

STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:

APPEAL FROM DISPOSAL ORDER
ISSUED BY THE TOWN OF WEST HAVEN

"Rosco"

Dog owned by: Michael Langello

May 8, 2014

FINAL DECISION

I, Commissioner Steven K. Reviczky, the Final Decision Maker in the Appeal of the Disposal Order issued by the Town of West Haven, in the Matter of a dog named "Rosco" owned by Mr. Michael Langello, hereby issue the Final Decision in this matter. I have thoroughly reviewed the entire record, including the transcript of the hearing and all of the admitted exhibits. The Final Decision adopts the recommendation of the Hearing Officer to affirm the Disposal Order as follows:

FINDINGS OF FACT:

1. Commissioner Steven Reviczky appointed Wayne Kasacek to act as Hearing Officer in this matter and to issue to him a Proposed Final Decision. Hearing Officer ("HO") Exhibit ("Ex.") 1. Conn. Gen. Stat. § 4-179. A November 20, 2013, Notice of Hearing was sent to the Town of West Haven and its representative as well as the owner of the animal subject to this appeal, for a hearing that was scheduled for December 5, 2013. At the request of the Town, the hearing was continued until December 18, 2013 by Notice dated December 2, 2013. The Hearing was held and concluded on December 18, 2013.
2. At issue is the appeal of a Disposal Order issued by the Town of West Haven on July 16, 2013 to Michael Langello, concerning his dog named "Rosco." (Ex. T-8). Rosco is described on the Disposal Order as a male, one year old, Blue Nose Pit Bull, Gray.
3. The Town of West Haven offered the testimony of West Haven animal control officers (ACO) Denice Lynn Ford and James Vitelli, and the dog bite victim, Stephen Carney and exhibits T-1 through T-10, including exhibits T-9A, T-9B, T-9C, and T-9D, were admitted into the record. The Town of West Haven was represented by Attorney Anne Leavitt. The dog owner, Mr. Langello, was *pro se* and he offered the testimony of Vanessa Kristie and Laurie Langello and exhibits R-1 through R-5 were admitted into the record. Exhibit R-5 consists of 14 photographs. During the

hearing, Mr. Langello asked that a video(s) be submitted as evidence, by emailing the video to the Hearing Officer, who would then forward the video to Attorney Leavitt. (Tr. at pages 20-34 and 230-232). The video was not subsequently provided by Mr. Langello. Also, while Mr. Langello was identified as the dog owner, the Hearing Officer gave Mr. Langello latitude in terms of allowing other individuals to speak on his behalf and to ask questions during the course of the hearing. Stephen Carney, the dog bite victim, was accompanied by counsel at the hearing, Attorney Robert Mirtro, and photographs of Mr. Carney, identified as exhibits I-1 and I-2, were also admitted into the record.

4. With a letter dated April 7, 2014, the parties received the Hearing Officer's Proposed Final Decision, which was dated January 9, 2014. Apparently, the Proposed Final Decision was not sent to the parties until April 7, 2014 due to a clerical error. By letter dated April 7, 2014, the parties were advised that they had the opportunity to submit exceptions or a brief and also had the opportunity to request an oral argument before the Final Decision maker. No exceptions or briefs were submitted and there was no request for an oral argument.
5. ACO Ford, who issued the Disposal Order, has been an ACO with the Town of West Haven for 11 and ½ years and was an ACO in Easton for 2 years prior to working for the Town of West Haven. Tr. at pages 42-43.
6. On July 10, 2013, Stephen Carey reported a dog bite to the Town of West Haven. Ex. T-1. He reported that he was bitten by Mr. Langello's dog on July 7, 2013 while he was visiting Mr. Langello, inside Mr. Langello's home, at 56 Wind Sock Road in West Haven and that he had just gotten out of the hospital as a result of the bite injury. According to exhibit T-1, visible on Mr. Carney's right cheek on July 10, 2013, were multiple stiches over an approximately 3 inch by 6 inch area that was the result of the dog bite. The dog was identified as Michael Langello's dog Rosco. *And see* exhibits I-1, I-2, and T-2 and Tr. at pages 46-49.
7. Upon investigation, rabies information could not be obtained for Rosco and Rosco was subject to an off-property quarantine at the Town of West Haven shelter. At the time that Rosco was initially quarantined on July 13, 2013, Rosco was extremely aggressive to West Haven ACO McMahan, and while in Mr. Langello's presence, Rosco began to jump on the cage door, growl and bark at the ACO. Tr. at pages 50-58 and exhibits T-3, T-4, and T-5.
8. During her visit to see Rosco on July 16, 2013, Rosco growled at ACO Ford and snapped at her when she reached to open the kennel door. Exhibit T-5 and Tr. at pages 57-58. According to exhibit T-5 and the testimony of ACO Ford, when Rosco was visited at the shelter by family members or friends he knew, e.g., Ms. Kimberlee Langello and Ms. Laurie Langello, Rosco was friendly and affectionate to

them, but Rosco would growl and snap at ACO Ford or McMahon. See also, exhibit R-4. In response to this behavior, Laurie Langello stated that Rosco was never brought out in public so he doesn't know how to act around strangers. Ex. T-5 and Tr. at pages 57-58 and see page 92. Ms. Langello denies she made this statement. Tr. at page 97-101 and 106.

