

**STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE**

IN THE MATTER OF:

APPEAL FROM DISPOSAL ORDER
ISSUED BY THE TOWN OF COLCHESTER

“STELLA BLUE”

Owned by: Michelle Avery

February 28, 2013

FINAL DECISION

This action is an appeal to the Commissioner of Agriculture of a Disposal Order Issued by the Town of Colchester Animal Control Officer for a dog named Stella Blue. This hearing was held under the authority of Connecticut General Statutes, Section 22-358(c).

On November 2nd and 21st, 2012, a formal administrative hearing was held before Hearing Officer Steven Schwane, pursuant to designation by Steven K. Reviczky, the Commissioner of Agriculture. At said hearing, Scott R. Ouellette, attorney for the Town of Colchester, presented testimony, exhibits and arguments. The respondent was represented by Attorney Robert J. Hale, Jr., who presented testimony, exhibits and arguments.

On December 12, 2012, Hearing Officer Schwane issued a Proposed Findings of Fact, Conclusions of Law and Order (“Proposed Final Decision”) in this matter. The Proposed Final Decision was provided to all parties and exceptions to the Proposed Final Decision were filed on behalf of Michelle Chapman-Avery and the Town of Colchester.

After review of the entire record, including the transcript of the two days of hearings, and a review of the exceptions filed, I agree with the Hearing Officer’s determination that a restraint order

rather than a disposal order is sufficient to protect the public. However, based upon my review of the entire record, I find that additional conditions to the Hearing Officer's proposed order are necessary and justified from the evidence in the record. Therefore, I modify portions of the Hearing Officer's Proposed Final Decision and adopt others as my Final Decision.

FINDINGS OF FACT

After consideration of the entire record, the following facts are found:

1. Commissioner Steven K. Reviczky appointed Attorney Steven Schwane to act as Hearing Officer in the matter of a dog named Stella Blue. This matter is an appeal of a disposal order issued by the Town of Colchester for a dog named Stella Blue, owned by Michelle Chapman-Avery.
2. The Department of Agriculture gave proper notice of the hearings to both parties. Administrative hearings were held on November 2, 2012 and November 21, 2012, and both parties appeared at the hearings. The Town of Colchester was represented by Attorney Scott R. Ouellette and the owner was represented by Attorney Robert J. Hale, Jr.
3. The Town of Colchester submitted the testimony of Officer Kristen DiMauro, Officer Shannon Owens, Trooper Craig Fox, Sgt. Marc Petruzzi and Animal Control Officer Bill Paul. The owner presented the testimony of John Gagnon, Michelle Chapman-Avery, John Avery and Christina Geary.
4. On January 3, 2012, the Animal Control Officer for the Town of Colchester, Donald Favry, issued a Disposal Order for a dog owned by Michelle Chapman-Avery named Stella Blue. The Disposal Order was based on a dog bite to Officer Shannon Owens on December 19, 2011. The dog, Stella Blue, has been in the Town of Colchester animal shelter from

December 19, 2011, to the present.

5. On December 19, 2011, Michelle Chapman-Avery, the owner of Stella Blue, was arrested at her residence by Officers Shannon Owens and Kristen DiMauro. During the arrest, Ms. Chapman-Avery struggled with the officers near a porch to her home and was calling out the name "Stella." The dog, Stella Blue, was behind a glass storm door and could see her owner and the officers. Ms. Chapman-Avery managed to open the door and release Stella Blue and another dog. The officers and Ms. Chapman-Avery struggled and fell to the ground together. The two dogs were barking and circling as the officers attempted to handcuff the owner. During this time, Stella Blue bit Officer Owens twice. After Ms. Chapman-Avery was controlled and handcuffed, the two dogs retreated to the back of the home and were put back inside the home by the owner.

6. Officer Owens required medical attention and received antibiotics and a tetanus shot. She was out of work for one week.

7. Town Animal Control Officer Bill Paul testified that Mr. Favry warned him about the nature of Stella Blue. He also testified that Stella Blue was unpredictable and lunged at him three times while in the Colchester shelter, but he was not bitten. Stella Blue was kept in a confined area and was not exercised or given any socialization during this time.

