



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



HEARINGS OFFICER'S ORDER

TriMet vs. Denis O. Ponomarev

CASE NO. 3120156

(TriMet Exclusion Number 183805)

HEARING DATE: April 5, 2012

APPEARANCES:

Excluded Party did not appear

Officer Michael Powers, on behalf of TriMet

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Timelines: The Hearings Officer finds the following concerning the Notice of Exclusion being issued:

TriMet issued the Notice of Exclusion to Mr. Denis O. Ponomarev on March 5, 2012. The case was forwarded to the City of Portland Hearings Office on March 15, 2012. The Hearings Office mailed a Notice of Hearing and Interim Order extending the stay on the exclusion to the parties on March 16, 2012, within the time prescribed in the TriMet Code. The notice contained the required information concerning Mr. Ponomarev's rights in the hearing process.

Sufficiency of the Notice of Exclusion: A copy of the Notice of Exclusion was provided to Mr. Ponomarev when he was excluded. The notice referenced the violating conduct/applicable code provision.

Stays: The exclusion was stayed on the Hearings Officer's direction on March 16, 2012.

Mitigating and/or Aggravating Factors: The Hearings Officer finds no mitigating or aggravating factors existed when the Notice of Exclusion was issued.

Probability that the excluded individual engaged in the conduct supporting the exclusion: TriMet has the burden to demonstrate that it is more probable than not that the conduct forming the basis to issue the Notice of Exclusion occurred. Officer Powers appeared and testified that on March 5, 2012, he was at the Gateway Transit Center when he saw Mr. Ponomarev. Officer Powers testified that he is familiar with Mr. Ponomarev and that he is aware that Mr. Ponomarev is on probation for "robbery." Officer Powers testified that Mr. Ponomarev is "known for" being involved in burglary, theft and other property crimes. Officer Powers testified that he asked Mr.

Ponomarev for permission to search his person, and Mr. Ponomarev consented to the search. Officer Powers testified that, in Mr. Ponomarev's front pocket he located a screw driver and quartered pieces of porcelain that had been broken off of a spark plug. Officer Powers testified that Mr. Ponomarev told him that the pieces of porcelain had been intentionally broken off of the spark plugs, but offered no explanation for why that was done. Officer Powers testified that based on his training and experience, the items Mr. Ponomarev was carrying were consistent with the tools individuals use to gain entry into structures for purposes of burglarizing the structures.

Mr. Ponomarev was issued a Notice of Exclusion on March 5, 2012, for violating TMC section 28.15C by engaging in the crime of Possession of Burglary Tools under ORS 164.235 while on TriMet property. A person violates ORS 164.235 if the person possesses a burglary tool or theft device and the person:

- (a) Intends to use the tool or device to commit or facilitate a forcible entry into premises or a theft by a physical taking; or
 - (b) Knows that another person intends to use the tool or device to commit or facilitate a forcible entry into premises or a theft by a physical taking.
- (2) For purposes of this section, "burglary tool or theft device" means an acetylene torch, electric arc, burning bar, thermal lance, oxygen lance or other similar device capable of burning through steel, concrete or other solid material, or nitroglycerine, dynamite, gunpowder or any other explosive, tool, instrument or other article adapted or designed for committing or facilitating a forcible entry into premises or theft by a physical taking.

Mr. Ponomarev was mailed a Notice of Hearing on March 16, 2012. The Notice was not returned by the U.S. Postal Service and Mr. Ponomarev did not contact the Hearings Office prior to the hearing requesting that the hearing be rescheduled. Mr. Ponomarev did not appear at the hearing. The Hearings Officer makes this decision based upon the testimony of Officer Powers and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 6).

The Hearings Officer finds the testimony of Officer Powers to be credible and to accurately reflect the events leading up to the issuance of the Notice of Exclusion to Mr. Ponomarev on March 5, 2012. The Hearings Officer finds it is more probable than not that on March 5, 2012, Mr. Ponomarev violated TMC 28.15C by engaging in conduct constituting the crime of Possession of Burglary Tools under ORS 164.235 while on TriMet property. The Hearings Officer finds the Notice of Exclusion issued to Mr. Ponomarev on March 5, 2012, is valid.

Special Exceptions: The Hearings Officer finds there is no evidence in the record to suggest that Mr. Ponomarev is disabled or transit dependent.

ORDER AND DETERMINATION:

1. Validity of the Notice of Exclusion:

The Hearings Officer sustains the Notice of Exclusion issued to Mr. Denis O. Ponomarev on March 5, 2012.

2. Length of the Exclusion:

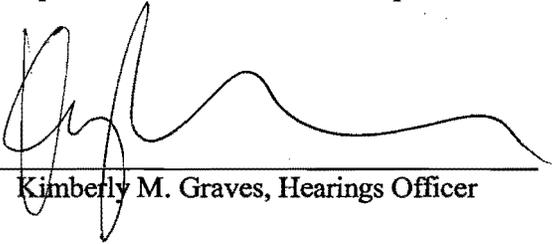
The exclusion shall become effective with this Order, on April 11, 2012, and shall conclude on June 10, 2012, at 5:00 p.m.

3. Scope of the Exclusion:

The scope of the exclusion shall be as described in the Notice of Exclusion.

4. This order has been mailed to the parties on April 6, 2012, not more than five (5) business days following the hearing, and will become final on April 11, 2012.
5. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 6, 2012



Kimberly M. Graves, Hearings Officer

KMG:jeg/rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form page 2	Turner, Anna	Received
2	TriMet Fare Inspection System printout	Turner, Anna	Received
3	Notice of Exclusion	Turner, Anna	Received
4	Mailing List	Hearings Office	Received
5	Notice of Hearing	Hearings Office	Received
6	Statement of Rights	Hearings Office	Received