9. During the first and only attempt to move Rosco from his indoor enclosure at the shelter, to outside, in order to clean the enclosure, Rosco was injured when he was aggressive and uncooperative on a control pole. Tr. at pages 87-91 and Ex. T-9B and see transcript testimony of ACO Vitelli and page 164.
10. The July 16, 2013 Disposal Order at issue was issued after investigation of the bite incident that occurred on July 7, 2013, involving the serious injury to Stephen Carney and after observation of Rosco's aggressive behavior at the shelter towards individuals he did not know. Exhibits I-1, I-2, T-5, T-6, T-7, T-8, T-9A and Tr. at pages 57-59.
11. Rosco has been continually aggressive towards the ACOs who take care of him at the shelter, including repeated attempts to snap at and bite the ACOs. Exhibits T-9B, T-9C, and T-9D.
12. In her 13 and ½ years as an animal control officer, the Disposal Order to Rosco was the first Disposal Order ACO Ford has ever issued. The basis for the Disposal Order is Rosco's aggressive nature and the severity of the injuries received by Stephen Carney. Tr. at page 71.
13. In her professional opinion, ACO Ford believes that Rosco is a danger to the public and that she would be remiss in her duties as an animal control officer if she were to return Rosco to the community. ACO Ford believes that Rosco is a danger. Tr. at page 72. ACO Ford thinks that it is in the public's best interests to euthanize Rosco. Tr. at page 73.
14. ACO Ford believes that Rosco has the potential to kill someone because of his aggressive nature. At no point was the owner able to walk the dog on a leash and at no point were the ACOs able to successfully put the dog on even a control pole and bring the animal in and out of the facility without the dog trying to attack them. Tr. at pages 72-73 and Ex. T-9 and see Ex. T-9B, T-9C, and T-9C.
15. Stephen Carney went to Michael Langello's home on July 7, 2013, and was greeted by Michael Langello and his dog Rosco. Stephen Carney has known Rosco since the dog was a puppy and has interacted and petted Rosco in the past. Tr. at pages 116-118.

16. During the visit the two men had a conversation in the kitchen area while at some point in the conversation, Stephen Carney was petting Rosco. According to Mr. Carney, the conversation included talking about Michael Langello's concern that Rosco was getting aggressive and that he had not been paying enough attention to the dog. Tr. at pages 118-120.
17. Stephen Carney testified that he was down on one knee talking to Michael Langello and scratching and petting Rosco. While still talking to and looking at Mr. Langello, Mr. Carney stood up, and then, approximately 15 or 20 seconds later, Rosco came at Mr. Carney and put Mr. Carney up against the wall. Rosco came at Mr. Carney a second time and then Michael Langello grabbed Rosco and threw him down into the basement. During either the first or second time that Rosco came at Mr. Carney, Rosco bit Mr. Carney in the face. Tr. at pages 119-120.
18. Mr. Carney testified that the incident occurred very quickly and until he saw blood all over the floor, he did not realize he had been bitten. Tr. at pages 120 and 135. Mr. Carney had his wife drive him to the hospital, where he was admitted for treatment of his injuries. Tr. at pages 121-122.
19. On July 8, 2013, Mr. Carney had surgery at the hospital relating to the dog bite. Exhibits I-1 and I-2 are photographs of Mr. Carney the morning after the bite. Tr. at pages 121-122.
20. Mr. Carney testified that before Rosco bit him, he was not teasing, abusing, harassing, taunting, or "messing with" Rosco. Tr. at pages 125-126 and 129.
21. Mr. Carney testified that he did not startle the dog from a sleeping condition and that the dog was not asleep and he did not smack the dog on the butt. Tr. at pages 133-134. Mr. Carney does not know why Rosco bit him. He testified that, "I stood up talking to Michael and the dog just lunged. Like I said, I wasn't even looking at the dog." "The dog lunged at me twice." Tr. at page 135.
22. By letter dated July 17, 2013, Michael Langello wrote to West Haven Animal Control and described the July 7, 2013 biting incident. Exhibit T-10. In this letter Mr. Langello stated that Stephen Carney "provoked Rosco by yelling his name. When Rosco approached Steve, Steve proceeded to roughhouse Rosco and then hit him on his hindquarters. Rosco then turned 180 degrees and bit Steve's cheek using his four front teeth in response to the provocation." The letter states that "Steve apologized for provoking Rosco and admitted that he was at fault for causing the incident." *And see transcript at pages 181-183.*
23. At the hearing on December 18, 2013, Mr. Langello stated, "I never said you were aggressive or taunting my dog at all in that letter. I don't know where that came

