

**STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE**

IN THE MATTER OF:

APPEALS FROM RESTRAINT
AND DISPOSAL ORDERS ISSUED BY
THE TOWN OF WINDSOR

“Dominique”
Owned by Bradshaw Smith

Dated: October 19, 2012

FINAL DECISION

As the final decision maker in these matters, the following is the Final Decision from the Appeals from the Restraint and Disposal Orders Issued by the Town of Windsor against a dog named Dominique, owned by Mr. Bradshaw Smith:

I. FINDINGS OF FACT:

A. Procedural Facts:

1. Commissioner Steven K. Reviczky appointed Attorney Richard Joaquin to act as Hearing Officer for these two Town of Windsor Orders (a Restraint and a Disposal Order) and to issue him proposed decisions. The June 4, 2011 Town of Windsor Restraint Order is Exhibit T-1 in the Restraint Order Hearing record (“RO”) (and also in Exhibit T-3 of the Disposal Order Hearing record) and the July 15, 2011 Town of Windsor Disposal Order is on the second page of Exhibit T-1 of the Disposal Order Hearing record (“DO”).
2. Administratively, the Disposal Order Hearing was noticed and held first. After the determination that the Restraint Order was not moot and required adjudication, a Restraint Order Hearing was thereafter noticed and held separately.
3. A September 29, 2011 Notice of Disposal Order Hearing, which hearing was originally scheduled for October 31, 2011, was provided via certified mail to the Town of Windsor and its representatives as well as the owner of the dog subject to the disposal order, Mr. Bradshaw Smith. The Hearing Date was re-scheduled to December 12, 2011, and thus another Notice of Disposal Order Hearing, this one dated November 9, 2011, was mailed to the parties in the same fashion.

4. On December 12, 2011 a hearing was held and concluded for the appeal of the July 15, 2011 Disposal Order issued by the Town of Windsor concerning the disposal of a dog known as Dominique, a female Dalmatian, approximately 8 years old, owned by Mr. Smith. (DO Exhibit T-1).

5. At the Disposal Order Hearing, the Town was represented by Attorney Kevin Deneen and Mr. Smith was *pro se*. Testifying at the Disposal Order Hearing for the Town was Town of Windsor Animal Control Officer (ACO) Brian Davis and Mr. Smith testified on his own behalf.

6. A Proposed Decision for the Disposal Order was issued by the Hearing Officer dated January 23, 2012. The Proposed Decision for the Disposal Order was mailed with a letter from Commissioner Reviczky, dated January 26, 2012, whereby the parties were given an opportunity to file exceptions or briefs and to request an oral argument before the Commissioner. A request for oral argument was made by Mr. Smith.

7. By certified letter dated March 6, 2012, the parties were informed that oral argument on the Disposal Order Proposed Decision would take place before the Commissioner on March 29, 2012 and oral argument was held on that date.

8. Thereafter, an April 23, 2012 Notice of a Restraint Order Hearing, scheduled for May 18, 2012, was sent to the parties by certified mail. A Restraint Order Hearing was held before Hearing Officer Joaquin on May 18, 2012.

9. Attorney Kevin Deneen represented the Town of Windsor at the Restraint Order Hearing and Mr. Bradshaw Smith was *pro se*. Testifying at the Restraint Order Hearing was Bonnie Williams and Town of Windsor ACO Brian Davis for the Town and Mr. Smith testified on his own behalf.

10. A Proposed Decision for the Restraint Order was issued by the Hearing Officer dated August 17, 2012. The Proposed Decision for the Restraint Order was mailed with a letter from Commissioner Reviczky, dated October 1, 2012, whereby the parties were given an opportunity to file exceptions or briefs and to request an oral argument before the Commissioner.

11. In response, by letter dated October 8, 2012, Mr. Bradshaw sent a letter to the Commissioner, attaching another letter written by Mr. Bradshaw, dated June 20, 2012.

