

# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

APPEAL OF DAVID REYNOLDS  
AND  
AGGRESSIVE SHUTTLE SERVICES INC.  
DBA AGGRESSIVE TOWN CAR & LIMOUSINE SERVICE, INC.  
("Appellants")

CASE NO. 3110539

DATE OF HEARING: December 27, 2011

APPEARANCES:

None

HEARINGS OFFICER: Mr. Gregory J. Frank

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A letter (Exhibit 1a) from Mr. David Reynolds ("legal agent founder & president" of Aggressive Town Car & Limousine Service, Inc.) to Mr. Frank Dufay, Private for Hire [program administrator], dated November 25, 2011, included the following statement:

"WE HAVE RIGHTS. AND WE RESERVE THE RIGHT TO CONDUCT BUSINESS AND THEREFORE APPEAL YOUR CITATION AND ACCUSATIONS AND HAVE MET THE 10 REPLY TO YOUR LETTER. PURSUANT TO VIOLATION CODE 16.40.130."

The City of Portland Regulatory Division ("City") forwarded Exhibit 1a to the Hearings Officer with a cover sheet (Exhibit 1). The City characterized Exhibit 1a as an appeal allowed under Portland City Code ("PCC") Title 16.40.570 A. The City Hearings Officer agrees that Exhibit 1a is the expression by Mr. Reynolds of a permissible City appeal.

A Notice of Hearing (Exhibit 8) was mailed to the parties on December 6, 2011, identifying a December 15, 2011, hearing date. A letter from Tosha Alps (Vice President/Treasurer of Aggressive Town Car Services) requested that the December 15, 2011, hearing be rescheduled (Exhibit 12). The Hearings Officer granted the rescheduling request and sent a Notice of Hearing (Exhibit 13) identifying a December 27, 2011, at 9:00 a.m., hearing date/time.

At the December 27, 2011, hearing, no party appeared. The Hearings Officer notes that no person contacted the Hearings Office from December 15, 2011, to December 27, 2011, to request another rescheduling. The Hearings Officer makes this decision based upon the documents admitted into the evidentiary record (Exhibits 1 through and including 14). The Hearings Officer, at the December 27, 2011, hearing, delayed making a decision for one hour after the conclusion of the hearing (Exhibit 14).

Exhibit 5, a November 22, 2011, letter from Mr. Frank Dufay (hereafter "Dufay"), on behalf of the City, to Appellants sets out the violations which Appellants are contesting in this proceeding.

Exhibit 5 alleges that Appellants violated PCC 16.40.130A. Specifically, the City alleged, in Exhibit 5, that Appellants violated PCC 16.40.130A by "taking reservations and arranging for pickups in Portland, including PDX International Airport." As a result of the alleged violation the City, in Exhibit 5, assessed civil penalties (PCC 16.40.540).

### **Application of PCC 16.40.130.A to the City's Alleged Violations**

PCC 16.40.130A states:

"no person or entity may conduct business as an LPT for-hire transportation company without a valid, current LPT company permit issued by the City. . ."

PCC 16.40.030J defines:

"conduct business" as "operating a for-hire vehicle or company, receiving money or other compensation from the use of a for-hire vehicle, causing or allowing another person to do the same, advertising the same."

PCC 16.40.030Y defines:

"operate" as "driving a for-hire vehicle, using a for-hire vehicle to conduct a business, receiving money from the use of a for-hire vehicle, or causing or allowing another person to do the same."

The first issue to be addressed by the Hearings Officer is whether or not arranging for the another Limited Transportation Company to pick-up passengers at the Portland International Airport is a violation of PCC 16.40.130.A.

The relevant portion of PCC 16.40.130.A states that "no person or entity may conduct business as an LPT for-hire transportation company without a valid, current LPT company permit issued by the City under Chapter 16.40." The Hearings Officer finds that interpreting the phrase "conduct business as a LPT for-hire transportation company" is central to determining if the City's alleged violations in Exhibit 5, if proven, would result in violation of PCC 16.40.130.A. In addressing that issue, the Hearings Officer applies the principles of statutory construction as set out in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 6100-12, 859 P2d 1143 (1993). The Hearings Officer's fundamental task is to discern and, if possible, effectuate the Portland City Council's intent in enacting PCC 16.40.130.A. The Hearings Officer begins that inquiry by examining the text and context of PCC 16.40.130.A.

