19

CITY OF SACRAMENTO

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DEPARTMENT OF LAW
812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

November 25, 1980

Honorable City Council
Council Chamber
City Hall
Sacramento, California

RE: REMAND OF ADMINISTRATIVE DECISION INVOLVING VICIOUS ANIMAL

Members in Session:

SUMMARY

This is a case involving the City animal control officer's determination that a certain dog is a vicious animal within the meaning of City Code Section 6.101. An administrative decision upholding that determination has been set aside by the superior court for procedural irregularity. The case has been remanded to the City Council for reconsideration in light of the court's ruling. For reasons which follow we recommend that the case be referred to the same hearing officer, for reconsideration in light of the court's ruling.

BACKGROUND INFORMATION

Acting pursuant to City Code Section 6.101 et seq., the City Animal Control Officer determined a certain dog (a pit bull dog named "Bullard") to be a "vicious animal" and decided that under the circumstances the dog should be destroyed. Upon appeal, that decision was upheld by a hearing officer appointed by the City Council. The dog owner thereafter contested the matter in superior court.

The superior court determined that the hearing officer placed the burden of proof on the dog owner at the administrative hearing. The court further determined that the burden of proof should be on the animal control officer, to prove that the dog in question is a vicious animal. The court therefore vacated the hearing officer's decision, remanded the matter back to the City Council, and ordered a reconsideration of the evidence in light of the aforementioned ruling on the burden of proof issue.

The City Council may refer this matter to a hearing officer (City Code Sections 2.320-2.329). A de novo hearing is not required in this matter (NLRB vs. Donnelly Garment Co. (1946) 330 US 219, 91 L.Ed.854; Cole vs. L.A. Community College District (1977) 68 C.A.3d 785). The matter may and should be decided upon the existing record, with the evidence being reconsidered in light of the superior court's ruling (id; accord, Ford Motor Co. vs. NLRB (1938) 305 US 364, 83 L.Ed.221; Corey vs. Board of Medical Examiners (1977) 66 C.A.3d 538). The existing findings may be modified accordingly (ibid). In our opinion, the matter may be referred to Mr. Herman Lorenz, the original hearing officer, for decision (NLRB vs. Donnelly Garment, supra; Cole vs. L.A. Community College Dist., supra.)

As stated by the United States Supreme Court, ". . . a remand [of administrative proceedings] does not dismiss or terminate the administrative proceedings. If findings are lacking which may properly be made upon the evidence already received, the court does not require the evidence to be reheard. If further evidence is necessary, . . . that evidence may be taken" (Ford Motor Co. vs. NLRB, supra, 83 L.Ed.221, 230.

"There is nothing in the statute, or in the principles governing judicial review of administrative action, which precludes the court from giving an administrative body an opportunity to meet objections to its order by correcting irregularities in procedure, or supplying deficiencies in its record, or making additional findings where these are necessary, or supplying findings validly made in the place of those attacked as invalid." (id., 83 L.Ed. at 231).

"Certainly it is not the rule of judicial administration that . . . a judge is disqualified from sitting in a retrial because he was reversed on earlier rulings. We find no warrant for imposing upon administrative agencies a stiffer rule, whereby examiners would be disentitled to sit because they ruled strongly against a party in the first hearing", NLRB vs. Donnelly Garment Co., supra, 91 L.Ed. 854, 867.

Since the prior hearing officer has already received the evidence and observed the demeanor of the witnesses, and there is no need for a new hearing or a new hearing officer, we believe that the matter should be referred to the same hearing officer for reconsideration of the evidence in light of the superior court's ruling. An entirely new hearing or a hearing before a different hearing officer would be unnecessarily time consuming and costly, and would serve no useful purpose.

RECOMMENDATION

For the foregoing reasons it is recommended that this matter be referred to Mr. Herman Lorenz for reconsideration of the evidence in light of the superior court's ruling.

