November 9, 2018

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 no. **V18008351**

ARTURO JIMENEZ SANCHEZ
Animal Services Enforcement Appeal

Activity no.: A18003087

Appellants: Angela Coria and Arturo Jimenez Sanchez
represented by **William Justyk**
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King County: Regional Animal Services of King County
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation: Deny appeal
Department's Final Recommendation: Deny appeal
Examiner's Decision:Deny appeal as to violation; modify monetary penalty and compliance terms

EXAMINER PROCEEDINGS:

Hearing Opened: September 26, 2018
Hearing Record Closed: October 19, 2018

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

After hearing the witnesses' testimony and observing their demeanor, studying the exhibits admitted into evidence, and considering the parties' arguments and the relevant law, the examiner hereby makes the following findings, conclusions, and decision.

FINDINGS AND CONCLUSIONS:

1. Animal Services alleges that on June 30, 2018, Arturo Jimenez Sanchez's and Angela Coria's dog, Rhino, attacked a woman walking the sidewalk. Animal Services' asserted violations for Rhino running at large, being unlicensed, and vicious, and that the couple's other dog, Foxy, was also unlicensed, and Animal Services required compliance terms for Rhino. Ex. 1-B. Appellants did not appeal the running at large violation or either licensing violations, but did appeal the viciousness determination and compliance terms. Ex. 1-G. The parties settled the licensing violations prior to hearing, leaving us to decide only the viciousness issue. We uphold the viciousness determination, but modify both the monetary penalty and the terms of compliance.

2. Riva Kiseleva testified at hearing that on June 30 she walked past the dog's house, as she did on most of her daily walks. Without warning—meaning she heard no barking—the dog suddenly jumped her from behind, knocked her over, and bit her leg. A driver stopped his car, got out, and chased the dog away; if not the dog would have killed her. She heard some screams in the distance. Soon after, an ambulance transported her to the hospital

3. At the hospital, Ms. Kiseleva received stitches for the bite. She was not able to walk for three days. She was on antibiotics for the bite for two weeks, and her underlying health problems, like hypertension and diabetes, were exaggerated. The knock-down also caused some back and elbow injuries. The bite caused some major vessel damage, as well as some lymph damage. She is currently in physical therapy. She is not sure whether any of the damage the attack caused will be permanent. She is afraid to resume what had been daily neighborhood walks.

4. In the appeal statement, Exhibit 1-G, Ms. Coria explained that, given Rhino's high-energy, they keep him in a kennel with a two-door system. Prior to the incident, they worked hard to train Rhino, and they took Rhino to off-leash parks and public events on numerous occasions, all without incident. Rhino is very good with children.

5. Ms. Coria wrote that on June 30, they were out of town and extended family was looking after their pets. The family did not properly secure the kennel, and that afternoon Rhino escaped. Ms. Coria felt that Rhino did not attack Ms. Kiseleva, but instead, given his habit of jumping up, jumped up and subsequently scratched her, causing a cut. She agreed that Rhino should never have been loose, never have caused the injury, and never have created stress to folks involved trying to catch Rhino that day. She then explained the responsible steps they have taken since the incident. Ex. 1-G at 003–04.

6. At hearing, Ms. Coria tried to shift course and challenge whether Rhino was the dog that injured Ms. Kiseleva. However, the scope of an appeal is limited to matters or issues raised in the initial appeal statement and any appeal amendment the examiner authorizes. KCC 20.22.080.G. Ms. Coria did not file an amended appeal statement. We thus rejected this expansion at hearing. The intersection of KCC 20.22.080.G. and .210 means that Animal Services bears the burden of proof, but only for those matters or issues raised in some appeal statement.

7. Dog identification is often an issue—sometimes the only issue—in a viciousness case. For example, in *Shermer* the appellant's appeal statement asserted that her dog was not the dog that felled the complainant, and she argued for an alternative perpetrator. Animal Services thus brought the investigating officer to the hearing. The officer testified about her investigation, including talking with neighbors and taking dog pictures. We then devoted five pages of our decision to analyzing the culprit's identity.[1] Here, had Ms. Coria challenged whether Rhino was the dog involved in the June 30 incident with Ms. Kiseleva, we would have expected Animal Services to do something similar.

