



**DECISION OF THE SNOHOMISH COUNTY
HEARING EXAMINER**

Hearing Examiner's Office

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Millie Judge
Hearing Examiner

Subject: Appeal of Notice of Leash Law Violation

File No.: 12-814572

M/S 405
3000 Rockefeller Ave.
Everett, WA 98201

Appellant: Nicole and Jason Reed

(425) 388-3538
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Respondent: Snohomish County Auditor – License and Animal Control Services Division

DECISION DATE: March 15, 2012

DECISION SUMMARY: The Appeal is denied.

INTRODUCTION

This matter having come before the Hearing Examiner on March 14, 2012 and the testimony of witnesses having been heard and all exhibits admitted into evidence having been considered, the Hearing Examiner makes the following findings of fact, conclusions of law and decision based on a preponderance of the evidence:

FINDINGS OF FACT

1. Appellants, Nicole and Jason Reed, are the owners of two dogs: Rocky, a brindle-colored, male Boxer, and Cean, a tan, male Boxer. Appellant resides at 1118 207th Place SE, in Bothell, Washington.
2. On January 24, 2012, at around 7:30 a.m., the Appellants' dogs escaped from their fenced yard and charged a neighbor, Jeffrey Simms, who was walking his Pomeranian, Kekoa, on a leash on 270th Place SE, a public street. Rocky pinned Kekoa to the ground, while Cean jumped and bit Mr. Simms on the arm as he attempted to rescue his dog. Mr. Simms fought back against Cean, kicking him in the face to get him to release his jacket sleeve. The attack was unprovoked.
3. At the time of the incident, Ms. Reed was in her basement with daycare children. She ran to the front door to call the dogs. When she saw the commotion through a window. The dogs quickly ran inside when she opened the door. Mr. Simms was quite upset after the attack, kicking over the Reed's garbage cans which were at the curbside, and swearing profanities. Ms. Reed stated that she did not want to approach him at that time and shut the door behind the dogs.
4. Ms. Reed does not deny the incident occurred. However, she claims that her dog Cean was a victim in the attack, based on cuts he sustained to his face and paw. In her statement submitted in support of the appeal, Ms. Reed states that there was no intent on their part to allow the dogs to be in their front yard without them being present. She stated that the younger dog, Cean, is a

one-year old pup, who was just excited to see Mr. Simms and jumped up on him. (Exhibit 20) In her statement, Appellant admits that the dogs escaped out of their back yard, and were found in the front yard, without their direct supervision. She admits that Cean jumped on Mr. Simms but denies that he was injured as he had no marks on him. She asserts that Kekoa was the aggressor, given that Cean had bloody scratches on his face. (Exhibit 21) She asserts that Mr. Simms was an aggressor as to Cean, and that he smashed his back paws during the altercation, causing him to need medical attention. (Exhibit 20)

5. Animal Control Services Officer Rich Wiersma investigated the case. He visited both Mr. and Mrs. Simms and Ms. Reed and obtained sworn witness statements from them. (Exhibits 8, 9 and 10) Jeffrey Simms and Nicole Reed also appeared and testified at the public hearing.
6. Officer Wiersma testified at the public hearing. He testified as to the facts set forth in his statement which were the result of his investigation. His findings are consistent with the facts presented by the parties in this case. (Exhibit 7) Officer Wiersma issued a First Notice of Violation of Leash Law on January 31, 2012 based on his investigation.
7. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction to hear this appeal pursuant to Chapter 2.02 SCC and SCC 9.12.101.
2. At the hearing, the director of the animal control agency and officers have the burden of proving the leash law violation occurred by a preponderance of the evidence.
3. The County Code provides: "It is unlawful for the owner or custodian of any dog to cause, permit, or allow such dog to roam, run, stray or be away from the premises of its owner or custodian or to be on any public place or any public property unless the dog is under control. . . ." (SCC 9.14.030) Enforcement of a leash law violation is made pursuant to SCC 9.12.090 (Notice of Violation or "NOV").
4. Officer Wiersma issued a NOV to Ms. Reed based on the fact that Cean and Rocky were found running at large off of their property, not under control, and on a public street on January 24, 2012. (Exhibit 3) A \$50.00 civil fine was assessed for a first violation.
5. Based on a preponderance of the evidence, as set forth in the findings of fact set forth above, the Hearing Examiner concludes that the Auditor's Office, Licensing Division had sufficient evidence to charge Ms. Reed with a Leash Law Violation. The dogs were found off of the Reed's property on a public street (running at large), on January 24, 2012, and were not under control of the owners when they attacked Mr. Simms and his dog, Kekoa. The Hearing Examiner concludes that a violation of SCC 9.14.030 occurred.
6. The Appellant admitted that the violations occurred both in Exhibit 20 and during Ms. Reed's testimony at the public hearing. Appellant failed to prove that the dogs were either provoked or not off of their property at the time of the incident.
7. Any conclusion of law that should be declared a finding of fact, and vice versa, is adopted as such.

DECISION

The appeal is denied.

Decision issued this 15th day of March, 2012.


Millie Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION and APPEAL PROCEDURES

The Decision of the Hearing Examiner is final and conclusive with right of appeal to the Superior Court. However, reconsideration by the Examiner may also be sought by one or more Parties of Record as provided by SCC 9.12.101. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 2.02 SCC and the respective Examiner Rules of Procedure.

Reconsideration

Any Party of Record may request reconsideration by the Examiner. A Petition for Reconsideration must be filed in writing with the Office of the Hearing Examiner, 3000 Rockefeller Avenue, M/S #405, Everett WA 98201, on or before **MARCH 26, 2012**. There is no fee for filing a Petition for Reconsideration. **Reconsideration is filed under SCC 2.02.170 and requires that the petitioner for reconsideration "shall mail or otherwise provide a copy of the petition of reconsideration to all parties to the appeal on the date of filing."**

The petition for reconsideration does not have to be in any special form but must:

- (a) Contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any;
- (b) Identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested;
- (c) State the relief requested; and,
- (d) Where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
or

- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered.

Petitions for Reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 2.02.170. Please include the County file number in any correspondence regarding this case.

Appeal

This decision of the Hearing Examiner is final and conclusive and is reviewable by an action for Writ of Review filed in Snohomish County Superior Court. The following paragraphs summarize the appeal process. For more information about appeals to Superior Court, please see Chapter 7.16 RCW, Chapter 2.02 SCC, Chapter 9.12 SCC and applicable court rules.

The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized documents, and of staff time spent in copying and assembling the record and preparing the return for filing with the court shall be borne by the petitioner. [SCC 2.02.195(1) (b)] Please include the county file number in any correspondence regarding this case.

Staff Distribution:

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APPEAL – LEASH LAW

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