Very truly yours,

JAMES P. JACKSON
City Attorney

Stephen Nocita

STEPHEN B. NOCITA
Deputy City Attorney

RECOMMENDATION APPROVED:

Walter J. Slipe

WALTER J. SLIPE, City Manager

SBN:GD

CITY OF SACRAMENTO

DEPARTMENT OF ANIMAL CONTROL
2127 FRONT STREET SACRAMENTO, CALIFORNIA 95818
TELEPHONE (916) 449-5623

TOM HOOVER
CHIEF ANIMAL CONTROL OFFICER
RUBEN MORA
SENIOR ANIMAL CONTROL OFFICER

July 31, 1980

Haskel B. Compton
4791 - Scarborough Way
Sacramento, Ca. 95823

Dear Mr. Compton

Your Animal has been deemed "Vicious Animal" under Sacramento City Ordinance Section 6.101. As on one or more occasions, attacked, mauled or killed other animals.

You are hearby notified that your animal will be put to sleep on August 15, 1980.

If you would like to appeal this determination of the Chief of Animal Control, please file a notice of such appeal with the city clerks office prior to August 14, 1980.

Very Truly Yours,

Tom Hoover

Tom Hoover
Chief of Animal Control

c.c. city clerk
city attorney

BEFORE THE CITY COUNCIL

CITY OF SACRAMENTO, STATE OF CALIFORNIA

IN RE APPEAL OF Item No. 47 (8-12-80)

HASKEL B. COMPTON FINDINGS OF FACT AND ORDER

The above-entitled matter came on regularly for hearing on Friday, August 29, 1980 at 9:30 a.m. at City Hall, Sacramento, California, before Hermann E. Lorenz, Jr., duly appointed Hearing Examiner.

Appellant, HASKEL B. COMPTON, was personally present and was represented by James R. Lee, Attorney at Law. The Department of Animal Control, City of Sacramento, was represented by Tom Hoover, Cief of Animal Control.

A full and complete hearing was heard with witnesses duly sworn, testifying through direct and cross-examination, and further documentary and written evidence was submitted to the Hearing Examiner.

After the completion of the testimony, the hearing was kept open until Wednesday, September 3, 1980 for the City to file further written evidence and for Appellant to object thereto. The City did forward to the Hearing Examiner a copy of its files in the above-entitled matter and Appellant, by and through his attorney, objected to portions thereof by letter of August 29, 1980. The objections of Appellant are sustained herein as to the portions of the matters contained in the written file submitted by the City.

Thereafter, the matter was taken under submission and the Hearing Examiner has considered the evidence herein, the

documentation and arguments of the parties hereto.

FINDINGS OF FACT

The Hearing Examiner makes the following findings:

1. That Appellant, HASKEL B. COMPTON, resides at 4791 Scarborough Way, Sacramento, California and is the owner of a certain Pit Bull dog, known as Bullard.

2. That pursuant to complaints filed with the City, on July 31, 1980, Bullard was detained and impounded by the Department of Animal Control of the City of Sacramento.

3. That on July 31, 1980, Tom Hoover gave notice to Appellant of the intention of the City to put said animal to sleep, said notice being given pursuant to Section 6.104(a) of the Sacramento City Code. Said notice was properly given and contained all elements required by law.

4. That on or about August 5, 1980, pursuant to Section 6.104(b) and (c) of the Sacramento City Code, Appellant filed his Notice of Appeal to the City Council of the City of Sacramento.

5. That on August 5, 1980, pursuant to Section 2.320, City Code, the City Council appointed Hermann E. Lorenz, Jr. as Hearing Examiner and set the matter of the appeal for hearing on August 29, 1980 at 9:30 a.m.

6. That on or about May 15, 1980, said Pit Bull, Bullard, killed a dog owned by Maryann Prewitt who resides at 4781 Scarborough Way, Sacramento, California, next door and adjacent to the property owned by HASKEL B. COMPTON. Said killing occurred wherein a hole developed in the fence between the Prewitt and Compton homes, and the remains of the Prewitt dog were found in

the backyard of the Compton home. The Hearing Examiner finds the killing of the Prewitt dog was without provocation and that the Appellant did not establish his burden of proof that the killing of the Prewitt dog was with provocation.