B. Disposal Order Facts:

12. At the Disposal Order Hearing, Mr. Smith informed the Hearing Officer that the sole purpose of the December 12, 2011 hearing was the appeal of the Disposal Order; and the Town did not object. DO Transcript (Tr.) pages 7-8. The December 12, 2011 hearing proceeded only as a hearing on the Disposal Order. *Id.*

13. The incident that gave rise to the initial Restraint Order occurred on May 25, 2011, at a

public track located at the Windsor Middle School. (DO Exhibit T-2). The incident, whereby Dominique was involved in physical contact with a dog named "Rajah," owned by a Ms. Bonnie Williams, is outlined in DO Exhibit T-2. According to DO Exhibit T-2, Dominique was not a leash while Rajah was on a leash. Immediately after the two dogs had physical contact with each other, Ms. Williams discovered that Rajah had been injured and was bleeding. *Id.*

14. In a written statement (also contained in DO Exhibit 2), Ms. Williams states that she informed Mr. Smith that his dog bit her dog, but Mr. Smith proceeded to walk away.

15. Ms. Williams brought her dog to the Kennedy Road Vet Clinic where he stayed overnight for treatment under the care of a Dr. Sachdev. (DO Exhibit T-2 statement of Ms. Williams). Dr. Sachdev informed ACO Davis that the bite wound to Rajah was very deep and required subcutaneous as well as outer stitches. (DO Exhibit T-2, *see*, page 2 of ACO Davis' Supplemental Report, dated May 26, 2011).

16. DO Exhibit T-2 contains photographs of stitches on the dog Rajah and a copy a Kennedy Road Veterinary Clinic Invoice for \$566.70.

17. According to DO Exhibit T-2, on or about May 31, 2011, when ACO Davis met with Mr. Smith at his home, Mr. Smith said his dog was not involved in any incident at the middle school the prior week. (DO Exhibit T-2, *see*, page 2 of ACO Davis' Supplemental Report, dated May 26, 2011). Thereafter, Mr. Smith was identified as the man with Dominique during the May 25, 2011 incident, after Ms. Williams identified him in a police photo line-up on June 2, 2011. *Id.*

18. ACO Davis also reported in DO Exhibit T-2, that he received two prior complaints about Dominique being off of her leash; and that on April 5, 2011, ACO Davis himself observed Dominique off leash (either on the Windsor Sage Park Middle School property or residential property) and that ACO Davis informed Mr. Smith that this action was in violation of town ordinance regarding restraining his dog. *Id.*

19. A Restraint Order was issued to Mr. Smith on June 4, 2011 for the incident between Dominique and Rajah, to which Mr. Smith appealed. DO Exhibits T-3 and D-1.

20. On or about June 13, 2011, Dominique was found roaming and was taken to the Windsor Dog Pound. DO Transcript pages 16-17.

21. By letter dated June 14, 2011, Mr. Smith was informed that on June 13, 2011, Dominique was seized for violation of the Restraint Order and was at the Windsor Dog Pound. Among other things, the letter informed Mr. Smith that Dominique would be held, at \$15.00 per day that she remained at the pound, and that if she was not claimed within 15 days after receiving the letter or there was no correspondence, a Disposal Order would be placed on the dog pursuant to CGS 22-348(h). DO Exhibit T-5 and DO Tr. pages 17-18.

22. As of the Disposal Order Hearing date, Mr. Smith had not come forward to claim his

dog or pay the fees. DO Tr. pages 18-20. The Disposal Order was issued on July 15, 2011. *Id.* at page 18.

23. The Disposal Order states, among other things but in pertinent part, "Mr. Smith has made no attempt to claim his dog after it was seized 6/13/11 by Officer Kaldy when Mr. Smith was found to be in violation of a Restraint Order which was issued to him on June 4, 2011." The Disposal Order does not state the date of the bite, or the person or animal bitten or any other information relating to the May 25, 2011 incident. DO Exhibit T-1.

