October 24, 2018

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. **V18008403**

WHITNEY RAQUEL RODIA
Animal Services Enforcement Appeal

Activity no.: A18003238

Appellant: **Whitney Rodia**
13021 33rd Avenue S
Tukwila, WA 98168
Telephone: (206) 612-0860
Email: whitneyrodia@hotmail.com

King County: Regional Animal Services of King County
represented by **Michael Lindquist**
21615 64th Avenue S
Kent, WA 98032
Telephone: (206) 263-5968
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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

EXAMINER PROCEEDINGS:

Hearing Opened:	October 10, 2018
Hearing Closed:	October 10, 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 asserts that one of Whitney Rodia's two pit bulls came through Michael and Maria Knights' fence and attacked their dog on July 8, 2018. Ms. Rodia appeals. Unless directed to by law—and no special directive applies to today's case—the examiner does not grant substantial weight or otherwise accord deference to agency determinations. Exam. R. XV.F.3. Ours is an open record, *de novo* hearing. 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.

2. Three witnesses testified at our October 10 hearing.

3. First, Mr. Knight offered very simple, straightforward testimony about the events of July 8. He was barbecuing in the backyard, his own dog lying nearby on the lawn. Ms. Rodia's adult pit bull got through the gate separating their yards and bolted straight to his dog. The pit bull latched onto his dog's neck. Mr. Knight then grabbed the pit bull and punched it, at which point the pit bull retreated. The whole incident took less than 60 seconds. After the pit bull retreated to its yard, Ms. Rodia came out, and Mr. Knight asked her to contain her dog until he could patch up the gate. Ex. 4 & 5. His testimony came across as unembellished, and overall we found him very credible.

4. Ms. Knight then took the stand. Her version of the incident was more dramatic and elaborate than Mr. Knight's. She said she was in the kitchen when she heard Mr. Knight utter an expletive and slam down the barbecue. She ran out to see her dog running towards their house with the pit bull chasing her dog, latching on to her dog's neck. She then saw Mr. Knight hit the pit bull. After Ms. Rodia came out, Ms. Rodia informed her that she would be leaving in a couple of days anyway. We did not find Ms. Knight nearly as credible as Mr. Knight.

5. Ms. Rodia testified next, asserting that she was visiting her mom and was sitting in the backyard, doing her homework, during the incident. Her dog and the Knights' dog were fighting through the fence. She watched the Knights' dog try to come through the fence and cut its neck on the fence. The Knights' dog had previously injured its neck, and simply reopened the wound during the fence altercation. She told the Knights she would not pay the veterinarian's bill, since they refused to provide a copy. Overall, we found her somewhat less credible than Ms. Knight and significantly less credible than Mr. Knight.

6. While witness testimony and demeanor is critical, and we listen to and watch hundreds of witnesses each year, we do not stop there. We now turn to other materials in the record.

7. Ms. Rodia's main thrust is that Mr. Knight's story changed. It is true that *Animal Services*' interpretation changed. Animal Services first issued a notice of violation asserting that both Ms. Rodia's pit bulls (the adult one discussed above, plus a juvenile) broke through the backyard fence and trespassed into the Knights' backyard. Ex. 8, Ex. 3 at 002. Animal Services repeated this two-dogs version even when it reissued its notice and order. Ex. 5.[1] The investigating officer's notes from an interview with Mr. Knight reported that Mr. Knight had said the second dog "was with the attacking pit bull but Mr. Knight says that dog did nothing but was just following along with the dog attacked," seems to imply that the officer gleaned from Mr. Knight that the second dog came into the Knights' yard on July 8.

8. As we analyzed officer notes in a previous case, we accord some,

> but still little, weight to the alleged inconsistencies between what a responding police officer wrote that [the complainant] said and what an Animal Services officer wrote that [the appellant] said, versus their respective hearing testimonies. What a third party, not present and available for questioning, reported that either of them said is not worth as much as what [the complainant] actually wrote in her complaint and [the appellant] actually wrote in his statement of appeal; any inconsistencies between their own written statements and their later hearing testimony is critical.[2]

9. Mr. Knight's own statement, in the written complaint he filed approximately 44 hours after the incident, was that the "Neighbors dog broke through the gate and attacked my dog. In my yard. Thankfully I was home to break up the fight." Ex. 2 at 002. That is "dog," singular, not "dogs" plural, and is not inconsistent with his testimony. His explanation that he told the investigating officer that Ms. Rodia's dogs had gotten loose and had come onto his yard (and into another neighbor's yard) at other times, and that the investigating officer apparently mis-ascribed those events to July 8, does not require any suspension of belief to accept.

