

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF SERGEANTS TOWING

CASE NO. 3110518

DATE OF HEARING: November 22, 2011

APPEARANCES:

Mr. Jesse Copeland, on behalf of Sergeants Towing

Ms. Marian Gaylord, on behalf of the City

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Jesse Copeland, manager of Sergeants Towing ("Appellant") appeared and presented argument on behalf of the Appellant. Mr. Josiah Stewart, employee of Appellant, appeared and presented testimony on behalf of Appellant. Ms. Marian Gaylord, Towing Coordinator for the City of Portland, appeared and presented argument on behalf of the City. Exhibits 1 through 16 were admitted into the evidentiary record without objection from the City or Appellant.

Ms. Gaylord testified that she received a complaint on October 8, 2011, from Justin Henning regarding the tow of his vehicle on October 5, 2011, from "The Green Building" by Sergeants Towing. Ms. Gaylord stated that Mr. Henning contended that he and his girlfriend approached his vehicle while the tow driver was hooking up the vehicle, but prior to the completion of the hook-up. Ms. Gaylord stated that a vehicle is not completely hooked up until the driver has attached all the required safety lines, entered the cab, and is beginning to roll forward. (PCC 7.24.016G) Ms. Gaylord indicated in her report to the Hearings Office, Exhibit 3, that Administrative Rule LIC 9.04, Conditions provides that "*If the vehicle owner or operator returns while the PPI tower is still attaching equipment to the vehicle or is outside of the tow truck, the PPI tower shall release the vehicle to the vehicle owner or operator at no charge.*" Ms. Gaylord testified that Mr. Henning stated that the driver was outside of the vehicle when he approached, and that he attempted to contact the driver. Ms. Gaylord stated that Mr. Henning reported that the driver ignored him and got into the tow truck and left.

The Hearings Officer reviewed the documents written by Mr. Henning and Ms. DeLima that were submitted to the Hearings Office. Mr. Henning states in Exhibit 5 that he was 10 feet from the tow truck driver when he attempted to make contact by stating "Sir! Excuse me!" Ms. DeLima writes in Exhibit 7 that she has attached a photo, Exhibit 8, from her cell phone which shows a call received at 11:39 p.m. from a taxi cab company. Ms. DeLima writes that the Sergeants Towing invoice shows 11:43 p.m. (time released). Ms. DeLima writes, "The only way we made it to the towing office so quickly, is the fact that we returned to Mr. Henning's vehicle before the vehicle was even towed." The Hearings Officer finds that Ms. Gaylord sufficiently summarized the other arguments put forth by Mr. Henning and Ms. DeLima, and repetition of such arguments is not necessary.

Mr. Copeland, in his initial statement on behalf of Appellant, stated that the case relies on "he said vs. we said" testimony and that he believes the statement of the driver, Josiah Stewart, regarding what took place. Mr. Copeland stated that the driver has proven his integrity on numerous occasions, and has a long history with the company. Mr. Copeland stated that the area where the tow occurred is very busy in the evening, and that a large number of people frequent the food carts that are set up in the area. Mr. Copeland stated that he spoke to Mr. Stewart about the tow which occurred on October 5, 2011, and that Mr. Stewart told him that he did not hear the vehicle owner calling to him prior to the tow of the vehicle. Mr. Copeland stated that Mr. Stewart reported hearing people in the taco cart area yelling "your car is being towed," but that he did not hear an owner calling to him. Mr. Copeland stated that the carts are further away than 10 feet from where the vehicle was parked, and Mr. Stewart would have been able to hear if the owner was calling to him from 10 feet away. Mr. Copeland indicated that the owner, coming from the food carts, would have been approaching the vehicle on the driver's side, and Mr. Stewart would have had to look that direction before driving away. Mr. Copeland stated that a towed vehicle is taken directly from the towed location to the tow lot which is 2.5 miles away. Mr. Copeland stated that he believes it takes less than 5 minutes to get to the tow lot from where the vehicle was parked prior to towing. Mr. Copeland submitted 2 photos of the area where the vehicle was towed. The photos were labeled collectively as Exhibit 16 and entered into the record.

