



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF JACOB CLINE

CASE NO. 1100023

DESCRIPTION OF VEHICLE: Wells Cargo Trailer (No plates)

DATE OF HEARING: February 4, 2010

APPEARANCES:

Mr. Jacob Cline, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Cline appeared at the hearing and testified on his own behalf. The Hearings Officer makes this decision based upon the testimony of Mr. Cline and the documents admitted into the evidentiary record (Exhibits 1 through and including 11). Mr. Cline disagreed with the statements made by the Abandoned Auto Inspector in Exhibit 7 and objected to the Hearings Officer admitting Exhibit 7. The Hearings Officer admitted Exhibit 7 because the document contained relevant information to the tow of Mr. Cline's vehicle. The Hearings Officer noted, to Mr. Cline, that the Hearings Officer would consider the testimony of Mr. Cline when determining the weight/credibility to be given to Exhibit 7.

Mr. Cline testified that on January 16th through 21st he visited his truck and attached trailer daily. Mr. Cline stated that he did not see any tow warning stickers attached or on the truck or trailer. Mr. Cline stated that on January 22nd, when he came out to do his inspection, the truck had a bright green tow warning sticker (see Exhibit 3) but the trailer was gone. Mr. Cline stated that he later learned that the trailer had been towed by the City because it was "abandoned." Mr. Cline stated a tire was flat on the truck and as a result of seeing the sticker he got the tire pumped full of air.

The Abandoned Auto Inspector who ordered Mr. Cline's vehicle towed submitted documents into the record (Exhibits 7, 8, 9 and 10). Exhibit 7 contains a narrative prepared by the Abandoned Auto Inspector. The most important statement made by the Abandoned Auto Inspector was that he/she attached a tow warning was placed on the trailer on January 11, 2010. The Abandoned Auto Inspector stated, in the Exhibit 7 narrative, that Mr. Cline's trailer was cited and towed as a prohibited trailer (PCC 16.20.120). Exhibit 8, an additional document submitted by the Abandoned Auto Inspector, is a computer printout indicating that Mr. Cline's trailer was "warned" (tow warning tag placed on the trailer) on January 11, 2010. Exhibit 10, submitted by the Abandoned Auto Inspector, contains three photographs. Mr. Cline was given an opportunity to look at the color version of the photos (original Exhibit 10). The Hearings Officer finds that a green warning sticker *may* be visible on the bottom photo; the picture is so dark that the Hearings Officer cannot say with confidence that a sticker is on the

trailer. Therefore, the photos on Exhibit 10 were disregarded by the Hearings Officer in making this decision.

The Hearings Officer must find a tow is valid if the Hearings Officer finds that the person ordering the tow followed the relevant laws/rules. In this case the relevant laws/rules can be found in the Portland City Code ("PCC") Title 16. PCC 16.90.005 defines, for the purposes of towing a vehicle in Portland, the term "abandoned." A vehicle is deemed to be abandoned if the vehicle remains in violation for more than 24 hours and if the vehicle does not have a lawfully affixed, unexpired registration plate, or fails to display current registration. An "abandoned" vehicle may be towed and stored at the owner's expense if the vehicle is parked in the public right-of-way. (PCC 16.30.210 A.10) A vehicle may be towed 72 hours after notice of intent to tow has been affixed to or placed on the vehicle.

The Hearings Officer finds Mr. Cline to be credible. The Hearings Officer finds that Mr. Cline did check his vehicle daily between January 16th and January 22nd. The Hearings Officer finds that Mr. Cline did, on January 22nd, observe a tow warning tag on his truck and he promptly corrected the violation. The Hearings Officer finds that Mr. Cline did not, during his daily visits to the truck and trailer between January 16th and January 22nd observe a tow warning sticker on the trailer. Therefore, the Hearings Officer finds that a tow warning sticker was not placed on the trailer more than 72 hours before the tow. The Hearings Officer, had there been a clear photo showing a tow warning sticker, would likely have found this tow valid. However, the Hearings Officer, based solely on the evidence in the record, finds that the tow is not valid.

The Hearings Officer, at the conclusion of the hearing, informed Mr. Cline that vehicles parked on the City of Portland right-of-way must be moved every 24 hours (PCC 16.20.170). The Hearings Officer also noted, for Mr. Cline's attention, the provision of the Portland City Code related to parking trailers on the public right-of-way (PCC 16.20.120. H and I).

The owner or other persons who have an interest in the vehicle are not liable for the towing and/or storage charges. Therefore, it is ordered that the vehicle shall be immediately released, if still held, and any money heretofore paid for towing and/or storage charges shall be returned to the vehicle owner.

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

Dated: February 5, 2010
GJF:rs



Gregory J. Frank, Hearings Officer

Bureau: Abandoned Autos
Tow Number: 1346

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 3 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Cline, Jacob	Received
2	Tow Invoice (illegible)	Cline, Jacob	Received
3	Tow Warning	Cline, Jacob	Received
4	Tow Desk printout	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Tow Hearings Process Info. sheet	Hearings Office	Received
7	Tow Hearing Report	Abandoned Autos	Received
8	Tow Detail	Abandoned Autos	Received
9	Recheck Request	Abandoned Autos	Received
10	Photos	Abandoned Autos	Received
11	Original tow receipt w/bank card receipt attached	Cline, Jacob	Received