D8.

November 2, 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. **V21012379-A21003571**

QIAN ZHANG

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 2, 2021.



Lauren Olson
Legislative Secretary

Bowlby, Jeff
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County

Xiangming Li, Qian Zhang
Hardcopy