

December 21, 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. **V21012410-A21003732**

**SHANTI COLWELL**  
Animal Services Enforcement Appeal

Activity no.: A21003732

Appellants: **Shanti Colwell**  
[REDACTED]  
Vashon, WA 98070  
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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Kent, WA 98032  
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FINDINGS AND CONCLUSIONS:

Overview

1. Shanti Colwell appeals a Regional Animal Services of King County (Animal Services) violation notice regarding her cats. 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 the licensing violation (but reduce the penalty), sustain the trespass violation, and overturn the viciousness designation.

### Background

2. On August 10, Animal Services issued Shanti Colwell a notice of violation and order to comply for her two cats, one for trespassing on private property, qualifying as vicious, and needing to be confined, and both for being unlicensed and unaltered. Ex. D5. Ms. Colwell timely appealed. Ex. D6. We went to hearing on December 8.

### Hearing Testimony

#### *Testimony of Mark Peloquin*

3. Mark Peloquin has two cats—Buddy, a male tiger cat, and Miss, a female calico. He testified that for months before the March incident, the Colwell/Gross Bengal cats had been coming onto his property. On March 20, the Bengals beat up Buddy. Buddy's hair was all over the back walkway, and it was also hanging in clumps off him. Ex. D3.
4. After the incident, Mr. Peloquin went to the Colwell/Gross property, where he saw the Bengals. He showed Ms. Colwell photos of his cat and the fur in the yard. Ms. Colwell responded by suggesting that Mr. Peloquin spray water on her cats. This was not a viable option for Mr. Peloquin, because by the time he could get the hose going, the cat fight would be over. Mr. Peloquin expressed concern to Ms. Colwell and asked her to do something, because her suggestion was not a tenable, long-term solution. He is not sure if at that point he demanded that the Bengals stay off his property.
5. Mr. Peloquin described how, as time passed, there continued to be routine intrusions by the Bengals. He did not write down every time they came over. The Bengals did not attack Mr. Peloquin's cats every time they intruded, because when Mr. Peloquin heard hissing, he would try to scare the Bengals away. One time the Bengals cornered his cats, and Mr. Peloquin chased the Bengals away. During another incident, Buddy was at the base of the steps in the backyard. The Bengal was bounding towards the house, making a large presence. Buddy ran back into the house.
6. Mr. Peloquin never saw the two cats locked in combat. By the time he would get outside (about ten seconds after he would hear screaming), the cats would be a few feet apart. He would see his cat's hair on the ground and the Bengal a few feet away.
7. Mr. Peloquin's cats no longer wanted to go outside. Buddy had previously been the picture of health, but had started to throw up. Mr. Peloquin brought the cat to the vet due to the vomiting. The vet said Buddy could be throwing up due to being stressed, or to latent herpes the stress was causing to surface. Mr. Peloquin's cats are each fourteen years old.
8. Mr. Peloquin's wife spoke with Ms. Colwell in June. On June 25, Mr. Peloquin emailed Ms. Colwell a photo of the rug with Buddy's throw up. He concluded that Ms. Colwell was not going to do anything.

9. On July 28, Mr. Peloquin heard screeching in the yard, so he ran out of the house and saw cat hair all over the entryway. He scared away the Bengal. This was the event that prompted him to file the complaint. Ex. D2.
10. Ms. Colwell emailed Mr. Peloquin to propose scheduling times when her cats could be loose, while his cats were inside. Mr. Peloquin responded September 5, writing that he opposed her idea because the scent from the Bengals would stress his cats out.
11. Since he filed the complaint, the Bengals have not been coming into his yard. Buddy's health has improved. Buddy and Miss go outside freely now. They are not hiding or throwing up, and their lives have returned to normal.

*Testimony of Shanti Colwell*

12. Shanti Colwell testified that she is primarily appealing the violation notice because it does not identify a specific cat. It is a huge fine and a second violation [after a viciousness designation] could lead to a cat's removal from King County. The cats wear bright colored collars, which should allow anyone to distinguish them.
13. There is another Bengal cat that roams the neighborhood. While there is a likelihood it was a Colwell/Gross cat on July 28, that is not definitive; there were no witnesses. There are lots of free roaming animals in the neighborhood.
14. Ms. Colwell said Mr. Peloquin only approached her about the March attack. She showed concern during that conversation. Mr. Peloquin did not provide information about any other incidents. Ms. Colwell thought at the time that the March incident was a one-off. She provided Mr. Peloquin her phone number and asked him to call her if another incident occurred. He never called. This is why Animal Services' violation notice felt like it came out of nowhere.
15. Ms. Colwell said she was never asked to contain her cats. She did not learn about Mr. Peloquin's cat throwing up until after receiving the violation notice. If the issue was as serious as Mr. Peloquin now says, she would have expected a call every time the Bengals came over. But she received no calls. If they could have worked together, they would not have let this happen.
16. Ms. Colwell spoke with Ms. Peloquin in June, three months after the last interaction with the Peloquins. Ms. Peloquin said her cats were scared, but she did not mention another attack.
17. During a phone call with Sgt. Chelsea Eykel, Ms. Colwell's "just fur" statement meant fur is not proof an attack happened, and maybe it was the cats playing. While discussing solutions, Ms. Colwell expressed concern for her cats' quality of life if they had to be contained. The cats were used to roaming, so this was a lot to process. After the violation was issued, they completely followed the containment.
18. She reached out to an invisible fence company at the end of August. Her family has spent over \$3,400 installing an invisible fence system.

