



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

APPEAL OF PHILLIP RILLING, DBA ALOHA EXECUTIVE SEDAN & LIMOUSINE SERVICE

CASE NO. 3110198

DATES OF HEARINGS: June 10, 2011; June 28, 2011; and July 26, 2011

APPEARANCES:

Ms. Kathleen Butler, for the City

Mr. Eric Jenson, Attorney for Appellant (June 10, 2011 and June 28, 2011 hearings)

Mr. Phillip Rilling (June 28, 2011 and July 26, 2011 hearings)

Mr. Dennis Vannier, Attorney for the City (July 26, 2011 hearing only)

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Procedural Overview. The Hearings Officer consolidated Case Nos. 3110198 ("Rilling Case") and 3110199 ("Ahmad Case") for the evidentiary purposes.

This case involves an appeal (Exhibit 1a) by Phillip Rilling dba Executive Sedan & Limousine Service ("Rilling") of a City of Portland Office of Management and Finance –Revenue Bureau (the "City") allegation of violations of the Portland City Code ("PCC"). The City, as a result of Rilling's alleged violations, assessed a civil penalty. (Exhibit 2 – hereafter referred to as the "Determination Letter.") Rilling was represented at a June 10, 2011, hearing by Attorney Eric Jenson ("Jenson"). Ahmad Burhan (also represented by Jenson) testified at the June 10, 2011, hearing. Kathleen Butler ("Butler"), Regulatory Division Manager for the City, appeared at the June 10, 2011, hearing and cross-examined Ahmad.

A second hearing was held on June 28, 2011. At the June 28, 2011, hearing, Jenson requested the Hearings Officer permit his withdrawal as attorney for both Rilling and Ahmad. The Hearings Officer

granted Jenson's request to withdraw as counsel for Rilling and Ahmad and continued the hearing until July 26, 2011, to permit Rilling and Ahmad to obtain substitute legal counsel.

On July 26, 2011, a third hearing was held. Attorney Lake Perriguet ("Perriguet") appeared at the July 26, 2011, hearing as legal counsel for Ahmad. Rilling appeared at the July 26, 2011, hearing and represented himself; no legal counsel appeared at the hearing to represent Rilling. Deputy City Attorney Denis Vannier ("Vannier") appeared at the July 26, 2011, hearing as legal counsel for the City. Butler appeared at the July 26, 2011, hearing and asked questions of witnesses. Mr. Frank Dufay ("Dufay"), Mr. Wali Kanani ("Kanani"), Mr. Feyegh Abdollahi ("Abdollahi"), Mr. Allan Waysee ("Waysee"), Mr. Eric Paul ("Paul"), Mr. Mohammad Hamdan ("Hamdan"), Rilling and Ahmad appeared at the July 26, 2011, hearing as witnesses.

The Hearings Officer makes this decision based upon the testimony of the above referenced individuals and the documents admitted into the evidentiary record. Based upon a review of the July 26, 2011, hearing recording, the Hearings Officer admits the following documents into the evidentiary record: Exhibits 1 through and including 23 and 41. The Hearings Officer takes note that "declarations" for Waysee, Kanani, Abdollahi and Hamdan may have been "withdrawn" from the evidentiary record by Jenson. (Exhibit 31). Waysee, Kanani, Abdollahi and Hamdan were present and testified at the July 26, 2011, hearing and, as a result, the Hearings Officer finds that their written "declarations" (Exhibits 15 through and including 22) are repetitive and the written contents of the "declarations" were not considered by the Hearings Officer in making this decision. The Hearings Officer did, however, consider testimony of Waysee, Kanani, Abdollahi and Hamdan that referenced the "declarations."

Summary of City Determination: The City sent a letter to Rilling, dated May 2, 2011, alleging violations of PCC sections 16.40.460 and 16.40.480. (Exhibit 2). Specifically, the City alleges the following:

"The Regulatory Division has received a complaint that on March 11, 2011, at approximately 8:15 a.m., your permitted vehicle DMV 224DKQ, provided executive sedan service on demand at the Courtyard Marriott at 555 SW Oak.

During my investigation I confirmed with the cab driver who eventually took the complainant to the airport that your driver, Burhan Ahmad, quoted a \$30 fare to the airport, and an additional \$5.00 surcharge for use of a credit card. I also confirmed with the hotel manager that Mr. Ahmad was operating at the hotel with the SUV on this morning.

Per Portland City Code 16.40.460.A. *All limousine and executive sedan service must be provided on a prearranged basis.*

Per Administrative Rule 16.40.480-01 Prearranged Defined *"For the purposes of 16.40.560 'prearranged' means that the reservation for services was made at least 60 minutes prior to the transportation of the customer.*

Per Portland City Code 16.40.480.A *Minimum flat rates apply for limousine and executive sedans that provide for-hire transportation service between the airport and Portland's Fareless Square and/or the AMTRAK station (in either direction), whether paid by the passenger or by a third party. The minimum rates are prescribed in administrative rules.*

Per Administrative Rule 16.40.480.01 Minimum Livery Fare "No livery transportation provider may charge less than \$50 per trip for routes listed in 16.40.480.A."

Per Portland City Code 16.40.540 Civil Penalty Table, the financial penalty for a violation of 16.40.460 is \$500. The financial penalty for a violation of 16.40.280 is \$500.

Per Portland City Code 16.40.460, 16.40.480 and 16.40.540 you are hereby assessed a civil penalty in the amount of \$1,000 for these two violations."

The Hearings Officer finds that the City is alleging that a private for-hire vehicle, permitted to Rilling (DMV 224 DKQ, hereafter the "Vehicle"), accepted a customer trip from downtown Portland to the Portland Airport that was not prearranged (reservation made at least 60 minutes prior to the transportation of the customer) and quoted a \$30 fare when \$50 was the minimum allowed fare. The Hearings Officer finds that the City assessed a \$500 civil penalty for each of the alleged violations.

Summary of Rilling Claims/Arguments. Rilling was represented at the June 10, 2011, hearing by Jenson. Jenson's request to withdraw from representation of Rilling and Ahmad was granted at the June 28, 2011, hearing. Rilling was not represented by legal counsel following the June 28, 2011, hearing.

