

STATE OF RHODE ISLAND
WASHINGTON, SC.

SUPERIOR COURT

DEFENDERS OF ANIMALS, INC., Alias;
KRISTY MISERENDINO, Alias, KIM MISERENDINO, Alias
and DAVID GOBERN, Alias

VS.

CA NO WC2014-

TRISH SUNDERLAND, As Finance Director of the
Town of North Kingstown; Alias; and HOLLY DUFFANY Alias,
in Her Capacity as Chief Animal Control Warden for the
Town of North Kingstown; Alias

COMPLAINT AND REQUEST FOR DECLARATORY RELIEF

ALLEGATIONS APPLICABLE TO ALL COUNTS

1. Plaintiff KRISTY MISERENDINO, Alias, (hereinafter Kristy M) is a resident of the Town of North Kingstown, RI who owns a pet dog; Ozzy.
2. Plaintiff KIM MISERENDINO, Alias, (hereinafter Kim M) is a resident of the Town of North Kingstown, RI who owns a pet dog; Balou.
3. Plaintiff DAVID GOBERN Alias, (hereinafter Gobern) is a resident of the Town of North Kingstown, RI who owns a pet dog; Latte.
4. Plaintiff DEFENDERS OF ANIMALS, INC. Alias (hereinafter Defenders of Animals) is a non-business corporation organized and existing in accordance with the laws for the State of Rhode Island whose purpose and goal is to provide for the ethical treatment of animals, and to protect animals from mistreatment and cruelty.
5. Plaintiff DEFENDERS OF ANIMALS, INC.; Alias has been specifically harmed by the actions complained of in that members of Defenders of Animals, Alias have had transactions involving the ownership of dogs in the Town of North Kingstown, and further that the actions as

hereinafter alleged are contrary to, and affect the stated purpose and mission of the plaintiff DEFENDERS OF ANIMALS, INC.; Alias. and its ability to effectively lobby for legislation that affects the ethical treatment of animals.

6. Defendant TRISH SUNDERLAND, (hereinafter Defendant North Kingstown) is Finance Director of the Town of North Kingstown; Alias; and suit is being brought against said TRISH SUNDERLAND in her official capacity.

7. Defendant HOLLY DUFFANY Alias (hereinafter Duffany) in Her Capacity as Chief Animal Warden for the Town of North Kingstown; Alias, is an employee of the Town of North Kingstown, and, at all pertinent times has been the chief animal control officer in and for the Town of North Kingstown, and suit is being brought against said HOLLY DUFFANY in her official capacity.

8. Defendant HOLLY DUFFANY is charged with the duty of operating a municipal dog pound pursuant to RIGL § 4-19-1 *et. seq.*, in and for the Town of North Kingstown, Rhode Island.

9. On or about July 29, 2014, Plaintiffs Kristy M, Kim M, and Govern were each charged by Defendant North Kingstown, *inter alia* with keeping and harboring a vicious dog. Notice was provided to each of them that a hearing would be held on August 8, 2014 to determine whether their dogs would be declared vicious and thereby subject to the restrictions as provided for in RIGL §4-13.1-1, *et. seq.* pertaining to the Regulation of Vicious Dogs.

10. On or about August 8, 2014, a hearing was conducted in conformity with RIGL § 4-13.1-11 to determine if the dogs owned by the aforesaid Kristy M., Kim M. and Govern were to be declared vicious. At said hearing Ozzy, owned by Kristy M. was declared to be vicious, Ballou, owned by Kim M. was declared to be vicious, and Latte owned by Govern was declared to be not vicious. A copy of the decision of the duly convened Hearing Board is attached as **Exhibit A.**

11. As a result, the Hearing Board imposed certain requirements as pertaining to the dogs kept by Kristy M. (Ozzie) and Kim M. (Ballou) as set forth in **Exhibit A**, pursuant to the authority conferred to the Board by RIGL §4-13.1-3.

12. As a result of the dog owned by Govern (Latte) being declared Not Vicious, no restrictions as contained in RIGL §4-13.1-3 were imposed. upon Govern's harboring or keeping of the dog Latte.

