

September 9, 2022

**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. **V2013297-A22003343**

EFRAIN VEGA JR

Animal Services Enforcement Appeal

Activity no.: A22003343

Appellant: **Efrain Vega Jr. (EJ)**

[REDACTED]
Federal Way, WA 98003

Telephone: [REDACTED]

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King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
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FINDINGS AND CONCLUSIONS:

Overview

1. Efrain Vega Jr. appeals a violation for his dog, Brutus, being unlicensed, running at large, trespassing on private property, qualifying as vicious, and needing to be confined. 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 minor violations, but we reduce the penalty for the licensing violation and overturn the viciousness violation and confinement order.

Hearing Testimony

Testimony of Hilda Bell

2. Hilda Bell testified that on June 28 she was unloading her car in her driveway when she heard a dog barking from the street behind her. She closed her trunk. (She explained later that her trunk closes automatically with a button; she did not manually close it.) A dog [Brutus] kept barking, and the barking sounded like it was getting closer to her, but she did not turn to look. Ms. Bell started running to her home entrance. She did not see where Brutus came from, and she did not look behind her as she was running to the door. Her Ring camera recorded the event. Ex. D4.
3. She was not bitten, but she was nervous and scared. It felt like she was running for her life. Brutus was growling and barking at her as she ran through the door. After seeing the Ring video, she realized that Brutus must have crossed the street, ran through her front yard and up the stairs. She heard someone screaming for Brutus. After she entered her house, Brutus left.
4. She has lived in the neighborhood for over twenty years, and nothing like this has happened to her before. She has never had any other incidents with Brutus. She now carries pepper spray when she walks in the neighborhood.
5. Ms. Bell has a cat, but it was inside during the incident.

Testimony of Dean Bell

6. Dean Bell testified that earlier this summer (meaning prior to the June 28 event), he witnessed the two Vega dogs [Brutus and Fate] corner a FedEx driver in the walkway up to the Vega house. The dogs were barking and growling at the driver, and they were standing in front of her. They did not bite or jump at the driver. Mr. Vega Sr. took the dogs back into the house. The driver was visibly shaken up; she was crying. Mr. Vega apologized and comforted her.
7. The older Vega pitbull [Beast] was always well behaved. Beast was better behaved compared to the puppy [Brutus].
8. Mr. Bell testified that after he filed the June 28 incident report, Mr. Vega Sr. came over and immediately apologized. When Mr. Bell reported the incident, he did not know what the consequences would be. He is concerned for his wife's safety. Mr. Bell believes that Brutus is an intimidating dog because he is a pitbull. Mr. Bell noted that Mr. Vega Jr. is doing everything that he can to take care of the dogs.

Testimony of Efrain Vega Jr. (EJ)

9. Efrain Vega Jr. testified that on June 28 he was in the street playing fetch with Brutus. He would not have an aggressive pitbull off leash. Mr. Vega Jr. thought he heard a car door or trunk slam closed, which startled Brutus. Brutus trotted over to where he heard the noise and went up against Ms. Bell's leg. Mr. Vega Jr. was calling for Brutus. Ms. Bell was walking a normal speed to her house. He heard Brutus bark loudly when the door to Ms. Bell's house closed. Mr. Vega Jr. called Brutus two to three times, and then Brutus returned to him. Mr. Vega Jr. also thinks that Brutus may have smelled the Bells' cat, which could have distracted him.
10. Brutus is still in training, and he is still a puppy. Mr. Vega Jr. is doing basic commands and obedience training with Brutus. He is also trying to make Brutus a service animal for his diabetes.
11. Mr. Vega Jr. understands that pitbulls have a bad reputation, but Brutus is good natured. He believes that when a dog has raised hackles the dog may be fearful. He also believes that if a dog is wagging its tail, it probably would not bite anyone.

Testimony of Efrain Vega Sr.¹

12. Efrain Vega Sr. testified that Brutus is a puppy. Brutus and Fate are being kennel- and obedience-trained. Brutus is being socialized with other animals and he would never try to bite anyone. Beast, the Vegas' previous pitbull, died a year ago, so Mr. Vega Sr. has not been mentally or emotionally here for the new dogs. He has had well-behaved dogs his whole life.
13. Mr. Vega Sr. testified that he has neighbors who agree that Brutus is not vicious. Ms. Bell continues to walk past the Vega house. Mr. Vega Sr. believes that Brutus went after the Bells' cat. He said Brutus is trained in scent, so he would be able to smell the Bells' cat.
14. Mr. Vega Sr. asserted that the incident with the delivery driver was very brief. He left the front door open when he went upstairs. The delivery driver came to his front door, and Brutus and Fate stood their ground at the front door and barked at the driver. He apologized to the driver. The driver did not leave crying.

Testimony of Macquiva Vega

15. Macquiva Vega started her testimony by apologizing to the Bells about the incident. Ms. Vega is trying to support her son in training Brutus and Fate. There was a lapse in Brutus getting a license and vaccines because she tasked her son to take care of it, and he forgot.
16. The Vegas are currently going through a divorce. Ms. Vega left the home six months ago, which has caused a delay in Brutus's training. The next step in Brutus's training is

¹ I apologize for interrupting and speaking over Mr. Vega Sr. That was totally unacceptable. He deserved a better examiner in that moment.

socialization and public access. They are working on making sure that Brutus does not get distracted.