24. During his testimony at the Disposal Order Hearing, Mr. Smith testified, among other things, that "there is no authority for requiring a person to, in this case, pay boarding fees for an offense or an alleged offense for which they have not been found culpable." DO Tr. at page 36; and that he has "no intention of paying any disposal fees or claiming any animal until I have been found culpable of the offense, or some alleged offense for which the order was issued. And so far, that has not happened." *Id.* at page 39. (And *see also*, DO Tr. pages 41, 43, and 55-57.

25. The Town, through council, clearly articulated the reason why the Disposal Order was issued: "[r]egardless of how the animal was seized, it's the 15 days -- the failure to claim the animal that's the basis for the disposal order --it says, "He made no attempt to claim his dog after it was seized on 6/13 when he was found." Whether this dog was simply roaming, unlicensed, whatever, the dog was seized as of the 15th." DO Tr. page 46; *see also* DO Tr. pages 53, 65, and 67. In response to a statement by the Hearing Officer that the way the disposal order was written presupposes that there was a violation of the restraint order, council for the Town stated: "No. It was the failure to claim the animal, which is the first sentence." DO Tr. page 66 and *see also* DO Tr. at page 70 ("[if] he had claimed the dog that restraint order still would have been in effect, subject to the appeal"). Finally, at DO Tr. page 76; in response to a statement by the Hearing Officer that because [Mr. Smith] had not redeemed the dog in countless months, council stated that the reason for the disposal order is "[s]eparate and apart from how the dog was ultimately seized."

D. Restraint Order Facts:

26. Ms. Williams testified that her dog Rajah was on a leash with her during an incident that took place on May 25 2011, that involved physical contact between her dog Rajah and Mr. Smith's dog Dominique, at the Sage Park Middle School track. Ms. Williams testified that Mr. Smith's dog was not on a leash. RO Tr. at pages 20-24 and 36-37 and RO Exhibit T-5.

27. Ms. Williams testified that after Rajah and Dominique had physical contact, Ms. Williams discovered that Rajah had two gashes in his back. Upon discovery, Ms. Williams testified that she "started screaming at the gentleman, Mr. Smith . . . [y]elling at him telling him his dog just bit my dog. And he just looked around. He called his dog to him and he literally walked out of the track area. Again, his dog was never on a leash." RO Tr. pages 24-25 and also *see*, Tr. pages 28-29 and 34 and RO Exhibit T-5.

28. Ms. Williams testified that Rajah was not cut or bleeding immediately prior to the incident with Mr. Smith's dog and there were no other dogs interacting with Rajah. RO Tr. at page 29.

29. Ms. Williams brought Rajah to the Kennedy Road Veterinary Center for his injury where he was kept overnight and received almost sixteen stitches, in and out. The bill for veterinary care was almost \$600. RO Tr. pages 25-26 and 44-45 and RO Exhibits T-3, T-4 and T-5.

30. RO Exhibit T-2 is a photograph of Dominique and RO Exhibit T-4 is a photograph of Rajah (after the physical contact with Dominique and after Rajah went to a veterinarian).

31. ACO Davis testified that when he met with Mr. Smith about the incident at the high school, Mr. Smith told him that his dog was not involved in any incident at the high school. RO Tr. page 51. *See also* RO Exhibit T-7: when ACO Davis met with Mr. Smith at his home on May 31, 2011, ACO Davis reports that Mr. Smith said his dog was not involved in any incident at the middle school the prior week. (RO Exhibit T-7). (The middle school and the high school are both on the same street, but on opposite sides. RO Tr. page 47). On rebuttal, ACO Davis states that he asked Mr. Smith if his dog was involved in an altercation with another dog at the middle school in the prior week. RO Tr. pages 72-73.

32. Mr. Smith was identified as the man with Dominique during the May 25, 2011 incident after Ms. Williams identified him in a police photo line-up on June 2, 2011. (RO Exhibits T-6¹ and T-7 and RO Tr. pages 51-52).