13. Plaintiffs Kristy M. and Kim M. complied with all the restrictions imposed by the Hearing Panel, and as a result, their dogs were returned to them to be kept consistent with the restrictions as imposed by the Hearing Panel.

14. Thereafter, on or about September 17, 2014, Plaintiffs Kristy M. and Kim M. were notified that they must remove their dogs from the premises, since their dogs were within one mile of a private school in violation of North Kingstown Mun. Ord. Sec. 3-8(h) which provides: "All animals declared vicious as a result of a hearing conducted under RIGL §4-13.1-11 shall not be kept or housed within a one mile radius of any public or private school, or child or daycare facility." A copy of the Notice sent to Kristy M. and Kim M. is attached as **Exhibit B**.

15. On or about October 14, 2014, a search warrant and order was issued by the District Court to search for, and if found to seize the dogs Ballou and Ozzy. The person identified as the owner or keeper of the dogs was improperly identified as "David Miserendino," however the search warrant was issued against Kimberly Miserendino (Kim M). A copy of the Search and Seizure Order is attached as **Exhibit C**.

16. On or after October 25, 2014 Plaintiff Govern received a Citation to appear in Municipal Court on the basis that he was in violation of North Kingstown Mun. Ord. Sec. 3-8(h). Said citation was sent to Plaintiff Govern even though his dog, Latte was never declared to be vicious. A copy of the Citation issued to Plaintiff Govern is attached as **Exhibit D**.

17. Upon information and belief, Plaintiffs Kristy M. , Kim M., and Govern are the only persons in the Town of North Kingstown who have been charged with a violation of North Kingstown Mun. Ord. Sec 3-8(h), although there are others within the Town of North Kingstown, similarly situated, who have not been charged, or had their dogs impounded for a violation of Mun. Ord. Sec. 3-8(h).

18. RIGL § 4-13.1-3 establishes the restrictions that a City or Town may impose if a dog is declared to be vicious.

19. The requirements as set forth in North Kingstown Mun Ord. 3-8 are inconsistent with those requirements as established by State Law, and as contained in RIGL §4-13.1-3. A copy of North Kingstown Mun Ord. 3-8 is attached as **Exhibit E**.

COUNT I
UNLAWFUL FORFEITURE OF PROPERTY

20. The seizure of Ozzy and Ballou is in violation of laws and regulations pertaining to the control or regulation of dogs.

21. Enforcement of the North Kingstown Municipal Ordinance, as aforesaid will result in a taking of property without due process of law, in that said Ordinance requires a forfeiture in derogation of the laws and Constitution of the State of Rhode Island.

WHEREFORE, Plaintiffs Kim M. and Kristy M. demand that they be awarded compensatory damages for their loss, attorneys fees, expenses, and other such relief as this Court deems meet and just.

COUNT II
UNLAWFUL FORFEITURE OF PROPERTY

22. The attempts forfeiture of Latte is in violation of laws and regulations pertaining to the control or regulation of dogs.

23. Enforcement of the North Kingstown Municipal Ordinance, as aforesaid will result in a taking of property without due process of law, in that said Ordinance requires a forfeiture in derogation of the laws and Constitution of the State of Rhode Island.

WHEREFORE, Plaintiff Govern demands that he be awarded compensatory damages for his losses, attorneys fees, expenses, and other such relief as this Court deems meet and just.

COUNT III
DECLARATORY/EQUITABLE RELIEF

24. North Kingstown Municipal Ordinance 3-8(h) is in in conflict and preempted by State law, repugnant to the laws of the State of Rhode Island, and is therefore void and unenforceable.

WHEREFORE plaintiffs pray that this honorable court order the following relief:

A. issue a declaratory judgment that the North Kingstown Municipal Ordinance 3-8(h) is in conflict and preempted by State law, repugnant to the laws of the State of Rhode Island, and is therefore void and unenforceable;

B. issue an injunction preliminarily enjoining, until such time as there is a hearing on the merits, and then permanently enjoining the defendants from enforcing North Kingstown Municipal Ordinance 3-8(h);

C. award to plaintiffs interest, costs, and attorneys fees; and

D. award other such relief as this Court deems meet and just.

COUNT IV
DECLARATORY/EQUITABLE RELIEF

25. North Kingstown Municipal Ordinance 3-8(h), as applied to Plaintiffs Kristy M, Kim M. and Govern is violative of the plaintiffs' rights of due process in that it seeks to impose requirements in addition to those already imposed after hearing, in violation of article 1, sec. 2 and of the RI Constitution, and the Fourteenth Amendment to the United States Constitution.

