

Facsimile Transmission

THE MCNEELY LAW FIRM

Mahan Oaks Center
2898-6 Mahan Drive
Tallahassee, FL 32308
(850) 656-7780 (o)
(850) 656-7781 (f)
www.mcneelylawfirm.com

TO: Nicole Palotta
FAX NO.: 707-795-7280
FROM: Cindy McNeely
DATE: Wednesday, March 1, 2006
RE: Rodriguez - Porras vs. Miami Dade Animal Control

MESSAGE

The fax is long, I'm sending it in two-
Cover sheet + Complaint 1-9.

CONFIDENTIALITY STATEMENT: This facsimile may contain privileged and confidential information intended only for the use of the addressee named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the original facsimile to us at the above address via the U.S. Postal Service. Thank you.

**TOTAL NUMBER OF PAGES INCLUDING COVER PAGE:
HARD COPY TO FOLLOW BY MAIL:**

Yes/No

182 faxes

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

ANAYS RODRIGUEZ-PORRAS,
Plaintiff,

CASE NUMBER: 2005-17525-CA-01
Civil Division

vs.

MIAMI-DADE ANIMAL SERVICES,
MIAMI-DADE POLICE DEPARTMENT,
MIAMI-DADE COUNTY,
Defendants.

FIRST AMENDED COMPLAINT

Plaintiff, ANAYS RODRIGUEZ-PORRAS ("MRS. RODRIGUEZ-PORRAS"), sues
Defendants, MIAMI-DADE ANIMAL SERVICES, MIAMI-DADE POLICE DEPARTMENT,
and MIAMI-DADE COUNTY, and alleges:

COMMON ALLEGATIONS

Venue and Jurisdiction

1. Plaintiff is a citizen of the State of Florida. The Defendants are duly organized governmental units or departments thereof under the laws of the State of Florida and engaged in activity more particularly described below. Venue is proper in Miami-Dade County, Florida, pursuant to section 47.011, *Florida Statutes* (2004). This Court has personal jurisdiction over the parties.

2. Notice of the claim has been given to the Defendants pursuant to section 768.28(6), without conceding that the Defendants are entitled to any type of sovereign immunity, or that they are entitled to the damage limitations of section 768.28.

3. The matter in controversy exceeds, exclusive of interest and costs, \$15,000, and this Court has original jurisdiction.

4. The activities complained of herein are in the "operational" level of decision-making of the Defendants. Since this activity does not fall into the category which involves broad policy making or planning and does not involve discretionary governmental functions, the Defendants are not immune from tort liability, and in accordance with Article X, Section 13, of the Florida Constitution, and section 768.28, the Defendants waive sovereign immunity from liability for torts. The activities occurred in August 2005, after the effective date of section 768.28.

Identity of Parties

5. MRS. RODRIGUEZ-PORRAS is a citizen and resident of the State of Florida, who maintained at all times material to this complaint, and continues to maintain, her residence in Miami-Dade County, Florida.

6. MIAMI-DADE ANIMAL SERVICES DEPARTMENT ("ASD") is a governmental agency located and operating in Miami-Dade County, and is a department of the MIAMI-DADE POLICE DEPARTMENT. The MIAMI-DADE POLICE DEPARTMENT ("MDPD") is a governmental agency located and operating in Miami-Dade County, Florida; is a department of MIAMI-DADE COUNTY; and is the department with supervisory control of, and responsibility for, the ASD. MIAMI-DADE COUNTY ("MDC") is a duly organized governmental unit located in Miami-Dade County, Florida, and has responsibility for oversight of all its agencies, including the MDPD and ASD.

7. The ASD operates the Animal Services Unit ("the shelter"). The shelter's goal "is to find life long homes for as many animals as possible and to provide proper care for them while

they're at the shelter." See ASD website (<http://www.miamidade.gov/animals/about_us.asp>) (accessed August 22, 2005). Its "primary concern is for the needs of animals." *Id.* Moreover, the shelter "strive[s] to provide hundreds of animals outstanding care and compassion." *Id.*

Factual Allegations

8. When a certain golden retriever was a six-week-old puppy, MRS. RODRIGUEZ-PORRAS became his legal owner. She named the puppy "Cowboy."

9. MRS. RODRIGUEZ-PORRAS purchased Cowboy from a breeder of golden retrievers. Cowboy came from a championship line of golden retrievers. His grandfather was a certified show champion.

10. For the next eight-and-a-half years, Cowboy enjoyed the role of a beloved family member. MRS. RODRIGUEZ-PORRAS developed a special affection for Cowboy: she dressed him in costumes and took him trick-or-treating on Halloweens; he would wear festive hats during special family occasions, such as birthdays; he would be given gifts during Christmas, and gifts to others would be given on his behalf; and he assumed the role of supervisor when he would swim with MRS. RODRIGUEZ-PORRAS's young nieces or nephews, barking an alert and going under water immediately to perform a "rescue" if a child's head went under water. He was vibrant, friendly, loving, loyal, compassionate, and adored by MRS. RODRIGUEZ-PORRAS.