Rilling offered scant argument in support of his appeal of the Determination Letter. Rilling, during cross-examination of Dufay, suggested that multiple white SUV vehicles provided "limousine" service to Courtyard Marriott ("Marriott") hotel guests. The Hearings Officer considered Rilling's defense to the Determination Letter to be the same as Ahmad's; Ahmad claimed that he did not engage in the alleged activities, on March 11, 2011, at the Marriott because the Vehicle was being serviced by Sammi Wassen and Ahmad was on a car trip to the Oregon Coast with Hamdan, Waysee, Kanani and Abdollahi.

Evidentiary Review.

Rilling testified at the July 26, 2011, hearing. Rilling stated that he is the owner of Aloha Executive Sedan and Limousine Service (this company hereafter referred to as "Aloha"). Rilling stated that he is the holder of a City of Portland Private For-Hire Transportation permit. Rilling stated that Aloha leases vehicles from one or more individuals and those individuals enter into an independent contractor agreement whereby they drive the leased vehicle under Aloha's City of Portland Private For-Hire Transportation permit. Rilling stated that Aloha has a lease/independent operator agreement with Hamdan where Hamdan and Ahmad are authorized to drive the leased vehicle. Rilling stated that the lease/independent operator agreement with Hamdan was in effect on March 11, 2011. Rilling stated that Hamdan and Ahmad are, under the lease/independent operator agreement, authorized to make reservations for the leased vehicle.

The Hearings Officer, in an Order for Case No. 3110199, reviews testimony offered by persons appearing at the June 10, 2011, June 28, 2011, and July 26, 2011, hearings. The Hearings Officer finds that the testimony reviewed in the Order for Case No. 3110199 is relevant and applicable to the Hearings Officer making a decision in this case. Therefore, the Hearings Officer attaches the Order for Case No. 3110199 to the Order in this case and incorporates the "Summary of Evidence" section of the Order in Case No. 3110199 as the findings herein.

The Hearings Officer also incorporates sections of the Order for Case No. 3110199 labeled **“Evidentiary Objections Raised by Perriguey, Hearings Officer’s Findings Related to Credibility, Burden and Standard of Proof and Sufficiency of Evidence Tying Ahmad and/or the white SUV to the March 11, 2011, incident, and Sufficiency of Evidence Related to Ahmad agreeing to conduct transportation for hire within the City of Portland with less than one hour advance reservation and/or charging less than \$50 for transportation from downtown Portland to the Portland Airport,”** as the findings in this Order.

The Hearings Officer finds that Rilling presented no evidence and/or testimony, beyond that discussed in the incorporated sections of the Order for Case No. 3110199, with respect to the whereabouts of Ahmad and the Vehicle on March 11, 2011. The Hearings Officer finds that Ahmad and the Vehicle (leased to Aloha and operated by Hamdan and Ahmad under the Aloha City of Portland For-Hire Transportation permit) were at the Marriott on the morning of March 11, 2011. The Hearings Officer finds that Ahmad, while operating the Vehicle under the Aloha permit on March 11, 2011, did offer to transport Blay from the Marriott to the Portland Airport without the minimum one hour reservation and at a fare less than the required minimum.

Conclusion: The Hearings Officer finds, based upon the preponderance of the evidence in the record, that on March 11, 2011, Ahmad was operating a white SUV under a City of Portland Private For-Hire Transportation permit issued to Aloha, where Ahmad offered a customer (Blay) transportation from the Marriott to the Portland Airport, with less than the one hour required reservation and at a fare less than the minimum required \$50. The Hearings Officer finds that a vehicle and driver, operating under the Aloha City of Portland Private For-Hire Transportation permit, did violate PCC 16.40.460 A and City of Portland Administrative Rule 16.40.460-01. The Hearings Officer finds that a vehicle and driver, operating under the Aloha City of Portland Private For-Hire Transportation permit, did violate City of Portland Administrative Rule 16.40.480.01.

The Hearings Officer finds that Rilling did not assert that the “amount” of the assessed civil penalties (assuming the violations were proven) was incorrect. The Hearings Officer finds that each of the above-reference violations is subject to a civil penalty of \$500. The Hearings Officer finds that the assessed penalties are correct in amount.

ORDER AND DETERMINATION:

1. The Determination Letter (Exhibit 2) is valid; Rilling’s appeal is denied.
2. This Order has been mailed to the parties on April 9, 2012.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 9, 2012

