

STATE OF CONNECTICUT

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:

APPEAL FROM DISPOSALS ORDERS
ISSUED BY THE TOWN OF HAMDEN

"Kato" and "Kleo"

Dogs owned by: Kim Miller

May 1, 2014

FINAL DECISION

I, Commissioner Steven K. Reviczky, the Final Decision Maker in the Appeal of Disposal Orders issued by the Town of Hamden, in the Matter of dogs named "Kato" and "Kleo" owned by Ms. Kim Miller, hereby issue the Final Decision in this matter. I have thoroughly reviewed the entire record, including the transcript of the hearing, the transcript of the oral argument, all of the admitted exhibits, and all other related submissions of the parties, including Ms. Miller's Brief in Response to Proposed Final Decision. The Final Decision adopts the recommendation of the Hearing Officer to affirm the Disposal Orders as follows:

FINDINGS OF FACT:

1. Commissioner Steven K. Reviczky appointed Dr. Bruce Sherman to act as Hearing Officer in this matter and to issue to him a Proposed Final Decision. Conn. Gen. Stat. § 4-179. Hearing Officer ("HO") Exhibit ("Ex.") 2. An October 4, 2013 Notice of Hearing was sent to the parties via certified mail to the Town of Hamden and its representatives as well as the owner of the animals subject to this appeal and her attorney, for a hearing that was scheduled for and held on October 23, 2013. HO Ex. 3.
2. At issue is the appeal of Disposal Orders issued by the Town of Hamden on October 16, 2012 to Kim Miller, concerning her dogs named "Kato" and "Kleo." (Town Ex. T8A and T8B; HO Ex. 1). Kato is described as a male, two year old black/tan Rottweiler and Kleo is described as a female, one year old black/tan Rottweiler. Ex. T8A and T8B.
3. On October 23, 2013, a hearing was held and concluded. There was no request by either party to continue the hearing to call additional witnesses or for any other reason. See transcript in its entirety and oral argument transcript at pages 15-16.

intervened and he took off in his car and tried to get to the dogs before they got to her. Tr. at pages 27-28. He testified: "[t]hat didn't happen and [t]hey go to her, so I started honking my horn, backing my car up, trying to hit the dogs a bit, without hitting the girl. And eventually I guess her crying and screaming, the grandmother came from the upstairs apartment, that had stairs on the outside of the building, so she ran down the stairs, and was like, what's going on, what's going on, and as soon as she turned the corner to where her granddaughter was, the dogs jumped on her and started biting her and pulling her and dragging her, and they ended up dragging her like, while she was trying to get away, she was on my car asking for help, and they were just pulling her. The dogs had her by the back of her neck, and [were] pulling off chunks of her neck and her back. And I just continued to do the same thing, I tried to back up, and because I didn't have anything to try to help protect or defend myself with. So I just kept backing the car up and hitting the dogs, until two guys ended up coming. One had a bat, the other one had like a pole or something, and he started swinging on the dogs until the dogs finally released the lady and took off running back towards, like Edwards Street." Tr. at pages 28-29. *And see Ex. T3, page 4.* The two men, Mr. Kenneth Lewis and Mr. Curtis Watkins, stated that the canines would not stop attacking Ms. Reed. They retrieved baseball bats and struck the canines until they stopped attacking Ms. Reed. At that time the canines ran away from the area.