8. We do not doubt that Rhino was the dog that jumped Ms. Kiseleva. The responding officer's notes from June 30 indicate that he went to Appellants' home, where the dog was still loose and in the driveway, with many people, including firefighters, trying to contain him. He interacted with the family member, and was eventually able to the get the dog back in Appellants' fenced yard. Ex. 1-A at 005, nn. 2-3. The odds that the dog returned to Appellants' yard and claimed by family members was not Rhino,[2] or that at the same time Rhino was running loose, with neighbors and firefighters try to contain him, another large dog was randomly loose and attacking a few doors down, does not sound like the type of argument that would even work in the beyond-a-reasonable-doubt context. It would almost certainly fall short in our preponderance-of-evidence context, even without Ms. Kiseleva's testimony that she had previously seen Appellants' dog.

9. Nevertheless, if Appellants had timely raised identification, Animal Services would have had the burden to prove this matter. As that did not happen, we limit our analysis to the issues actually raised in the appeal statement, basically the specific nature of Rhino's altercation with Ms. Kiseleva on June 30, whether Animal Services has proven that Rhino qualifies as "vicious," and the terms of confinement.

10. SMC 6.05.020.JJ defines "vicious" 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,

[1] https://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2017/2017%20july/V17006703_Shermer_REPLACE.ashx?la=en at ¶¶ 3, 10–11, 20–36.

[2] Moreover, in our August 3 pre-hearing order, we noted that Ms. Coria was not disputing that on June 30 Rhino was running at large, will being defined as "off the premises of the owner and not under the control of the owner by leash," with "under control" itself including the need to be "restrained from approaching any bystander or other animal." SMC 6.05.020.G, II; SMC 6.30.010.A.2. In that order we gave the parties until August 13 to correct any misunderstanding we might have expressed as to the actual appeal issues.

> including, but not limited to, biting a human being or attacking a human being or domesticated animal without provocation,

while SMC 6.30.010.A.7 declares as a nuisance, "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."

11. At hearing, Ms. Coria explained the steps they had taken prior to June 30 to train Rhino. She described him as a big teddy bear who loves kids. She showed several videos of her kids walking Rhino. The family keeps him in a kennel. On June 30, they were out of state at a wedding, and her in-laws (who live a few blocks away) were caring for their pets. Rhino was supposed be in the kennel during the day, and in the garage in the evening. But when her father-in-law put Rhino in the kennel that morning, he forgot to lock it, so Rhino just pushed it open.

12. After they received a copy of the violation notice, they quarantined Rhino. They put a tarp over the kennel, to ensure he could not escape. They now have double locks on the kennel. They took Rhino to a professional trainer. They put a bark collar on him, to try to keep him from getting too amped up. She provided a picture of a puncture one of her children experienced when Rhino ran into the back of the child's heel with his sharp toenails.

13. In addition to Ms. Coria's testimony about Rhino's nature, she also submitted a character witness on how affectionate and safe Rhino is, and a trainer's assessment that Rhino did not display any aggressive behavior and remained calm and stable during various tests. Exs. 2–A, 2– L. We return to the trainer's assessment in the final paragraph, but we note here that the trainer also opined that he had "warned the client (Angela Coria) if the barking is not limited the dog (Rhino) could become amped up and potentially break through the fence and misbehaviors are more likely to occur." Ex. 2-L. But the basic truth is that none of those people were present on June 30.

14. We decide cases based on the specific facts of an altercation. This cuts both ways. On the one hand, despite the "having the propensity to do any act," in the viciousness definition—which seems to offer an alternative avenue for Animal Services to prove viciousness (i.e. divining that a dog that has not actually done anything violent nonetheless has an inclination to do something violent)—we have always based our decisions on an animal actually performing some act. Numerous times we have overturned Animal Services' viciousness designation where a dog did something aggressive (like getting up close and snarling) but did not actually lunge at or make contact with a complainant; scary and unacceptable as such behavior may be, an aggressive nature, without more, does not qualify as "vicious." Second—and cutting in the other direction—all the testimony and supportive letters about how friendly and well-behaved a dog *generally* is have not trumped actual evidence about a specific day.