GJF:rs



Gregory J. Frank, Hearings Officer

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form	Butler, Kathleen	Received
1a	5/10/11 letter from Eric Jenson, Attorney	Butler, Kathleen	Received
2	5/2/11 letter, Frank Dufay to Rilling	Butler, Kathleen	Received
3	Appeal form page 2	Butler, Kathleen	Received
4	5/24/11 Staff Report	Butler, Kathleen	Received
5	Private for-Hire Transportation Program Complaint Form	Butler, Kathleen	Received
6	E-mail string	Butler, Kathleen	Received
7	5/2/11 letter, Dufay to Marriott Courtyard Hotel	Butler, Kathleen	Received
8	Mailing List	Hearings Office	Received
9	Hearing Notice	Hearings Office	Received
10	06/09/11 Cover Letter from Eric Jenson	Jenson, Eric R.	Received
11	06/09/11 Declaration of Sami Hassan	Jenson, Eric R.	Received
12	06/09/11 Cover Letter from Eric Jenson	Jenson, Eric R.	Received
13	06/09/11 Declaration of Sami Hassan	Jenson, Eric R.	Received
14	Customer Transaction Report	Jenson, Eric R.	Received
15	06/06/11 Declaration of Allen Waisi	Jenson, Eric R.	Received
16	06/08/11 Declaration of Mohammad Hamdan	Jenson, Eric R.	Received
17	06/08/11 Declaration of Walli Kanani	Jenson, Eric R.	Received
18	06/08/11 Declaration of Fayek Abdullahi	Jenson, Eric R.	Received
19	Declaration of Fayek Abdullahi	Jenson, Eric R.	Received
20	Declaration of Allen Waisi	Jenson, Eric R.	Received
21	Declaration of Walli Kanani	Jenson, Eric R.	Received
22	Declaration of Mohammad Hamdan	Jenson, Eric R.	Received
23	Declaration of Sami Hassan	Jenson, Eric R.	Received
24	Fax dated 6/10/2011	Jenson, Eric R.	Not Offered
25	Subpoena (copy)	Hearings Office	Not Offered
26	Letter dated 6/17/11	McGair, Ken	Not Offered
27	Subpoena (copy)	Hearings Office	Not Offered
28	Subpoena (copy)	Hearings Office	Not Offered
29	Subpoena (copy)	Hearings Office	Not Offered
30	Letter dated 6/17/11 (duplicate)	McGair, Ken	Not Offered
31	6/23/11 Request to withdraw declarations	Jenson, Eric R.	Not Offered
32	6/24/11 letter	McGair, Ken	Not Offered
33	E-mail	McGair, Ken	Not Offered
34	Subpoena for Wali Kanani	McGair, Ken	Not Offered
34a	Affidavit of Service	McGair, Ken	Not Offered
35	Subpoena for Allan Waysee	McGair, Ken	Not Offered
36	Affidavit of Service	McGair, Ken	Not Offered
37	6/27/11 letter from Kim Sneath	McGair, Ken	Not Offered
38	Affidavit of Service	McGair, Ken	Not Offered
39	Subpoena for Fayegh Abdollahi	McGair, Ken	Not Offered
40	6/27/11 Request to Withdraw from Representation	Jenson, Eric R.	Not Offered
41	6/15/11 E-mail, Dufay to Butler	Butler, Kathleen	Received



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

APPEAL OF BURHAN AHMAD

CASE NO. 3110199

DATES OF HEARINGS: June 10, 2011; June 28, 2011; and July 26, 2011

APPEARANCES:

Ms. Kathleen Butler, for the City

Mr. Burhan Ahmad, Appellant

Mr. Eric Jenson, Attorney for Appellant (June 10th and June 28th hearings only)

Mr. Dennis Vannier, Attorney for the City (July 26th hearing only)

Mr. Lake Perriguet, Attorney for Appellant (July 26th hearing only)

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Procedural Overview: This case involves an appeal (Exhibit 1a) by Burhan Ahmad ("Ahmad") of a City of Portland Office of Management and Finance – Revenue Bureau (the "City") letter (Exhibit 2) assessing civil penalties against Ahmad for alleged violations of the Portland City Code ("PCC"). Ahmad was represented at a June 10, 2011, hearing by Eric Jenson ("Jenson"), Attorney. Ahmad testified at the June 10, 2011, hearing. Ms. Kathleen Butler ("Butler"), Regulatory Division Manager for the City, appeared at the June 10, 2011, hearing and cross-examined Ahmad.

A second hearing was held on June 28, 2011. At the June 28, 2011, hearing, Jenson requested the Hearings Officer permit his withdrawal as attorney for Ahmad. (Exhibit 39) Butler appeared at the June 28, 2011, hearing. The Hearings Officer granted Jenson's request to withdraw as counsel for Ahmad and continued the hearing until July 26, 2011, to permit Ahmad an opportunity to obtain substitute legal counsel.

On July 26, 2011, a third hearing was held. Mr. Lake Perriguet ("Perriguet"), Attorney, appeared as legal counsel on behalf of Ahmad. Mr. Denis Vannier ("Vannier"), Deputy City Attorney, appeared as a legal representative for the City. Butler attended the July 26, 2011, hearing and questioned witnesses. Mr. Frank Dufay ("Dufay"), Mr. Wali Kanani ("Kanani"), Mr. Fayegh Abdollahi ("Abdollahi"), Mr. Allan Waysee ("Waysee"), Mr. Eric Paul ("Paul"), Mr. Mohammad Hamdan ("Hamdan"), Mr. Phillip Rilling ("Rilling"), and Ahmad appeared as witnesses during the July 26, 2011, hearing.

The Hearings Officer makes this decision based upon the testimony of the above referenced individuals and the documents admitted into the evidentiary record. Based upon a review of the July 26, 2011, hearing recording, the Hearings Officer admits the following documents into the evidentiary record: Exhibits 1 through and including 23 and 40. The Hearings Officer takes note that "declarations" for Waysee, Kanani, Abdollahi and Hamdan may have been "withdrawn" from the evidentiary by Jensen. (Exhibit 31). Waysee, Kanani, Abdollahi and Hamdan were present and testified at the July 26, 2011, hearing and, as a result, the Hearings Officer finds that their written "declarations" (Exhibits 15 through and including 22) are repetitive and the written contents of the "declarations" were not considered by the Hearings Officer in making this decision. The Hearings Officer did, however, consider testimony of Waysee, Kanani, Abdollahi and Hamdan that referenced the "declarations."

This case, related to Ahmad, was consolidated for evidentiary purposes, with Hearings Office case number 3110198. The City alleges that Ahmad acted as a City of Portland permitted driver for Aloha Executive Sedan & Limousine Service and/or Aloha Executive Limo ("Rilling Company"). The vehicle alleged to have been driven on March 11, 2011, by Ahmad operates under the Rilling Company. The City alleged that Rilling violated the PCC as a result of the alleged March 11, 2011, actions of Ahmad. Rilling, Ahmad and the City agreed that testimony related to both the Ahmad case and the Rilling case (3110198) should be heard together.

Summary of City Determination: The City sent a letter, dated May 2, 2011, to Ahmad alleging violations of PCC sections 16.40.460 and 16.40.480. (Exhibit 2 – hereafter referred to as the "Determination"). Specifically, the City alleges the following:

"The Regulatory Division has received a complaint that on March 11, 2011, at approximately 8:15 a.m. your permitted vehicle DMV 224 DKQ, provided executive sedan service on demand at the Courtyard Marriott at 555 SW Oak.

