



STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE
Office of the Commissioner



Steven K. Reviczky
Commissioner

860-713-2501
www.CTGrown.gov

December 6, 2018

Chelsea Gough
[Redacted]

Mailed USPS/certified mail/return receipt
[Redacted]

Dear Ms. Gough:

I am the final decision maker in the matter of the appeal of a Disposal Order for the dog named "Roxie" owned by Chelsea Gough. The Disposal Order was issued by the City of Torrington and its animal control officer on November 2, 2017.

A Proposed Final Decision of the Hearing Officer, Wayne Kasacek, was served upon the parties on or about November 2, 2018, through notice from the undersigned. The notice afforded each party the opportunity to present exceptions or briefs and requests for oral arguments to the Commissioner, as the final decision maker.

I have read the entire record in this matter. Upon due consideration of the entire record, I find there is substantial evidence in the record to **Revoke** the Disposal Order and I hereby adopt the Proposed Final Decision of the hearing officer as the final decision in this matter with the change of the date on number 2 in Findings of Fact to:

- 2. On November 28, 2017 all parties were noticed of the receipt of appeal. HO-2.



Steven K. Reviczky
Commissioner

SKR:dbw

Enclosed: Service List
Proposed Final Decision

STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:

APPEAL FROM DISPOSAL ORDER
ISSUED BY TOWN OF TORRINGTON

“ROXIE”

Owned by CHELSEA GOUGH

PROPOSED DECISION

FINDINGS OF FACT

1. The Connecticut Department of Agriculture (“the Department”) received an appeal from Chelsea Gough (“Ms. Gough” or “the dog owner”) from a disposal order issued on her dog “ROXIE”. See Exhibit HO-1.
2. On November 27, 2017 all parties were noticed of the receipt of appeal. HO-2
3. That on August 9, 2018, the Commissioner of Agriculture, Steven K. Reviczky, designated Wayne Kasacek as the Hearing Officer (HO) in this matter and to render a proposed decision. HO-3
4. On July 25, 2018 all parties were noticed of the scheduled hearing date of August 30, 2018. HO-4
5. On August 30, 2018 a full evidentiary hearing was held and concluded. See Transcript dated August 30, 2017 at p. . (“TR”)
6. The Town of Torrington (“the Town”) was represented by Torrington Animal Control Officer (ACO) Kaitlin Nield.
7. The dog owner, Chelsea Gough represented herself.
8. “ROXIE” is described as a black and white, female “Pit Bull” type dog (T-1, T-3). No specific breed was given during testimony nor is described in the exhibits. T-1, T-3
9. At issue is a disposal order for the dog ROXIE, issued by Torrington ACO Lauren Foley November 2, 2017, citing Connecticut General Statute subsections 22-358(c) and 22-358(h) as the authority is issue the order. T-3, TR pg. 18

