

October 12, 2023

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

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

REPORT AND DECISION

SUBJECT: Regional Animal Services of King County file no. **V23014513-A23004597**

ANDREW RUBINSTEIN

Animal Services Enforcement Appeal

Activity no.: A2004597

Appellant: **Andrew Rubinstein**

[REDACTED]
Sammamish, WA 98075

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
Telephone: (206) 263-5968
Email: raskcappeals@kingcounty.gov

FINDINGS AND CONCLUSIONS:

Overview

1. Andrew Rubinstein appeals a notice and order finding his dog, Ryder, potentially dangerous. 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 deny the appeal, but we reduce the monetary penalty.

Background

2. On July 30, 2023, Regional Animal Services of King County (Animal Services) issued violation notice V23014513-A23004597 to Andrew Rubinstein for his dog, Ryder, qualifying as a potentially dangerous animal. Ex. D6.
3. Mr. Rubinstein timely appealed. Ex. D7. We went to hearing on September 28.

Hearing Testimony

Kleif Hammer Testimony

4. Kleif Hammer testified that on July 18 he delivered a package to the Rubinstein property. He followed standard protocol. The Rubinstein's live down a rural driveway, so he backed up his vehicle dead center into the driveway, about ten feet from the gate. Mr. Hammer exited his vehicle and went to the back of his van to get the package. He noticed a dog [Ryder] barking at the gate. He could tell Ryder was upset at him; it is very common for dogs to be upset at a delivery driver.
5. Mr. Hammer had his back to the gate and was in the process of checking the address when Ryder bit the top of his left shoulder. Ex. D4. Because the gate was held closed only with a chain (and not a rod into the ground), the gate was able to open slightly and swing towards him. Mr. Hammer was shocked that Ryder could reach him because he was a couple paces from the gate. Mr. Hammer is 5' 11", so he guessed Ryder had to go over the gate to reach his shoulder, but since his back was turned he cannot say that with certainty. At no point was Mr. Hammer reach over or through the gate.
6. Mr. Hammer yelled to try to get someone's attention. Mr. Rubinstein came out and secured Ryder. Mr. Rubinstein asked Mr. Hammer to show him the wound, and Mr. Hammer decided to go to a different location to check his back.
7. Mr. Hammer contacted FedEx, who told Mr. Rubinstein to put a delivery location away from the gate.
8. On July 18, Mr. Hammer did not see the sign and pallet that are in exhibit D5. Mr. Hammer had delivered to the Rubinstein property several times before July 18. He was prepared to set the package on the ground by the mailbox. He had not encountered Ryder or any dogs at that property in the past.

Andrew Rubinstein Testimony

9. Andrew Rubinstein testified that he ran outside when he heard Ryder barking. Mr. Hammer yelled that Ryder bit him. Mr. Rubinstein secured Ryder in the house and returned to speak with Mr. Hammer. Mr. Rubinstein asked to see the wounds because he was concerned for Mr. Hammer and for what Ryder could do. The conversation calmed down and they discussed delivery options for future packages.

10. Mr. Rubinstein and his family receive around 90 deliveries a year. On July 18 there was a “beware of dog” sign, but Mr. Rubinstein can understand why Mr. Hammer did not see it because the sign was small. Mr. Rubinstein is planning on moving the Ring doorbell away from the gate. There is now a box with a pallet that is far from the gate and has a sign for deliveries. He is working on ways to keep delivery drivers safe.
11. Mr. Rubinstein had a small dog that will escape out the gate if it is open too far, so the gate only has a flex of five inches. Mr. Rubinstein believes that Mr. Hammer must have been close to the gate in order for Ryder to reach him. Ryder cannot bite up to 5’ 11” inches.
12. Mr. Rubinstein apologized that Mr. Hammer was bit. When Mr. Rubinstein says that Ryder barks at the gate, he is not saying he expects Ryder to bite anyone. Ryder shows no aggression at dog parks. Ryder is not a danger, particularly not in public.

Legal Standards

13. Does Ryder meet the definition of “potentially dangerous animal”? KCC 11.04.230. Per KCC 11.01.320,
 - A. “Potentially dangerous animal” means any animal that when unprovoked:
 1. Bites or inflicts injury on a human or domesticated animal;
 2. Chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack;
 3. Has a known propensity, tendency, or disposition to attack, to cause injury, or otherwise to threaten the safety of humans or domestic animals; or
 4. Jointly engages, with one or more animals in conduct meeting subsections A.1., A.2., or A.3., of this section, in which case all animals are deemed potentially dangerous, absent an affirmative demonstration that a specific animal was not responsible for a qualifying act.
 - B. Regardless of provocation, an animal is a “potentially dangerous animal” if it enters onto private property without the consent of the owner or occupant and bites a human or animal or chases or approaches a person in a menacing fashion or apparent attitude of attack.
 - C. An animal shall not be declared a “potentially dangerous animal” if the threat, injury, or bite alleged to have been committed by the animal was sustained by a person who was at the time committing a willful trespass upon the premises occupied by the owner of the animal, or who was abusing or assaulting the animal, or who was committing, or attempting to commit a crime. This exclusion does not apply to actions taken in defense of oneself, other humans, animals, or property.

