

May 5, 2023

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

King County Courthouse
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REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file nos. **V23013939 & V23013940**

JENNIFER METTER

Animal Services Enforcement Appeal

Activity no.: A23000405

Appellant: **Jennifer Metter**

[REDACTED]
Auburn, WA 98001

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
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FINDINGS AND CONCLUSIONS:

Overview

1. Jennifer Metter appeals two violation notices for her dog, Nika, running at large. 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 uphold the violations, but reduce the fines.

Background

2. On May 27, 2022, Victor Sviridovich filed a complaint for a large white dog trespassing on his property, injuring two of his bunnies, and then running loose. Ex. D9-001-004.
3. On June 7, 2022, Mr. Sviridovich filed another complaint for a large white dog being loose in the neighborhood. Ex. D9-005-008.
4. On September 9, 2022, Mr. Sviridovich filed another complaint for the large white dog being loose in the neighborhood that night. Ex. D11. He submitted photographs. Ex. D12. On September 10, 2022, Regional Animal Services of King County (Animal Services) issued violation notice V22013541-A22004893 to Ms. Metter for Nika running at large, first offense, on September 9. Ex. D14. Ms. Metter did not appeal V22013541.
5. On January 25, 2023, Mr. Sviridovich filed a complaint for [Nika] being loose in his neighborhood on January 20, 2023. Ex. D2. He submitted a video of the January 20, 2023, incident. Ex. D4. He also submitted video of a January 26, 2023, incident. Ex. D3.
6. On January 28, 2023, Animal Services issued violation notice V23013939-A2300405 to Ms. Metter for Nika running at large, second offense, on January 20. Ex. D6. Animal Services also issued Ms. Metter violation notice V23013940-A23000405 for Nika running at large, third offense, on January 26. Ex. D7. Ms. Metter appealed on February 21. Ex. D16. She submitted additional photographs. Ex. A1. We went to hearing on April 19.

Hearing Testimony

Testimony of Victor Sviridovich

7. Victor Sviridovich testified that he first filed a complaint in 2022 for a white dog trespassing and getting into his rabbit hutch. That morning, Mr. Sviridovich's mom woke up to a loud rattling noise. She saw the big white dog take a rabbit out of the hutch and slip under the fence and out towards the street. While Mr. Sviridovich did not wake up and witness this, the next morning he saw that the hutch door was ripped off, two of their rabbits were missing, and there was blood on the cage.
8. After this incident, there was a large hole under the Sviridovich fence that is across the street from Ms. Metter's house. It has been dug twice, and Mr. Sviridovich has reinforced that part of the fence twice. At that time, Mr. Sviridovich was unsure where that dog was from. He started to investigate and watch the neighborhood.
9. Later in June 2022, Mr. Sviridovich was walking with his nieces and nephews in the neighborhood when he saw the same white dog roaming the streets. The dog approached his nieces and nephews, but Mr. Sviridovich was unsure if the dog jumped on them.
10. Mr. Sviridovich found the same white dog out roaming and by his front garage. He followed the dog back to the Metter property, which gave him confidence that it was where the dog lived.

11. Mr. Sviridovich has seen the dog defecating on or near his property multiple times. He is not always able to take a video every time it happens, because once the dog sees Mr. Sviridovich, it runs away. In September 2022, Mr. Sviridovich captured a photo of the dog defecating on his property. Ex. D12.
12. Video exhibit D4 shows the January 20, 2023, incident. The white dog started running towards Mr. Sviridovich's brother, so he ran inside the Sviridovich house.
13. On January 26, 2023, Mr. Sviridovich went out to get the mail and saw the same dog in the street. Mr. Sviridovich took a video of the dog defecating and then returning to Ms. Metter's property. Ex. D3. He did not see where the dog came from.
14. Mr. Sviridovich does not see where the dog comes from. He has seen the dog return to the Metter property multiple times and sit at the Metter front door. Mr. Sviridovich did not take photos of the dog at the Metter front door because it is obstructed by many trees and bushes and for his safety he did not want to get too close.
15. After Animal Services told Mr. Sviridovich that it issued two citations, he has seen the dog leashed and being walked but it no longer roams the streets. Mr. Sviridovich is not sure what Ms. Metter looks like, but he has seen the dog being walked recently. The dog has a normal demeanor on walks. Mr. Sviridovich could not see what the collar looked like on the dog, but it was the same dog that he has seen running loose. Mr. Sviridovich has never seen two white dogs running loose in the neighborhood at the same time. Mr. Sviridovich has not seen a bandana or collar on the loose dog.