33. ACO Davis testified that prior to the May 25, 2011 incident between Dominique and Rajah, a Sergeant Nairy of the Windsor Police Department received complaints about Mr. Smith allowing his dog to roam on school property and the students were filing complaints against the dog that appeared aggressive to them as they were entering and leaving school (RO Tr. page 46); that Sergeant Nairy informed ACO Davis that she observed the dog loose on one occasion on the south side of the building and Mr. Smith was not in view and was on the east side of the building (RO Tr. pages 46-47); and that Sergeant Nairy advised Mr. Smith that he couldn't leave his dog roaming loose. RO Tr. page 47.

34. In April, ACO Davis himself observed Mr. Smith on school grounds with his white and black Dalmatian off leash and told him of the complaints and advised him that his dog has to be on a leash. RO Tr. pages 47-48; and see RO Exhibit T-7, whereby ACO Davis reports that he received two complaints about Dominique being off of her leash; and that on April 5, 2011, ACO Davis himself observed Dominique off leash (either on the Windsor Sage Park Middle School property or residential property) and that ACO Davis informed Mr. Smith that this action was in violation of town ordinance regarding restraining his dog. *Id.*

35. In RO Exhibit T-8, ACO Davis reports that when ACO Davis and Windsor Officer

¹ The public file and record in this case will contain a redacted version of RO Exhibit T-6, with the dates of birth redacted.

Valenti met with Mr. Smith on June 4, 2011, he asked Mr. Smith if he could bring his dog outside to check for any possible injuries that might have occurred during the incident and to verify the sex of the dog; Mr. Smith said the dog was not injured and that it was a female and refused to bring the dog outside. *See also* RO Tr. page 78. RO Exhibit T-8 also outlines Mr. Smith's aggression towards the officers when he received a citation and the Restraint Order.

36. In his own testimony, Mr. Smith states he was at the high school track on May 25, 2011. Mr. Smith stated that his animal was not on a leash and also that Ms. Williams' dog was also not on a leash. RO Tr. pages 63-64. Mr. Smith testified that the two dogs did interact and that the two dogs were chasing each other. RO Tr. pages 64-65. Mr. Smith testified that he did not see his dog bite Ms. Williams' dog and that his own dog came home with a puncture wound to her outer ear. *Id.* at 66. According to Mr. Smith, with respect to a conversation Mr. Smith had with ACO Davis some days later or about a week later [after May 25, 2011], Mr. Smith answered "no," when asked if he had an altercation with a woman at the Sage Park fields and denied that ACO Davis ever inquired about the well being of his animal. *Id.* at 67.

37. The Hearing Officer found the "testimony of Mr. Smith to be less than credible and highly suspect particularly as to his testimony that he had no idea what happened." Restraint Order Proposed Final Decision at paragraph 14. In addition, the Hearing Officer stated that he was "convinced that the incident in question did happen consistent with the testimony of Ms. Williams." *Id.* at paragraph 15.

II. CONCLUSION:

The Town did not withdraw the Restraint Order upon issuance of the subsequent Disposal Order and therefore, both Orders are addressed in this very unique record concerning Dominique.

Conn. Gen. Stat. section 22-358(h) provides, among other things, that "any animal control officer may make any order concerning the restraint or disposal of such attacking dog as . . . such officer deems necessary." "[T]he commissioner may affirm, modify or revoke such order as the commissioner deems proper."

There is sufficient evidence in the record to support the facts that on May 25, 2011, the dog named Dominique was not on the premises of its owner when she, Dominique, had physical contact with the dog named Rajah, who immediately after the physical contact with Dominique, suffered from a serious injury. Rajah's treating veterinarian stated to ACO Davis that the bite wound was very deep and the dog required subcutaneous stitches as well as outer stitches. The photograph of Rajah shows the nature of the injury. Even though Ms. Williams did not actually see Dominique's teeth biting into Rajah, there is enough evidence in the record to support the fact that Rajah did not suffer from these injuries before his contact with Dominique, and that Rajah then had these injuries after the physical contact with Dominique. Ms. Williams testified that her dog was on a leash and that Mr. Smith's dog was not.

