

April 18, 2022

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

King County Courthouse
516 Third Avenue Room 1200
Seattle, Washington 98104
Telephone (206) 477-0860
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www.kingcounty.gov/independent/hearing-examiner

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V22012899-A22000516**

WAI HAN POON

Animal Services Enforcement Appeal

Activity no.: A22000516

Appellant: **Wai Han Poon**

[REDACTED]
SeaTac, WA 98168

Telephone: [REDACTED]

Email: [REDACTED]

King County: Regional Animal Services of King County
represented by **Rebecca Smokoska**
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. Regional Animal Services of King County (Animal Services) issued Wai Han Poon a violation notice for her dog, Lucky, qualifying as vicious for the second time in a 12-month period. Ms. Poon appealed only the penalty amount. 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 reduce the penalty.

Background

2. In April 2021, Animal Services issued Ms. Poon’s son a violation notice (V21011965), after Lucky charged, attacked, and injured a neighbor’s dog. Among the terms of confinement was a requirement that Lucky be restrained using a leash and collar or harness when being taken off his property and that “A competent and capable person must handle [Lucky] at all times when attended outside.” Ex. D10. We went to hearing in June, and in July we upheld the running at large, viciousness violations, and confinement order, while reducing the monetary penalty. Ex. D12.
3. On January 31, 2022, Ms. Poon was walking Lucky and her other dog on leashes; both were muzzled. The dogs pulled Ms. Poon across the street. Lucky knocked a woman onto the ground who was trying to pick up her two Pomeranians. Lucky began clawing at the woman’s Australian Shepherd puppy, who was still on the ground. Animal Services issued Ms. Poon violation notice V22012899, asserting that Lucky again qualified as vicious. Ex. D2.
4. Animal Services also ordered Lucky’s removal from King County (V22012900), citing KCC 11.04.290.B.2, which covers an animal that “bites, attacks or attempts to bite one or more persons two or more times within a two-year period.” Ex. D8.
5. Ms. Poon appealed. She did not challenge the violation itself, but she requested a penalty reduction, as a 72-year-old retiree with limited financial means. And she challenged the removal order. Ex. D7.
6. We held a pre-hearing conference on March 9, after which we dismissed, without prejudice, the removal order. In our 2021 appeal hearing, we did not find—nor was there even an allegation that—Lucky attacked or attempted to bite a human, only another dog. Animal Services agreed that its removal order had cited the wrong legal standard.
7. We went to hearing on April 6 on the penalty amount for violation V22012899, providing Ms. Poon with a Cantonese interpreter.

Hearing Testimony

8. Ms. Poon testified that she is single, over 70 years old, and has no one to depend on financially. She has a 30-year-old son who is a new immigrant and works part-time, bagging groceries and making only minimum wage.
9. Ms. Poon explained that her son is the one to take Lucky for walks. However, her son had injured his arm. So, on January 31 Ms. Poon took the muzzled Lucky and her other dog out. Their home is completely enclosed with a tall fence. Ms. Poon is apologetic for the incident and requests a penalty reduction.
10. Animal Services Rebecca Smokoska argued that because this is the second time in a twelve-month period that Lucky injured another dog (and this time, a person), the full penalty amount set by code should be upheld.