10. Mr. Saulsbury testified that he "actually drove onto the driveway, because that is where the dogs were, the dog attack occurred, ending up being behind the home" and in addition to honking his car horn, he "kept going back and forth on the driveway, trying to hit the dogs." Tr. at page 34. The grandmother, i.e., Ms. Reed, came running down the stairs, "and I am sure she heard the dogs barking, but I am sure she was more concerned with the little girl screaming. She runs down the stairs, and she can't really see the dogs or the granddaughter, but as soon as she got [to] the bottom of the steps, the dogs turned around and jumped on her, and began to attack her, began to bite her, drag her and that was pretty much it." Tr. at pages 34-35.
11. Mr. Saulsbury testified that Ms. Reed, "ended up on my car at one point asking for help, while the dogs were chewing But my window was up, so, you know, the blood and everything was on my window of my car. And, you know, but [the dogs] continued to attack her until the other two guys came." Tr. at page 35. There was blood on Mr. Saulsbury's car hood and on the driver's side of the car. The blood on the hood was from Ms. Reed trying to get away from the dogs and the blood on the driver's side window came from the mouths of the dogs trying to bark at Mr. Saulsbury. Tr. at pages 35-36. *See also* Tr. at pages 50-51, whereby Mr. Saulsbury describes how the blood on the driver's side window of his car materialized: "one of the dogs came and tried to, you know, was barking at me and had its face against the driver's side of my car, on my window, the actual body of

18. During cross-examination, Mr. Saulsbury testified that he saw the dogs attack the girl by jumping on her and pawing her but he did not see the dogs biting her. With respect to the little girl: "they were definitely on top of her. They were taller, by the time they were standing on top of her, they were much taller than she was. She was trying to push them away, at them, as I was trying to go back and forth with my car." Tr. at pages 41-42. According to Mr. Saulsbury, the dogs came off of the little girl when the grandmother came down. She came running down the stairs when the little girl was crying. Tr. at page 42.
19. Mr. Saulsbury further described the dog biting incident on Ms. Reed during his cross-examination. The dogs "were biting her, scratching at her, dragging her, pulling her along the curb and . . . in my words, they were attacking her." Tr. at page 43. The dogs pulled Ms. Reed "from the point of being on the step to . . . the curb and everywhere in between." Tr. at page 43. "[W]hen she comes down the step and she tries to, actually she actually tried to go back up when she saw the dogs. Because like I said, they were behind the house. She goes down and she is like, whoa, whoa, this is her first reaction, was whoa, as they are coming back pretty much on top of her. They pulled her from the steps, and pretty much drag her all the way out from the, from the sidewalk to the grass, her trying to get away, driveway, curb, pretty much like kind of on the street a little bit." Tr. at page 44.
20. Mr. Saulsbury first heard the dogs barking when they came running across the street. Tr. at page 45.
21. Mr. Saulsbury actually saw the dogs biting Ms. Reed. The first time he saw them biting Ms. Reed was when the dogs had her by the neck and were pulling her across the sidewalk. He also had the opportunity to observe the bites after the incident. Tr. at page 45 and Ex. T1.
22. Mr. Saulsbury testified that he saw flesh hanging off of Ms. Reed as well as the actual bite marks in her back and her neck and that Ms. Reed had some hair missing from the bottom of her head. Tr. at page 47.
23. When questioned whether he saw Ms. Reed strike the dogs at all, Mr. Saulsbury testified, "Not that I could see. Like I said, initially she just, when she came to [the] bottom and saw the attack, she tried to back up a little bit, and that is when they jumped on her." Tr. at page 47.
24. Mr. Saulsbury did not see Ms. Miller at the incident on October 3, 2012 and did not see anyone following with the dogs when the dogs ran back towards Edwards Street. Tr. at pages 48-49.