17. Ms. Vega explained that Mr. Vega Jr. was diagnosed with type one diabetes when he was twelve years old. Brutus was chosen to be his second service dog. Beast, who passed away in 2021, was Mr. Vega Jr.'s previous service dog. Ms. Vega was hoping to use Beast as a mentor to Brutus. Beast would wake up Mr. Vega Jr. when his blood sugar was low. Brutus is being trained to Mr. Vega Jr.'s scent. It takes about two years to completely train a dog. Brutus and Fate are a year and a half old. Having a service dog for Mr. Vega Jr. makes life simpler.
18. The other dog, Fate, is licensed and up to date on her shots. She is trained in retrieval, such as Mr. Vega Jr.'s medical device or a juice. Fate is very nice to people, but she is more aggressive and protective of the family than Brutus. Brutus is more like a puppy. The last time Ms. Vega saw Fate was a few days before the hearing. Fate was given to the Humane Society when she left the house. Ms. Vega recently got Fate back from the Humane Society, and Fate has since returned to the house.

Legal Standards

19. Animal Services asserts that Brutus:
 - A. was “running at large” on June 28, 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;
 - B. was trespassing on June 28, defined as a “domesticated animal that enters upon a person’s property without the permission of that person,” KCC 11.04.230.K;
 - C. unaltered and unlicensed as of June 28, in violation of KCC 11.04.030.A, which requires all dogs eight weeks old and older be licensed and registered; and
 - D. most seriously, qualifies as vicious, defined as “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,” with the violation itself framed as, “Any 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,” KCC 11.04.020.BB; .230.H.
20. 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

21. The first three items are fairly straightforward and not contested. On June 28, Brutus was off his premises and not under sufficient control so as to be restrained from approaching a bystander, and he entered the Bells' property without their permission; we sustain the trespass and running at large violations. We also sustain the licensing violation, but as the Vegas have since licensed Brutus, and as they only skipped a year of what would have been Brutus's \$60 licensing fee, we reduce the penalty down to the \$60 they would have spent a year ago if they had originally licensed Brutus.
22. Our state has a two-tiered violation system for dogs who do something aggressive. The lower category, a potentially dangerous dog designation, applies to a dog that, when unprovoked, chases or approaches a person in a menacing fashion or apparent attitude of attack. RCW 16.08.070(1). Brutus approached Ms. Bell in a menacing fashion, with his hackles raised. In no sense was anything Ms. Bell did, or even alleged to do (like slamming a car door) in her own driveway even remotely legal provocation for Brutus following Ms. Bell up her sidewalk, barking at her, or darting to the door as she closed it. And even if Brutus darted at the door because he saw or smelled the cat, that is in no sense an excuse or provocation.²
23. However, while the County is likely to adopt the state's two-tier system in the near future, for now it has only a single designation, "vicious." As quoted above a viciousness violation does not necessarily require a bite—the standard being performing an act, endangering the safety of a person or animal, and proof that the animal constitutes a danger to the safety of people off (or lawfully on) the animal's premises. But a viciousness designation carries, in addition to a \$500 penalty, stiff compliance terms (such as having the dog on a leash at all times when off the property, which acts as a lifetime ban from dog parks), sticks with the dog even if the dog winds up in the hands of other owners, can be an impediment to finding living arrangements (what sensible landlord would risk allowing a vicious dog to reside on their premises?), can bar the animal from daycare and kenneling options, and raises the specter of future removal of the dog from the County. *See* KCC 11.04.290. We are thus more exacting on a viciousness count, the more being at stake. We do not lightly uphold a viciousness designation, especially when the dog did not actually injure anyone or bite (or at least attempt to bite) anyone.
24. Brutus's behavior on June 28 was wholly unacceptable. His raised hackles are concerning, especially since Mr. Vega Jr. did not seem to grasp the import of that or that Brutus's hackles were up well *before* Ms. Bell opened the door and Brutus ostensibly noticed a cat. And while we do not find pit bulls any more aggressive than other dogs (we get a lot of appeals involving bites from smaller, yippy dogs), pit bulls are much more intimidating than other dogs, and not without reason, given the damage they can do (versus other breeds) with their powerful jaws *if* things go south. A loose pitbull approaching someone is objectively more threatening than, say, a loose Chihuahua, even


² It might be different if the cat was trespassing on the Vega property, but the cat was on the *Bell* property and even inside the Bell house. Action endangering a pet's safety and being a danger to pets off the offending animal's premises can result in a viciousness designation, even if no humans are involved. KCC 11.04.020.BB; .230.H.

if the Chihuahua might actually be more likely to bite. But Animal Services has not proven that Brutus meets KCC 11.04.020.BB and .230.H's criteria.

DECISION:

1. We overturn the viciousness violation, confinement order, and \$500 penalty.
2. We sustain the running at large, trespass, and licensing violations, but we reduce the total penalty due to \$160 (\$50 plus \$50 plus \$60).

ORDERED September 9, 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 *October 10, 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 AUGUST 30, 2022, HEARING IN THE APPEAL OF EFRAIN VEGA, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V2013297-A22003343**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Hilda Bell, Dean Bell, Efrain Vega Jr., Efrain Vega, and Macquiva Vega. 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 June 28, 2022, incident by Dean Bell, dated June 29, 2022 |
| Exhibit no. D3 | Online Complaint form of June 28, 2022, incident by Hilda Bell, dated June 30, 2022 |
| Exhibit no. D4 | Ring Camera Video |
| Exhibit no. D5 | RASKC investigation report no. A22003343 |
| Exhibit no. D6 | Notice of violation no. V2013297-A22003343, issued June 30, 2022 |
| Exhibit no. D7 | Appeal, received July 22, 2022 |
| Exhibit no. D8 | Map of subject area |

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September 9, 2022

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V2013297-A22003343**

EFRAIN VEGA JR

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 September 9, 2022.



Lauren Olson
Legislative Secretary

Bell, Hilda/Dean
Hardcopy

Efrain/Macquiva/EJ, Vega
Hardcopy

Eykel, Chelsea
Regional Animal Services of King County