26. Enforcement of North Kingstown Municipal Ordinance 3-8(h) places the plaintiffs Kristy M, Kim M., and Govern in double jeopardy by seeking to impose penalties for the same conduct as that previously tried and determined, in violation of article 1, sec. 7 of the RI Constitution, and the Fifth Amendment to the United States Constitution.

WHEREFORE plaintiffs pray that this honorable court order the following relief:

A. issue a declaratory judgment that North Kingstown Municipal Ordinance 3-8(h) is a denial of due process, and in violation of the prohibition against double jeopardy as applied to Plaintiffs Kristy M., Kim M. and Govern, and in violation of article 1, sec. 2 and sec. 7 of the RI Constitution, and the Fifth and Fourteenth Amendment to the United States Constitution;

B. issue an injunction preliminarily enjoining, until such time as there is a hearing on the merits, and then permanently enjoining the defendants from enforcing North Kingstown Municipal Ordinance 3-8(h);

C. award to plaintiffs interest, costs, and attorneys fees; and

D. award other such relief as this Court deems meet and just.

COUNT V
DECLARATORY/EQUITABLE RELIEF

27. North Kingstown Municipal Ordinance 3-8(h), as applied to Plaintiffs Kristy M, Kim M. and Govern is violative of the plaintiffs' rights of due process in that it imposes requirements different than those imposed upon others, similarly situated, who have been determined to keep or harbor a vicious dog within one mile of a school within the Town of North Kingstown.

28. As a result, Plaintiffs Kristy M., Kim M., and Govern have been the subject of selective enforcement and have been denied the equal protection of the law in violation of Article 1, Section 2 of the RI Constitution, and the Fourteenth Amendment to the United States Constitution.

WHEREFORE plaintiffs pray that this honorable court order the following relief:

A. issue a declaratory judgment that North Kingstown Municipal Ordinance 3-8(h) is a denial of due process, in violation of the prohibition against double jeopardy as applied to Plaintiffs Kristy M., Kim M. and Govern, in violation of the equal protection of the law as applied to Plaintiffs Kristy M., Kim M. and Govern, and in violation of article 1, sec. 2 and sec. 7 of the RI Constitution, and the Fifth and Fourteenth Amendment to the United States Constitution;

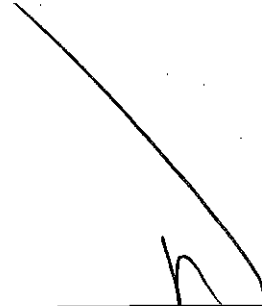
B. issue an injunction preliminarily enjoining, until such time as there is a hearing on the merits, and then permanently enjoining the defendants from enforcing North Kingstown Municipal Ordinance 3-8(h);

C. award to plaintiffs interest, costs, and attorneys fees; and

D. award other such relief as this Court deems meet and just.

PLAINTIFFS
By their Attorneys
Law Office of Mark B. Morse

12-11-14 1114196



MARK B. MORSE
RI Bar Reg No 3003
420 Angell Street
Providence, RI 02906
tel (401) 831-0555
fax (401) 273-0937
mark@morselawoffice.com

EXHIBIT A

10/21/14

VICIOUS DOG HEARING

RHODE ISLAND GENERAL LAW TITLE 4 CHAPTER 4-13.1

LOCATION North Kingstown DATE 8-8-14 REPORT# 14-1145-0F

PANEL MEMBERS	PRINTED NAME	INITIALS
	<u>JOE WARZYCHA RISPER</u>	<u>JW</u>
	<u>Eli A. Mulligan NKPD</u>	<u>RAM</u>
	<u>MO Erin Medeiros</u>	<u>EM</u>

