



Bryan P. Hurlburt
Commissioner

STATE OF CONNECTICUT
DEPARTMENT OF AGRICULTURE
Office of the Commissioner



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April 7, 2021

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RE: PROPOSED FINAL DECISION IN THE MATTER OF THE APPEAL FROM DISPOSAL ORDER ISSUED BY THE TOWN OF GROTON FOR THE DOG HANS OWNED BY LUCIEN AND RACHEL BANALES


To all parties:

Pursuant to Connecticut General Statutes Section 4-179, enclosed is the Proposed Final Decision of the Hearing Officer, Edward Taiman, in the above referenced matter.

Any exception or brief, which you may wish the final decision maker to consider before rendering a Final Decision must be submitted, in writing, and be received within fifteen (15) days of your receipt of this Proposed Final Decision.

Any request for the scheduling of oral argument must also be submitted to, in writing, and be received within fifteen (15) days of your receipt of this Proposed Final Decision.

Sincerely,


Bryan P. Hurlburt,
Commissioner

BPH:dbw

Enclosures: Proposed Final Decision



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**IN THE MATTER OF: APPEAL OF DISPOSAL ORDER
ISSUED BY TOWN OF GROTON
FOR THE DOG HANS**

PROPOSED FINAL DECISION

I, Edward C. Taiman, Jr., the designated Hearing Officer in the Appeal of a Disposal Order issued by the Town of Groton Animal Control Officer (“the Town”), in the matter of a dog named “Hans” owned by Lucien and Rachel Banales (collectively referred to as “owner” or “owners” or “Banales”), hereby issue the Proposed Final Decision in this matter. I have thoroughly reviewed the entire record, all the admitted exhibits, and all other related submissions of the parties. The Proposed Final Decision recommends affirming the Disposal Order as follows:

FINDINGS OF FACT:

1. Commissioner Bryan P. Hurlburt appointed me as Hearing Officer in this matter to issue to him a Proposed Final Decision. Connecticut General Statute § 4 – 179. Hearing Officer (“HO”) Exhibit 4. On November 10, 2020, the Notice of Hearing was sent by email to the Town and its attorney, and to the owners of Hans, for a hearing that was scheduled for January 12, 2021. Ex. HO 8.
2. The hearing commenced January 12, 2021 and was concluded on the same date after the Town and the owners each called all of their respective witnesses, put in all of their exhibits, and stated that they did not have any other evidence to be submitted into the record.
3. The hearing was conducted in accordance with the Uniform Administrative Procedures Act, and the Department’s Rules of Practice pertaining to contested cases, which regulations were provided to the parties. Ex. HO 8.

4. At issue is the appeal of the Disposal Order issued by the Town on August 10, 2020 to owner Lucien Banales concerning a dog named Hans. Ex. T 8.
5. The impounded dog, Hans, is owned by Lucien and Rachel Banales of 4 Buckeye Rd., Groton, CT.
6. On August 3, 2020 Officer Andrew Collins appeared at 4 Buckeye Rd., Groton regarding a dog bite. Upon arrival he met the victim's mother, Mary Jane Torres. She explained to the officer that her son, Mark Torres (dob 10/21/2011), was playing in their backyard with his younger brother at 159 Charter Oak Dr., Groton. Ms. Torres was in her kitchen when she heard loud yelling from her backyard. A few moments later her son Mark came in bleeding from his right shin. Ms. Torres photographed the injured leg and took her Mark to the hospital. Mark described the dog as a German Shepherd, or "like a Police Dog". Ex. T 1.
7. The victim, Mark Torres, testified that on the date in question he and his younger brother, Miguel, were swimming in their backyard pool when they got out to warm up in the sunshine. January 12, 2021 Transcript (hereinafter "Transcript") at pg. 48. He said his younger brother is afraid of dogs. Suddenly, they saw Hans running toward them in an aggressive manner which caused them to flee back towards their home. Mark heroically slowed down to allow his brother to run ahead of him thereby putting himself between his brother and the dog who proceeded to viciously attack Mark while Miguel escaped harm. Id. Mark had to kick the dog in its eye several times to get the dog to retreat. Mark said, "It was the worst day (of his life)". Transcript at 49. He showed his leg which had a large, approximately 3" long scar running down the side.
8. Christine O'Brien, Animal Control Officer for the Town of Groton testified on the Town's behalf as follows. On the date in question, she viewed the victim's dog bite which she described as the "most severe" she has seen in her 10-year career. Transcript at 29. She sees on average 5 – 10 dog bites per month. Id. The dog, Hans, is currently in quarantine where it has exhibited an aggressive temperament to the point where she is unable to handle it. Transcript at 29 – 30.

She further testified to the factors that led her to issue a disposal order against Hans as follows:

Q. Okay. What were the factors that led to your decision to issue a disposal order in this case?

A. The factors that led to my decision was severity of the bite to Mark Torres, the fact that we have a previous history of the dog bite in California, the aggression of the dog is still showing at the time. We cannot handle the dog. He is very aggressive during his quarantine with us, as well as going to the vet records and seeing that there is a documented history of aggression.

Transcript at 29.

The Town introduced photographs of the victim's leg, and in particular the wound. They establish that Mark Torres suffered an extremely deep, large, and likely painful laceration of the leg requiring no less than five stitches. Exs. T 12 - 27.