During my investigation I confirmed with the cab driver who eventually took the complainant to the airport that you quoted a \$30 fare to the airport, and an additional \$5.00 surcharge for use of a credit card. I also confirmed with the hotel manager that you were operating at the hotel with the SUV that morning. Per Portland City Code 16.40.460.A. *All limousine and executive service must be provided on a prearranged basis.*

Per Administrative Rule 16.40.480-01 Prearranged Defined *'For the purposes of 16.40.460 'prearranged' means that the reservation for services was made at least 60 minutes prior to the transportation of the customer.'*

Per Portland City Code 16.40.480.A. *Minimum flat rates apply for limousine and executive sedans that provide for-hire transportation service between the airport and Portland's Fareless Square and/or AMTRAK station (in either direction), whether paid by the passenger or by a thirds party. The minimum rates are prescribed in the administrative rules.*

Per Administrative Rule 16.40.480.01 Minimum Livery Fare 'No livery transportation provider may charge less than \$50 per trip for routes listed in 16.40.480A.'

Per Portland City Code 16.40.540 Civil Penalty Table, the financial penalty for a violation of 16.40.460 is \$500. The financial penalty for a violation of 16.40.480 is \$500.

Per Portland City Code 16.40.460, 16.40.480 and 16.40.540 you are hereby assessed a civil penalty in the amount of \$1,000 for these two violations."

The Hearings Officer finds that the City is alleging that Ahmad, on March 11, 2011, engaged in conduct violating two separate sections of the PCC. Specifically the Hearings Officer finds that the alleged violations are:

- Ahmad, on March 11, 2011, entered into limited passenger transportation with a customer without having prearranged for the transportation at least one hour prior to the pick-up.
- Ahmad, on March 11, 2011, charged a private for-hire customer \$30 when a minimum charge for transportation to the Portland Airport from downtown is \$50.

The Hearings Officer finds that the City assessed civil penalties of \$500 for each of the alleged violations.

Summary of Ahmad Claims/Arguments: The Hearings Officer finds that Ahmad disputes the City claim that he was at the Courtyard Marriott ("Marriott") hotel at 8:15 a.m. on March 11, 2011. Ahmad asserts that the City's evidence is insufficient to prove that he was at the Marriott, located at 555 SW Oak within the City of Portland, on March 11, 2011. Ahmad asserts, on March 11, 2011, that he traveled to the Oregon Coast with friends and therefore, could not have been at the Marriott and committed the acts alleged by the City. Ahmad offered no factual or legal arguments related to the amount of the civil penalties assessed; assuming that the alleged violations are proven. Ahmad did not present any arguments relating to the interpretation of PCC 16.40.460, PCC 16.40.480 or PCC 16.40.540.

Summary of Evidence:

Ahmad. Ahmad testified at the June 10, 2011, hearing and the July 26, 2011, hearing. During his June 10, 2011, hearing testimony, Ahmad testified that he is a town car driver servicing the Portland market and drives, on occasion, for the Rilling Company. Ahmad stated, at the June 10, 2011, hearing, that he did not drive for the Rilling Company on March 10th or 11th, 2011. Ahmad stated that on March 10, 2011, he checked out a Rilling Company vehicle (DMV 224 DKQ; hereafter the "Vehicle") and delivered the Vehicle to Sammi Hassen ("Hassen") to repair. Ahmad stated that Hassen had possession of the Vehicle on March 10th, 11th and 12th, 2011. The Hearings Officer notes that Hassen was not presented as a witness at any of the hearings.

Ahmad testified, at the June 10, 2011, hearing, that March 11th is a Kurdish National Holiday (Yazdai Azar). Ahmad stated that he drove to Salem and then to the Oregon Coast with "Allan, Mohammad, David, Wali and Fayegh." Ahmad submitted a Chinook Winds "Customer Transaction Report" indicating that on March 11, 2011, at 7:17 p.m., Ahmad cashed a "payroll" check for the amount of \$426.00. Ahmad stated that "all Iraqi Kurdish don't work that day" referring to March 11th. Ahmad stated he did not engage in the town car business on March 11, 2011. Ahmad stated he was aware of the City-mandated \$50 minimum charge for airport customers and that he was aware that one hour advance booking is required for town car reservations.

Ahmad testified, once again, at the July 26, 2011, hearing. Ahmad was asked, during examination by Butler, how certain declarations "came into existence." Ahmad stated that the persons signing the declarations (Waysee, Kanani and Abdollahi) were with him on a trip to the Oregon coast on March 11, 2011. Ahmad stated that he talked with attorney (Jenson), explained to Jenson that Waysee, Kanani and Abdollahi were with him on the March 11, 2011, road trip and, that Jenson prepared the declarations. Ahmad stated that the declarants changed their stories because the City threatened to make trouble for Waysee, Kanani and Abdollahi. Ahmad stated that he talked with the Waysee, Kanani and Abdollahi and was that they (Waysee, Kanani and Abdollahi) would say that they with him on March 11, 2011, only "if you feed our families." Ahmad reiterated, at the July 26, 2011, hearing, that the "three gentlemen who testified that they were not with him" were "together [with Ahmad] on the 11th."

Hamdan. Hamdan testified, at the July 26, 2011, hearing, that March 11th is a Jordanian festival and not a Kurdish holiday. Hamdan stated that on March 11, 2011, Ahmad picked him up at 7:30 a.m. and they went to Lincoln City. Hamdan stated that he and Ahmad returned to Portland from Lincoln City on March 12, 2011. Hamdan stated that only Ahmad and Hamdan were in the vehicle on the trip to/from Lincoln City on March 11th/12th. Hamdan stated that he is a partner with Ahmad in Amore Town Car Company. Hamdan stated that he and Ahmad operate one Lincoln and one SUV (white); the SUV being operated through a company owned by Rilling.

Kanani. Kanani testified at the July 26, 2011, hearing. Kanani stated, at some time after March 11, 2011, he was contacted by a friend who told him that Ahmad had a "paper" to be signed (by Kanani) that indicated that he was with Ahmad on March 11, 2011. Kanani stated that he was in Bagdad, Iraq on March 11, 2011. Kanani stated that subsequent to the "paper" discussion he called the City and spoke with Dufay about Kanani's driver permit.