PCC 16.40.010 (Purpose) states, in part, that the "purpose of Chapter 16.40 is to provide for the safe, fair and efficient operation of private 'for-hire' transportation services." PCC 16.40.030.CC says, in

relevant part, that "Private for-hire transportation" means "providing vehicular or pedicab transportation for compensation of any kind within the Portland City limits." The word "providing" is not defined in PCC 16.40.030 (definitions section of PCC 16.40) but is defined in the Merriam-Webster Online Dictionary as "to supply or make available (something wanted or needed)" and also as "to make something available."

The phrase "conduct business as a LPT for-hire transportation company" is not defined in PCC 16.40.030. "Limited Passenger Transportation Company" (LPT Company) is defined in PCC 16.40.030R as "a for-hire transportation company other than a taxi company." "Limited Passenger Transportation" (LPT) is defined in PCC 16.40.030S as "providing for-hire transportation services with pedicabs or with vehicles other than taxicabs. LPTs include Pedicabs, Executive Sedans, Limousines, Shuttles and SATs." The word "conduct" is not defined in PCC 16.40.030 but is defined in the Merriam-Webster Online Dictionary as "to direct or take part in the operation or management." The word "business" is not defined in PCC 16.40.030 but is defined in the Merriam-Webster Online Dictionary as "dealings or transactions especially of an economic nature."

The Hearings Officer finds that the phrase "conduct business" in PCC 16.40.130.A may be reasonably interpreted in the context of the dictionary definitions of "conduct" and "business" and the PCC 16.40.030 definition of "Private for-hire transportation" to mean the provision of motor vehicle services by carrying passengers for a fare within the City of Portland city limits. The Hearings Officer finds the picking up and/or dropping off of passengers, for a fare, within the City of Portland city limits falls within the PCC 16.40.130.A permit requirements. The Hearings Officer also finds that "conduct business" under PCC 16.40.130.A includes other activities necessary to provide for-hire transportation services. The Hearings Officer finds that other activities would include, but are not limited to, advertising LPTs pick-up services within the City of Portland limits.

**Is there substantial evidence in the record to support findings that Appellants violated PCC 16.40.130.A?**

Exhibit 5 specifies two separate Appellants' activities that the City allege violate PCC 16.40.130.A. The first is the alleged arrangement by Appellants to pick-up a customer at the Portland International Airport (hereafter "PIA"). The second is the alleged advertising by Appellants for the pick-up of customers within the City of Portland.

Mr. Reynolds ("Reynolds"), in Exhibit 1a, states that Appellants provide only a "drop-off" service at PIA. Reynolds stated that a former customer named "Carter" created a problem for Appellants at PIA on November 18, 2011. Reynolds also stated, in Exhibit 1a, the following:

"Ms. Carter was explained by our dispatcher that we did not possess the permits to enter Portland International Airport. We had explained to her that if she was adamant in us providing such services to her that she would have to pay the DAY PASS fess in which the Port of Portland imposes on us of \$250.00. This would allow us access for 24 hours into the airport. We also explained to her that she would have to take any arrangements we made with a permitted company rather than us if she wanted a re pickup at the airport back to Sherwood...We are based in Sherwood which is not Portland or Multnomah County and in fact she resides right across hwy 99 from our office and was personally told by me that we could

not pick her up at the airport without a day pass from grounds transportation. Her confirmation email also disclosed this as well. She totally ignored this and went over to the information booth and rather than asking the information staff at the commercial zone for the company we had originally set up for her, she requested us. The information supervisor called me directly instead of our dispatcher and wanted to know if we had Ms. Carter on a pickup at the airport and that her records did not show that we were allowed to enter the airport for this service. I had explained to her that I was off work and that I would call my dispatcher to find out the details of this situation. My dispatcher informed me that the company he had sit her up with kicked back the request for service and that he had been calling Ms Carters cell phone off and on throughout the day and kept getting a voice message greeting stating that the person we were attempting to call is not excepting any phone calls at the moment."