15. As to the day, Appellants' counsel did a good job pointing out some inconsistencies in Ms. Kiseleva's narrative, both at hearing and then, post hearing. (Ms. Kiseleva filed what Animal Services found to be an unfounded claim that Rhino was digging under the

kennel or fence, post hearing. Ex. 1-T.) And Ms. Kiseleva was almost certainly overstating things when she alleged that Rhino would have killed her, had not the Good Samaritan driver stopped to help her. In the vast majority of appeals where we have sustained a viciousness allegation, the altercation involved a single bite. Multiple bites would be well outside the norm. And the bite here looks more like a single bite-and-release, and not a flourish of twisting or tearing. We will not assume that, contrary to the overwhelming pattern of cases we entertain, Rhino was that rare dog that actually intend to maul or kill his victim, and only stopped because someone intervened. We will stick to what actually happened, and not postulate on what could have later happened.

16. Yet Ms. Kiseleva's basic June 30 narrative is solid. Rhino (later identified as a 100-pound mastiff) charged her from behind, knocked her over, and bit her. Beyond her testimony, the physical evidence is unmistakable. The pictures from the hospital of Ms. Kiseleva's leg wound looks exceedingly like the dog bite aftermath we have viewed in too many pictures in too many cases to count, and nothing like a dog scratch. Exs. 1I–1L. The difference between the slight disturbance Rhino caused by jamming his nail into a child's heel, and Ms. Kiseleva's gaping flesh, is dramatic. Exs. 2-G, 1-J. Moreover, even if against all evidence to the contrary, Rhino gashed Ms. Kiseleva with his nails instead of with his teeth, we would still uphold the violation. Rhino attacked an octogenarian, from behind and without warning, knocked her over, gashed her, and caused her to suffer multiple injuries, including the visible wound to her elbow. Ex. 1-H.

17. That leaves the remedy. Just as Animal Services had the burden to prove the violation, it has the burden to prove the appropriateness of its remedy. KCC 20.22.210.

18. The statutory penalty for the running at large and viciousness violations would be $550. Especially given that Animal Services rejected Ms. Kiseleva's claim of post-violation neglect, we put more weight on Ms. Coria's version of her post-attack conscientiousness than on Ms. Kiseleva's assertion that Ms. Coria has not, post-violation, taken the appropriate steps to control Rhino and keep him from again running at large or engaging in more vicious behavior. This includes Animal Services noting that Mr. Jimenez Sanchez had, soon after the violation, obtained fencing materials and was fixing weak points in the fence. Ex. 1-A at 007, n.11. Where an owner takes reasonable steps to prevent a recurrence of the violation, we have often halved the applicable penalty. We do so again today.

19. Compliance-wise, there was some dispute about whether Ms. Coria's 12-year-old daughter is allowed to walk Rhino on a leash in public. Animal Services apparently told Ms. Coria that the daughter could not. The code does not set any particular age thresholds, but the handler must be able, at all times, to control the dog enough to restrain it from approaching bystanders or other animals. Given that Rhino is a powerful, energetic, 100-pound mastiff, this seems a questionable proposition for any 12-year-old.

20. In addition to the physical challenges, a competent handler must be able to observe demeanor and body language and anticipate reactive behaviors in various scenarios, and quickly apply the proper corrective techniques under stressful conditions. That level of focus and problem-solving is something even adults (in past cases) have had difficulty

with. And if the handler cannot control Rhino, the legal consequences may be severe. Yet there is no magic age level cutoff, and so there is no absolute bar (or permission) based on age.

21. Finally, and also compliance-wise, Appellants described taking Rhino to off-leash parks on numerous occasions, and how well behaved he has always been in those parks. Ex. 1-G. The trainer describes running Rhino through aggression evaluations with children, strangers, and barking dogs, and noted that Rhino did not display any aggressive behavior under such provocations. Ex. 2-L. Certainly for any dog, there is some risk of some altercation happening at an off-leash dog park. But that trades off against the risk of *not* allowing a high-energy mastiff an outlet to run off some of that energy in a contained environment, especially given the trainer's warning that Rhino could get "amped up" and "potentially break through the fence." *Id.* We will modify the compliance terms accordingly.

DECISION:

1. The appeal is DENIED as to the running at large and viciousness violations.

2. The applicable penalty is REDUCED to $275, provided Appellants pay this amount to Animal Services by **December 31, 2018**.

3. Animal Services' June 30, 2018, compliance order is MODIFIED as follows (A. through D. being the substantively unchanged, and E. being new):

   A. Secure Rhino in a fenced area suitable for his size when Rhino is unattended and outside the home. Lock all passages with a padlock to prevent accidental release.

