

February 9, 2023

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

King County Courthouse
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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. **V22013613-A22005311**

DONG YANG

Animal Services Enforcement Appeal

Activity no.: A22005311

Appellant: **Dong Yang**

[REDACTED]
Redmond, WA 98053

Telephone: [REDACTED]

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King County: Regional Animal Services of King County
represented by **Chelsea Eykel**
Regional Animal Services of King County
21615 64th Avenue S
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FINDINGS AND CONCLUSIONS:

Overview

1. Dong Yang appeals a Regional Animal Services of King County (Animal Services) violation notice for his dog, Shiner, qualifying as vicious and needing to be confined. After hearing witnesses testimony and observing demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, we find that, although Mr. Yang did absolutely nothing wrong, we deny his appeal as to the violation and compliance order. However, we reduce the \$500 penalty to \$50.

Background

2. On September 30, 2022, Ling Yin filed a complaint asserting that Shiner bit her six-year-old daughter on September 20. Ex. D3. Ms. Yin provided photographs of the injuries. Ex. D4.
3. On October 3, 2022, Animal Services issued Mr. Yang a violation notice. Ex. D6. Mr. Yang timely appealed. Ex. D8. Although the injury was severe, Animal Services chose not to issue a removal order because Mr. Yang had cautioned the child not to enter his yard. Testimony of Sgt. Eykel.
4. On November 8, 2022, we originally scheduled a hearing for December 6. However, on November 18, Mr. Yang requested a pre-hearing conference. We converted the December 6 hearing into a pre-hearing conference.
5. We went to hearing on January 26, 2023, and provided Mr. Yang with a Mandarin interpreter.

Hearing Testimony

Testimony of Ling Yin

6. About three years ago, Ling Yin and her daughter began interacting with Shiner, Mr. Yang and Mr. Yang's daughter. Shiner was friendly at the time. During the winter Shiner even pulled the girls on a sled.
7. About two years ago, however, Ms. Yin developed concerns about Shiner's behavior. There have been occasions when her daughter entered Mr. Yang's yard to jump on the trampoline, and Ms. Yin notices Shiner's nervousness towards them and excessive barking. When her daughter pets Shiner's head and tail, Ms. Yin can see Shiner tense up. Ms. Yin has asked her daughter not to pet Shiner, but her daughter disobeys. Ms. Yin has talked to Mr. Yang about Shiner's aggressive behaviors and asked him to please follow-up on it. However, in response to our question, Ms. Yin clarified that she was not sure whether she had ever expressed those concerns to Mr. Yang *before* the injury.
8. Though Ms. Yin did not actually witness the incident, she testified to her understanding on what happened on September 20: her daughter entered Mr. Yang's yard through a small gate, while Mr. Yang was trying to get ear medication into Shiner's ear. Mr. Yang told her not to approach, but she did not listen and gradually began approaching them. She was about eight feet away when Shiner suddenly jumped on her, pushing her to the ground and biting her lip; Shiner tore off a chunk of the lip tissue.
9. Mr. Yang brought her daughter to Ms. Yin. Ms. Yin opened the door to see her daughter crying, with her nose and lip area bleeding heavily. Ms. Yin immediately took her to Children's Hospital, where the doctor prescribed plastic surgery. Her daughter had played in Mr. Yang's yard many times, and Ms. Yin and her daughter have had prior friendly interactions with Mr. Yang and Shiner.

10. Ms. Yin took over a week to file a complaint with Animal Services because she did not want to strain her friendship with Mr. Yang.

Testimony of Dong Yang

11. Dong Yang did not dispute the basic outline of events Ms. Yin recounted, but he denied that Shiner did not bite the child. When Sgt. Eykel questioned him that this was the first time denying that a bite occurred, he stated that earlier he was not asked to verify or confirm the facts and that is why he did not dispute the bite. Mr. Yang opines that Shiner’s nose was pushing the child’s face, so her injuries may be from that force and not from an actual bite.
12. The day of the incident was very unexpected because Shiner had been having issues with an ear infection. Mr. Yang was putting the medication in Shiner’s ear and Shiner did not like it. Shiner had been scratching his ear and Mr. Yang could see scars and blood— Shiner was probably in pain. When Mr. Yang saw the child push the yard gate open, he immediately told her not come inside and not to get close. Mr. Yang was multi-tasking and was unable to control Shiner nor get the child to leave. It all happened in a matter of seconds.
13. After this incident, Shiner has not shown aggressive behavior towards anyone else. Recently, they attended a community gathering at a park, and Shiner was well-behaved.

Legal Standards

14. Does Shiner qualify as vicious, defined as “[h]aving 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 “[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”? 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. A fair amount of the hearing focused on whether or not Shiner injured the child via an actual bite. Animal Services’ notice and order alleged that the child was “bit by the dog,” and Mr. Yang did not dispute that in his appeal. Ex. D6 at 001; Ex. D8. Ms. Yin did not witness it. Mr. Yang would have been directly behind Shiner as Shiner went at the child, so it is unclear what he could have seen from that vantage point, beyond the back of Shiner’s head at the child’s face. And even if the child herself had testified, precisely what would she have remembered, beyond a dog charging at her, hitting her hard in the face,

and knocking her down. Would she, or even an adult victim, be able to distinguish, in that split second, the difference between “the dog hit me in the face with his mouth” versus “the dog actually bit down on me”?