The Hearings Officer finds that PIA is located within the City of Portland and therefore "conducting business" at PIA would require a City of Portland LPT permit. The Hearings Officer finds, based upon Reynolds' comments in Exhibit 1a, that Appellants do not have a City of Portland LPT permit.

The Hearings Officer finds, based upon the Reynolds comments quoted above, that Appellants are arranging to pick-up customers, through other "permitted companies" at PIA. The Hearings Officer finds that arranging, even through other companies, by Appellants, is the conduct of business as described under PCC 16.40.030.J. It is clear to the Hearings Officer, from Reynolds' statements in Exhibit 1a, that Appellants provided transportation to Ms. Carter from Sherwood to PIA and made arrangements for another "permitted business" to pick up Ms. Carter at PIA to transport her back to Sherwood.

The Hearings Officer also finds, based upon Reynolds' Exhibit 1a comments, that he agreed to transport Ms. Carter from PIA to Sherwood if she would pay an additional \$250 to cover a Port of Portland fee. The Hearings Officer finds that even if \$250 had been paid to the Port of Portland for a 24 hour access permit to PIA, Appellants would not have the right to make PIA pick-ups; Appellants would still not have a City of Portland LPT permit.

The Hearings Officer finds that Reynolds' attempt to blame "the company he had sit her up with" for Ms. Carter's confusion and/or mistake on or about November 18, 2011, does not negate the fact that Appellants made arrangements for Ms. Carter's pick-up from PIA. It is clear to the Hearings Officer that Appellants attempted to find a way to pick-up Ms. Carter at PIA on or about November 18, 2011. The Hearings Officer finds the arrangement to pick-up Ms. Carter, even if through another company, constitutes the "conduct of business" under PCC 16.40.130 A.

The second City allegation involved Appellants' advertising of its services on the Internet. Reynolds, in Exhibit 1a, stated the following:

"Yes, our web site YouTube video does say airport pickups you are correct about that, however, we did not create or have anything to do with the making of that video and one should notice when viewing the video before activating it to play its ad would realize that it is a couple enjoying themselves on their wedding day drinking Champaign in

Exhibit 6 also contains a page identified as "Our Rates on Non Shared Basic Shuttle Service." The Hearings Officer finds that the rates quoted are rates to/from the named location and PIA. As noted by the City in Exhibit 5, rates for Appellants' service are shown for Forest Height and Johntzen Beach. The Hearings Officer finds it reasonable to infer that Forest Height refers to a neighborhood primarily within the City of Portland. The Hearings Officer finds it reasonable to infer that Johntzen Beach refers to Jantzen Beach which is a neighborhood mostly within the City of Portland. Exhibit 5 shows Appellants' shuttle rate from Forest Height to be \$45. The Hearings Officer finds Appellants' shuttle rate from Johntzen Beach to be \$45.

The Hearings Officer finds that Appellants have the right, authority and ability to control what is placed on its own webpage. The Hearings Officer finds that if Appellants disagree with any third party-created content that is placed upon Appellants' webpage, that Appellants have the right to remove such content. The Hearings Officer finds that the "YouTube Video" statement "airport pickup" can reasonably be interpreted to mean Appellants pick-up customers from PIA. The Hearings Officer finds that the "Our Rates on Non Shared Basic Shuttle Service" pages listing airport shuttle service to/from PIA and Forest Height and Johntzen Beach can reasonably be interpreted to relate to Appellants providing service from the City of Portland neighborhoods of Forest Heights and Jantzen Beach.

The Hearings Officer finds, based solely upon the evidence in the record, that Appellants' webpage advertises picking up of customers from PIA and also advertises shuttle services to/from City of Portland neighborhoods. The Hearings Officer finds the allegations, as set forth in Exhibit 5, are correct.

The Hearings Officer finds that Appellants did not specifically argue that the civil penalties assessed in Exhibit 5 were not legally supportable. Therefore, the Hearings Officer having found the alleged violations do exist, also finds that the assessed civil penalties are correct.


### **Conclusion**

The Hearings Officer finds that Exhibit 5 is, based solely upon the evidence in the record, valid. The Hearings Officer denies Appellants' appeal.

