



CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF KUNDIN NADEW

CASE NO. 3120219

DATE OF HEARING: May 11, 2012

APPEARANCES:

Mr. Kundin Nadew, Appellant

Ms. Kathleen Butler, for the City

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Appellant, Mr. Kundin Nadew ("Nadew"), appeared at the May 11, 2012 hearing ("The Hearing"). Nadew represented himself at The Hearing and also provided oral testimony. Ms. Kathleen Butler ("Butler"), Manager, Regulatory Division of the City of Portland Revenue Bureau (the "City") appeared at The Hearing as the City representative. Mr. Frank Dufay ("Dufay"), Regulatory Program Administrator, appeared at The Hearing as a witness. The Hearings Officer makes this decision based upon the testimony of Nadew and Dufay and the documents admitted into the evidentiary record (Exhibits 1 through and including 3 and 5 through and including 10).

Nadew confirmed, at The Hearing, that the subject matter of his appeal was the validity of the April 16, 2012 letter from Dufay to Nadew (Exhibit 5). Exhibit 5 is a "NOTICE OF IMMEDIATE SUSPENSION" of Nadew's City for-hire vehicle driver's permit. Exhibit 5 indicates two reasons for the suspension of Nadew's City for-hire permit: (1) public safety risks created by the arrest of Nadew, on March 12, 2012, for Driving Under the Influence of Intoxicants; and (2) failure to pay \$4,000 in City assessed penalties related to Nadew's operation of a taxi in violation of City rules.

Nadew testified that on or about March 12, 2012, he was stopped by a police officer, while driving in the City of Beaverton. Nadew stated that he did not believe he was arrested at that the time of the traffic stop. Nadew stated that rather than being arrested he entered a diversion program. Nadew stated that he

did not have enough money to hire an attorney to contest the traffic stop. Nadew admitted that prior to being stopped by the Beaverton Police officer he had consumed two beers.

Nadew testified that he has not paid the City any penalties assessed by a City Hearings Officer. Nadew disputed that the amount of the unpaid penalties is \$4,000.

Dufay testified that the City conducts regular driving record reviews of persons holding City-issued for-hire permits. Dufay stated that the Nadew driving record review indicated that Nadew was arrested, on March 12, 2012 by the Beaverton Police Department, for allegedly violating ORS 813.010 (Driving Under the Influence of Intoxicants) (See Exhibit 10). Dufay stated that a City representative contacted Nadew by telephone on April 13, 2012 and informed Nadew that his for-hire driver's permit was going to be immediately suspended. Dufay stated that a letter (Exhibit 5) was sent to Nadew and receipt of delivery was confirmed.

Dufay stated that he issued two violation letters to Nadew related to Nadew providing taxi services in the City without having the taxicab permitted. (Exhibits 6 and 7) Dufay stated that civil penalties were assessed to Nadew in Exhibits 6 and 7. Dufay stated that Nadew appealed the determinations set forth Exhibits 6 and 7 and that a Hearings Officer affirmed the City's assessment of civil penalties. Dufay stated that Nadew failed to pay the civil penalties assessed in Exhibits 6 and 7.

The Hearings Officer finds that Portland City Code ("PCC") 16.40.550 A.1 grants the City authority to suspend a for-hire transportation permit if it "is necessary to protect public safety." The Hearings Officer finds that PCC 16.40.330 A.3 prohibits a for-hire driver to drive a taxi while under the influence of alcohol. The Hearings Officer finds that Nadew was, on or about March 12, 2012, arrested for driving while under the influence of alcohol. The Hearings Officer finds that Nadew did not contest the DUII citation and entered an alcohol diversion program. The Hearings Officer finds that driving a vehicle while under the influence of alcohol creates a public safety risk. The Hearings Officer finds that the City has the legal right/authority to suspend Nadew's for-hire transportation driving permit on the basis that Nadew was arrested for driving while under the influence of alcohol.

The Hearings Officer finds that PCC 16.40.550 A.3 grants the City the authority to suspend a for-hire transportation permit if "the permittee has failed to fully pay a civil penalty when due and the permittee did not file a timely appeal." The Hearings Officer finds that the evidence in this case is clear that Nadew was assessed civil penalties by the City pursuant to Exhibit 6 and 7. The Hearings Officer finds that the evidence in the record suggests that Nadew **did** file appeals related to Exhibits 6 and 7. The Hearings Officer finds, based upon the evidence in the record of this case, that the City may not suspend Nadew's for-hire transportation permit on the basis of Nadew's failure to pay civil penalties.

The Hearings Officer finds that the City's Notice of Immediate Suspension issued to Nadew on April 16, 2012 is valid with respect to Nadew's conduct on March 12, 2012 creating a public safety risk under PCC 16.40.550 A.1.

ORDER AND DETERMINATION:

1. The immediate suspension (per Exhibit 5) of Nadew's for-hire transportation driver's permit is valid; Nadew's appeal is denied.
2. This order has been mailed to the parties on May 14, 2012.

3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: May 14, 2012

GJF:jeg/cl



Gregory J. Frank, Hearings Officer

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form page 1	Butler, Kathleen	Received
2	4/18/12 Letter from Nadew to Dufay	Butler, Kathleen	Received
3	Appeal Form page 2	Butler, Kathleen	Received
4	4/26/12 Staff Report	Butler, Kathleen	Rejected
5	4/16/12 Notice of Immediate Suspension	Butler, Kathleen	Received
6	1/24/12 Determination Letter, with Certified Receipt 7010 0290 0000 8725 3549	Butler, Kathleen	Received
7	1/24/12 Determination Letter, with Certified Receipt 7010 0290 0000 8725 3525	Butler, Kathleen	Received
8	Mailing List	Hearings Office	Received
9	Notice of Hearing	Hearings Office	Received
10	OR Arrest Record	Butler, Kathleen	Received