14. 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

15. We clear away the undercard, before turning to the main event. Animal Services’ offered a theory that Ryder could qualify as potentially dangerous via KCC 11.01.320.A.3’s avenue of having a “known propensity, tendency, or disposition to attack, to cause injury, or otherwise to threaten the safety of humans or domestic animals.” That both Rubinsteins described Ryder as being protective of his yard and sometimes rising up on the fence does not mean that Ryder meets the quoted code provision. And it does not mean that the Rubinsteins (nor Mr. Hammer) would have expected that Ryder would reach *beyond* the fence line (either through the gap in the top or over the top) to bite someone.
16. Is Ryder an “animal that when unprovoked: [b]ites or inflicts injury on a human or domesticated animal”? KCC 11.01.320.A.1. It is undisputed that Ryder bit Mr. Hammer on July 18. Our inquiry then is whether that bite was legally provoked, which per our code “means to torment, agitate, or harass an animal immediately before the attack, chase, or menacing behavior, [and] does not include actions taken to defend oneself, other humans, animals, or property.” KCC 11.01.350. In animal jurisprudence, courts focus on how an average dog, neither unusually aggressive nor unusually docile, would react to an inciting act.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
17. There is some dispute as to the precise sequence of events, but no dispute that could control the outcome. Per Mr. Hammer, he was standing several paces from the chained gate, with his back to the gate, when Ryder pushed the gate outwards towards him and was able to bite him on the upper back. Ex. D4. Mr. Rubinstein did not actually witness the altercation, but he opined that Ryder would not have been able to push the gate that far or get up that high, and so he speculated that Mr. Hammer must have been bending down, maybe to put the package in the mailbox to the right of the gate.
18. It would not surprise us that a 180-pound dog would be able to push a gate (without a rod anchoring to the earth) a few feet back, farther than Mr. Hammer had expected a dog could, and get at his shoulder (either through the gap in the top, or over the top, of the gate), though Mr. Rubinstein made some good points about height and distance. But even under *Mr. Rubinstein’s* theory of what he thinks might have happened—that Mr. Hammer was trying to put the package in the mailbox—a mailbox mounted on the outside of the fence, with the open slot perpendicular to the fence and the length of the

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)).

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

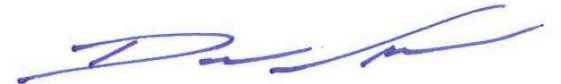
mailbox away from the fence (exhibit D5)—there is nothing to counteract Mr. Hammer’s testimony that at no point was he reaching over or through the fence. And he was bitten on his *back*, not, say, a hand that might have wandered through or over the gate. An average dog might come to the fence line and menace a person standing on the other side to discourage someone from coming, but actually biting Mr. Hammer’s back past the fence line was grossly disproportionate to Mr. Hammer’s presence near the fence. Even under Mr. Rubinstein’s version of spacing and distance, Ryder’s bite was not “provoked.” Mr. Hammer being closer to the gate than he remembered was still not legal provocation for Ryder to bite him.

19. Animal Services has shown that Ryder bit Mr. Hammer without legal provocation, thus meeting the definition of a “potentially dangerous animal.” KCC 11.04.230; KCC 11.01.320.A.1.
20. While the code provisions quoted above look purely at the dog and not the dog’s owners, monetary penalties are targeted at the owners. Where an owner showed that the animal did something despite (not due to a lack of) the owner’s responsible behavior and/or where the owner took steps after the violation to avoid a recurrence, we often reduce the otherwise applicable penalty. We do so here. The Rubinsteins certainly knew Ryder was protective, but July 18 did not happen because, say, the Rubinsteins were lax and left the gate unlocked. And they have taken steps since—most importantly placing a lockbox several feet away from the gate—to discourage repeat violence. We halve the penalty.

DECISION:

We deny the appeal, except that we reduce the monetary penalty from \$500 to \$250.

ORDERED October 12, 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 *November 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 OCTOBER 2, 2023, HEARING IN THE APPEAL OF ANDREW
RUBINSTEIN, REGIONAL ANIMAL SERVICES OF KING COUNTY
FILE NO. V23014513-A23004597**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sergeant Chelsea Eykel, Kleif Hammer, and Andrew Rubinstein. 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
Exhibit no. D2	RASKC investigation report no. A23004597
Exhibit no. D3	Online Complaint form of July 18, 2023, incident by Kleif Hammer, dated July 21, 2023
Exhibit no. D4	Photograph of injuries
Exhibit no. D5	Photograph of gate
Exhibit no. D6	Notice of violation no. V23014513-A23004597, issued July 30, 2023
Exhibit no. D7	Appeal, received August 7, 2023
Exhibit no. D8	Map of subject area

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V23014513-A23004597**

ANDREW RUBINSTEIN

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, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED October 12, 2023.



Lauren Olson
Legislative Secretary

Eykel, Chelsea

Regional Animal Services of King County

Hammer, Kleif

Hardcopy

Rubinstein, Andrew

Hardcopy