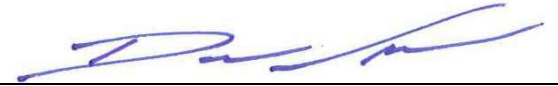
Analysis

11. 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.
12. Because January 2021 was Lucky's second viciousness violation in a one-year period (the first being April 2021), the default penalty is \$1000, instead of \$500. KCC 11.04.035.C.2.b. So, contrary to Animal Services' argument, January being the second violation is *already* the reason the default penalty is \$1000 and not \$500; it is not an *additional*, exacerbating factor. And several factors counsel in favor of a penalty reduction.
13. First, Lucky's April 2021 confinement order did not require that he be muzzled when taken off the property. Ex. D10. Yet Ms. Poon took the extra step of muzzling Lucky, as well as her other dog, before she went out for the January walk. While it appears that Lucky injured the other dogs' owner by knocking the woman down, and even with a muzzle was able to claw at and hurt the woman's puppy, muzzling Lucky likely prevented Lucky from causing far more damage.
14. Secondly, we have entertained appeals in the past where an owner/handler had a documented history or being incapable of containing a leashed dog(s), and yet the person foolishly walked a dog(s) again, and again proved unable to contain the dog(s). It is possible that Ms. Poon had been unable to control Lucky on leashed walks prior to January 31, 2022. But there is no testimony to that effect in our record. In fact, Ms. Poon explained that she normally does not take Lucky out at all, but only walked him on January 31 because her son was recovering from an injury.
15. Moreover, Lucky's April 2021 violence had nothing to do with a leash; instead, a gate had been left open. The April 2021 confinement order required that Lucky only be allowed, unattended, in a fenced area if all passages were padlocked, to avoid accidental release. Ex. D10. But, again, that confinement order was only placed *after* Lucky's escape.
16. Now, to be clear, the January 31 events prove that Ms. Poon is not capable of handling Lucky. If in the future her son is unable to walk Lucky, then Ms. Poon needs to arrange for a more able-bodied person to take out Lucky. Lucky is a threat to the public, and not a threat that Ms. Poon is able to manage. Lucky's April 2021 removal order requires that a competent and capable person must handle Lucky at all times when Lucky is outside. Ex. D10. And Ms. Poon is not competent to handle Lucky. But there is nothing in the record to show that it should have been obvious to Ms. Poon prior to January 31 that she was not capable of controlling a leashed Lucky.
17. Finally, there is Ms. Poon's precarious financial situation. A monetary penalty here has more impact than it would on someone with greater resources.

DECISION:

1. We reduce the penalty in V22012899 from \$1000 to \$350. (We previously dismissed the removal order, V22012900, so there is no penalty associated with that.) Animal Services should attempt to accommodate Ms. Poon’s request for a payment plan.
2. Ms. Poon is not competent and capable of controlling Lucky. If Ms. Poon has Lucky outside again, without another adult there to handle Lucky, we will consider that a violation potentially warranting Lucky’s removal from King County. Additionally, if Lucky is left outside in the fenced yard, all passages must be padlocked, or that too could create a violation potentially warranting Lucky’s removal from King County.

ORDERED April 18, 2022.



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 *May 18, 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 APRIL 6, 2022, HEARING IN THE APPEAL OF WAI HAN POON, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22012899-A22000516

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Rebecca Smokoska and Wai Han Poon. 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	Notice of violation no. V22012899-A22000516, issued February 8, 2022
Exhibit no. D3	RASKC investigation report no. A22000516
Exhibit no. D4	Online Complaint form of January 31, 2022, incident by Denise Westerdahl, dated January 31, 2022
Exhibit no. D5	Witness Statement from Dale Westerdahl, dated February 2, 2022
Exhibit no. D6	Witness Statement from Donna Westerdahl, dated February 2, 2022
Exhibit no. D7	Appeal, received February 10, 2022
Exhibit no. D8	Notice and order for removal no. V22012900-A22000516, issued February 8, 2022
Exhibit no. D9	Order of Dismissal V22012900, dated March 10, 2022
Exhibit no. D10	Notice of violation no. V21011965-A21001856, issued April 30, 2021
Exhibit no. D11	RASKC investigation report no. A21001856
Exhibit no. D12	Report and Decision Wong V21011965-A21001856, dated July 8, 2021
Exhibit no. D13	Map of subject area

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CERTIFICATE OF SERVICE

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WAI HAN POON

Animal Services Enforcement Appeal

I, Jessica Oscoy, 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 18, 2022.



Jessica Oscoy
Office Manager

Han Poon, Wai

Hardcopy

Smokoska, Rebecca

Regional Animal Services of King County

Westerdahl, Denise

Hardcopy

Wong, Sauchen Mr.

Hardcopy