11. Never wanting to lose Cowboy, MRS. RODRIGUEZ-PORRAS had an identification microchip implanted under his skin between his shoulders. Moreover, Cowboy was readily identifiable by sight because of a unique black mark on his tongue.

12. Upon information and belief, the ASD, MDPD and MDC were aware of conditions and operations at the ASD that could lead to an animal being improperly euthanized.

due to a May 2004 evaluation of the ASD conducted by the Humane Society of the United States that found the overall management, organization, and animal handling at the ASD "appalling."

13. Upon information and belief, the ASD, MDPD and MDC were aware that euthanasia is fatal.

14. On Friday, August 5, 2005, agitated and frightened by stormy weather, Cowboy got loose from MRS. RODRIGUEZ-PORRAS's home, where she lived with her husband and their one-year-old son. Records from the Miami-Dade Police Animal Services Unit show Cowboy was picked up by a shelter officer at approximately 9:35am the following morning about a block away. *See Exhibit 1.*

15. At 2:35 p.m. that same afternoon, records show Cowboy was checked into the shelter. *See Exhibit 2.* He was placed in kennel N32. *Id.*; *see also Exhibit 3.* His condition was observed to be "NORMAL." *See Exhibit 2.* Three other entries reflected the following information: "Status: STRAY WAIT"; "Hold: Y"; and "Request: HOLDNOTIFY [sic]." *Id.* Another entry stated, "Duc Out: 08/17/05." *Id.*

16. After searching frantically and unsuccessfully for Cowboy during the weekend, MRS. RODRIGUEZ-PORRAS telephoned the shelter on Monday and asked whether a golden retriever (Cowboy) had been picked up and placed in the shelter. She also filed a missing-animal report and received a case number. A shelter employee told her no golden retriever had been picked up, and Cowboy was not at the shelter. Both statements were false.

17. MRS. RODRIGUEZ-PORRAS suffered throughout the day on Monday, fearing Cowboy had been killed on the street, was injured, suffering, and alone, or was wandering in great fear and hunger, or had been stolen. But for the misstatements from the shelter employee, MRS. RODRIGUEZ-PORRAS would not have suffered such fears.

18. Her search continued on Monday, to no avail. On Tuesday, during another telephone conversation with the shelter, MRS. RODRIGUEZ-PORRAS again asked whether a golden retriever had been picked up and placed in the shelter. She asked specifically whether a golden retriever fitting Cowboy's description and with his unique black mark on his tongue was at the shelter. Again, a shelter employee told her a golden retriever had not been picked up, and Cowboy was not at the shelter. Both statements were false. MRS. RODRIGUEZ-PORRAS again suffered throughout the day on Tuesday, reliving the same fears regarding Cowboy as she had suffered the day before, with her hope fading. But for the misstatements from the shelter employee, MRS. RODRIGUEZ-PORRAS would not have again suffered such fears.

19. MRS. RODRIGUEZ-PORRAS passed another fruitless day of searching, another restless night. On Wednesday, August 10, 2005, she continued to be devastated about the unknown whereabouts and unknown fate of Cowboy. Upon information and belief, at some point during that Wednesday, after having held Cowboy since Saturday, a shelter employee scanned him and found identifying information from Cowboy's microchip. About 5 p.m. that same day, a shelter employee telephoned a relative of MRS. RODRIGUEZ-PORRAS at the address on the microchip and told the relative that Cowboy was safe and at the shelter. The relative called MRS. RODRIGUEZ-PORRAS, who called the shelter, overjoyed.

20. MRS. RODRIGUEZ-PORRAS told the employee she was leaving right then to pick up Cowboy. The shelter employee told her the shelter closed at 6 p.m. and she would not be able to get Cowboy that evening because of the time it would take her to travel to the shelter (13 miles away) with rush-hour traffic congestion and because Cowboy could not be "processed" out of the shelter that quickly. Upon information and belief, however, the shelter was open until 7 p.m. that night, and MRS. RODRIGUEZ-PORRAS had plenty of time to reach the shelter and pick up Cowboy to take him home. See ASD website (http://www.miamidadc.gov/animals/hours_of_oper.asp) (accessed August 22, 2005) (showing hours of operation 7 a.m. to 7 p.m., Monday through Friday).

21. On Thursday, August 11, 2005, MRS. RODRIGUEZ-PORRAS called the shelter in the morning and said her husband would be coming to pick up Cowboy. She was told to wait until she received rabies vaccination verification and tag identification documents from her veterinarian before picking up Cowboy. Once she obtained the documents, she called the shelter again and advised that her husband, RICARDO PORRAS, would be at the shelter in the afternoon to retrieve Cowboy. Despite knowing in the morning that her husband would be picking up Cowboy, a shelter employee now stated for the first time that he would not be able to do so without a signed, notarized letter of authorization from her. Upon information and belief, this new requirement was erroneous. MRS. RODRIGUEZ-PORRAS was assured Cowboy would be kept safe at the shelter if it took until Friday, August 12, 2005, for her to get the letter of authorization notarized.

