

**STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE
Office of the Commissioner**

Via Email and Certified Mail, Return Receipt Requested

June 7, 2024

Paul Novicelli 280 Wall St.
Meriden, CT 06450
novicop@snet.net

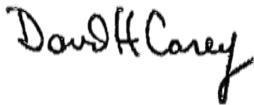
Emily Holland, Esq.
142 East Main Street Meriden, CT 06450
sbacon@meridenct.gov
bkline@meridenct.gov
EHolland@meridenct.gov

Marilyn M. Gaffey
24 High Meadow Lane Middlefield, CT 06455
Marilyn@larosacc.com

FINAL DECISION

Pursuant to Connecticut General Statutes Section 4-179, enclosed is the Final Decision of the Final Decision Maker, David H. Carey, in the above referenced matter.

Sincerely,



David H. Carey, Final Decision Maker

Enclosures: Final Decision

**STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE**

CASE NO. 21-31172

IN THE MATTER OF:

**APPEAL OF RESTRAINT ORDER, ISSUED BY CITY OF MERIDEN FOR THE DOG
DIAMOND CARED FOR BY PAUL NOVICELLI/KEEPER**

FINAL DECISION

I, David H. Carey, the designated Final Decision Maker in the appeal of restraint order issued by the City of Meriden, in the matter of a dog named Diamond, cared for by Paul Novicelli (“Owner” or “Mr. Novicelli”), hereby issue the Final Decision in this matter. I have thoroughly reviewed the entire record, including the transcripts of the hearing and oral argument (which I attended), all the admitted exhibits, and all other related submissions of the parties. I also reviewed and assessed the parties’ alleged discrepancies in the Proposed Final Decision issued by Hearing Officer Taiman. For the reasons set forth below, I recommend that the City of Meriden’s Restraint Order be affirmed with the following modifications outlined as follows.

FINDINGS OF FACT:

1. On October 25, 2023, Commissioner Brian P. Hurlburt appointed Edward C. Taiman, Jr. the Hearing Officer in this matter to issue a Proposed Final Decision. Connecticut General Statute § 4 – 179. Exhibit Hearing Officer (“Ex. HO”) -4.
2. On October 7, 2023, Mr. Novicelli, the caretaker¹ of a dog named Diamond, appealed a restraint order (“Restraint Order”) entered by City of Meriden Animal Control Officer (“ACO”) Sarah Bacon. Ex. HO-1.
3. On October 16, 2023, Marilyn Gaffey, also appealed the Restraint Order requesting intervenor status. Ex. HO-2. On November 6, 2023, the Hearing Officer requested that Ms. Gaffey file a brief to establish that she has been aggrieved by the Restraint Order which

¹ The dog Diamond is owned by Mr. Novicelli’s daughter, Holly, who is currently unable to care for it.

would give her intervenor status. Ex. HO-6. She filed her brief on December 6, 2023 (Ex. HO-7) and on January 3, 2024, and the Hearing Officer granted her intervenor status. Ex. HO-8.

4. On October 3, 2023, ACO Bacon entered the Restraint Order now at issue. Ex. Town (“Ex. T”) -1.
5. On January 17, 2024, a Notice of Hearing was sent by email to the City’s attorney, ACO Bacon, Mr. Novicelli and Ms. Gaffey, for a hearing that was scheduled for February 22, 2024. Ex. HO-11.
6. The hearing was held on February 22, 2024 (the “Hearing”), and was concluded that date after the City, Mr. Novicelli and Ms. Gaffey, either individually or through their legal counsel, each testified and/or called all of their respective witnesses, put in all of their exhibits, and stated that they did not have any other evidence to be submitted into the record.
7. The hearings were conducted in accordance with the Uniform Administrative Procedures Act, and the Department’s Rules of Practice pertaining to contested cases, which regulations were provided to the parties. Ex. HO-11.
8. At issue is the appeal of the Restraint Order issued by the City’s ACO Bacon on October 3, 2023, to Mr. Novicelli concerning a dog named Diamond. Ex. T-12.
9. The dogs are owned by Mr. Novicelli’s daughter but cared for by him at his residence at 280 Wall Street, Meriden, CT 06450 (the “Property”). Mr. Novicelli represented himself throughout the hearing.
10. The Intervenor, Marilyn Gaffey, resides at 24 High Meadow Lane, Middlefield, CT 06455.
11. As testified to at the Hearing, on January 26, 2023, ACO Bryan Kline issued a Case Incident Report concerning a cat that was fatally injured allegedly by 3 roaming Husky dogs while tethered to its owner’s porch at 117 Pearl St., Meriden, CT. Ex. T-1. February 22, 2024 transcript (the “Transcript”) at pgs. 32 – 34. Although no one witnessed the attack, Mr. Novicelli was observed by a neighbor loading 3 Husky type dogs into 2 vehicles. There is some question as to which, if any, of the dogs participated in the attack. Id. Mr. Novicelli subsequently admitted that his dogs were loose but was unaware of them killing a cat. Transcript at 34. An infraction was issued to Mr. Novicelli for 3 counts of dog nuisance and 3 counts of allowing a dog to roam. Transcript at 35, Ex. T-1.