There is also sufficient evidence in the record to support the fact that Dominique's owner, Mr. Smith, had allowed Dominique to be off of her leash on the grounds of a school or residential property before May 25, 2011, and did not or would not heed the warning prior not to do so by Windsor officials. Even after the Restraint Order was issued, Dominique was found roaming on July 13, 2011.

The Hearing Officer made a specific finding about the testimony of Mr. Smith, finding his testimony to be "less than credible and highly suspect" and that he believed that the incident in question did happen consistent with the testimony of Ms. Williams. This is important given the times there were differences in the record evidence. Even so, those differences do not alter the injuries the dog Rajah suffered after and from, her physical contact with dog Dominique, while Dominique was not on a leash, and was not on the premises of Mr. Smith.

Upon review and assessment of the record regarding the Restraint Order, the Restraint Order is affirmed. There is substantial evidence in the record to support the necessity for issuance of the Restraint Order. The Disposal Order, however, is not affirmed.

If there was sufficient evidence in the record to justify the change from a Restraint Order to a Disposal Order on the basis of public safety and/or the dog's dangerous disposition, the outcome of the Final Decision for the Disposal Order may well have been a different. However, no evidence was submitted by the Town that there was a need to alter the Restraint Order to a Disposal Order because, for instance, it was necessary for the welfare of the citizens of the Town or its dogs; or for instance that the Disposal Order was necessary in light of the serious nature of the bite or attack to the dog named Rajah; or again, as a for instance, that the Disposal Order was necessary because while in the pound, Dominique exhibited a dangerous or aggressive disposition. To the contrary, the Town's admission that it was willing to release the dog back to Mr. Smith (subject to the Restraint Order) when he paid the boarding fees certainly implies that the Town does believe that Dominique has to be euthanized in order to ensure the safety of their citizens or the dogs in the Town.

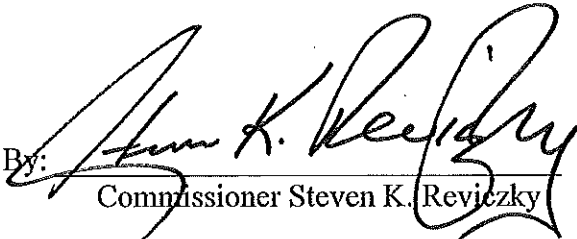
The Disposal Order was issued because of a failure of Mr. Smith to respond to the Town's letter dated July 14, 2011 to pay the boarding fees for Dominique; it did not relate back to the incident that led to issuance of the Restraint Order. In fact, the Town made it clear that the underlying reason as to why Dominique was in their pound did not matter in their decision to issue the Disposal Order.

Conn. Gen. Stat. section 22-358(h) allows for the imposition of a criminal fine or imprisonment for failure to comply with an Order of an Animal Control Officer issued pursuant to that statute. Conn. Gen. Stat. section 22-358 also does provide that if the owner or keeper of such dog fails to comply with an order made pursuant to this subsection, an Animal Control Officer may seize the dog to ensure compliance and the owner or keeper shall be responsible for any expenses from such seizure. Here, however, the Department of Agriculture's role is the assessment of evidence regarding the necessity

of a Disposal Order based on circumstances surrounding a bite or attack to, in this case, a dog. Under this particular record, the Department does not deem it necessary issue a Disposal Order to euthanize Dominique for the failure of her owner to pay the fees to pick her up from the pound; and therefore the Disposal Order is revoked.

The Town does have other redress for the failure of an owner to pick up a dog left too long in its pound. See Town of Windsor Code of Ordinance Chapter 12, Article IV, sections 12-70 and 12-74.

Dated: 10/19/12

By: 
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