

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DAG 07101

NICHOLAS FROST D/B/A)
TOP DOG KENNEL)
)
Petitioner,)
)
v.)
)
N.C. DEPARTMENT OF AGRICULTURE)
AND CONSUMER SERVICES)
VETERINARY DIVISION)
)
Respondent.)

SETTLEMENT AGREEMENT

RECITALS

Nicholas Frost (the "Petitioner") and the North Carolina Department of Agriculture and Consumer Services (the "Respondent") desire to fully and finally settle this and all other disputes and controversies surrounding the Petitioner's operation of a boarding kennel, and desire to affect a full and final settlement solely in order to avoid the burden and expense of continued litigation.

WHEREAS, at all times pertinent to this matter the Petitioner operated a boarding kennel, Top Dog Kennel ("TDK" or the "kennel") licensed pursuant to N.C. Gen. Stat. § 19A-28, license number 10,386.

WHEREAS, on July 16, 2014, Mrs. James Burns called TDK to arrange for the family dog, a Chihuahua, "Dulcey," to be boarded there from July 18 to July 21, 2014.

WHEREAS, Mr. Burns dropped Dulcey off at TDK at about 3:30 p.m., Friday, July 16,

2014, at TDK and informed the receptionist that he would pick up Dulcey on the following Monday.

WHEREAS, Mr. Burns declined the extra service of having Dulcey walked.

WHEREAS, On Monday, July 21, 2014, at about 4:31 p.m., Mr. Burns was driving from Asheville to TDK to pick up Dulcey.

WHEREAS, Mr. Burns received a telephone call at 4:31 p.m. from the Petitioner, who said that he had Dulcey in his office at TDK. There was also a Kerry Blue Terrier ("Terrier") in the office in a crate, to be groomed.

WHEREAS, the Petitioner said that he left the office. When he returned he found that the Terrier had "broken out of his crate" and killed Dulcey.

WHEREAS, Mr. Burns ended the call and then called the Petitioner back at 4:36 p.m., requesting that the Petitioner explain what happened again. The Petitioner repeated what he had told Mr. Burns. When Mr. Burns asked the Petitioner whether he still had Dulcey's body or had he taken her to a veterinarian, the Petitioner replied that Dulcey was dead when he found her. Mr. Burns informed the Petitioner that he was coming to pick up Dulcey and to please wrap up the body. Mr. Burns told the Petitioner that this was the second time that one of his pets has been attacked while at TDK.

WHEREAS, Mr. Burns and his son arrived at TDK at 6:00 p.m. Mr. Burns asked the Petitioner to explain again what happened to Dulcey because he thought a terrier was a small dog. The Petitioner said that the Terrier was "about hip high."

WHEREAS, the Petitioner took Mr. Burns to the TDK's grooming area adjacent to the front lobby and office. The Petitioner showed Mr. Burns the dog crate the Terrier escaped from

when it killed Dulcey. Mr. Burns saw no damage to the crate. The Petitioner said he “didn’t know what happened, (he) didn’t know if (he) hadn’t latched the door properly or…”

WHEREAS, Respondent’s Inspector Jay Blatche arrived at TDK on July 24, 2014, and met with employee Michael Boggs.

WHEREAS, Inspector Blatche reviewed the Terrier’s and Dulcey’s records and found Dulcey’s rabies vaccination had expired on December 13, 2013.

WHEREAS, Inspector Blatche called the Petitioner by telephone. The Petitioner told Mr. Blatche that he left Dulcey in the office and left the Terrier, Layla, in the crate in the grooming area next to the office, when he left the office. When he returned to the office he found Dulcey dead and Layla out of the crate. This occurred at about 2:30 p.m.

WHEREAS, Inspector Blatche asked the Petitioner if he had informed Layla’s owner that Layla had killed another dog. The Petitioner replied that he had done so.

WHEREAS Inspector Blatche asked the Petitioner if he had informed Layla’s owner that the dog Layla killed was not current on its rabies vaccination. The Petitioner answered that he did not know Dulcey’s rabies vaccination was not current.

WHEREAS, the Petitioner said that TDK does not use a written contract or agreement for dog owners to indicate that their dogs may come into contact with other animals. It is TDK’s policy to ask owners whether they want their animals to play or be walked with other animals.

WHEREAS Inspector Blatche informed the Petitioner:

- i. that all animals at TDK must be secure when unsupervised;
- ii. that all animals at TDK must be current on their rabies vaccination;
- iii. that TDK’s facility must have a written contract or agreement that allows

animals to come in contact with other animals; and

- iv. that all animal bites must be reported to the local animal control immediately.

WHEREAS, the Respondent imposed a civil penalty upon the Petitioner for Petitioner's failure to comply with minimum state standards for the maintenance and operation of a licensed boarding kennel.

WHEREAS, the Petitioner has filed with the North Carolina Office of Administrative Hearings a Petition for a Contested Case Hearing.

WHEREAS, the parties desire to resolve this matter without further litigation.

NOW THEREFORE, the parties agree as follows:

1. Petitioner agrees that, when Respondent signs this Agreement, Petitioner shall authorize the Respondent to file on his behalf a voluntary dismissal of his Petition for a Contested Case Hearing, with Prejudice, with the N.C. Office of Administrative Hearings.
2. Petitioner agrees and the Respondent agrees to accept from Petitioner, the sum of six hundred dollars (\$600.00), to be paid in three equal monthly payments of \$200.00, with the first payment due on December 1, 2014. Respondent further agrees that said payments shall be deemed made on time if Petitioner mails them, US Postal Service First Class Mail, postage prepaid, postmarked no later than 5:00 o'clock p.m. on the date due.
3. The Petitioner agrees to execute and to provide to the Respondent the attached Confession of Judgment which the parties agree shall not be filed with the Clerk of Court in Buncombe County unless Respondent's duly authorized officers, agents or employees find that Petitioner has:

- a) violated a material provision of this Agreement; or
- b) committed a violation of Chapter 19A of the North Carolina General Statutes or subchapter 52J of Title II of the North Carolina Administrative Code.

4. The persons signing this Agreement represent that they have full authority and representative capacity to execute this Agreement in the capacities indicated below, and that this Agreement constitutes the valid and binding obligations of all parties, the parties represent to each other that they have full power and all requisite authority to execute and perform this Agreement.

5. The parties agree to act in good faith in the implementation of this agreement.

6. The parties agree to bear their own attorneys fees and costs.

7. It is understood between the parties that this Agreement contains the entire agreement between the parties hereto regarding the matters set forth, and it supersedes all previous negotiations, discussions and understandings regarding such matters. Terms of this Agreement are contractual and not a mere recital, and may be modified only in a writing executed by all signatories hereto.

8. The effective date of this Agreement will be the date on which it has been executed by all parties as shown on the signature lines below.

9. North Carolina law shall govern the interpretation and enforcement of this Agreement.

IN TESTIMONY WHEREOF, the parties have set their hands and seals on the dates indicated below:

Nick CMA
Nicholas Frost
D/b/a Top Dog Kennel

Date: 11-28-14.

FOR RESPONDENT:

BH Bloch
Barry H. Bloch
Assistant Attorney General
N.C. Department of Justice
ATTORNEY FOR RESPONDENT

Date: 12/2/2014

Patricia Norris
Dr. Patricia Norris, DVM
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumers Services

Date: 12/2/2014