from," and "[n]o, I never said he taunted or was messing with the dog at all," and "the only thing I can say is that I never said that he was aggressive or instigating the incident. I don't know how that came out in the report, but that's not my intention, that letter was saying he was aggressive toward the dog. The dog was more spooked than him being aggressive towards him. Steven never, never hit the dog or punched the dog or nothing like that for that to happen. It was just a spur of the moment, split-thing that happened. The dog was facing the other way, he was petting him around his butt, and he turned around. And he didn't jump at him, lunge at him. He just turned around and his face was right there and that's where he bit him." Tr. at pages 129-130.

24. When asked by the Hearing Officer if Mr. Langello was "essentially agreeing with Mr. Carney," Mr. Langello replied "yes."
25. Later in the hearing, Mr. Langello testified that Rosco was "[n]ot exactly provoked, but the dog, he woke up and [Mr. Carney] spooked the dog. Tr. at page 171. Also, Mr. Carney, "screamed his name, woke the dog up, the dog came walking towards him and he grabbed him by his butt." And he shook him up like that. And he went smack him on his butt, not aggressively, but smack[ed] him on his butt." Tr. at page 177.
26. Ms. Vanessa Kristie testified that Mr. Carney woke Rosco up and provoked him and riled Rosco up before he was bitten. Tr. at page 181. Ms. Kristie also testified that Rosco, "was at his feet laying down, sleeping. Stephen had called his name and just, you know, he was playing with him, you know, nothing rough. I don't think he was really trying to hurt him or nothing. He just went, Rosco, Rosco, Rosco, Rosco. Boom. The dog was facing the other way. The dog got spooked. It happened so fast. I just saw Stephen punch the dog." Tr. at page 182. Mr. Kristie also testified that Rosco did not jump on Mr. Carney twice. Tr. at page 182.
27. West Haven Animal Control Officer James Vitelli testified about an incident in the shelter where Rosco was injured while animal control officers attempted to get Rosco outside in order to clean his enclosure. Tr. at pages 142-167. ACO Vitelli stated that if Rosco got off of the pole used to move Rosco, Rosco would certainly want to come after somebody. Tr. at page 150.
28. ACO Vitelli testified that Rosco has gotten progressively more aggressive to people as time has passed. Tr. at pages 198 and 206.
29. Laurie Langello testified at the hearing and authenticated her log of notes (11 pages) regarding her visits to see Rosco and his living conditions at the shelter. Rosco does not act aggressively with Mr. Langello and is happy to see Ms. Langello and the family member/friend visitors with her. Ms. Langello's logs often describe

dirty living conditions in Rosco's enclosure and missing items brought for Rosco.
See Ex. R-4.

30. Mr. Langelo submitted exhibit R-1, which is an internet article on "Behavior Problems and Long-Term Housing of Shelter Dogs," to explain Rosco's aggressive behavior at the West Haven shelter as kennel stress. Tr. at pages 187-196 and Ex. R-1.
31. Mr. Langelo presented two character exhibits on behalf of Rosco and on behalf of himself as the dog's owner. These exhibits were a letter from Eric Colon dated December 17, 2013 (R-2) and an undated letter from Ronda Johnson, (R-3). Neither of these individuals state that they witnessed the bite incident that occurred on July 7, 2013 or Rosco's aggressive behavior at the shelter.
32. The Hearing Officer stated in paragraph number 7 of his Findings of Fact that: "during the hearing, differing accounts of actions of the victim, Mr. Carney were presented by Michael and his witnesses (TR pg. 121, 129, 135). At question was whether Mr. Carny somehow caused the dog Rosco to bite him by provoking, startling or spooking. That ultimately Mr. Langelo substantially agreed with the account of the attack by Mr. Carney." (TR-pg. 130-131). Proposed Final Decision at page 1.
33. The Hearing Officer stated in paragraph 9 of his Findings of Fact that: [t]his hearing officer is convinced that the incident in question did happen consistent with the testimony of Mr. Carney, and that Rosco did cause substantial injury to Mr. Carney during the incident." Proposed Final Decision at page 2.
34. In the Discussion section of the Proposed Final Decision, the Hearing Officer reiterated his credibility assessment regarding Mr. Langelo. The Hearing Officer was not persuaded by Mr. Langelo's attempts to blame Rosco's aggressive behavior on West Haven Animal Control. In addition, the Hearing Officer stated that his Proposed Final Decision was not based on the fact or allegation that Rosco was or became unmanageable after the disposal order was issued, but that he relied largely on the testimony and evidence concerning the actions of Rosco at the time of the attack and the behavior of Rosco immediately subsequent to the attack until the time the Disposal Order was issued (July 16, 2013), as the basis of his Proposed Final Decision. Proposed Final Decision at page 2.
35. The Hearing Officer determined that Mr. Langelo did not instill him with any confidence that he or his family could or would manage Rosco's behavior such that Rosco would not attack in the future. Proposed Final Decision at page 2.