7. That on or about July 7, 1980 said Pit Bull, Bullard, did kill, in the front yard on or near 4791 Scarborough Way, a dog owned by Sheila Sanders who resides at 7744 Quinby Way, Sacramento, California. That said Pit Bull was in the front yard of the Compton residence leashed, but the Sanders dog entered on or near the premises of the Compton front yard, at which time the said Pit Bull became uncontrollable, the same weighing 160 - 165 pounds, and attacked the Sanders' dog and killed the same. Said attack and killing of the Sanders' dog was without provocation. The Appellant did not meet his burden of proof in establishing that said attack and killing of the Sanders' dog was with provocation.

8. That City Code Section 6.101 defines a vicious animal as follows:

> "For the purposes of this article, the term "vicious animal" shall mean any animal which has, on one or more occasions, attacked, bitten, mauled or otherwise injured any person or other animal without provocation by such person or other animal. (Ord. No. 3211, §3)."

9. That the Hearing Examiner finds the Pit Bull, Bullard, to be a vicious animal within Section 6.101 of the City Code of the City of Sacramento.

10. That Section 6.103 of the City Code of the City of Sacramento, provides as follows:

> "The chief animal control officer may

do any of the following with regard to a vicious animal:

(a) Retain such animal for purposes of observation for a period of not to exceed thirty days.

(b) Release such animal to the control of its owner upon such conditions as may be reasonably required to insure the public safety.

(c) Cause such animal to be destroyed if, in his opinion, the release of such animal would create a threat to the public safety. (Ord. No. 3211, §3)."

11. That the said Chief Animal Control Officer elected to destroy said animal pursuant to the provisions of 6.103(c) of the City Code of the City of Sacramento. That said termination is not an abuse of discretion and is supported by the evidence presented at said hearing.

12. That the Hearing Examiner finds that if said Pit Bull, Bullard, should be released that such animal would create a threat to the public safety within the City of Sacramento and elsewhere, and in the best interests of public safety, the Pit Bull, Bullard, should be destroyed.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Hearing Examiner concludes as follows:

1. That the Chief Animal Control Officer acted in a reasonable manner and did not abuse his discretion in ordering the destruction of the Pit Bull, Bullard, as set forth in his letter of July 31, 1980.

2. That the Chief Animal Control Officer acted in accordance with all the provisions of the Animal Control Act,

and City Ordinances of the City of Sacramento.

3. That the appeal of Appellant should be denied.

4. That the destruction of said Pit Bull, Bullard, should be stayed until Friday, September 26, 1980, in order to allow Appellant, if he desires, to seek judicial review of the foregoing proceeding.

O R D E R

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered as follows:

1. That the appeal of HASKEL B. COMPTON be, and the same is hereby denied.

2. That the action of the Chief Animal Control Officer is hereby ratified and affirmed.

3. That the Pit Bull, Bullard, shall be put to sleep on or after Friday, September 26, 1980, said stay being granted to allow Appellant to seek judicial review of this order if he so chooses.

DATED: SEPTEMBER 9, 1980.

HERMANN E. LORENZ, JR.

HERMANN E. LORENZ, JR.
Hearing Examiner

SUPER[illegible] COURT OF THE STATE OF CALIF[illegible]NIA
IN AND FOR THE
COUNTY OF SACRAMENTO

DATE November 6, 19[illegible], COURT MET AT _____ DEPARTMENT 11

PRESENT HON. WILLIAM A. WHITE, JUDGE H. [illegible] DEPUTY CLERK

_____, REPORTER _____ BAILIFF

	COUNSEL:
MICHAEL D. SIMPSON, Petitioner	JAMES A. LAM
VS No. 291609	
CITY OF SACRAMENTO, ET AL	STEPHEN R. [illegible], Deputy City Attorney
	(UNDERLINE COUNSEL PRESENT)

NATURE OF PROCEEDINGS: [illegible]

The court is prepared to find that the Hearing Officer erred in his legal conclusion that the burden of proof here was on the Petitioner to show that his dog was not vicious. To the contrary, the burden of proof was on the City to establish that the dog was vicious in that he made unprovoked attacks. This requires a reconsideration of the evidence.