34. Hamden Animal Control Officer Christopher Smith has been an animal control officer for 6 and 1/2 years and these are the first disposal orders he has ever issued. Tr. at pages 71-73.
35. Following the incident, ACO Smith spoke to Ms. Miller at her home at 35 Edwards Street and saw her dogs, a male and a female Rottweiler. Tr. at pages 73-74. Because the bite incident occurred off property, a 14 day quarantine order was issued for Kato and Kleo. Tr. at pages 75-76 and Ex. T4A and T4B.
36. ACO Smith spoke with one of the men that came to Ms. Reed's defense in the attack and he stated he did not want to file a statement without talking with an attorney. A statement from this individual was never filed. Tr. at pages 78-79. Also, ACO Gimler of Hamden talked to and received a statement from Ms. Monique Jones. Ms. Jones was the neighbor who saw the little girl, Kiara Reed, with the dogs, and Ms. Jones took Kiara into the safety of her home. Tr. at page 79 and Ex. T3 and T5.
37. ACO Smith spoke with Ms. Reed on the day of her release from the hospital. Ms. Reed provided ACO Smith with a statement and he observed bandages on the back of her head and from what he could see on her back. Tr. at pages 80-81 and Ex. T6.
38. According to ACO Smith, Ms. Reed stated that she came down to the base of the stairs, encountered the two Rottweilers, started back up to the stairs, and the dogs went after her. Ms. Reed got up a couple of stairs, "and the dogs got ahold of her and brought her back down the stairs, dragged her back down the stairs, and proceeded to bite her." Tr. at page 83.
39. Based on ACO Smith's investigation, no one came forward with any information that Ms. Reed struck the dogs with anything and ACO Smith is not aware of any witnesses who stated that Ms. Reed had anything in her hands at the time the dogs attacked her. Tr. at page 84.
40. According to ACO Smith, Exhibit T7A-P photographs are of Ms. Reed, taken approximately a week after the biting incident, and the photos depict her bandaged injuries and these photographs of Ms. Reed are consistent with ACO Smith's observations of Ms. Reed's injuries on October 5, 2012. Tr. at pages 85-86 and 116. Some of the photographs show bandages packed or stuffed into open wounds. Ex. T7 and see Ex. T6 Statement of Ms. Reed ("my back is patched up because they can't stitch it up").

when Mr. Renick was interacting with the dogs and the dogs were muzzled. Tr. at pages 153 and 155.

49. Mr. Renick went through some general temperament testing issues, food aggression, barrier frustration, and guarding behaviors. He performed these exercises with Ms. Miller. Mr. Renick does not believe either Kato or Kleo is vicious or aggressive. Tr. at pages 135, 142-144, 151, 161-162, and 171-171. *And see* Ex. R1 (Kato and Kleo passed all tests with no signs of aggression, even with the added stress of being in a high stress kennel environment for an extended period of time). Mr. Renick thinks the dogs can be trained and should not be euthanized. Tr. at pages 135, 147, 155-156; 163, and 171-172.
50. Mr. Renick's assessment of Kato and Kleo was based on his 20 minute interaction with each dog, and he did not witness the biting incident to Ms. Reed on October 3, 2012 and even had limited information about the event. Tr. at pages 151-152, 161-162, *and see* Tr. at page 154 ("I was basically just told that the dogs got out, there was a melee with cars blocking the dogs in and bats, but I try not to ask too many questions"). *And see* Tr. at pages 171-171. Mr. Renick's opinion that the dogs are not dangerous, that it's a training issue, is based solely on his observations with the dogs at the pound.
51. Mr. Renick testified that he did not have an opinion on what happened on October 3, 2012. Tr. at page 152 ("I am not going to, because I don't have all the facts").
52. Mr. Renick believes that dogs that bite, hold and shake a victim should be put down (euthanized). Tr. at pages 137-138 and 156-157. When Mr. Renick looked at the photographs depicted in Ex. T7 for the first time, he did not think there was shaking. Tr. at page 140.
53. With regards to advising a client to put a dog down, "[n]ormally, it is with a, with bites that it doesn't make sense, it doesn't follow rules, and the severity of the bite." Tr. at page 144. With regards to this matter, Mr. Renick testified, "[t]hey certainly are severe bites," and that the bites were "full mouth bites." Tr. at page 140. Mr. Renick said the bites were deeper in photographs exhibit T7M, L, K, J, and I, that they were deep, but not torn completely open. Mr. Renick stated "these aren't mild bites, but they are not the worst." Tr. at page 140. Also, the bites were "fairly typical of powerful bites, Rottweiler, shepherd, pit, anything with a lot of jaw pressure." Tr. at page 141.
54. Mr. Renick agreed that a factor to consider in recommending euthanizing a dog is a severe bite wound to the neck. Tr. at page 169.

the back yard gate and run away. Ms. Miller stated that Kleo was able to open the gate's latch and she assumed that this was what had happened. Ms. Miller stated that she found out from a friend of hers that Kato and Kleo had bitten someone. Ms. Miller also stated that she was concerned that her friend had also advised her that Kato and Kleo had been beaten with baseball bats.