Abdollahi. Abdollahi testified at the July 26, 2011, hearing. Abdollahi stated that he reviewed a "declaration" (Exhibit 19) and concluded the signature on that document was not his. Abdollahi stated that he was not with Ahmad on March 11, 2011. Abdollahi stated that he was with Ahmad on March 21, 2011; a Kurdish holiday. Abdollahi stated that, after discovering the error on Exhibit 19, he (Abdollahi) contacted the City and informed Dufay of the error.

Waysee. Waysee testified at the July 26, 2011, hearing. Waysee stated that he was presented and he signed a declaration (Exhibit 20). Waysee stated that the declaration indicated that he was with Ahmad on March 11, 2011. Waysee stated that he later realized that he was not with Ahmad on March 11, 2011. Waysee stated that he was with Ahmad on March 21, 2011; a Kurdish holiday. Waysee stated that he received a telephone call from Kanani who informed him that he (Waysee) could get into trouble if the information in the declaration (Exhibit 20) was incorrect. Waysee stated that he went to the City and told Dufay that he (Waysee) was with Ahmad on March 21, 2011, and not on March 11, 2011.

Dufay. Dufay testified that he is a Regulatory Program Administer for the City Revenue Bureau. Dufay stated that his employment includes oversight of the City's Private For-Hire Transportation program. Dufay stated that his employment duties include receipt and review of complaints directed towards persons and companies that are permitted under the City's Limited Private For-Hire Transportation Program.

Dufay stated that he received a phone complaint, from Doug Blay ("Blay"), related to an event occurring on March 11, 2011, at approximately 8:15 a.m. at the Marriott. Dufay stated that Blay followed up the

telephone complaint by submitting a written complaint. (Exhibit 5) Blay, in Exhibit 5, alleged that an "unpermitted company, vehicle, driver" charged a "fare less than \$50 from airport to downtown" and conducted a town car "pick up without 60 minute reservation, 'on demand.'" Blay submitted a written statement along with the complaint form. (Exhibit 5, page 2) The Hearings Officer notes that the City did not present Blay as a witness at any of the hearings.

In summary, the Blay written statement indicates that on March 11, 2011, Blay requested a Marriott valet to secure a cab to take him to the Portland Airport. Blay stated that the Marriott valet directed him to "their" SUV and that the fare would be the same as a taxi; a \$30 charge. Blay stated that when he was informed that the driver would charge an additional \$5 to process a credit card, Blay demanded, once again, to be placed in a taxi. Blay stated that the Marriott valet secured a taxi for him and he was transported to the Portland Airport.

Dufay further testified that following the receipt of the Blay complaint (Exhibit 5), he contacted the Marriott hotel manager (Paul). Dufay stated that Paul informed him that Ahmad was the driver of the SUV subject to the March 11, 2011, complaint filed by Blay. Dufay stated that he issued a penalty letter to the Marriott hotel for a violation of PCC 16.40.460. Dufay stated the Marriott paid the \$500 civil penalty; no appeal was filed.

Dufay stated, following the first hearing (June 10, 2011), that he received a telephone call from Kanani indicating a declaration submitted (Exhibit 17) in this case contained inaccurate information. Kanani stated that the date referenced in the declaration was not correct. Dufay stated that two additional declarants met at Dufay's office and indicated that they were not with Ahmad on March 11, 2011.

During cross examination by Perriguet, Dufay stated that Paul had been the person to identify Ahmad as the driver of the SUV that was the subject of the March 11, 2011, Blay complaint. Dufay also stated that a taxi driver ("Berens"), who ultimately transported Blay to the airport on March 11, 2011, informed Dufay that Ahmad was the driver of the SUV. Dufay admitted that neither Paul nor Berens identified the SUV license plate number that was involved in the March 11, 2011, incident. Dufay admitted that he was not personally present on March 11, 2011, at the Marriott to identify the SUV or Ahmad. Dufay stated that he had knowledge that the SUV and Ahmad were frequently/regularly at the Marriott. Dufay considered statements by employees of the Marriott that Ahmad and the SUV were "our go to town car company" in arriving at his "educated presumption" that it was Ahmad and the Rilling Company white SUV that were involved in the March 11, 2011, Marriott incident. Dufay also stated that Ahmad used the Rilling Company SUV because Ahmad and Hamdan's vehicle was suspended at the time of the March 11, 2011, incident.

During rebuttal testimony Dufay stated that when he spoke with Paul (Marriott Manager), he was not certain that Paul identified Ahmad. Dufay admitted that he was aware of other white SUVs operating as private for-hire vehicles in Portland. Dufay admitted that he did not have any photographic evidence of the white SUV or Ahmad taken on March 11, 2011. Dufay admitted that he had not reviewed the Marriott logbooks relating to town car referrals/reservations for March 11, 2011. At the conclusion of rebuttal testimony, Dufay stated that his recollection of his conversation with Paul was that Paul did identify Ahmad as the driver of the SUV on March 11, 2011.

Paul. Paul identified himself at the General Manager of the Marriott in downtown Portland. Paul stated that he had one or more telephone conversations with Dufay related to an incident involving a town car at the Marriott on March 11, 2011. Paul stated that he had also reviewed a complaint by a

hotel patron related to a town car incident on March 11, 2011. Paul stated that Dufay did not identify the driver of the town car involved in the March 11, 2011, incident. Paul stated that he did not inform Dufay of the name of the driver of the town car involved in the March 11, 2011, incident. Paul stated that he did not give Dufay a license plate number of a white SUV. Paul stated that he is familiar with Ahmad but is not familiar with a white SUV that was allegedly involved in the March 11, 2011, incident at the Marriott. Paul stated that neither he nor the Marriott paid any fine associated with the March 11, 2011, incident. Paul stated that he believed that the City did cite the Marriott for its part in the March 11, 2011, incident but, since it was a first offense, no fine was pursued by the City.