Mandamus lies.

The Hearing Officer's Findings of Fact and Order should be vacated, and the matter remanded to the City Council for whatever proceedings are deemed proper under the circumstances.

Counsel for Petitioner shall prepare, serve and lodge with the Clerk, Department 11, the appropriate form of Writ.

Execution of the dog is stayed pending final disposition by respondent City.

William A. White, Judge of the Superior Court

CC: COUNSEL ABOVE NAMED

MINUTES

BOOK [illegible] PAGE [illegible]

J. A. SIMPSON, CLERK

CC 1a ACTION NO. 291609 By _____ Deputy

JAMES R. LEE
Attorney at Law
901 F Street, Suite 200
Sacramento, CA. 95814
(916) 448-9336

Attorney for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

HASKEL B. COMPTON, Petitioner, vs. CITY OF SACRAMENTO, et al., Respondents.	NO. 291603 WRIT OF MANDATE

TO THE CITY OF SACRAMENTO, DEPARTMENT OF ANIMAL CONTROL FOR THE CITY OF SACRAMENTO, TOM HOOVER, RESPONDENTS:

After hearing and determination of this Court that you have failed to perform your legal duty by placing the burden of proof on petitioner in the administrative action which is the subject of this suit, judgment has been entered in this proceeding ordering that a peremptory writ of mandate issue under the seal of this Court.

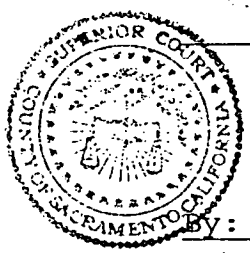
THEREFORE, you are commanded immediately on receipt of

this writ to set aside your decision entered September 16, 1980 which orders petitioner's dog to be destroyed; to reconsider the evidence in that case; and, to stay execution of the dog until final disposition by respondent CITY OF SACRAMENTO.

WITNESS the Honorable WILLIAM WHITE, Judge of the Superior Court.

DATED: NOV 2 0 1980

J.A. SIMPSON
, Clerk



By: _____, Deputy

James R. Lee
Attorney at Law
901 F St., Suite 200
Sacramento, Ca. 95814
Tel: (916) 448-9336

ENDORSED:

NOV 19 1980

J. A. SIMPSON, CLERK
By H. LORIS, Deputy

Attorney for Petitioner

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

HASKEL B. COMPTON,

Petitioner

vs.

CITY OF SACRAMENTO, et al

Respondents.

No. 291603

JUDGMENT
[WRIT OF MANDATE]

This cause came on regularly for trial on October 17, 1980, at 10 A.M. in Dept. 11 of the above entitled court, the Honorable William A. White, Judge, presiding, sitting without a jury. Petitioner appeared by his attorney, James R. Lee, and respondents appeared by their attorney Stephen B. Nocita, Deputy City Attorney, and the cause having been argued and submitted for decision,

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. A peremptory writ of mandate shall be issued and directed to respondents, commanding respondents immediately after receiving the writ, to set aside the decision made by respondents on September 16, 1980, in the matter entitled In re Appeal of Haskel B. Compton.

2. The writ shall further command respondents to reconsider the evidence in that proceeding.

3. The writ shall further command respondents to stay execution of petitioner's dog pending final disposition by respondents.

4. Petitioner shall have and recover from respondents petitioner's costs and disbursements in this proceeding in the sum of $41 which represents the filing fee for the petition for writ of mandate.