63. During her testimony Ms. Miller described the fencing and gate at her residence at 35 Edwards Street and on the day of the incident she did not know how the gate got open and the dogs got out in "a split second." Tr. at page 194. Tr. at pages 188-195, 219, and 221-222. Ms. Miller acknowledged that the dogs biting Ms. Reed had nothing to do with how the gate became unlatched. Tr. at page 222.
64. Ms. Miller testified to her actions and observations after Kato and Kleo escaped from her yard. Tr. at pages 196-199 and until page 239. When Ms. Miller arrived at the scene she saw that one of her dogs had grabbed Ms. Reed by the pant leg and Ms. Reed was hitting and kicking at the dogs. Tr. at pages 196, 204 and 229. She also saw a green car hit Kleo and knocked her back; and she saw a person with a pole hit Kleo. Tr. at pages 196-197 and 205. She also observed an individual identified as Curtis Watkins beating Kato with a bat. Tr. at pages 197-198 and 205.
65. Ms. Miller did not observe how the initial attack by Kato and Kleo on Ms. Reed occurred. In response to whether she saw Ms. Reed hitting the dogs with anything, she replied that she did not see anything in Ms. Reed's hands. Tr. at page 229.
66. Ms. Miller testified that Ms. Reed was bitten on the head and back. Tr. at page 210. *And see transcript at page 229: "I did not see anything in her hands, no. I saw her on the sidewalk hitting and kicking at the dogs." Question: "As she was being bitten, correct?" Answer: "Right."*
67. At another point, Ms. Miller's testimony differed and she testified that during the incident she saw Ms. Reed flailing but that the dogs were not biting her at this time, but that the bat was being swung at Kato. Ms. Miller then testified that it looked like one of the dogs had Ms. Reed by the pant leg, but not an actual bite. While Ms. Miller did not deny that the dogs bit Ms. Reed, she then stated that she did not know if it was a scratch or a bite. Tr. at page 225.
68. Ms. Miller testified that when she saw Ms. Reed immediately following the attack, there was no neck injury at all to Ms. Reed. In somewhat conflicting testimony, Ms. Miller stated, "[y]eah, there was some blood, but someone had put a coat on her, so I honestly didn't see her back. But I did see the back of her, back of her head, and I didn't see, there was just a small traces, small traces of blood there. I think she was covered up . . . someone had put a coat or something on her, so I never saw

Miller responded, "I may have written some of that. Lexus Project edited some. They were the managers from that page." And to that same question, Ms. Miller also testified, "to the best of my knowledge, I am not sure." Tr. at page 236. In response to the Hearing Officer question about how she felt about Kato and Kleo attacking the victim, Ms. Miller stated that she felt awful. Tr. at page 236.