10. Conversely, Ms. Rodia's testimony that the Knights' dog reinjured its neck poking through the fence has greater problems. She points to a veterinarian's report listing the Knights' dog's condition as "wound; puncture" as proof that the Knights' dog reinjured itself on July 8. Her interpretation that the vet was describing two separate events (a pre-existing wound, and a later puncture reopening that wound) is not persuasive. A far more plausible reading of the vet's report is that the first word was a description of the

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[1] Note: Animal Services' revised notice and order dropped the allegations related to the Rodia dogs' lack of a license (as Ms. Rodia later licensed both dogs), trespass for the juvenile dog, and running in packs (which requires two dogs to make a violation). Compare Exhibits 5 and 8.

[2] https://www.kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/animal%20enforcement/2017/2017%20april/V17006547_Masciocchi.ashx?la=en at ¶ 22.

category of affliction ("wound") and the second a descriptor or subcategory of that wound (a "puncture," as opposed to something like, say, the blunt force of a car striking a dog).

11. Additionally, Ms. Rodia wrote in her appeal statement that "the next day [i.e. July 9, Mr. Knight] did approach my mother informing her" of the bite and trip to the vet. Ex. 7. In her testimony she stated that Mr. Knight "came to me two days later after the incident had happened [i.e. July 10] and told me that he wanted me to pay his $550 vet bills." After she told him she was not going to pay, "then two days later [i.e. July 12] he called animal control," which she described as "retaliation" for her declining to pay. The problem with this version is that Animal Services received Mr. Knight's call on July 9 and his written complaint on July 10. Ex. 3 at 001; Ex. 2.

12. There is also something slightly inconsistent about Ms. Rodia stating that she told the Knights she would not pay the vet bill absent the Knights producing veterinarian proof. Again, contrary to the Knights' version that Ms. Rodia only came out after the attack was over, Ms. Rodia testified that she was sitting outside watching the entire incident, and that she saw the Knights' dog cram its head through the broken fence. Demanding proof before paying a bill does not quite jibe with her having been an eyewitness to the altercation and seeing exactly how the Knights' dog incurred its injuries—sticking its head through the fence.

13. In the end, we do not decide cases on a "beyond a reasonable doubt" standard or even a "clear and convincing" standard.[3] Instead, we apply a "preponderance of the evidence" standard. KCC 20.22.210.B. And while Animal Services' case is not a slam dunk, we find it more probable that the incident in question involved Ms. Rodia's dog charging into the Knights' yard and attacking and biting the Knights' dog, than that the Knights' dog injured itself sticking its head through the fence.

DECISION:

1. Ms. Rodia's appeal is DENIED.

2. Ms. Rodia's shall pay the resultant $550 penalty to Animal Services by **December 26, 2018**.

ORDERED October 24, 2018.

David Spohr
Hearing Examiner

[3] *Mansour v. King County*, 131 Wn. App. 255, 265, 128 P.3d 1241, 1246 (2006) (rejecting "arbitrary and capricious" as too low a standard, but rejecting "beyond a reasonable doubt" and "clear and convincing evidence" as too high a standard, and determining that a "preponderance of the evidence" was the correct standard for animal enforcement cases). *Mansour* occurred during an era where a different County tribunal, not the examiner, entertained animal enforcement appeals.

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 26, 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 10, 2018, HEARING IN THE APPEAL OF WHITNEY RAQUEL RODIA, REGIONAL ANIMAL SERVICES OF KING COUNTY FILE NO. V18008403

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Sergeant Michael Lindquist, Michael Knight, Maria Anderson Knight, and Whitney Rodia.

The following exhibits were offered and entered into the record:

Exhibit no. 1	Regional Animal Services of King County staff report to the Hearing Examiner
Exhibit no. 2	Online complaint form of date July 8, 2018 incident by Michael Knight, dated July 10, 2018
Exhibit no. 3	RASKC investigation report no. A18003238
Exhibit no. 4	Photographs of property
Exhibit no. 5	Notice of violation no. V18008403, issued September 25, 2018
Exhibit no. 6	Aerial photograph of neighborhood
Exhibit no. 7	Appeal, received July 27, 2018
Exhibit no. 8	Notice of violation no. V18008403, issued July 13, 2018

DS/ld

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CERTIFICATE OF SERVICE

SUBJECT: Regional Animal Services of King County file no. **V18008403**

WHITNEY RAQUEL RODIA
Animal Services Enforcement Appeal

I, Vonetta Mangaoang, 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 October 24, 2018.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator

Knight, Michael/Maria
Hardcopy

Lindquist, Michael
Regional Animal Services of King County

Rodia, Whitney
Hardcopy