Dated: NOV 19 1980

WM. A. WHITE

Judge of the Superior Court

ATTEST:
J. A. SIMPSON, CLERK
By [illegible]
DEPUTY CLERK

SEAL

Judgment entered on _____, 1980, in Vol. _____ of the Judgment Book, page _____.

Clerk

By _____

Deputy Clerk

JAMES R. LEE
ATTORNEY AT LAW
901 F STREET, SUITE 200
SACRAMENTO, CA 95814
(916) 448-9336

December 1, 1980

City Council
915 I St., 2d Floor
Sacramento, Ca. 95814

Dear Council:

My office represents Mr. Haskel B. Compton with regard to the recent problems he has been having with his family pet, Bullard. Bullard's fate is before the Council on December 2, 1980.

As you may or may not know, Bullard was sentenced to death this past September by a hearing officer appointed by this Council. However, the legal errors in that decision were apparent from the face of the findings so my client sought judicial review of that ruling. Ultimately Judge White agreed with my client's contentions and that is how the matter has returned to this Council.

I must call the Council's attention to the fact that the hearing officer, while the mandate action was pending, engaged in exparte conversations with the City Attorney's office. These conversations were clearly contrary to the letter and spirit of the Rules of Professional Conduct and, as attorneys, both of those participants have a duty to know and obey those rules. See Rule of Professional Conduct 7-108(b). As a result of those ex parte conversations the hearing officer gave a sworn declaration to the City Attorney which he tried to introduce at the mandate hearing. Judge White flatly refused to review that ex parte document and caused the City Attorney to phisically remove it from his trial brief in open court. There can be no doubt that these types of Rule violations can only harm our professional status in the eyes of the public.

The Sacramento Union recently informed me that this conduct continues even after my strong protest at the mandate hearing. On Wednesday, November 26, 1980, the same City Attorney advised me that this matter would be before the Council on December 2, 1980. During this conversation I asked him if it would be proper for me to submit a letter to the Council

if I noticed a copy to him. He informed me that it would be proper with notice but that he preferred that I did not do so. Out of respect for his preference I did not contact the Council. On Friday, November 28, 1980, the Union informed me that the same City Attorney had filed a legal memorandum with the Council without notice to me. It is beyond question that this attorney actually knew that the City Council is the trier of fact in this matter (City Code section 6.104) and, therefore, this ex parte communication again violates the Rules of Professional Conduct, specifically Rule 7-108(b). I find this conduct inexcusable because it ocurred after actual notice of Rule 7-108(b) and, more importantly, after leading me not to submit a memorandum even with proper notice.

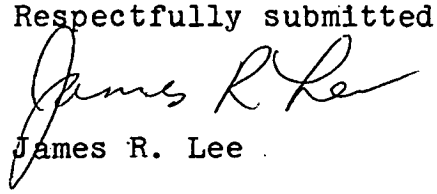
I have been informed by the Union that the improper communication urges the Council to send Bullard's fate back to the same hearing officer. My client and I strongly protest this action as there can be no doubt that a person who engages in ex parte communications, as the trier of fact, cannot impartially judge the merits of the action.

It is apparent that my client must seek judicial review of his claim if it is to be contested. Therefore, he hereby demands his right to a jury trial guaranteed to him by Article III, section 2 of the United States Constitution and Article I, section 16 of the California Constitution. Should my client be deprived of such valuable property without a jury trial his Constitutional and Civil rights shall have been denied.

Further, we feel that there is no basis for this action as Mr. Compton has generously offered to forego his rights if Bullard is returned on probation. Such action would probably be consistent with our constitutions as it would not involve a significant deprivation of property rights. Mr. Compton has repeatedly offered to confine this pet to a secure back yard except when it is leashed and under the control of an adult. This action would alleviate any perceived fears which the City has and would most expeditiously settle this matter.

In conclusion, we mostcearnestly hope that this matter may be resolved on December 2, 1980, but, if it cannot, we feel that it must be tried before a jury

Respectfully submitted,



James R. Lee

cc: Steve Nocita, City Attorney
Mr. Haskel B. Compton