



Steve Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

David T. Marshall, DVM
State Veterinarian

July 30, 2014

Top Dog Kennel
Attn: Mr. Nicholas Frost, Manager
12 Cavalier Lane
Swannanoa, North Carolina 28778

UPS
1Z 210 617 01 5561 3538

NOTICE OF CIVIL PENALTIES

RE: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF ANIMAL WELFARE ACT, N.C. GENERAL STATUTE § 19A-40(2) & (3) AND TITLE 2, N.C. ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0201, .0204 & .0210

Dear Mr. Frost:

Pursuant to N.C. Gen. Stat. §§ 19A-24 and -40 I am issuing this notice to you that Top Dog Kennel is assessed a civil penalty of \$1,000.00, as provided in the enclosed Notice of Violations and Order.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing in the NCOAH to appeal the penalty assessment.

Pursuant to N.C. Gen. Stat. § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, present your offer to Dr. David T. Marshall, State Veterinarian, who may be contacted by telephone at (919) 733-7601. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. David T. Marshall
State Veterinarian
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. Gen. Stat. § 150B-23. The petition must be accompanied by a filing fee of twenty dollars (\$20.00) payable to the N.C. Office of Administrative Hearings. Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone 919/733-0926. You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in blue ink that reads "David T. Marshall, DVM". The signature is fluid and cursive, with the initials "DVM" written at the end.

David T. Marshall, DVM
Acting Director, Animal Welfare Section
State Veterinarian

Attachment: Assessment Document

cc: Mr. Barry Bloch, NCDOJ, Assistant Attorney General
Ms. Tina Hlabse, NCDA&CS, Legal Affairs
Joe Blomquist, NCDA&CS, Animal Welfare Section
Jay Blatche, NCDA&CS, Animal Welfare Section

IN THE MATTER OF
TOP DOG KENNEL

) NOTICE OF VIOLATIONS,
) ASSESSMENT OF CIVIL
) PENALTY
)
) For Violations Of:
) Animal Welfare Act
) N.C. General Statute §§ 19A-40
) 2 N.C. Administrative Code 52J
) .0201, .0204, & .0210

Acting pursuant to N.C. Gen. Stat. §§ 19A-24 and -40, Dr. David T. Marshall, Acting Director, Animal Welfare Section, North Carolina Department of Agriculture and Consumer Services (NCDA&CS) makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter Top Dog Kennel (“TDK” or the “kennel”) is a boarding kennel licensed pursuant to N.C. Gen. Stat. § 19A-28, license number 10386.
2. 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.
3. Mr. Burns dropped Dulcey off 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.
4. Mr. Burns declined the extra service of having Dulcey walked.
5. On Monday, July 21, 2014, at about 4:31 p.m., Mr. Burns was driving from Asheville to TDK to pick up Dulcey.
6. Mr. Burns received a telephone call at that time from Mr. Nick Frost (“Mr. Frost”). Mr. Frost 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.
7. Mr. Frost said that he left the office. When he returned he found that the Terrier had “broken out of his crate” and killed Dulcey.
8. Mr. Burns ended the call and then called Mr. Frost back at 4:36 p.m., requesting that Mr. Frost explain what happened again. Mr. Frost repeated what he had told Mr. Burns. When Mr. Burns asked Mr. Frost whether he still had Dulcey’s body or had he taken her to a veterinarian, Mr. Frost replied that Dulcey was dead when he found her. Mr. Burns informed Mr. Frost that he was coming to pick up Dulcey and to please wrap up the body. Mr. Burns told Mr. Frost that this was the second time that one of his pets has been attacked while at TDK.

9. Mr. Burns and his son arrived at TDK at 6:00 p.m. Mr. Burns asked Mr. Frost to explain again what happened to Dulcey because he thought a terrier was a small dog. Mr. Frost said that the Terrier was "about hip high."
10. Mr. Frost took Mr. Burns to the Kennel's grooming area adjacent to the front lobby and office. Mr. Frost showed Mr. Burns the dog crate the Terrier escaped from when it killed Dulcey. Mr. Burns saw no damage to the crate. Mr. Frost said he "didn't know what happened, (he) didn't know if (he) hadn't latched the door properly or..."
11. Inspector Jay Blatche arrived at the Kennel on July 24, 2014, and met with employee Michael Boggs.
12. Inspector Blatche reviewed the Terrier's and Dulcey's records and found Dulcey's rabies vaccination had expired on December 13, 2013.
13. Inspector Blatche called Mr. Frost by telephone. Mr. Frost stated 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.
14. Inspector Blatche asked Mr. Frost if he had informed Layla's owner that Layla had killed another dog. Mr. Frost replied that he had done so.
15. Inspector Blatche asked Mr. Frost if he had informed Layla's owner that the dog Layla killed was not current on its rabies vaccination. Mr. Frost answered that he did not know Dulcey's rabies vaccination was not current.
16. Mr. Frost said that Kennel 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 Kennel's policy to ask owners whether they want their animals to play or be walked with other animals.
17. Inspector Blatche informed Mr. Frost:
 - a. that all animals must be secure when unsupervised;
 - b. that all animals must be current on their rabies vaccination;
 - c. that Kennel's facility must have a written contract or agreement that allows animals to come in contact with other animals; and
 - d. that all animal bites must be reported to the local animal control immediately.

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that TDK, either by act or omission, violated the following provisions of the N.C. General Statute:

- a) N.C. Gen. Stat. § 19A-30(2) and (3)
- b) North Carolina Administrative Code 52J .0201(a)
- c) North Carolina Administrative Code 52J .0204(b)
- d) North Carolina Administrative Code 52J .0210(d)

(These laws and rules are appended to this document)

III. DECISION

As required by N.C. Gen. Stat. § 19A-40 in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, TDK is assessed a civil penalty of: \$1,000.00 for violating N.C. General Statute §§ 19A-30(2) and (3) North Carolina Administrative Code 02 NCAC 52J 0201, .0204, and .0210.

\$1000.00 TOTAL AMOUNT ASSESSED

7/30/14
Date



Dr. David T. Marshall
State Veterinarian
Acting Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply: ...

- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;

02 NCAC 52J .0201 GENERAL

(a) Housing facilities for dogs and cats shall be structurally sound and maintained in good repair to protect the animals from injury, contain the animals and restrict the entrance of other animals and people.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(b) Primary enclosures for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out. Primary enclosures shall be constructed so as to provide space to allow each dog or cat to walk, turn about freely, and to easily stand, sit, or lie in a natural position. The height of a primary enclosure other than a cage shall be no less than five feet. All enclosures shall be constructed to prevent the escape of animals.

02 NCAC 52J .0210 VETERINARY CARE

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. However, no shelter shall be disapproved following inspection or otherwise cited for failure to inoculate any dog or cat known to be less than 12 weeks old or until such animals have been in the shelter at least 15 days.