   B. Restrain Rhino using a leash with a collar or harness when taking it off your property. A competent and capable person must handle the animal at all times when attended outside.

   C. If not already completed, microchip Rhino and provide the microchip number two the King County Animal Licensing Office (206) 296–2712 by **December 10, 2018**.

   D. Keep Rhino current on his rabies vaccination.

   E. Rhino is allowed to run in sanctioned off-leash dog parks, provided Ms. Coria or Mr. Jimenez Sanchez are present, and provided Rhino is leashed at all times when he is not in the car or in the fenced off-leash area.

ORDERED November 9, 2018.

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 *December 10, 2018*. 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 3, 2018, HEARING IN THE APPEAL OF ARTURO JIMENEZ SANCHEZ, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V18008351

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Mari Isaacson, Riva Kiseleva, Andrei Medvedev (Interpreter), William Justyk, and Angela Coria.

The following exhibits were offered and entered into the record:

Department-offered exhibits:

Exhibit no. 1-A	Regional Animal Services of King County investigation report no. A18003087
Exhibit no. 1-B	Notice of violation no. V18008351, issued June 30, 2018
Exhibit no. 1-C	Animal bite report for bite no. B18001669, dated June 30, 2018
Exhibit no. 1-D	Call for service detail report no. SHFD00406318, dated June 30, 2018
Exhibit no. 1-E	Complaint form of June 30, 2018 incident by Riva Kiseleva, dated July 13, 2018
Exhibit no. 1-F	Animal report for animal no. A561872
Exhibit no. 1-G	Appeal, received July 24, 2018
Exhibit no. 1-H	Photograph of injury
Exhibit no. 1-I	Photograph of injury
Exhibit no. 1-J	Photograph of injury
Exhibit no. 1-K	Photograph of injury
Exhibit no. 1-L	Photograph of injury
Exhibit no. 1-M	Photograph of injury
Exhibit no. 1-N	Photograph of injury
Exhibit no. 1-O	Photograph of dog
Exhibit no. 1-P	Photograph of property
Exhibit no. 1-Q	Photograph of property
Exhibit no. 1-R	Photograph of property
Exhibit no. 1-S	RASKC staff report to the Hearing Examiner for file no. V18008351

Appellant-offered exhibits:

Exhibit no. 2-A	Statement from Jamie Flores
Exhibit no. 2-B	Video of dog
Exhibit no. 2-C	Video of dog
Exhibit no. 2-D	Video of dog
Exhibit no. 2-E	Video of dog
Exhibit no. 2-F	Video of dog

Exhibit no. 2-G	Photograph of injury
Exhibit no. 2-H	Photograph of dog
Exhibit no. 2-I	*Not admitted: Conversation thread of Tiffany Doody Blood, dated August 24, 2018*
Exhibit no. 2-J	*Not admitted: Continued conversation thread of Tiffany Doody Blood*
Exhibit no. 2-K	*Not admitted: Continued conversation thread of Tiffany Doody Blood*
Exhibit no. 2-L	Statement from Steve Walter, Nitro K9 LLC, dated September 19, 2018

The following exhibit was offered and entered into the record on October 15, 2018:

Department-offered exhibit:

Exhibit no. 1-T	RASKC investigation report no. A18005121
Exhibit no. 1-U	Aerial photograph of property

The following exhibit was offered and entered into the record on October 18, 2018:

Appellant-offered exhibit:

Exhibit no. 2-M	Declaration of Angela Coria, dated October 10, 2018
Exhibit no. 2-N	Declaration of William Justyk, dated October 18, 2018

DS/ld

November 9, 2018

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V18008351**

ARTURO JIMENEZ SANCHEZ
Animal Services Enforcement Appeal

I, Liz Dop, 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.

☒ placed via County INTEROFFICE MAIL to County staff to addresses on record.

DATED November 9, 2018.

Liz Dop
Legislative Secretary

Arturo Jimenez, Angela Coria
Hardcopy

Isaacson, Mari
Prosecuting Attorney's Office
Hardcopy

Justyk, William
Justyk Legal PLLC
Hardcopy

Kiseleva, Riva Samulovna
Hardcopy

Lindquist, Michael
Regional Animal Services of King County

Medvedev, Andrei (Do NOT Schedule in p.m.) Mr.