36. The Hearing Officer determined that upon review of the evidence and exhibits presented at the hearing and after much reflection, that the Disposal Order for Rosco was justified and should be affirmed. Proposed Final Decision at page 3.

LEGAL CONCLUSION

Connecticut General Statute § 22-358(c) provides that "the commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer. . . may make any order concerning 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."

Upon review of the entire record, including the hearing testimony and exhibits, and after much reflection, I find that there is substantial evidence in the record to affirm the Disposal Order.

There is substantial evidence in the record establishing that the dog named Rosco severely bit and injured Mr. Stephen Carney on July 7, 2013. The nature and severity of Rosco's bite to Mr. Carney is sufficient justification for the Disposal Order. In addition, there is substantial evidence in the record that Rosco can be aggressive, and if given the opportunity, may bite other individuals that he does not know, making Rosco a potential danger to the public.

As stated by the Hearing Officer, there was conflicting evidence in the record regarding what interaction Mr. Carney had with Rosco immediately preceding the bite. Mr. Carney testified that he in no way provoked the attack. Mr. Langelo's testimony of the bite incident differed, not only in comparison to his written account provided in exhibit T-10, in which he blamed Mr. Carney for provoking Rosco and hitting him in the hindquarters, but during the hearing itself. At the hearing, Mr. Langelo determined that a portion of his written account in exhibit T-10 was not accurate and that he never stated Mr. Carney taunted or messed with Rosco or that Mr. Carney was aggressive with Rosco, instead stating that Rosco got spooked. Mr. Langelo testified that "Steven never, never hit the dog or punched the dog or nothing like that for that to happen," and he stated that he essentially agreed with Mr. Carney's version of the incident. At another juncture, however, Mr. Langelo testified that Mr. Carney grabbed and/or smacked Rosco in the butt. Ms. Kristie's account was that Mr. Carney did provoke the dog by calling the dog's name and playing with him and that this spooked Rosco.

The Hearing Officer necessarily made certain credibility determinations regarding the nature and validity of the testimony of these witnesses and determined Mr. Carney's account of the incident was credible. 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 hearing is fundamentally fair." *Samperi v. Inland Wetlands Agency*, 226 Conn. 570, 597 (1993); *Huck, supra*, 203 Conn. At 542; see also *Manor Development Corporation v. Conservation Commission*, 180 Conn. 692, 697 (1980).

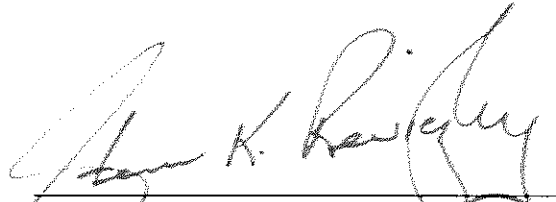
There is substantial evidence in the record to support the notion that the dog bite to Mr. Carney was unprovoked and that it caused Mr. Carney serious injury. There is certainly "a substantial basis of fact from which the fact in issue can be reasonably inferred;" (Internal quotation marks omitted). *Sweetman v. State Elections Enforcement Commission*, 249 Conn. 296, 331 (1999); thus satisfying the substantial evidence test. The nature of the dog bite to Mr. Carney and his resulting injuries were significant enough to justify issuance of the disposal order, or stated alternatively, the disposal order was appropriately "deemed necessary" by the Town of West Haven Animal Control Officer.

Adding to the nature of the bite and severity of Mr. Carney's injuries is the aggression that Rosco has exhibited to individuals outside of certain family members or friends. Looking solely at the time period from Rosco's quarantine, until the issuance of the Disposal Order (3 days), there is sufficient evidence in the record that Rosco may be a danger to individuals he does not know. Also, it should be noted that Rosco did know Mr. Carney, but Rosco nevertheless bit an individual he has known since he was a puppy. Given the severity of Mr. Carney's injuries, this is a legitimate concern for public safety

I have carefully reviewed, and given due weight to the evidence in the record that was admitted by both parties, including evidence that may have been admitted over objection.

While it is always with great regret that a Disposal Order is required, in this matter, the disposal order is affirmed.

Dated: May 8, 2014


Steven K. Reviczky, Commissioner