DOG (s)	DESCRIPTION	BITE OR ATTACK	FINDING (s)
<u>"Balou"</u>	<u>Pitbull 6 1/2 y/o M - white</u>		<u>Vicious - 3-0</u>
<u>"Ozzy"</u>	<u>Pitbull 1 y/o M - Brindle</u>		<u>Vicious - 3-0</u>
<u>"Latte"</u>	<u>Pitbull - 1 1/2 y/o F - Brown</u>		<u>NOT VICIOUS - 3-0</u>

REQUIREMENTS WRITE YES, NO OR CIRCLE REQUIREMENTS IMPOSED

- INSURANCE (at least \$100,000) YES-3-0
- TATTOO OR MICROCHIP YES-3-0
- WARNING SIGN YES-3-0
- ENCLOSURE (six sided) NO-3-0
- NOTIFY POLICE IF DOG IS LOOSE YES-3-0
- DOG OFF OWNER'S PROPERTY ON A LEASH AND/OR MUZZLE YES-3-0
- DOG OUTSIDE ON OWNER'S PROPERTY, ANY COMBINATION OF THE FOLLOWING MAY BE IMPOSED: LEASH, MUZZLE, TIE OUT ENCLOSED AREA YES-3-0
- DOG MUST BE SPAYED OR NEUTERED YES-3-0
- IF OWNER MOVES MUST NOTIFY BOTH CITIES/TOWNS OF THE MOVE YES-3-0
- OWNER CANNOT GIVE DOG AWAY OR SELL DOG YES-3-0
- DOG KILLS A PERSON, 4-13.1-9 (C) (1), THE DOG SHALL BE EUTHANIZED _____
- DOG SERIOUSLY INJURES A PERSON, KILLS OR SERIOUSLY INJURES A DOMESTIC ANIMAL, THE DOG MAY BE ORDERED EUTHANIZED ON A UNANIMOUS VOTE OF THE PANEL 4-13.1-9 (C) (4) _____

ACO RECEIVED COPY HW INITIALS

EXHIBIT B

OCT 9 2014 2:09PM

PRINT WORLD

NO. 178 P. 2

N.K. 295-8579



NORTH KINGSTOWN POLICE DEPARTMENT

8166 POST ROAD, NORTH KINGSTOWN, RHODE ISLAND 02852

Telephone: (401) 294-3311 FAX: (401) 294-6830

Administrative Offices: (401) 294-3316

CHIEF OF POLICE
Thomas J. Mulligan

September 17, 2014

Ms. Kimberly Miserendino
Ms. Kristy Miserendino
90 Hickory Drive
North Kingstown, Rhode Island 02852

Dear Misses Miserendino:

As you are aware, pursuant to the provisions of Rhode Island General Laws §4-13.1-3, on August 8, 2014, a 3 - member Administrative Hearing Board unanimously voted to declare your dogs "Ozzy" and "Balou" to be vicious dogs. I am forwarding a copy of Sec. 3-8 of the Ordinances of the Town of North Kingstown. Subsection (h) states:

"All animals declared vicious as a result of a hearing conducted under RIGL §4-13.1-11 shall not be kept or housed within a one-mile radius of any public or private school, or child or daycare facility."

It has been brought to the attention of this department that your residence is within a mile of the Montessori School located at 1239 Tower Hill Road. Pursuant to the provisions of this ordinance, you must remove these animals from your premises. If the dogs are not removed from the premises by September 30, 2014, you will be cited to appear before the North Kingstown Municipal Court for failure to comply with Sec. 3-8(h).

Very truly yours,

Thomas J. Mulligan
Chief Thomas J. Mulligan

516 - 8466 - cell
~~295 - 8579~~
*

EXHIBIT C

EXHIBIT C

Search Warrant

COPY

State Ex rel	City/Town North Kingstown	County Kent
vs Respondent Misereudino, Kimberly		TO: An Officer authorized by law to execute the within warrant.

Complaint and affidavit having been made to me under oath, and as I am satisfied that there is probable cause for the belief therein set forth that grounds for issuing a search warrant exist, you are hereby commanded diligently to search the place or person herein described for the property specified and to bring such property or articles, and to summon the owner, or keeper thereof, if any be named in the complaint, if to be found by you, to appear before the District Court in the district where such property shall have been seized, namely the Third, Division of the District Court of Rhode Island.