75. Ms. Miller testified that Kato and Kleo have never bitten anyone else or shown any aggression. Tr. at pages 182 and 208.
76. Ms. Miller presented character exhibits on behalf of Kato and Kleo and on behalf of herself as the dog's owner. These exhibits included a signed letter from B.A. Brue, DMV (R2A); a signed letter from Stephanie Buchanan, a veterinary technician, (R2B); and unsigned letter from Richard A. Pearce (R2C); an unsigned letter from Laura Hansen (R2D); an unsigned letter from J.R. Miles (R2E); a signed letter from Elvina Traore (R2F); an unsigned letter from Joy Dunston (R2G); an unsigned letter from Anita Patel (R2H & I); a one page, unsigned letter dated 10/9/12 (R2J); a signed letter from Mr. and Mrs. Richard Moore (R2K & N); a signed letter from Kristen Lynn Robinson (R2L); a signed letter from Evan Wilson (R2M, P & Q and see testimony of Evan Wilson from pages 240-243); an unsigned letter from Lauryn R. Wills (R2O); a Facebook posting from Toni Carlton (R2R); and a petition of approximately 17 neighbors stating that they do not feel threatened and support Kato and Kleo coming home and that Kim Miller is a responsible dog owner and that they welcome her dogs back to the community. (Ex. R7). None of these individuals state that they witnessed the bite incident that occurred on October 3, 2012.
77. Additional exhibits admitted by Ms. Miller include a hand-drawn map with a google earth picture (R3 and Tr. at pages 203-204); patient history reports for the dog Kato from New Haven Central Hospital (R4); police records involving larceny reports by Kim Miller on August 16, 2011 and February 26, 2012 (R5); and a news story written by Ernest Dempsy dated May 20, 2013 (R6). The article by Mr. Dempsy does not state that he witnessed the bite incident that occurred on October 3, 2012.
78. After listening to and observing the testimony of Mr. Renick, in his Proposed Final Decision, the Hearing Officer made assessments regarding Mr. Renick's testimony. The Hearing Officer determined that Mr. Renick's testimony, considered in its entirety, did not convey a level of confidence such that the outcome of behavior modification training would prevent "Kato" and "Kleo" from attacking and inflicting severe injuries to persons with whom they might encounter if they were to roam off of their owner's property in the future. Also, he assessed that Mr. Renick's testimony was not convincing with respect to his opinion of whether dogs that drag their victim have the intent to hurt or kill (as do dogs that grab and shake their victim). See page 12 of Proposed Final Decision.

hospital for treatment for these injuries. Ms. Reed was admitted to the hospital for treatment from these injuries. There is substantial evidence in the record to support the notion that the attack and dog bites to Ms. Reed were severe. There is, however, no magic to the word "severe." The record establishes that the attack and dog bites to Ms. Reed could alternatively have been called or deemed serious, or vicious, or aggressive, or any number of other adjectives. There is certainly "a substantial basis of fact from which the fact in issue can be reasonably inferred;" (Internal quotation marks omitted). *Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296, 331 (1999); thus satisfying the substantial evidence test. The point is that the nature of the attack and dog bites to Ms. Reed by Kato and Kleo and her resulting injuries were significant enough to justify issuance of the disposal orders, or stated alternatively, the disposal orders were appropriately "deemed necessary" by the Town of Hamden Animal Control Officer.

In response to her Brief, Ms. Miller was provided with sufficient due process in this administrative proceeding. There was adequate notice of the hearing and the basis for the hearing. Ms. Miller, through counsel, was given the opportunity to cross-examine all witnesses produced by the Town, to put on her own witnesses and to submit documentary evidence. Hearsay evidence is permitted by statute and regulation and the hearsay evidence admitted in the hearing by the Town relating to the attack and bites in question was not irrelevant, immaterial, or unduly repetitious. The evidence submitted by the Town was reliable and probative.

There was no violation of fundamental fairness to Ms. Miller. In assessing the common law right to fundamental fairness, courts review whether there was due notice of the hearing, that the parties had the right to produce relevant evidence and that there was the right to cross-examine witnesses **produced by its adversary**. See *Grimes v. Conservation Commission of the Town of Litchfield*, 243 Conn. 266, 273-274 (1997). Again, in this case, Ms. Miller had notice and the opportunity to participate in a fair and impartial administrative hearing. Ms. Miller had the opportunity to present all relevant evidence in this matter. All of the documents presented by Ms. Miller were accepted as evidence and made part of the record for the final decision maker's consideration. Ms. Miller had the opportunity to cross-examine all of the witnesses produced by the Town. Ms. Miller had the opportunity to call any and all witnesses that she determined to present for testimony before the Hearing Officer. Ms. Miller was provided with the opportunity to file exceptions to the Proposed Final Decision and argue them before the final decision maker at an oral argument prior to the issuance of a Final Decision.