10. The Town also introduced an Activity Report from the Lompoc Sheriff's Office in Lompoc, California. It establishes that in June of 2017 the dog was running loose from the care of the owners and proceeded to trap some juveniles in a pool area whereupon it attacked and bit one of them. At that time, euthanasia was under consideration. Ex. T 10.
11. At the time of the incident Hans was not current on its rabies vaccination. Ex. T 28. A veterinarian report prepared by a Dr. Patricia Ross, DMV of the Groton Ledyard Veterinary Hospital states that she had adequate time to evaluate the dog and his temperament and in her professional opinion "...Hans will likely repeat aggressive and attacking behavior especially if a dominant family member is not present and the victim is a more submissive person such as a woman or child." Ex. T 31, Transcript at 52 – 53.
12. Mr. Banales testified as follows. He is employed by the Navy and is currently undergoing training. Transcript at 89 – 90. They had just moved into Groton less than a week earlier after having been on the road for 12 days. Transcript at 70. They reside in military housing. Ex. T 5. They have 2 dogs, and on the date in question he was out walking their other dog when Hans escaped the confinement of their home. Transcript at 81 – 82. He believes either one of his kids let the dog out, or the door to their home was not properly closed which permitted the dog to escape. Transcript at 71. He further testified the dog had a difficult upbringing and was aggressive towards third parties "most of the time". Transcript at 83. He produced videos of the dog walking in public both on and off muzzle with no apparent problems. Exs. DO 8 A-E. In another video produced by the owners, it appears that Hans responds well to Mr. Banales' commands and under his direction and control appears well trained. Ex. DO 11. At the time of the incident, he believes the dog was protecting its territory.
13. Mr. Banales produced several letters in support of returning the dog to California, including a letter from his parents which states that while the dog was in their custody and control, it was a loving, obedient, and well-behaved animal. Ex. DO 1.
14. Mr. Banales also produced photographs of his parents' home in Santa Barbara, CA which shows they have constructed a large outdoor pen for the dog to reside in should it return to California. Although the pictures are limited in scope, the pen is fenced in and appears to be no smaller than a two-car garage. Ex. DO 6.

15. In another letter, Josue Sanchez, CPA, a longtime friend of Mr. Banales, stated he knows the dog well which has always been “very friendly” and provides emotional support to Mr. Banales who is in service of our country and that an alternative to the Disposal Order should be explored. Ex. DO 2.
16. Eric Smith, a professional dog trainer/behaviorist and the owner of K9 Solutions provided a letter for consideration. He is a U.S. Army veteran and started his career as a K9 handler while in the Army. He was also the original trainer of Hans in California “and worked extensively with him over a period of several months.” It is apparent from his letter that prior to his training of Hans, the dog had been ill-treated and he worked to rehabilitate, socialize, and train the dog. In his opinion Hans was likely reacting in defense of his home and family and may have been provoked. Ex. DO 4.
17. Angel Perez, a former next-door neighbor of the owners provided a letter stating that Hans is a “well behaved and good dog” and that he felt comfortable having his infant daughter around it. The letter further states that “Like all well-behaved dogs in their owners (sic) presence, Hans was always quick to disengage any behavior that was not approved by his owners Rachel and Lucien Banales.” Ex. DO 5.
18. In another letter of support, Mr. Noah M. Azlein stated he believed that on the date in question the dog was merely being protective and that it showed immense restraint in doing so because had the dog chosen, “he would have killed and [done so] quickly.” Ex. DO 7.

LEGAL DISCUSSION:

Connecticut General Statute §22 – 358(c) provides that “the Commissioner, the Chief Animal Control Officer, any municipal animal control officer... may make any Order concerning the 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.”

RULING RE: DISPOSAL ORDER:

During the hearing I had the opportunity to view the witnesses and assess their credibility. They each appeared honest and straightforward.

There is a common theme running throughout the testimony and evidence produced during the hearing. That is, while Hans is in the presence of its owners, and this includes the parents of Mr. and Mrs. Banales, it is a happy, obedient, and well-adjusted dog. However, outside of the presence of one its dominant owners, it is overly protective and aggressive to the point of being confrontational and threatening.

Unfortunately, the dog knows no bounds. It does not have a large yard to run in. Although the pen at the parents of Mr. Banales appears large and self-contained, there was no evidence in the record to indicate it had the space needed to safely run and roam about. While in California it eventually escaped its confines and confronted a group of children and bit someone. While here in Connecticut, it again escaped its confines and ran onto the property of the Torres family and attacked a young boy. In the absence of a fence, the dog has no awareness of its boundaries or limitations.

It is beyond dispute that Mr. Banales loves Hans, and that the dog loves him. The dog provides him with emotional support. It is responsive to his commands, but Mr. Banales cannot tend to the dog 24 hours a day. He is employed by the Navy and one day he may be out to sea.

Christine O'Brien, the Groton animal control officer, has worked with dogs for years and is experienced and highly qualified. It was her testimony that she was unable to handle the dog while it was in quarantine.

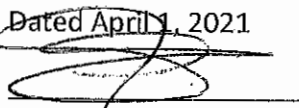
A local veterinarian stated she believed the dog "will likely repeat attacking and aggressive behavior especially if a dominant family member is not present and the victim is a more submissive person such as a woman or child."

Whether Hans is in Connecticut or California, the dog presents a risk to the public.¹ No child, or an adult for that matter, should ever have to be confronted with the very difficult decision that Mark Torres made, which was to put himself in harm's way to protect his younger brother. His younger brother is smaller and frailer (Ex. T 30), and Mark's actions may have very well saved his brother's life. Ms. O'Brien's disposal order was reasonably based upon her personal observations of the dog, as well as its history.

CONCLUSION

Having carefully reviewed all the evidence in the record, including testimony presented, I find the Town has satisfied its burden that by a preponderance of the evidence the Disposal Order issued by the Groton Animal Control Officer should be upheld.

Dated April 1, 2021


Edward C. Taiman, Jr.,
Hearing officer

¹ The Department does not have the authority to order a dog to be removed from the state in these types of appeals.