Place or person to be searched:

96 Hickory Drive, North Kingstown, RI described as a single occupant ranch color brown with an attached two car garage and shed in the rear of the residence.

Property or articles to be searched for:

1. Male Pit bull mix named "Dizzy" described as white in color 15 months old
2. Male Pit bull mix named "Dizzy" described as brindle in color and one years old

Name of owner, or keeper, thereof if known to complainant:

David Misereudino, [REDACTED]

Said warrant shall be served in the daytime - may be served in the nighttime - within seven (7) days from the issuance hereof, AND IF NOT SERVED WITHIN SAID TIME TO BE RETURNED FORTHWITH TO A JUDGE SITTING IN THE ABOVE NAMED COURT.

Property seized by you here under shall be safely kept by you under the direction of the Court so long as may be necessary for the purpose of being used as evidence in any case. As soon as may be thereafter, if the same be subject to forfeiture, such further proceedings shall be had thereon for forfeiture as is prescribed by law.

Hereof fail not and MAKE TRUE RETURN PROMPTLY OF THIS WARRANT TO A JUDGE THERE SITTING with your doings thereon, accompanied by a written inventory of any property taken to a judge sitting in the above named court.

Issued at Warwick in the county of Kent this 14th day of October, A. D. 2014


 Judge of the District Court
 Justice of the Supreme Superior Court

ACKNOWLEDGMENT OF RETURN

Warrant received on day of 20..... from

Judge.....

10/14/14

State of Rhode Island and Providence Plantations

Complaint To Search and Seize Property/or Person

TO: Pamela Woodcock Pfeiffer Justice of the Supreme, Superior Court, or Judge
of the District Court of the State of Rhode Island

a) Detective Lieutenant Christopher Emerson of the North Kingstown Police Department.

b) a person authorized by law to bring complaints for violation of the law which it is my responsibility to enforce/a person who has a right to possession of the property stolen, embezzled, or obtained by false pretense or pretenses:

ON OATH COMPLAINS THAT:

(1) Certain property has been stolen or embezzled, or obtained by false-pretense or pretenses, with intent to cheat or defraud within this state or elsewhere,

(2) Certain property has been kept, suffered to be kept, concealed, deposited, or possessed in violation of law, or for the purpose of violating the law,

(3) Certain property is designed or intended for use, or is or has been used in violation of law, or as a means of committing a violation of law,

and prays that a warrant to search for and seize said property/person be issued and if the same be subject to forfeiture, that the property be forfeited.

The person / property or articles to be searched for and / or seized is described as follows:

1. Male Pit bull mix named "Balou" described as white in color six and half years old
2. Male Pit bull mix named "Ozzy" described as brindle in color and one years old

The name of the owner or keeper, thereof (if known) is:

David Misserandino, ~~REDACTED~~

The place or person to be searched is described as follows:

96 Hickory Drive, North Kingstown, RI described as a single occupant ranch color brown with an attached two car garage and shed in the rear of the residence.

Your complainant prays that said warrant may be served in the nighttime for the reason that:

Subscribed and sworn to before me.