10. ACO Nield's testimony revealed that on April 10, 2017 Torrington ACO Lauren Foley issued a restraint order as to the dog in question. T-3, TR pg. 16
11. ACO Nield provided evidence as to a complaint about ROXIE received by Torrington Animal Control and investigated by Torrington ACO Deborah Gath concerning an incident that occurred on March 28, 2017. T-1, TR 13
12. The March 28, 2017 incident occurred within the residence of Ms. Gough. The testimony of Ms. Gough and the incident report prepared by ACO Gath both describe the incident as an altercation between ROXIE and a male dog named DIESEL, both owned by Ms. Gough. The incident occurred within 24 hours of ROXIE being acquired from Hartford CT Animal Control and was the result of DIESEL attempting to mate with ROXIE. It was the testimony of Ms. Gough that ROXIE snapped at DIESEL whereupon Ms. Gough was bitten while breaking up the altercation. T-1, TR pg. 8, 13, 35
13. ACO Nield testified that as a result of the March 28, 2017 incident a 14 day quarantine was placed on ROXIE. TR pg. 13, T-1
14. ACO Nield provided evidence as to a complaint received by Torrington Animal Control and investigated by Torrington ACO Foley that on April 2, 2017, at the residence of Ms. Gough, ACO Foley investigated a bite to the dog "NORA" owned by the sister of Ms. Gough, Ariel Gough on April 1, 2017. T-1, T-3, Tr. Pg. 13
15. ACO Nield testified that as a result of the April 1, 2017 incident and violation of the March 28, 2017 quarantine order which did not permit contact with other animals, a restraint order was issued as to the dog ROXIE. T-1, Tr. Pg. 13
16. Ms. Gough's testimony confirmed the April 1, 2017 incident occurred, however Ms. Gough testified that she did not understand the quarantine applied to contact between ROXIE and any animal including any dog within her residence. Tr. Pg. 9
17. ACO Nield discussed exhibit T-3 which includes a written statement, given to ACO Foley by Ariel Gough September 3, 2017, concerning the day ROXIE had puppies, July 6, 2017. It is Ariel Gough's written statement that while she introduced one of the newborn puppies to ROXIE she snatched it from her hands and killed it. TR pg. 15, T-3
18. Ms. Gough testified that the account of the July 6, 2017 incident given by Ariel Gough in her written statement was inaccurate. Ms. Gough in her testimony did not refute that something did happen to one of the puppies. Ms. Gough testified that while at PETCO purchasing supplies for the newborn puppies she was called by her sister, Ariel Gough, who reported the incident to her. Ms. Gough testified that after returning home she observed no evidence of a dead puppy, including no blood or body. Ms. Gough further testified that she monitored the feces of ROXIE for evidence she consumed the puppy and found nothing to indicate ROXIE had consumed the puppy. Ms. Gough testified that she does not know what happened to the puppy. TR pgs. 19, 28 – 32

19. Based upon complaint and written statements made by Brandon Wall and Ariel Gough and after investigation, on September 21, 2017, Torrington ACO Foley, executed a search and seizure warrant for the dog ROXIE. The complaints alleged, Chelsea Gough was not following the restraint order issued April 10, 2017. and observations made by ACO Foley on or about September 2, 2017, of ROXIE loose in the residence of Ms. Gough, not wearing a muzzle in violation of the restraint order issued April 10, 2017. Tr. Pgs. 7,15 T-3
20. ACO Nield testified that a disposal order against ROXIE was issued on November 2, 2017. She said the disposal order was warranted because ROXIE had exhibited dog aggressive behavior on several occasions and, that she was concerned that the dog might become aggressive towards humans. In her testimony ACO Nield acknowledged that that while ROXIE has been in the pound she has not been aggressive towards animal control staff. T-3, TR pgs.10-12

CHRONOLOGY OF EVENTS AND DISCUSSION

A timeline of events was used by fact finder to assist him in rendering this proposed decision. The timeline is as follows:

3/27/17 ROXIE obtained from Hartford CT Animal Control TR pg. 32

3/28/17 ROXIE bites Chelsea Gough in her residence while Ms. Gough was breaking up an incident between the female ROXIE and the male Diesel. T-1

3/28/17 In-home quarantine issued for 3/28/17 incident. T-1

4/1/17 ROXIE bit the dog Nora owned by Ms. Gough's sister Ariel who also resided with Ms. Gough at the time. The bite occurred just outside of the residence of Ms. Gough and required veterinary care. TR pg. 28, T-1, T-3

4/2/17 ROXIE was removed from the residence of Ms. Gough to the Torrington Pound to finish the quarantine issued 3/28/17. T-1

7/6/17 One of ROXIE's puppies disappears from residence. TR pgs. 19, 28 – 32

7/8/17 In a report authored by ACO Branco, ROXIE was observed at a vaccination event sponsored by the Little Guild at a Torrington park. ROXIE was muzzled, showed no sign of aggression towards ACO Branco or any other animals at the event. T-3

9/3/17 Brandon Wall and Ariel Gough made a complaint to ACO Foley regarding ROXIE that Ms. Gough was not following the restraint order and that ROXIE had attacked a cat and one of her newborn puppies. T-3, see findings of fact 18

9/4/17 a misdemeanor summons was issued to Ms. Gough for violation of the restraint order and infractions were issued for having unlicensed dogs. T-3 Note: This hearing officer took notice that these charges are still pending with GA-18 Bantam.