12. On October 2, 2023, ACO Bacon was called to 22 Wells Terrace Meriden, CT. The Complainant, Rodney Marcantonio, who is the brother to the intervenor Marilyn Gaffey, stated that two black-and-white huskies came into his mother's yard and attacked Ms. Gaffey's 13-year-old Yorkshire Terrier named Rocco. Ex. T-2. Rocco was on a leash and wearing a harness. One of the 2 intruding dogs had a plastic cone around its head and the other did not. The dog without the cone "ripped the Yorkshire Terrier straight out of its harness and began running around with the dog in its mouth, shaking it as it ran." *Id.* Mr. Marcantonio chased and yelled loudly at the dog which finally dropped the Yorkshire Terrier out of its mouth. Ms. Gaffey, the owner of the dog, immediately transported the dog to a local veterinary hospital and due to its severe injuries, it was later euthanized. *Id.*, Transcript at 44 – 48.
13. ACO Bacon asked Mr. Marcantonio if he knew where the attacking dogs lived, and he stated he believed they lived on Wall Street. Ex. T-2. As per ACO Bacon's Case Incident Report, Ex. T-2, "[o]ur office is aware of a home that owns multiple Husky type dogs that have been frequent roamers in the past. They belong to Paul Novicelli at 280 Wall Street. I immediately went to 280 Wall Street to speak with Novicelli." Mr. Novicelli acknowledged he knew that 2 of his dogs had gotten out, a male and a female, but they were now back in the house. The male dog had a plastic cone on its head because it was recently neutered. The other dog, a female, had no plastic cone on its head and was named Diamond. From that, ACO Bacon was able to conclude that Diamond was the attacking dog. *Id.*
14. After learning that Rocco had died, ACO Bacon issued the Restraint Order. Transcript at 48 – 49. As ACO Bacon testified:

By Attorney Holland:

Q. [W]hat other factors lead you to issue that restraint order?

A. The severity of the attack was definitely one of the main concerns. But also the history of the dogs continually leaving the property, the owner not being responsible for being able to contain them. We didn't want another animal to die because of this.

15. The Restraint Order requires Mr. Novicelli to comply with the following:
- a. When not on his property Diamond shall at all times be on a secure leash not more than 6 feet in length under the control of a responsible individual not less than 18 years of age and the animal shall be muzzled securely.

- b. When on Mr. Novicelli's property and not confined within the residence, Diamond shall be confined to a kennel structure made of chain-link. The kennel structure must be on a concrete pad to prevent digging out and must have a cover or roof to prevent climbing out.
- c. The animal is not to be tied, tethered or loose at any time, either on or off his property.
Ex. T-12.

16. As per the testimony of ACO Bacon, the Restraint Order was the least restrictive way of making sure that Diamond was restrained to the property and was safe when she was off the property.

By Attorney Holland:

Q. And in your opinion, was this order the least restrictive way of making sure that the dogs were confined on the property...and safe when they were off the property?

A. Yes. Transcript at 49-50.

17. The loss of Rocco has had a tremendous impact upon 83-year-old Barbara Ann Marcantonio who is the mother of the intervenor, Marilyn Gaffey, and her brother Rodney Marcantonio. Rocco was her friend and companion and in all respects, her comfort dog. Rocco brought her joy and happiness. She witnessed the attack which occurred on her property. Intervenor Ex. I-1. The attack and the subsequent loss of Rocco has caused her to suffer from post-traumatic stress syndrome.
18. The loss of Rocco has also greatly impacted Ms. Gaffney, her husband and daughter, and her brother Rodney Marcantonio. Exs. I-2 & I-3.
19. In his testimony, Mr. Novicelli did not deny but instead freely admitted that Diamond attacked Rocco. Transcript at 75. He testified that on the date of Rocco's demise, Diamond did not escape over or under his fence, but escaped when an Amazon delivery driver left the front gate open (Transcript at 72), which I find to be credible. When the cat was killed, his testimony was that his dogs did not jump over his fence, but rather, got out through the front door. Transcript at 75. I also find this to be credible.
20. After the issuance of the Restraint Order, Mr. Novicelli has taken steps to prevent any further escape either through the backyard fence or his house. He installed metal gates which create what he described as "an airlock" for both his front and back doors "and the dogs have no way of getting out." Transcript at 76. See also, Exs. O-1, O-2. The gates,

which are 6 feet high (Transcript at 77) allow he and his wife to enter through the front or rear door, close that door, and then go through the gates so that if Diamond or one of his other dogs were to somehow bypass the gates, they would not be able to escape the home. Id. Mr. Novicelli has installed anti-dig fencing to prevent any of his dogs from digging under the fence and escaping. Finally, he has installed metal runners alongside the fence from which the dogs have never escaped. Transcript at 76.