Testimony of Jennifer Metter

16. Jennifer Metter testified that she has lived in her house on the corner with Nika for over five years. Ex. D17. Nika is a ten-year-old husky. Her other husky, Pink, is black and can barely walk. Ms. Metter first testified that Nika does not have a consistent collar. (In her closing, Ms. Metter said that when Nika is home, she wears just a name tag collar.) At the end of her testimony, she asserted that Nika walks with a limp or leg drag and has been dealing with an aging dog disease for the last year.
17. The photograph in exhibit A1-005 shows Mr. Sviridovich's street. Ms. Metter believes that video exhibit D4 only shows a dog leaving a dead-end street. She also believes that video exhibit D3 only shows a dog walking up to a driveway. Passing by Ms. Metter's property is a natural path for dogs or people as they walk. The stop sign on the corner is a regular marking spot for dogs.
18. The two dogs in exhibit A1-002 and -003 are not from the same owner. The dog with the blue bandana is Nika and the other dog is her neighbor's. There are two dogs in the neighborhood that look like Nika. She saw one of those dogs out twice a few years ago.
19. Ms. Metter disagrees with Ofc. Wilson's notes from their conversation in September 2022. Ms. Metter said that if the neighbors thought it was her dog, they can talk to her. Ms. Metter said that her dog digs and she was working on lining the fence. Ms. Metter

did not say that Nika is digging under the fence. She added the meshing so Nika would not go after the gophers. Ex. A1-004.

20. Ms. Metter did not ask her character references to write about her containment of Nika. Ex. A1-006, -007, -009. Ms. Metter is a single parent, and the fines would be a financial burden.

Legal Standards

21. Animal Services asserts that on January 20, 2023 (V23013939) and January 26, 2023, (V23013940) Nika was “running at large,” 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.
22. 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

23. We found Mr. Sviridovich credible. His testimony was consistent and measured. After the rabbit hutch incident, Mr. Sviridovich decided to watch the neighborhood for the dog. He concluded that the dog was Ms. Metter’s when he saw it repeatedly return to the Metter property and sit at the front door. Considering Mr. Sviridovich would have been motivated to correctly identify the dog, because he believed it was the same dog that took his rabbits in June 2022, he took his time and observed the dog to confirm its identity. While he never saw where the dog was coming *from*, he repeatedly saw where the dog repeatedly returned *to*—the Metter property.
24. Mr. Sviridovich also stated that he was not always able to get a photo or video of the dog because it would run away from him. Mr. Sviridovich’s only comment regarding his opinion of whether the dog was aggressive was related to the aftermath of the rabbit hutch. This was not inconsistent with the character statements Ms. Metter submitted, which all said that they had never seen Nika display aggressive behavior. Ex. A1-006, -007, -009. We include this to show a consistency between the dog’s demeanor that Mr. Sviridovich observed, and the demeanor described by the character statements. We found Mr. Sviridovich very credible.
25. We did not find Ms. Metter as credible. When asked about the identity of the dogs in exhibit A1-002, an exhibit she submitted, she avoided answering the question. Yet the crux of this case is the identity of the loose dog. If the dog was not Ms. Metter’s, we would expect her to promptly help us in identifying the roaming dog. Ms. Metter’s appeal noted there are two other dogs in the neighborhood that look similar to Nika. Yet

the only information Ms. Metter offered about the other dogs in the neighborhood being loose is that she saw one of those dogs out twice a few years ago.