9/8/17 Brandon Wall made a complaint to State ACO Godejohn regarding ROXIE. ACO Godejohn relayed the complaint to ACO Foley who made contact with Wall. T-3

9/21/17 a search and seizure warrant was executed and ROXIE was seized and placed in the custody of Torrington Animal Control. See findings of fact number 19

11/2/17 a disposal order was placed on the dog ROXIE. T-3

The facts and circumstances of this case present this fact finder with a considerable challenge. This hearing officer in his questioning of Ms. Gough learned that she does believe that ROXIE is in her words "definitely dog aggressive" (TR pg. 42).¹ However there is testimony and exhibits that indicate that ROXIE is not aggressive towards people and that ROXIE is able to be around other dogs (TR pgs. 42, 47, 48 T-3). Ms. Gough also testified that it was her own ignorance about how to handle a rescue dog that may have been the cause of the attacks. HO-1, TR pg. 8 It is reasonable to conclude based on the facts presented that ROXIE aggressive tendencies towards other dogs that was triggered and possibly aggravated by her recent adoption and relocation to Ms. Gough's residence. This is supported by the testimony that the 2 uncontested biting incidents occurred within one week of her adoption. The third incident on July 6, 2017 is contested by Ms. Gough, and I find her testimony to be credible with respect to this incident. Subsequent to these reported incidents, ROXIE did not display any aggression has not made any documented or known attacks against animals or people. T-3, TR pgs. 42-44

The disposal order cites to both CGS 22-358(c) and Section 22-358(h) as the legal bases for its issuance. Section 22-358(h) states in part "If such officer finds that the complainant's animal has been bitten or attacked by a dog when the ***attacked animal was not on the premises of the owner or keeper of the attacking dog and provided the complainant's animal was under the control of the complainant or on the complainant's property***, such officer, the commissioner, the Chief Animal Control Officer or any animal control officer may make any order concerning the restraint or disposal of such attacking dog as the commissioner or such officer deems necessary." (bold and italic added) In this case, the testimony and evidence presented leads this fact finder to the conclusion that that the attacked animal (NORA) resided at the same residence as ROXIE and that the attacks occurred within or very close to entrance of the residence. Therefore, in this case, CGS Section 22-358(h) cannot be used as the basis for the issuance of the disposal order.

This hearing officer is also troubled by the fact that a disposal order was issued based upon incidents as they were presented, and for violation of the restraint and quarantine orders. The standard for issuing a disposal order rather than a restraint order is higher, in that it must be shown that the animal subject to a disposal order is a risk to public safety by a preponderance of the evidence. The Town of Torrington has not persuaded this hearing officer that the actions of ROXIE, as documented in the testimony or evidence in the record, meets a standard of viciousness or vicious propensity that justifies a disposal order.

¹ Ms. Gough stated on the record she is not trying to get ROXIE back. Ms. Gough's goal in contesting the disposal order to have ROXIE placed with a rescue and in fact she has been in contact with a rescue organization (TR pg. 43).

LEGAL CONCLUSION AND RECOMMENDATION:

Connecticut General Statute 22-358(c), provides in part "The commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may make any order concerning the restraint or disposal of any biting dog, cat 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."

Connecticut General Statute 22-358(h), provides in part "After such hearing, the commissioner may affirm, modify or revoke such order as the commissioner deems proper."

Upon review of the transcript, evidence and exhibits of the parties, and based on the credibility of the witnesses, and after much reflection, I propose that the Town of Torrington has NOT established by a preponderance of the evidence that the issuance of the disposal order subject to this appeal meets the legal tests provided in Connecticut General Statute subsections 22-358(c) and 22-358(h), and should be REVOKED.

Respectfully submitted,



Wayne Kasacek
Hearing Officer

2 Nov 2018

Date