Paul, upon cross examination by Butler, stated that he told Dufay that he would speak "to the town car driver" and further that he would speak to Ahmad. Paul stated that he did speak with Ahmad days after the incident. Paul stated that Ahmad is the "main town car driver" for the Marriott. Exhibit 6 is an email string between Paul and Blay. In an email from Paul to Blay on March 22, 2011, at 11:42 a.m., Paul wrote (in part) the following:

"I placed a call into the owner of the town car service asking to meet with him. I will review the policy with him (which I know he knows) and ensure he and my staff are in compliance."

Evidentiary Objections Raised by Perriguet: Perriguet objected, at the July 26, 2011, hearing, to questions, answers and written statements (i.e. Exhibits 5 and 6) that he characterized as containing hearsay evidence. The Hearings Officer, at the July 26, 2011, hearing, informed Mr. Perriguet that the Oregon Evidence Code generally does not apply to hearings before the City of Portland Code Hearings Officer. (See, ORS 183.450(1) PCC 22.03.080 and ADM 9.01 [Rules of the City of Portland Code Hearings Officer] section 12) PCC 22.03.080 and ADM 9.01 (12) indicate that the primary concerns of a Hearings Officer, in determining whether or not evidence is admitted into the record, are materiality and relevancy. The Hearings Officer is also required to take into account the generally accepted rules of privilege.

The Hearings Officer also takes note that, in administrative hearings, evidence will not be excluded under the highly technical hearsay rules. The Hearings Officer finds that the Oregon Supreme Court has held that an administrative decision may rest entirely on hearsay evidence. *Cole/Dinsmore v. DMV*, 336 Or 565 (2004), *Reguero v. Teacher Standards and Practices*, 312 Or 402 (1991).

The Hearings Officer admitted all testimony and documents that were considered relevant and material irrespective of whether the testimony and documents contained hearsay. However, the Hearings Officer stated, at the July 26, 2011, hearing, that he would consider credibility of all evidence admitted into the evidentiary record. The Hearings Officer, as stated at the July 26, 2011, hearing, generally considers hearsay evidence to be somewhat less credible than evidence related to the same subject that is not hearsay.

Hearings Officer's Findings Related to Credibility: The Hearings Officer finds that the testimony of Ahmad generally lacks credibility. The Hearings Officer finds that Ahmad clearly and unequivocally testified that on March 11, 2011, he traveled to Salem and then to the Oregon Coast with a number of individuals (June 10, 2011, testimony – traveled with "Allan, Mohammad, David, Wali and Fayegh"). Ahmad testified at the July 26, 2011, hearing that the persons signing the declarations (including Hamdan, Abdollahi, Kanani and Waysee) were with him on a March 11, 2011, trip to the Oregon Coast. The Hearings Officer finds that Hamdan's testimony (Ahmad's business partner) was that only Ahmad and he were in the car together on a March 11, 2011, trip to the Oregon Coast. The Hearings Officer

finds Hamdan's testimony to be inconsistent with testimony offered by Ahmad, Waysee, Kanani and Abdollahi.

The testimony of Kanani, Abdollahi and Waysee was consistent. Each testified that that he did not ride with Ahmad in a car trip on March 11, 2011, to the Oregon Coast. The Hearings Officer finds Perrigues' attempts to discredit the testimony of Kanani, Abdollahi and Waysee to be ineffectual. The Hearings Officer found the testimony of Kanani, Abdollahi and Waysee to be credible.

The Hearings Officer finds the testimony of Paul to be generally not credible. Paul testified, at the July 26, 2011, hearing, that he was not aware of the identity of the driver of the SUV. However, the Hearings Officer finds that Paul stated, in Exhibit 6, that he "placed a call into the owner of the town car service asking to meet with him." The Hearings Officer finds Paul's testimony to be inconsistent with his email statement in Exhibit 6. Further, the Hearings Officer finds that Paul's testimony, at the July 26, 2011, hearing, to be unequivocal when he states that no penalty or fine was paid to the City as a result of the March 11, 2011, town car incident. The Hearings Officer finds that Exhibit 7 is a violation letter sent by the City to the Marriot assessing a \$500 civil penalty arising out of the March 11, 2011, town car incident; Exhibit 7 indicates that first time violations, if not appealed, result in a reduced (by half) penalty.

The Hearings Officer finds the testimony of Dufay generally credible. However, the Hearings Officer does acknowledge that Dufay's testimony related to discussions with Paul to have changed during the course of the hearing. The Hearings Officer finds that Dufay did admit matters where he had no first hand information.

The Hearings Officer finds the written statements of Blay to generally be credible. The Hearings Officer finds no apparent motivation for Blay to make untrue statements. The Hearings Officer did consider that the City could have called Blay as a witness and made him subject to cross examination. For that reason, the Hearings Officer considered Blay's credibility to be slightly negatively impacted.

Burden and Standard of Proof: PCC 22.03 (Code Enforcement Procedures) and ADM 9.01 (Code Hearings Officer Rules) discuss the burden of proof in code/appeal cases. PCC 22.03.080 B and ADM 9.01(b), in relevant part, state that "the burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position." The Hearings Officer, consistent with the Oregon Court of Appeals holding in *Gallant v. Board of Medical Examiners*, 159 Or App 175 (1999) and *Staats v. Newman*, 164 Or App 18 (1999), that the preponderance of evidence standard should be applied in this case. Preponderance of evidence means that the Hearings Officer must believe that the facts asserted are more probably true than false. *Riley Hill General Contractor, Inc. v. Tandy Corp.* 303 Or 390 @ 402

Sufficiency of Evidence Tying Ahmad and/or the white SUV to the March 11, 2011 incident: The City alleged, in the Determination, that Ahmad's permitted vehicle DMV 224 DKQ provided:

- private for-hire service "on demand at the Courtyard Marriott at 555 SW Oak" on March 11, 2011, in the City of Portland; and
- quoted a private for-hire passenger a "\$30 fare to the airport, and an additional \$5.00 surcharge for use of a credit card" on March 11, 2011.

