

STATE OF CONNECTICUT  
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:

APPEAL FROM RESTRAINT ORDER  
ISSUED BY THE TOWN OF NEW FAIRFIELD

"JULIUS"

Owned by Dr. Mitchell Kahn

November 19, 2015

**FINAL DECISION**

I, Commissioner Steven K. Reviczky, the Final Decision Maker in the Appeal of the Restraint Order issued by the Town of New Fairfield by Municipal Animal Control Officer (ACO) Kelly Peet, in the Matter of a Dog Named "Julius," owned by Dr. Mitchell Kahn, hereby issue the Final Decision in this matter.

I have thoroughly reviewed the entire record, including: the transcripts of the two hearings that took place on December 11, 2013 and on November 18, 2014, all of the exhibits, which consisted of Town exhibits T1 through T8, Hearing Officer exhibits HO1 through HO5, and Commissioner exhibits CO1 through CO6, and the transcript of the oral argument that took place on April 10, 2015. It is clear from the evidence in the record that on June 16, 2013, the dog named Julius bit the dog named Jake, owned by Rick Bowen, and that Julius bit Mr. Bowen. (See Proposed Final Decision at paragraphs five (5) through eleven (11) and exhibits T-3, T-4, and T-5 and the testimony of ACO Peet at both hearings). ACO Peet provided applicable and appropriate reasons for the issuance of the Restraint Order. (See Proposed Final Decision at paragraph 11). While ACO Peet testified about other incidents involving Julius and additional exhibits about those incidents were put in the record, that evidence, while providing additional

reasons that the Animal Control Officer issued the Restraint Order after the June 16, 2013 incident, was not ultimately determinative to me.

While I have found that there is substantial evidence in the record to affirm the issuance of a Restraint Order issued by the Town for the bite incident that occurred on June 16, 2013, and this Final Decision hereby incorporates the Proposed Final Decision of the Hearing Officer, including its Findings of Fact (the Proposed Final Decision is attached to and incorporated herein), this Final Decision *makes a modification* to one of the Restraint Order terms.

Additional findings and assessment are as follows:

Dr. Kahn received proper notice of the hearings as reflected in the exhibits of the Hearing Officer and the Commissioner. Dr. Kahn did not attend either hearing. Although Dr. Kahn did not specifically ask for an oral argument, one was provided to him. Dr. Kahn had the opportunity to file exceptions or briefs to the Proposed Final Decision but he did not do so.

At the oral argument, Dr. Kahn was represented by Attorney Thompson Page. Attorney Page and Dr. Kahn both discussed the contours of a proposed modification to one of the Restraint Order conditions. The proposed modification went to the following Restraint Order condition, which requires that when Julius is on Dr. Kahn's property, "it will be on a secure leash no longer than 6 feet, controlled by a responsible adult and muzzled securely or it will be led on a secure leash to a pen constructed according to the following specifications: Structure: Dog pen at least six feet high with a top and bottom secured so the dog cannot climb or dig out. Size: Minimum of 8 feet by 12 feet. Material: Heavy gauge chain link."

Attorney Page and Dr. Kahn represented that Dr. Kahn's property has an existing fence that secures the entire back yard, which is secured to the house, and which is currently five feet high.

They represented the current fence extends one foot below ground level to prevent the dog from digging out and advocated that Dr. Kahn be permitted to modify this existing five foot high fence to make it six feet high and also to adjust the top of the fence so that there is an inward facing structure to keep the dog from climbing out. Julius would still be muzzled the entire time that he is in the back yard with the modified fence as proposed, but could be permitted off of a leash. This proposal would not alter the existing Restraint Order condition(s) if Julius was in the front yard (which is not fenced), or off of Dr. Kahn's property, or alter any of the other Restraint Order Conditions. *See* Oral Argument transcript at pages 11-13, and 15-21.

Attorney Keating for the Town stated that if the dog owner wanted to submit a functional equivalent of what was called for in the restraint order, that animal control would consider it and make a determination as to whether or not it was sufficient. Oral Argument transcript at pages 28-29. The Commissioner therefore afforded the parties with the opportunity to determine whether an agreement could be reached on the proposed modification to the Restraint Order prior to issuance of a Final Decision. The Commissioner provided the parties with three (3) weeks to do so and asked that he be informed of whether an agreement was reached. Oral Argument transcript at pages 29-30. On May 8, 2015, the Department received notification from Attorney Keating that no agreement was reached and that he did not receive a response from Attorney Page to a facsimile that was attached. The referenced facsimile, dated April 21, 2015, was from Attorney Keating to Attorney Page, with a confirmation page, that stated: "If your client would like Regional Animal Control to consider a modification of the pending restraint order, please email or fax me the proposal." The Department has received no further communication from either party about this issue.

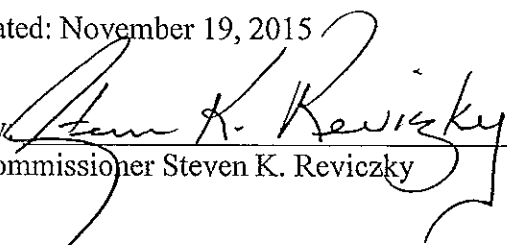
While I find it unfortunate that Attorney Page apparently did not engage in any discussions with the Town regarding Dr. Kahn's proposed modification, I will not fault Dr. Kahn or his dog for Attorney Page's failure to do so. Because I believe that the proposal for the secure back yard, with the dog muzzled, will be the functional equivalent of the existing condition, but will allow the dog to exercise which ensuring the same level of public safety, I will modify the Restraint Order condition discussed *supra*, as follows:

"When the dog is on your own property, after the existing five foot high fence around the entire back yard is raised to at least a six feet high fence, and after the top of the fence is adjusted so that there is an inward facing structure to keep the dog from climbing out and the bottom is secured so the dog cannot dig out, **while securely muzzled the entire time**, the dog will be permitted off of a leash in the back yard only. The modified fence shall be completed five weeks after the date of this Final Decision. The existing fence condition(s) shall be in place until the modified fence condition(s) is completed. This modification does not alter the existing Restraint Order condition(s) if Julius is in the front yard (which is not fenced), or off of Dr. Kahn's property, nor does it alter any of the other Restraint Order Conditions."

I have determined that based on the June 6, 2013 bite to the dog Jake and to Mr. Bowen, there is substantial evidence in the record that the Restraint Order issued to Julius, with the outline modification, was "deemed necessary" by a municipal animal control officer.

The Restraint Order is Hereby Affirmed with the outlined Modification.

Dated: November 19, 2015

By   
Commissioner Steven K. Reviczky