8. Stella Blue did not bite any other person other than Officer Owens. Town Animal Control Officer Bill Paul testified that no other complaints were received against Stella Blue.

9. Dog trainer John Gagnon has had extensive experience handling and training aggressive dogs. He was allowed to observe the dog at the Town of Colchester animal shelter. Mr. Gagnon testified that, based on the testimony he heard at the hearings and his personal observations of the dog, he does not believe that Stella Blue is an aggressive dog. He stated that the

actions of the dog with the Animal Control Officer in the shelter can be explained by isolation and fear. He also testified that the actions of the dog in the biting incident were not necessarily that of an aggressive dog, but were likely an attempt to stop the altercation. In Mr. Gagnon's opinion, Stella Blue was not a risk to the public if handled properly.

10. Mr. Gagnon also testified that Stella Blue is "in tact" and that while she was confined in the shelter she would have gone through two heat cycles and that the hormonal changes could have been the reason why she snapped at times when approached by employees of the shelter. (Transcript, Gagnon, pp. 281-282).

11. The owner of Stella Blue has taken the dog out in public on numerous occasions without incident.

CONCLUSIONS OF LAW

Connecticut General Statutes, Section 22-358, permits an animal control officer to issue a restraint order or disposal order for any biting dog. This order can be appealed to the Commissioner of the Department of Agriculture, who "may affirm, modify or revoke such order as the commissioner deems proper." The evidence in this case does not demonstrate that the dog Stella Blue is such a danger to the public that a Disposal Order is warranted. The Disposal Order should be modified to a Restraint Order.

DISCUSSION

The Town of Colchester presented evidence in this case of only one biting episode by

Stella Blue. The dog has never bitten any other person and the Town received no other complaints against the dog. The one biting incident appears to be a unique situation. The dog witnessed its owner in a struggle with two strangers on the owner's property, near an entry to the home. The dog was behind a storm door and was frustrated by its inability to assist its owner. I believe that the dog was just attempting to defend its owner.

In this case, the owner may have been at fault, but this is no reason to destroy the dog. This decision should not be deemed to be a criticism of the officers, who were performing their duty, or a failure to acknowledge the injuries suffered by the police officer. The main issue to be decided is whether Stella Blue represents a danger to the public. In the one biting incident, the dog was protecting its owner from a perceived physical attack. Any aggressive behavior towards the Animal Control Officer can be explained by the isolation of the dog in the animal shelter and possibly by hormonal changes in a female dog when it is in heat. The dog has been out in the public without other incidents of aggressive behavior.

I believe that a Restraint Order is sufficient to protect the public. Because the dog has been isolated for a long period of time, additional aggressive dog training is probably appropriate.

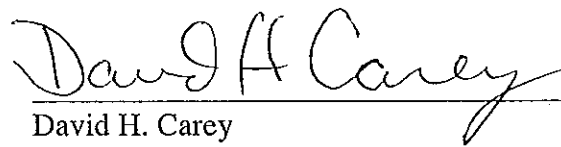
ORDER

IT IS HEREBY ORDERED that the Disposal Order for a dog named Stella Blue by the Town of Colchester Animal Control Officer be modified to a Restraint Order. The Restraint Order shall be as follows:

The Owner of the dog Stella Blue shall:

- 1.) Within ten days of issuance of this restraint order, have the dog spayed.
- 2.) Within twenty days of the issuance of this restraint order, enroll the dog in an aggressive dog training program, and the dog shall successfully complete the program. Documentation of the successful completion of this program shall be provided to the town animal control officer by the Owner.
- 3.) Within thirty days after the successful completion of the aggressive dog training program, enroll herself and the dog in an obedience training program and successfully complete the obedience training program. Documentation of the successful completion of this program shall be provided to the town animal control officer by the Owner.
- 4.) Keep the dog on a leash when dog is off the Owner's property.
- 5.) Physically contain or confine the dog by means of a fence when the dog is off leash on the Owner's property. Before being built, the design of the fence shall be submitted to the Municipal Animal Control Officer of the Town of Colchester for approval.

Dated at Hartford, Connecticut this 28th day of February, 2013.



David H. Carey
Final Decision Maker