Ahmad asserts that he was not present on March 11, 2011, at the Marriott. Ahmad testified that, on March 11, 2011, he was with his business partner (Hamdan) and others (Kanani, Abdollahi, and

Waysee) traveling by car to the Oregon Coast. Hamden testified that Kanani, Abdollahi and Waysee were not with him and Ahmad on March 11, 2011. As noted above, the Hearings Officer finds the testimony of Ahmad regarding his whereabouts on March 11, 2011, to be not credible.

The City relies upon the testimony of Dufay to establish the location of Ahmad on March 11, 2011. Dufay relies upon various communications and upon his "experience" in arriving at his "educated presumption" that Ahmad engaged in unlawful conduct while at the Marriott on March 11, 2011.

Dufay testified that he received a "complaint" from Blay regarding a referral by the Marriott "desk clerk" to "their" white executive sedan SUV. (Exhibits 4 and 5) The Hearings Officer notes that Blay did not identify Ahmad by name but rather as a "Middle Eastern" man present at the Marriott on March 11, 2011. (Exhibits 4 and 5)

Dufay stated that he obtained a copy of emails between Blay and the Marriott General Manager ("Paul"). (Exhibit 6) Blay stated, in Exhibit 6, that a Marriott valet "waved 'our SUV' driver over" after Blay requested a taxi to transport him to the airport. In response, Paul states that, "I placed a call into the owner of the town car service asking to meet within him." The Hearings Officer notes that neither Blay nor Paul identified (in Exhibit 6) Ahmad by name.

Dufay testified that he called Paul and inquired about the March 11, 2011, incident. Dufay offered somewhat equivocal testimony regarding whether or not Paul identified Ahmad, by name, during a telephone conversation. Initially Dufay stated that Paul did identify Ahmad, by name, as the driver of the white SUV at the Marriott on March 11, 2011. During Perriguet's cross examination, Dufay indicated that he did not recall if Paul identified Ahmad as the March 11, 2011, driver. At the conclusion of Dufay's testimony, he stated that he "now recalled" that Paul did identify Ahmad as the March 11, 2011, driver.

Dufay, in an email to Blay, stated, "I am familiar with the SUV the hotel staff tried to put you in...I will follow this up with the driver, the company they drive for, and the hotel, all of whom are subject to our regulations." (Exhibit 6, page 2) Dufay also stated that he had spoken to the taxi driver ("Berens") who eventually transported Blay to the airport, and that Berens confirmed that Ahmad was the white SUV driver at the Marriott on March 11, 2011.

The Hearings Officer finds that the City did not present Berens as a witness and did not offer "log books" from the Marriott that may have buttressed its case that Ahmad was the driver of the white SUV at the Marriott on March 11, 2011. On the other hand, Ahmad presented absolutely no credible evidence that he was at a location other than the Marriott on the morning of March 11, 2011; Ahmad did submit a check cashing customer transaction report from Chinook Winds Casino indicating Ahmad was at the Oregon Coast casino at 19:17 (7:17 p.m.) on March 11, 2011.

The Hearings Officer finds credible Dufay's statement that he (Dufay) was told by Paul and Berens that Ahmad was the driver of the white SUV driver on morning of March 11, 2011, at the Marriott. The Hearings Officer finds that Paul admitted that Ahmad was the Marriott's "main town car driver." The Hearings Officer finds Paul's written comment that he placed a call to the town car driver conveys that he was aware that Ahmad was the town car driver subject to the Blay complaint. The Hearings Officer finds that the Marriott was cited for violations arising from the March 11, 2011, incident involving Blay and Ahmad (Exhibit 7). Exhibit 7 specifically makes note that the incident at the Marriott involved Blay, Marriott "valets," and Ahmad. The Hearings Officer finds (despite Paul not recalling paying any

penalty arising out of Exhibit 7) that the Marriott did pay the penalty assessed in Exhibit 7 without contest or appeal. Although hearsay evidence, the Hearings Officer finds Dufay's testimony credible that Berens confirmed the driver of the white SUV, on the morning of March 11, 2011, at the Marriott, was Ahmad.

The Hearings Officer also considered significant Ahmad's testimony that on March 11, 2011, he traveled to the Oregon Coast on a Kurdish national holiday with "Allan, Mohammad, David, Wali and Fayegh." The Hearings Officer notes that the testimony of Hamdan (Mohammad), Ahmad's business partner, was that March 11th is not a Kurdish holiday (rather, a Jordanian holiday) and that only Hamdan and Ahmad were in the vehicle traveling to the Oregon Coast. The Hearings Officer considered the testimony of Waysee (Allan), Kanani (Wali), and Abdollahi (Fayegh), who all testified they were not with Ahmad on March 11, 2011. Based upon the testimony of Hamdan, Waysee, Kanani and Abdollahi, the Hearings Officer finds that March 11th is not a Kurdish holiday and that Ahmad did not travel to the Oregon Coast on March 11, 2011, with Hamdan, Waysee, Kanani and Abdollahi. The Hearings Officer finds, based upon the testimony of Ahmad, Hamdan, Waysee, Kanani, and Abdollahi, that Ahmad did not provide any credible evidence of his location in the morning hours of March 11, 2011.

The Hearings Officer, based primarily upon the testimony of Dufay and written statements by Blay, finds that it is more probable than not that Ahmad and the Rilling Company white SUV were present at the Marriott at approximately 8:30 a.m. on March 11, 2011. The Hearings Officer finds the only credible evidence of Ahmad's location, on March 11, 2011, came from the testimony of Dufay and Paul and the statements of Blay and Berens.

The Hearings Officer finds that a preponderance of the evidence in the record leads the Hearings Officer to believe that Blay was directed in the morning hours on March 11, 2011, by one or more Marriott valet(s), to a white SUV driven by Ahmad.

Sufficiency of Evidence Related to Ahmad agreeing to conduct transportation for hire within the City of Portland with less than one hour advance reservation and/or charging less than \$50.00 for transportation from downtown Portland to the Portland Airport: The City alleged, in Exhibit 2, that Ahmad:

- agreed to provide to Blay, on March 11, 2011, transportation upon demand from the Marriott to the Portland Airport; and
- quoted Blay a \$30 fare from the Marriott to the Portland Airport.