### **ORDER AND DETERMINATION:**

1. Exhibit 5 is valid; Appellants' appeal is denied.
2. This order has been mailed to the parties on January 3, 2012.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: January 3, 2012



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Gregory J. Frank, Hearings Officer

a 'LIMOUSINE' and the video goes onto show pictures of the Limousine and I think a Cadillac which we do not possess a Cadillac and certainly not black in color as well as that particular make, model, or color Limousine. However, DEXKNOWS is the company that had actually created that video and had done so against what we had advised them to place for wording. Speaking with my advertising rep Robin Mead with DEXKNOWS, She had indicated to us that the video only represents the many services and features we provide in my industry and that the wording 'AIRPORT PICKUPS' is based on providing airport pickups for 'OUTBOUND' services and not Airport pickups at the 'AIRPORT!' Speaking to my legal advisors about your accusations of false advertising they would concur that every part of what we advertise to our customers is within the boundaries of the law and what we do provide to those who reserve and conduct transactional services through our web site. Google is a complicated algorithmic science that unless you know how it works, then you know nothing about what you are accusing us of! Google Inc. provides exhaustive advertisements to businesses like mine but on keyword tag words. If certain keyword tags are not used properly and in accordance to what Google Inc. recognizes, Than Google Inc. will not promote any such ads to appear on the search listings and unfortunately Google only recognizes Portland as being to sole base for this whole region of the NW. Phone Book companies do the same thing."

The Hearings Officer provides written notices of hearings to all identifiable persons/entities identified in Appellants' appeal documents. Reynolds copied Exhibit 1a to "David Smith Attorney at Law PC." A Notice of Hearing (Exhibit 8) was sent to David Smith, Attorney at Law. David Smith, attorney, provided the Hearings Office (via fax and regular mail) a letter (Exhibits 9 and 11) stating the following:

"Please be advised that this office does not, nor have we ever represented Mr. David Reynolds or Aggressive Town Car & Limousine Services, Inc. We would ask that you please remove our name from your file, and to not forward any further information regarding this matter. All correspondence should go directly to Mr. Reynolds."

The Hearings Officer finds Reynolds' identification of Mr. David Smith in Exhibit 1a suggests that Mr. Smith is Appellants' attorney. However, Exhibits 9 and 11 clearly indicate Mr. Smith is not Appellants' attorney. The Hearings Officer finds Reynolds' reference to Mr. Smith is improper and as such, the Hearings Officer finds that Reynolds' credibility is negatively impacted.

Exhibit 6 is a copy of Appellants' home webpage. The Hearings Officer notes that at the bottom right hand corner there is a reference to a "YouTube Video." The Hearings Officer did not view the "YouTube Video." The Hearings Officer relies upon the statements in Exhibits 1a and 5 for the purpose of determining if there was an "advertising" violation related to Appellants' website.

Reynolds, as quoted above, admits that the "YouTube Video" says "airport pickups." The Hearings Officer finds that Reynolds then attempts to distance the Appellants from the contents of the "YouTube Video." Reynolds states that Appellants did not create the "YouTube Video" and therefore should not be held responsible for its contents. Reynolds states that the "airport pickup" language means that Appellants only pick-up customers to take them to the airport and not that Appellants actually pick-up customers at the airport.

GJF:rs

Enclosure

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Appeal form page 1	Butler, Kathleen	Received
1a	11/25/11 memo to Frank Dufay, from David Reynolds	Butler, Kathleen	Received
2	Appeal form page 2	Butler, Kathleen	Received
3	12/5/11 staff report	Butler, Kathleen	Received
4	11/21/11 memo to Mr. Lannom from Reynolds	Butler, Kathleen	Received
5	11/22/11 letter to Aggressive Shuttle Services, Inc., d/b/a Aggressive Town Car & Limousine Service, from Dufay	Butler, Kathleen	Received
6	Aggressive Town Car & Limousine Service Inc. website	Butler, Kathleen	Received
7	Mailing List	Hearings Office	Received
8	Hearing Notice	Hearings Office	Received
9	12/9/11 Letter of Non-Representation	Smith, David	Received
10	Updated Mailing List	Hearings Office	Received
11	Duplicate of 12/9/11 Letter of Non-Representation	Smith, David	Received
12	Request to reschedule hearing	Tosha Alps	Received
13	Notice of Hearing	Hearings Office	Received
14	12/27/11 Memo	Hearings Office	Received