22. Section 5-11 of the *Miami-Dade County Code of Ordinances* provides, "After a period of confinement of five (5) days, those dogs not claimed may be disposed of by adoption,

through humane agencies, or otherwise in a humane manner . . .” Thursday, August 11, 2005, was Cowboy’s fifth day at the shelter. The shelter employee failed to advise MRS.

RODRIGUEZ-PORRAS that Cowboy could be adopted to strangers or that his very life was at risk if he were not picked up that day.

23. Section 5-12 of the *Miami-Dade County Code of Ordinances* provides that prior to destruction of an animal at the shelter, shelter employees “shall review all missing-animal reports, if any, which have been filed with the Division during the fourteen-day period preceding the animal’s proposed date of destruction.” If the person reviewing the records finds such a report, then the ASD must notify the person who filed the report and cannot destroy the animal for five (5) days. *Id.*, 5-11.2(a). If the reviewer does not find a missing-animal report, then the animal may be destroyed. *Id.*, 5-11.2(b). Upon information and belief, the ASD, through its employees, failed to conduct such a review, failed to find the missing-animal report filed by MRS. RODRIGUEZ-PORRAS, or failed to file such a report when it was made (despite giving her Case Number 0500111324 as her missing-report number). But for the failure of the ASD to follow the *Miami-Dade County Code of Ordinances*, Cowboy would have been found and returned home, and MRS. RODRIGUEZ-PORRAS would not have suffered damages.

24. On Friday, August 12, 2005, MR. PORRAS went to the shelter with the aforementioned documents to pick up Cowboy. The shelter’s internal records indicated Cowboy was in kennel number N32. *See Exhibits 2, 3.* Shelter employees, however, were unable to locate Cowboy. Moreover, upon demand by MR. PORRAS, shelter employees were unable to produce any records showing the kennel Cowboy should have been in. MR. PORRAS spent two hours at the shelter searching for Cowboy to no avail. He left because shelter employees told

him the shelter was closing. Upon information and belief, Cowboy was still alive and at the shelter during the entire two hours that MR. PORRAS searched for him. But for the failure of the shelter's employees to keep proper track of Cowboy, MR. PORRAS would have taken him home that evening.

25. A shelter document reflects, contradictorily, that Cowboy had been placed on a "Pre Euthanasia Report" for Friday, August 12, 2005, while at the same time reflecting, in large, boldface type, "HAS HOLD FOR HOLDNOTIFY [sic]." *See* Exhibit 4. The document also noted his microchip identification number and observed, "called owner talked to mother / will p/u [pick up] dog." *Id.*

26. On Saturday, August 13, 2005, MRS. RODRIGUEZ-PORRAS went to the kennel to retrieve Cowboy. Upon asking for Cowboy, she was led down a hallway where an employee with apparent supervisory authority asked if she was Cowboy's owner. Receiving an affirmative response, the employee then stated, "Yeah, he was put down." By "put down," the employee meant the shelter had intentionally killed Cowboy with a lethal injection of fatal chemicals.

27. A shelter document records Cowboy's time of death as 9:30 a.m., Saturday, August 13, 2005, the morning after MR. PORRAS spent two hours searching for him at the kennel. *See* Exhibit 2.

28. MRS. RODRIGUEZ-PORRAS was devastated and hysterical. A kennel employee told her Cowboy was sick with "kennel cough," which was why he had been put down. Upon information and belief, those statements were knowingly false. Upon further information and belief, kennel records reflecting he had kennel cough were falsified records. *See* Exhibits 2, 4.

29. MRS. RODRIGUEZ-PORRAS demanded Cowboy's body to have an autopsy done by her veterinarian to disprove the kennel cough allegation. Shelter employees informed her they could not produce Cowboy's body because it had been incinerated shortly after he was euthanized. The actions of the shelter employees deprived MRS. RODRIGUEZ-PORRAS from having a funeral for Cowboy or from holding him one last time to say goodbye.

30. Subsequent to Cowboy's death, ASD and Miami-Dade County officials publicly stated his death was a mistake.

31. The ASD, the MIAMI-DADE POLICE DEPARTMENT, and MIAMI-DADE COUNTY were aware of numerous problems with the general operation of the shelter and with employees at the shelter, such that it was reasonably foreseeable that one or more employees would not only provide MRS. RODRIGUEZ-PORRAS with false information or misinformation, but also that the employee or employees would act with gross negligence or with reckless disregard for her rights to Cowboy and his body. The ASD, MDPD and MDC took no actions to protect MRS. RODRIGUEZ-PORRAS and Cowboy from the foregoing dangers.

32. Upon information and belief, the ASD and the MIAMI-DADE POLICE DEPARTMENT had responsibility for supervising ASD employees and the operation of the ASD, and MIAMI-DADE COUNTY has responsibility for oversight of all its agencies, including the MDPD and ASD.

33. The acts and activities and acts of gross negligence and failure to act and the acts of carelessness and gross negligence alleged against the Defendants were committed, or grossly negligently and carelessly omitted by the Defendants, acting through their agents and employees in the course and scope of their employment.