19. It is likely her cats trespassed, but trespassing is not the same as a viciousness violation.

*Testimony of James Gross*

20. James Gross testified that the cat arching its back and pouncing, as Mr. Peloquin described, is common behavior for cats. As to provocation, no one knows what happened and there is so much speculation. No one actually witnessed it.
21. As to the conversation with Animal Services, his “starting over” comment was his concern about potential removal if the confinement order were violated—*i.e.*, he would not have appealed, if the future-looking consequences were not so stark. There is a chance the cats will get out again, despite their best efforts.

Legal Standards

22. Animal Services asserts that, as of July 28, Ms. Colwell had two unlicensed cats, in violation of KCC 11.04.030.A, which requires all cats eight weeks old and older be licensed and registered.
23. Animal Services also asserts that on July 28, one of those cats trespassed onto the Peloquin property, defined as a “domesticated animal that enters upon a person’s property without the permission of that person,” KCC 11.04.230.K.
24. Finally, Animal Services asserts that, while trespassing, one of those cats attacked a Peloquin cat and qualifies 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.
25. 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

26. As to the licensing violation, Animal Services noted that the cats were altered, so the default penalty should have been \$125 per cat, not \$250. Moreover, Ms. Colwell licensed the cats after receiving the violation notice. Where an individual has duly licensed a pet after the violation but before our hearing, we have never eliminated—but have often reduced—the penalty. We do so here.
27. As to the trespass, Ms. Colwell did not challenge this, and even if she had, we would have found it more likely than not that one of the Coldwell/Gross Bengals (and not some random Bengal) was on the Peloquin property, without the Peloquins’ permission,

on July 28. And for minor violations like running at large or trespass, the inability to identify which Colwell/Gross Bengal it was would not have been problematic. The less at stake, the less exacting we are. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (nature of private interest being affected a factor in determining how much process is due).

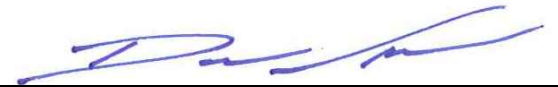
28. However, a viciousness designation is different. A viciousness designation comes with containment terms which, if not met, can subject that specific animal to removal from the County. KCC 11.04.290.A.3. It is a very serious charge with very serious consequences. And here, Animal Services cannot show, by a preponderance of the evidence, which Colwell/Gross Bengal was involved on July 28.
29. We are not unmindful of the catch-22 this could create. A single Colwell/Gross Bengal could repeatedly come onto the Peloquin property and attack the Peloquin cats, and yet, if we could never say with 51% certainty which Colwell/Gross Bengal it was, we would always be overturning any viciousness designation. That could run afoul of our Court's admonishment that we avoid situations "capable of repetition and yet evading review." *Cf. In re Marriage of Horner*, 151 Wn.2d 884, 893 & n.8, 93 P.3d 124 (2004).
30. However, that concern is lessened here. First, Ms. Colwell explained that her cats have different, and brightly, colored collars, making them distinguishable. More importantly, the family spent over \$3,400 installing an invisible fence system. And Mr. Peloquin acknowledged that, since then, the Bengals have not been coming into his yard, Buddy's health has improved, and Buddy and Miss go outside now without hiding, and their lives have returned to normal. On those facts we overturn the viciousness designation.
31. We offer one additional thought, with an eye toward the future. Ms. Colwell's appeal asserted that there is no proof the attack was without provocation and maybe the cats were just playing. Mr. Gross disputed provocation and Mr. Peloquin's assessment that the bounding behavior described was aggressive.
32. It would be an unusual scenario where an animal on its own property would be found to have legally "provoked" a trespassing animal. But could envision a *first-time* encounter, where a cat/dog goes onto another animal's property just looking to explore, gets surprised by an overly-reactive animal, and a fight ensues. ("Jeez buddy, cool your jets. I was just making a social call. You really don't like visitors, do you.") However, after that first, unwanted altercation [here in March], it is highly unlikely the cat/dog would trespass *again*, to return to the scene of the fight, with anything less than aggressive intentions. Compound that with altercations that occurred on multiple days, a few feet away from the Peloquin house, and the idea a Bengal was "provoked" on July 28 becomes almost farcical.

#### DECISION:

1. We sustain the licensing violations. However, the cats were altered at the time of the violation, so the default penalty should have been \$125 per cat, not \$250 per cat. Ms. Colwell licensed them prior to our hearing. We reduce the total licensing penalties from \$250 to \$100.

2. We sustain the trespass violation and its \$50 penalty.
3. We overturned the viciousness designation, its \$500 penalty, and the confinement order.

ORDERED December 21, 2021.




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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 *January 20, 2022*. 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 DECEMBER 8, 2021, HEARING IN THE APPEAL OF SHANTI COLWELL, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V21012410-A21003732**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Mark Peloquin, Shanti Colwell, and James Gross. 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 28, 2021 incident by Mark Peloquin, dated August 2, 2021         |
| Exhibit no. D3 | Photograph of Mr. Peloquin's cat with fur torn out and fur on the ground from a March incident |
| Exhibit no. D4 | RASKC investigation report no. A21003732   |
| Exhibit no. D5 | Notice of violation no. V21012410-A21003732, issued August 10, 2021                            |
| Exhibit no. D6 | Appeal, received August 20, 2021   |
| Exhibit no. D7 | Map of subject area  |

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**CERTIFICATE OF SERVICE**

SUBJECT: Regional Animal Services of King County file no. **V21012410-A21003732**

**SHANTI COLWELL**  
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 December 21, 2021.



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Lauren Olson  
Legislative Secretary

**Eykel, Chelsea**

Regional Animal Services of King County

**James Gross, Shanti Colwell**

Hardcopy

**Peloquin, Mark**

Hardcopy