21. Mr. Novicelli is of the understanding that the Restraint Order is effective statewide and follows the dog Diamond anywhere within the confines of the state of Connecticut.

22. The Hearing Officer determined that the City of Meriden sustained its burden by a preponderance of the evidence that the Restraint Order was appropriate at the time of its entry.

LEGAL DISCUSSION AND RULING

Connecticut General Statute § 22–358(c) provides that “the Commissioner, the Chief Animal Control Officer, any municipal animal control officer... may make any Order concerning the restraint or disposal of any biting dog or other animal as the Commissioner or such officer deems necessary.” It further provides that following a hearing on such Order the Commissioner may affirm, modify or revoke such Order as the Commissioner deems proper.” At the time that the Restraint Order was issued, the municipal jurisdiction in Conn. Gen. Stat. section 22-358 is limited to the City of Meriden.

As stated in the Proposed Final Decision, it is evident from this record that there is no question the attack and bite on Rocco was vicious and unwarranted. Understandably, Ms. Gaffney and her family have been greatly affected. However, Diamond is not the sole problem. This is also an owner problem, or in this case, a caretaker problem. Diamond escaped through an open gate due to the carelessness of both Mr. Novicelli and an Amazon delivery driver.

Mr. Novicelli admits that Diamond attacked Rocco, and the question therefore becomes what is an appropriate restraint order? Given the severity of Diamond’s attack on Rocco, a Restraint Order is appropriate and necessary for the safety of other animals and potentially for the safety of people. The dog Diamond’s attack and bite(s) killed a defenseless dog that was an important

part of Barbara Ann Marcantonio's life, as well as her son Rodney and the Intervenor's family. However, the record also establishes that since the entry of the Restraint Order, Mr. Novicelli has made substantial improvements to his home to secure against the escape of his dogs, which includes Diamond.

In that vein, per the oral argument and also per my request for further information about the adequacy and legality of the metal runner located on Mr. Novicelli's property, following oral argument, by email on May 9, 2024, the City of Meriden submitted further information, including photographs, regarding the secure metal runner at Diamond's residence. ACO Bacon viewed the property to confirm information pertinent to the adequacy of the metal runner system and about the runner system per the requirements of Conn. Gen. Stat. section 22-350a, in that:

1. There are three tethers set up in the backyard (there are 3 huskies on the property);
2. All three tethers allow the dogs to move 8 feet in every direction;
3. No tethers have any weights attached or metal chain links;
4. No tethers have a threat of the animal tangling or choking themselves over anything;
5. The dogs wear either regular dog collars or harnesses while tethered. There are no choke chains, martingales, coat hangers or other prohibited restraints;
6. The entire property is fenced in. The fenced area has cement tiles placed along the edges where the fence meets the ground to help prevent digging.

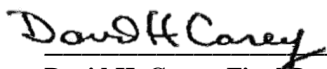
Also, during oral argument, Mr. Novicelli represented to this Final Decision maker that Diamond is already supervised 99% of the time while on the secure metal runner. Oral argument Tr. at page 9.

Therefore, having carefully reviewed all the evidence in the record, including testimony and exhibits presented, post hearing submissions, and representations made at the oral argument, I conclude the City of Meriden has sustained its burden by a preponderance of the evidence that a Restraint Order was certainly appropriate at the time it was entered to protect other animals and also public safety. Nonetheless, when considering the substantial improvements to the property made by Mr. Novicelli to safely contain Diamond while he is outside at his own residence, I find that he has sustained his burden of proof by a preponderance of the evidence that the Restraint Order for Diamond should remain in effect but be modified, as follows:

- a. When not on his residence property and within the City of Meriden, Diamond shall at all times be on a secure leash not more than 6 feet in length under the control of a

responsible individual not less than 18 years of age and the animal shall be muzzled securely.

- b. When at his residence at Mr. Novicelli's property and while not safely confined within the residence, Diamond shall be permitted to be on a secure metal runner to permit the dog to run on Mr. Novicelli's property without opportunity to escape. A City of Meriden ACO shall, upon reasonable notice to Mr. Novicelli, be permitted to inspect the metal runner to ensure its security with respect to this Order. Both Mr. Novicelli and a City of Meriden ACO assigned to this matter shall work together in the spirit of cooperation when any improvements to the metal runner are suggested by the ACO. When transporting Diamond to and from the residence home while on his property, or to and from the secure metal runner, Diamond is to be on a secure leash not more than 6 feet in length under the control of a responsible individual not less than 18 years of age. Only upon properly securing Diamond to the runner can the dog be released from the leash. While Diamond is on the secure metal runner, she shall be supervised at all times by a responsible individual not less than 18 years of age.
- c. Except when properly secured within his residence, Diamond is not to be loose at any time, either on or off his property in the City of Meriden.


David H. Carey, Final Decision Maker