

DONNA B. BETTS  
PETITIONER IN PRO PER  
3906 WALNUT AVENUE  
LONG BEACH, CA 90807

TELEPHONE: (213) 424-9368

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES

DONNA B. BETTS, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 CITY OF LONG BEACH DEPART- )  
 MENT OF HEALTH & HUMAN )  
 SERVICES-BUREAU OF ANIMAL )  
 CONTROL; WAYNE BESENTE, )  
 SENIOR ANIMAL CONTROL )  
 OFFICER OF THE BUREAU OF )  
 ANIMAL CONTROL; ROGER )  
 HATAKEYAMA MANAGER, BUREAU OF )  
 ANIMAL CONTROL, and DOES 1-50 )  
 INCLUSIVE, )  
 )  
 Respondents. )  
 )

CASE NO.  
PETITION FOR WRIT  
OF  
MANDAMUS

Petitioner, DONNA B. BETTS petitions this court for a Writ of Mandamus under Code of Civil Procedure Section 1085 directed to Respondents City of Long Beach Department of Health and Human Services; Bureau of Animal Control; Wayne Besente, Senior Animal Control Officer of the Bureau of Animal Control; Roger Hatakeyama Manager, Bureau of Animal Control,

and Does 1 through 50, Inclusive, and by this verified petition represents that:

1. Petitioner, DONNA B. BETTS at all times mentioned in this petition has been and now is a resident of the City of Long Beach, County of Los Angeles, State of California and is the owner of a Shepard-mix female dog named "Lilly". Petitioner brings this petition individually. As a pet owner, Petitioner, DONNA B. BETTS is within the class of persons beneficially interested in and aggrieved by the decisions of the Senior Animal Control Officer of the Bureau of Animal Control and the Manager of said bureau rendered without a hearing or opportunity to be heard as alleged below.

2. At all times mentioned in this petition Respondent, Wayne Besente, Senior Animal Control Officer of the Bureau of Animal Control and Roger Hatakeyama is the Manager of the Bureau of Animal Control respectively and have been and now are under contract with respondent the City of Long Beach Department of Health & Human Services-Bureau of Animal Control.

3. At all times mentioned in this petition Respondent City of Long Beach Department of Health & Human Services-Bureau of Animal Control have empowered the Senior Animal Control Officer and Manager of the Bureau of Animal Control to seize and/or destroy dogs pursuant to L.B.M.C 6.16.280 and L.B.M.C. 6.16.290.

4. On or about September 30, 1991, Respondent Wayne

Besente, Senior Animal Control Officer seized the dog "Lilly" and has ever since had the dog in his direct or indirect control. Subsequent to taking custody of said dog, Respondent, Wayne Besente issued an order for destruction of said dog. Respondent, Wayne Besente has purportedly issued said order pursuant to L.B.M.C. 6.16.280 and L.B.M.C. 6.16.290 which provides in pertinent part:

"Any dog or other animal declared to be a vicious animal may, at the discretion of the superintendent, be humanely destroyed. Such humane destruction shall occur no earlier than ten days following notice given to the owner of such animal of intention to destroy. . ."

5. Said City Code section has been enacted in violation of Petitioner's right to freedom from deprivation of property without due process of law. Said ordinances are violative of petitioners due process rights in that they improperly delegate to the Senior Animal Control Officer and/or Manager unrestricted powers to determine whether an animal shall be destroyed without an adjudicatory hearing or opportunity to be heard. The Senior Animal Control Officer and Manager's powers to destroy Petitioner's dog and deprive her of her property without a hearing is an invalid exercise of the police power not reasonably related to the health and safety of the public.

6. Since the subject ordinances do not provide for a

hearing prior to the destruction of a dog accused of biting, Respondents are required to bring an action pursuant to Civil Code section 3342.5, which provides for a hearing in the municipal court prior to removal or destruction of a dog which has allegedly bitten a human being on at least two separate occasions. On information and belief, Petitioner contends that an action pursuant to Civil Code section 3342.5 was not initiated as respondents could not meet the burden of proof necessary to prevail in such a judicial action.

7. Rather than instituting an action pursuant to Civil Code section 3342.5, respondents proceeded in excess of their jurisdiction by having a hearing conducted by hearing officers within its bureau to review the order to destroy "Lilly".

8. On or about October 8, 1991, City of Long Beach, Department of Health & Human Services-Bureau of Animal Control, without jurisdiction and without sufficient evidence to support said ruling, confirmed the order for destruction by setting the destruction for ten (10) working days following Petitioner, DONNA B. BETTS' receipt of this order. A copy of this order is attached hereto as Exhibit "A" and incorporated herein by reference.

9. Respondent Wayne Besente's decision to destroy "Lilly" is invalid in that:

a) Said order deprives Petitioner of her valuable and existing property rights to the possession and ownership of "Lilly";

b) Such order was made pursuant to local ordinances and regulations which make no provision for hearing or administrative review violative of fundamental principles of due process;

c) Respondents confirmed said order without proper administrative review or jurisdiction to review;

d) Respondent's failed to grant petitioner a fair trial and failed to provide sufficient competent evidence to support their findings confirming the Senior Animal Control Officer's destruction order.

e) Respondents committed a prejudicial abuse of discretion in that Respondents' failed to proceed in the manner required by law (to-wit: pursuant to Civil Code section 3342.5)

f) Respondent's findings are not supported by the weight of the evidence in that there was insufficient evidence to support any finding that "Lilly" in fact bit any person, that any alleged bite victims were treated by physicians for injuries caused by "Lilly", that the confinement order condition prohibiting the dog from running at large was violated, or that "Lilly" cannot be property controlled in order to ensure public safety.

10. Petitioner has exhausted all available administrative remedies and has no appeal nor any plain, speedy, or adequate remedy at law. According to an official of the Bureau of Animal Control, "Lilly" is scheduled to be

destroyed on Thursday, November 7, 1991.

11. If Respondent's decision is allowed to be executed, Petitioner will be irreparably injured in that "Lilly" will be destroyed and she will be deprived of her pet dog "Lilly".

WHEREFORE, Petitioner prays as follows:

1. An alternative Writ of Mandamus or temporary stay be issued ex parte in the form attached hereto;
2. An ex parte order be issued staying Respondent's destruction order and returning "Lilly" to her owner, DONNA B. BETTS, Petitioner herein, and ordering Respondents to show cause why an order should not be granted further staying that order;
3. A peremptory Writ of Mandamus be issued ordering Respondent to set aside its decision;
4. The Petitioner recover her costs in this action;
5. Other relief be granted that the court considers proper and just.

Dated: October 31, 1991

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DONNA B. BETTS  
Petitioner In Pro Per