17. It would have been helpful if Ms. Yin had taken a picture of the wound before stitches. But Ms. Yin has been clear throughout that Shiner did not just tear the upper lip and area under her nose, Shiner actually removed some flesh. Ex. D2 at 002, n.1; Ex. D3 at 003; testimony. A strong headbutt from a charging dog could certainly *split* skin, but it is harder to see how that could *remove* a chunk of flesh. Yet ultimately the bite question is unnecessary to decide. While biting is one way to meet the “vicious” definition, the touchstone is whether the animal performed an act “endangering the safety of any person.” And Shiner certainly did that on September 20.
18. The next question is whether Shiner was provoked to injure the child. “Provocation” in animal jurisprudence “focuses ‘on how an average dog, neither unusually aggressive nor unusually docile, would react to an alleged act of provocation.’”¹ And a key touchstone of courts’ analyses is that “provocation” requires the dog’s reaction to be roughly proportional to the victim’s act.² Certainly the child’s entrance was unwelcome, and added stress to a dog with an ear infection for whom Mr. Yang was trying to apply medicine and (momentarily) increasing the dog’s discomfort. But the average dog would not bound several feet (the testimony is that the distance was about eight feet) and go after a girl’s face, especially when the girl was not the one inflicting the discomfort. And splitting the child’s lip and beyond and removing flesh was grossly disproportionate to a child wandering into the situation. Animal Services has proven that Shiner was not provoked.
19. Does Shiner constitute enough of a danger to uphold the designation? Shiner had an earache and Mr. Yang was applying medicine at the time, a scenario unlikely to repeat itself in the future. Yet Ms. Yin described increasingly disturbing behavior as Shiner has gotten older. And the most basic fact here is that Shiner really hurt a six-year-old girl. We, along with other tribunals, are extra protective when the issue involves young children. We find that Animal Services has met its burden under. KCC 11.04.230.H.
20. What makes this case difficult is that usually, at least in hindsight, there was something an owner could have done differently to prevent the altercation. But here, Mr. Yang did absolutely nothing wrong, nor did he fail to do something he should have done. There is insufficient proof that Ms. Yin warned Mr. Yang *before* September 20 that Shiner had aggression issues. Even if she had, on September 20 he had Shiner on his property, in a fenced area, trying to take care of an ear infection. When the child entered he advised her repeatedly not to come in, but she disobeyed. Yet nothing in the legal standard asks how diligent (or irresponsible an owner is); the pertinent code is focused on the animal. KCC 11.04.020.BB; .230.H.

¹ *Bradacs v. Jacobone*, 244 Mich. App. 263, 273, 625 N.W.2d 108, 113 (2001) (citing *Kirkham v. Will*, 311 Ill. App. 3d 787, 792, 724 N.E.2d 1062 (2000) (internal citations omitted).

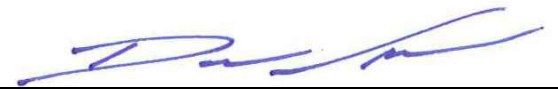
² *Stroop v. Day*, 271 Mont. 314, 319, 896 P.2d 439 (1995); *Bradacs* at 273–75; *Kirkham* at 792.

21. In addition, ours is not a scenario where strict conformance with the compliance order would have prevented this particular injury. Ex. D6 at 001. The fencing/padlock requirement only kicks in when the animal is “unattended and outside your home,” and Mr. Yang was actively attending to Shiner that day. In terms of future interactions *off* the property, Mr. Yang is concerned that he cannot take Shiner to community gatherings. He should obviously be extra careful with Shiner—especially around small children who do not always understand boundaries—but the compliance order itself only requires him (or another competent person capable of handling Shiner) to have Shiner on a leash that does not extend beyond eight feet.
22. The only relief we can really provide is to the monetary penalty. Fines are largely meant to incentivize (on disincentivize) certain *human* behavior. And again, on September 20 Mr. Yang did absolutely nothing wrong, nor did he fail to do something he should have done. We do not recall ever reducing a \$500 penalty to below \$100, but we do so today, reducing the penalty to \$50.

DECISION:

1. We uphold to the viciousness designation and compliance order.
2. We reduce the \$500 penalty to \$50.

ORDERED February 9, 2023.



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 *March 13, 2023*. 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 JANUARY 26, 2023, HEARING IN THE APPEAL OF DONG YANG, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V22013613-A22005311

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Chelsea Eykel, Dong Yang, and Ling Yin. 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	RASKC investigation report no. A22005311
Exhibit no. D3	Online Complaint form of September 20, 2022, incident by Ling Yin, dated September 30, 2022
Exhibit no. D4	Photographs of injuries
Exhibit no. D5	Proof of rabies vaccine for Shiner
Exhibit no. D6	Notice of violation no. V22013613-A22005311, issued October 3, 2022
Exhibit no. D7	Proof of Service
Exhibit no. D8	Appeal, received October 19, 2022
Exhibit no. D9	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V22013613-A22005311**

DONG YANG

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 February 9, 2023.



Jessica Oscoy
Office Manager

Eykel, Chelsea

Regional Animal Services of King County

Yang, Dong

Hardcopy

Yin, Ling/Eva

Hardcopy