Ms. Miller argues that because the Town did not (or could not) call Ms. Reed as a witness, that her rights were violated because she was denied the right to cross-examine Ms. Reed. There is no legal requirement mandating that the Town be required to produce Ms. Reed in their presentation of their case. Because the Town did not

During this interaction, Ms. Hudson did not state or reveal (nor did anyone else) that she had a medical condition or that she had a medical condition causing her to be disruptive.

The Hearing Officer's third and final involvement relating to Ms. Hudson occurred during Attorney Ouellette's cross-examination of Ms. Miller. Mr. Wilson asked for keys to Ms. Hudson's vehicle, claiming that Ms. Hudson is on medication and is having seizures and that this was the reason she was having issues. The Hearing Officer responded, "all right," and "I apologize." Thereafter, the cross-examination of Ms. Miller continued until it was concluded.

At no time after Ms. Hudson left the hearing did Ms. Miller or her counsel refer to or bring up Ms. Hudson. There was no request made to the Hearing Officer to have Ms. Hudson testify after a break or a recess, there was no request to continue or hold open the hearing to have Ms. Hudson testify on another date, there was no proffer by counsel for Ms. Miller regarding the alleged nature of Ms. Hudson's testimony. There was no request to file an affidavit regarding the nature of Ms. Hudson's testimony (she had earlier been identified only as a friend and resident of Kim's; there was no indication provided that Ms. Hudson may have witnessed the incident in question) and no request was made to late-file such an exhibit. As was represented at oral argument, counsel for Ms. Miller did not ask for a continuance and the reason she gave was because "I got the impression that nobody wanted to continue with the hearing and it was over." Oral argument transcript at page 16. The Hearing Officer did not prohibit Ms. Hudson from testifying at the hearing, he did not kick her out, and it was not the Hearing Officer's responsibility to question counsel for Ms. Miller as to whether they wanted to call Ms. Hudson to testify. That determination, and the determination regarding how to put on her case and response to the Town's presentation of evidence, should have been made by Ms. Miller and/or her counsel.

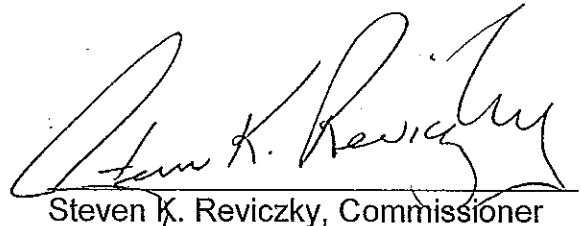
In his Proposed Final Decision to me, the Hearing Officer assessed the likelihood that Kato and Kleo would attack again if they were to escape from their enclosure or not be under the complete control of their owner or responsible person and whether there was an adequate assurance that behavior modification training would prevent future attacks. These concerns are legitimate, in that, should the dogs escape again and/or fail to adequately or properly respond to behavior modification training, public safety may again be in jeopardy. The Hearing Officer necessarily made certain determinations regarding the nature and validity of the testimony of Mr. Renick and Ms. Miller. Such determinations are completely proper. The credibility of witnesses is a matter entirely within the province of the administrative agency. *Tarullo v. Inland Wetlands & Watercourses Commission*, 263 Conn. 572, 587 (2003); *Huck v. Inland Wetlands & Watercourses Agency*, 203 Conn. 525, 540-41 (1987). "[A]n administrative agency is not required to believe any witness, even an expert, nor is it required to use in any particular fashion any of the materials presented to it so long as the conduct of the

Note that evidence of a dog owner's responsibility and past conduct is relevant in reviewing the animal control officer's discretion. See, Cetnarowski v. Ferris, 200 Conn. Super. LEXIS 1961; 2000 WL 1196445.

While I have considered the character evidence presented by Ms. Miller (testimony and exhibits) none of these individuals were present or saw any of the events at issue. Also, whether or not Kato and Kleo were aggressive in these witnesses presence or whether or not Kato and Kleo did not bite any other dog or person in their presence is not determinative, because these facts do not negate the other counterbalancing evidence in the record.

The disposal orders are affirmed.

Dated: May 1, 2014



Steven K. Reviczky, Commissioner