[Signature]
Judge/Justice

10/14/14
Date

[Signature]
Complainant

EXHIBIT D

NORTH KINGSTOWN MUNICIPAL COURT

CITATION NUMBER

TOWN ORDINANCE VIOLATION

MCP 02351

ISSUING OFFICER	THE UNDERSIGNED OFFICER STATES THAT:		ON MONTH	DAY	YEAR	AT (TIME)	AM
			10	25	14	6:00	P
OFFENSE	LOCATION OF OFFENSE						
	90 Hickory St						
OFFENSE	LAST NAME		MID INIT.	DOB		SEX	
	Groblerin			[REDACTED]		M <input checked="" type="checkbox"/> F <input type="checkbox"/>	
OFFENSE	FIRST NAME		JUVENILE				
	David						
OFFENSE	STREET ADDRESS						
	910 Hickory St						
OFFENSE	CITY		STATE	ZIP CODE			
	N. Kingstown		RI	02882			
OFFENSE	DRIVERS LICENSE NO.		STATE				
OFFENSE	VIN NO.		YEAR MAKE COLOR REGISTRATION NO STATE				
OFFENSE	OWNED BY		PLATE		INITIAL		
	C. J. [REDACTED]		128		[REDACTED]		
OFFENSE	ADDRESS		CITY		STATE ZIP CODE		
OFFENSE	ROAD CONDITION	TRAFFIC	VISIBILITY	ZONED SPEED	ACTUAL SPEED	CLOCKED RAZAR <input type="checkbox"/>	ACCIDENT
OFFENSE	DESCRIPTION OF OFFENSE					TOWN ORDINANCE / STATUTE NO.	
	1. Containment of dog w/in					38(H)	
	2. School Zone						
OFFENSE	3. 10-29-14 6:00pm						
	SIGNATURE - ISSUING OFFICER					BADGE NO.	
[Signature]					6		

WARNING ONLY PAY BY MAIL - AMOUNT DUE \$

YOU MUST APPEAR BEFORE THE NORTH KINGSTOWN MUNICIPAL COURT
 80 BOSTON NECK ROAD., NORTH KINGSTOWN, RI • 401-268-1557
 Make checks or money order payable to: North Kingstown Municipal Court within 7 days

**DO NOT MAIL CASH - CASH PAYMENTS MUST BE MADE IN PERSON
 BETWEEN 9:00 A.M. AND 4:00 P.M. WEEKDAYS**

Date: 10/25/14 Time: 1950

PROCEDURE FOR PLEADING NOT GUILTY
 If you wish to plead not guilty and have a hearing mark "X" in the box and return this notice within 7 days of issuance. You will receive a summons to appear in municipal court.

WARNING - FAILURE TO COMPLY WILL RESULT IN THE SUSPENSION OF YOUR OPERATOR'S LICENSE.

EXHIBIT E

Sec. 3-8. Confinement of certain dogs and other animals; emergency destruction.

- (a) The owner shall confine within a building or secure enclosure every fierce, dangerous or vicious animal and not take such animal out of such building or secure enclosure unless the animal is securely muzzled, leashed or caged.
- (b) Any animal described in subsection (a) of this section that is found at large may be impounded by the animal control officer or deputy animal control officer and may not be reclaimed by its owner, without the express consent of the animal control officer.
- (c) Every female animal in heat shall be kept confined in a building or secure enclosure or in a veterinary hospital or boarding kennel in such manner that such female cannot come in contact with another animal, except for intentional breeding purposes.
- (d) If a female animal in heat has been impounded, such animal shall remain impounded until the period of heat shall end, unless the owner shall reclaim such animal and provide satisfactory assurance to the animal control officer that the animal will be confined for the remainder of the period of heat.
- (e) When, in the judgment of a veterinarian, an animal should be destroyed for humane reasons, such animal may not be reclaimed.
- (f) Under emergency circumstances, the animal control officer or a deputy animal control officer may destroy an animal, but only after making every reasonable effort to communicate with the owner, and if that is not possible, making every reasonable effort to procure the services of the veterinarian either to care for the animal at the scene or to transport the animal to a veterinarian's office.
- (g) No wild animal may be kept within the town limits, except under such conditions as shall be fixed by the animal control officer. However, wild animals may be kept for exhibition purposes by circuses, zoos and educational institutions, in accordance with such regulations as shall be established by the animal control officer or any deputy animal control officer of this town.
- (h) Animals declared vicious as a result of a hearing conducted under RIGL § 4-13.1-11 shall not be kept or housed within a one-mile radius of any public or private school, or child or daycare facility.

(Rev. Ords. 1974, § 3-1-8; Ord. No. 04-07, § 1, 6-7-2004; Ord. No. 05-04, § 1, 4-11-2005; Ord. No. 11-20, § 1, 10-3-2011)

State law reference— *Confinement of vicious dogs, RIGL 1956, § 4-13-19; regulation of vicious dogs, RIGL 1956, § 4-13.1-1 et seq.*