26. The one unique feature Ms. Metter offered at hearing about Nika is that she has a leg drag or limp. We are not sure how to take this. If Ms. Metter had submitted a video of Nika walking, we could have compared it to the two videos Animal Services submitted, but she did not submit a video. Mr. Sviridovich said that the loose dog walked normally, and he did not notice a leg drag. The poor video quality in exhibit D3 makes it impossible to notice or not notice a leg drag. The video quality of exhibit D4 is better. While the dog is not in the frame for very long, we do not notice a distinguishable leg drag or limp. Lacking additional evidence about the leg drag, we can only base our decision on the evidence we have in front of us and witness credibility.
27. Additionally, Ms. Metter disputing whether the dog in video exhibits D3 and D4 was being aggressive was an odd approach if it were not her dog. It would be completely irrelevant what someone *else's* dog was doing or if that dog was aggressive or not aggressive. Yet the defensiveness makes a lot more sense if Ms. Metter knew it was Nika on the video and was defending her dog against an allegation of aggressiveness.
28. Also, Ms. Metter said she lined her fence with meshing because Nika digs, and she goes after the gophers. This was odd to us. In our experience, typically someone lines a fence with meshing if they want to avoid having something leaving or entering their yard. That, in addition to Mr. Sviridovich finding a hole under his fence across the street from the Metter property, does not help Ms. Metter's case.
29. Ms. Metter testified that video exhibit D3 shows the dog simply marking the corner of her property, which would not be odd because it is a common place for dogs to visit. We see the video differently. We see a dog cross the street, stand at the corner of the Metter property for a moment, and continue into the Metter property. This video, in addition to Mr. Sviridovich's testimony that he has seen the dog repeatedly return to the Metter property and wait by the front door, points to the dog being Nika.
30. Another major reason why we believe that the loose dog is Nika is because after the two violation notices were issued to Ms. Metter, there have been no more loose white dog sightings, only the same white dog being walked on a leash.
31. Weighing all the factors we find that, more likely than not, it is Nika running at large on January 26. We uphold violation V23013940.
32. When Mr. Sviridovich filed his complaint about the dog being loose on January 20, he said the same dog was out on January 26. While we do not have eyewitness testimony from January 20, we find Mr. Sviridovich credible. We also know that Mr. Sviridovich saw the same dog multiple times on his property or by his garage, and in September 2022 defecating on his property. Ex. D12. Nika has frequented the Sviridovich property. Mr. Sviridovich has been consistent that he sees that same big white dog out loose.
33. Ms. Metter did not offer any evidence that the other dogs that match Nika's description have been loose in the neighborhood, and even then, she testified that the last time she

saw a similar neighbor dog out loose was a few years ago. And Mr. Sviridovich has seen the same dog consistently out. Either the dog in video exhibit D4 is Nika, who has a history of running at large and frequenting the Sviridovich property, or it is a different dog that matches the physical description of Nika and also has coincidentally been contained since the violations were issued. Animal Services has met its burden of proving that, more likely than not, it was Nika running at large on January 20. We uphold violation V23013939.

34. Nika now has three nuisance violations in one year. Ms. Metter should stay vigilant in containing Nika, both to avoid another monetary penalty and because an animal with three nuisance violations in a 12-month period is subject to removal from the County. KCC 11.04.290.B.1.
35. Mr. Sviridovich noted that he has not seen Nika out loose since the violation notices were issued. Ms. Metter must have found a solution to Nika getting loose. Thus, we reduce the V23013940 penalty to \$100.

DECISION:

1. We deny the appeal and uphold V23013939 and V23013940. We reduce the penalty for V23013940 to \$100.

ORDERED May 5, 2023.



Lauren Olson
Hearing Examiner Specialist

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 *June 5, 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 APRIL 19, 2023, HEARING IN THE APPEAL OF JENNIFER
METTER, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NOS. V23013939 & V23013940**

Lauren Olson was the Hearing Examiner Specialist in this matter. Participating in the hearing were Sergeant Eykel, Victor Sviridovich, and Jennifer Metter. 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 January 20, 2023, incident by Viktor Sviridovich, dated January 25, 2023 |
| Exhibit no. D3 | Video, dated January 26, 2023 |
| Exhibit no. D4 | Video, dated January 20, 2023 |
| Exhibit no. D5 | RASKC investigation report no. A23000405 |
| Exhibit no. D6 | Notice of violation no. V23013939-A23000405, issued January 28, 2023 |
| Exhibit no. D7 | Notice of violation no. V23013940-A23000405, issued January 28, 2023 |
| Exhibit no. D8 | NVOC mailing/tracking history |
| Exhibit no. D9 | Online Complaint form of June 1, 2021, incident by Viktor Sviridovich, dated May 27, 2022 |
| Exhibit no. D10 | RASKC investigation report no. A22002972 |
| Exhibit no. D11 | Online Complaint form of September 9, 2022, incident by Viktor Sviridovich, dated September 9, 2022 |
| Exhibit no. D12 | Photograph of Ms. Metter’s dog roaming and defecating |
| Exhibit no. D13 | RASKC investigation report no. A22004893 |
| Exhibit no. D14 | Notice of violation no. V22013541-A22004893, issued September 10, 2022 |
| Exhibit no. D15 | NVOC mailing/tracking history |
| Exhibit no. D16 | Appeal, received February 21, 2023 |
| Exhibit no. D17 | Map of subject area |

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

| | |
|----------------|----------------------------|
| Exhibit no. A1 | Photographs and Statements |
|----------------|----------------------------|

May 5, 2023

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file nos. **V23013939 & V23013940**

JENNIFER METTER

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 May 5, 2023.



Jessica Oscoy
Office Manager

Eykel, Chelsea

Regional Animal Services of King County

Metter, Jennifer

Hardcopy

Sviridovich, Victor

Hardcopy