Ahmad denied offering on demand transportation for hire and denied quoting a \$30 fare to transport Blay to the Portland Airport. Ahmad couched his denial of offering on demand transportation for hire and quoting \$30 upon his testimony that he was at the Oregon Coast celebrating an Iraqi holiday. Ahmad's testimony was that on March 11, 2011, he traveled by car to the Oregon Coast with Hamdan, Kanani, Abdollahi and Waysee. Kanani, Abdollahi and Waysee testified that March 11, 2011, was not a generally celebrated Iraqi national holiday. Kanani, Abdollahi and Waysee all denied that they accompanied Ahmad on a March 11, 2011, car trip to the Oregon Coast. As discussed in this decision above, the Hearings Officer found that Ahmad's testimony was not credible.

The Hearings Officer finds that statements attributed to Blay related events occurring on March 11, 2011, while preparing to travel to the Portland Airport from the Marriott. (Exhibits 5 and page 2 of Exhibit 7). The Hearings Officer finds Blay's statements to be clear and unequivocal that he was directed to a white SUV town car without having a one hour advance reservation. The Hearings Officer

finds that Blay's statements, that Ahmad offered to transport Blay from the Marriott to the Portland Airport without a prior reservation and for \$30 fare, to be credible.

The Hearings Officer finds no evidence, other than Ahmad's denial that he was even at the Marriott on March 11, 2011, to discredit the Blay statements as referenced above. The Hearings Officer finds, by a preponderance of the evidence, that Ahmad did, on March 11, 2011, at the Marriott, offer to transport Blay to the Portland Airport without having a one hour advance reservation. The Hearings Officer finds, by a preponderance of the evidence, that Ahmad did, on March 11, 2011, at the Marriott, offer to transport Blay to the Portland Airport for a \$30 fare.

Conclusion: The Hearings Officer finds, based upon a preponderance of the evidence in the record, that on March 11, 2011:

- Marriott valet staff directed Blay to Ahmad's white SUV vehicle (permitted private for-hire transportation vehicle) without having an one hour advance reservation; and
- This activity to violate Portland City Code 16.40.460 A and City of Portland Administrative Rule 16.40.460-01.
- Ahmad offered to transport Blay to the Portland Airport, from the Marriott, for a \$30 fare; and
- This activity is a violation of City of Portland Administrative Rule 16.40.480.01.

The Hearings Officer finds that Ahmad did not assert that the "amount" of the assessed penalties (assuming the violations were proven) was incorrect. The Hearings Officer finds that each of the above-referenced violations is subject to a civil penalty of \$500. The Hearings Officer finds that the assessed penalties are correct in amount.

ORDER AND DETERMINATION:

1. The Determination Letter (Exhibit 2) is valid; Ahmad's appeal is denied.
2. This order has been mailed to the parties on April 9, 2012.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: April 9, 2012

GJF:rs

Enclosure


Gregory J. Frank, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
1	Appeal form	Butler, Kathleen	Received
1a	5/10/11 letter from Eric Jensen, Attorney	Butler, Kathleen	Received
2	5/2/11 letter, Frank Dufay to Ahmad	Butler, Kathleen	Received
3	Appeal form page 2	Butler, Kathleen	Received
4	5/24/11 Staff Report	Butler, Kathleen	Received
5	Private for-Hire Transportation Program Complaint Form	Butler, Kathleen	Received
6	Email string	Butler, Kathleen	Received
7	5/2/11 letter, Dufay to Marriott	Butler, Kathleen	Received
8	Mailing List	Hearings Office	Received
9	Hearing Notice	Hearings Office	Received
10	6/9/11 Cover Letter from Eric Jensen	Jenson, Eric R.	Received
11	6/9/11 Declaration of Sami Hassan	Jenson, Eric R.	Received
12	6/9/11 Cover Letter from Eric Jensen	Jenson, Eric R.	Received
13	6/9/11 Declaration of Sami Hassan	Jenson, Eric R.	Received
14	Customer Transaction Report	Jenson, Eric R.	Received
15	6/6/11 Declaration of Allen Waisi	Jenson, Eric R.	Received
16	6/8/11 Declaration of Mohammad Hamdan	Jenson, Eric R.	Received
17	6/8/11 Declaration of Walli Kanani	Jenson, Eric R.	Received
18	6/8/11 Declaration of Fayek Abdullahi	Jenson, Eric R.	Received
19	Declaration of Fayek Abdullahi	Jenson, Eric R.	Received
20	Declaration of Allen Waisi	Jenson, Eric R.	Received
21	Declaration of Walli Kanani	Jenson, Eric R.	Received
22	Declaration of Mohammad Hamdan	Jenson, Eric R.	Received
23	Declaration of Sami Hassan	Jenson, Eric R.	Received
24	Fax dated 6/10/11	Jenson, Eric R.	Not Offered
25	Subpoena (copy)	Hearings Office	Not Offered
26	Letter dated 6/17/11	McGair, Ken	Not Offered
27	Subpoena (copy)	Hearings Office	Not Offered
28	Subpoena (copy)	Hearings Office	Not Offered
29	Subpoena (copy)	Hearings Office	Not Offered
30	Letter dated 6/17/11 (duplicate)	McGair, Ken	Not Offered
31	6/23/11 Request to withdraw declarations	Jenson, Eric R.	Not Offered
32	6/24/11 letter	McGair, Ken	Not Offered
33	E-mail	McGair, Ken	Not Offered
34	Subpoena for Wali Kanani	McGair, Ken	Not Offered
34a	Affidavit of Service	McGair, Ken	Not Offered
35	Subpoena for Allan Waysee	McGair, Ken	Not Offered
35a	Affidavit of Service	McGair, Ken	Not Offered
36	6/27/11 letter from Kim Sneath	McGair, Ken	Not Offered
37	Affidavit of Service	McGair, Ken	Not Offered
38	Subpoena for Fayegh Abdollahi	McGair, Ken	Not Offered
39	6/27/11 Request to Withdraw from Representation	Jenson, Eric R.	Not Offered
40	6/15/11 E-mail, Dufay to Butler	Butler, Kathleen	Received