The Hearings Officer asked Ms. Gaylord and Mr. Copeland to further explain Exhibit 9, Tow Desk printout, with regards to the tow of Mr. Henning's vehicle. Ms. Gaylord stated that Exhibit 9 indicates that the tow of the vehicle was "initiated" at 23:21 and that the initiation of the tow is entered into the Tow Desk computer based on a call from the tow truck driver. Ms. Gaylord indicated that the tow of the vehicle was completed at 23:35 p.m. and that this time is based on a report from the tow company to the Tow Desk. Mr. Copeland indicated that a tow is complete and the call is made to the Tow Desk when the vehicle arrives at the tow lot.

Mr. Stewart testified at the request of the Hearings Officer. Mr. Stewart testified that he did not recall the tow of Mr. Henning's vehicle specifically, but that he had to look back at his records when Mr. Copeland asked him about the tow. Mr. Stewart stated that he was surprised when Mr. Copeland asked him about the tow, because he didn't recall anything significant about it. Mr. Stewart stated that it takes him approximately 45 seconds to hook up a vehicle like Mr. Henning's to his tow truck. Mr. Stewart testified that he typically waits before hooking up a vehicle at "The Green Building" because the food cart workers will usually yell to the customers when they see the flash of his camera, and the owner will return to their vehicle. Mr. Stewart testified that he is typically on scene for about two minutes when towing a vehicle from "The Green Building." Mr. Stewart testified that it is a 7 minute drive from "The Green Building" to the tow lot.

The Hearings Officer finds that the only issue to be decided is whether Mr. Stewart was contacted by Mr. Henning or Ms. DeLima prior to taking possession of the vehicle. The Hearings Officer finds Mr. Stewart to be credible regarding his conduct when towing Mr. Henning's vehicle. The Hearings Officer notes that neither Mr. Henning nor Ms. DeLima offers substantial evidence to counter the statements of Mr. Stewart. Mr. Henning indicates in his Tow Complain Form, Exhibit 4, that he called to Mr. Stewart from 10 feet away, though he does not indicate why he would have stopped at such a distance if Mr. Stewart was outside of the tow truck "in the process" of hooking up the vehicle. Ms. DeLima indicates that a call from Radio Cab at 11:39 p.m. indicates that she and Mr. Henning contacted Mr. Stewart before Mr. Stewart was in possession of the vehicle. However, Exhibit 9 indicates that the vehicle was at the Sergeants Tow Lot at 11:35 p.m. and Mr. Stewart testified that it takes 7 minutes to drive to the lot. Taken together, the evidence indicates that the vehicle was towed from the scene at approximately 11:28 p.m. or 11 minutes before the call on Ms. DeLima's phone. The Hearings Officer finds the information provided by Mr. Henning and Ms. DeLima to not be persuasive.

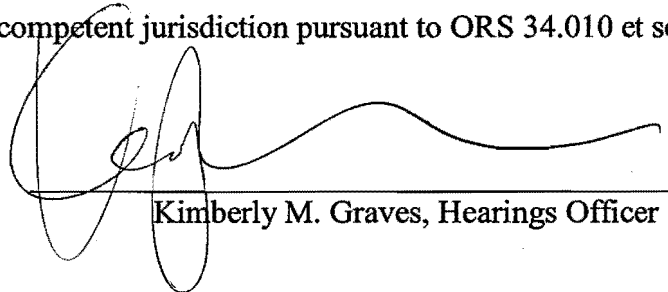
The Hearings Officer finds that Ms. Gaylord, as the City Tow Coordinator, with the information provided by Mr. Henning and Ms. DeLima, has failed to meet the burden to demonstrate that Mr. Stewart, as an agent of Sergeants Towing, engaged in conduct in violation of Administrative Rule LIC 9.04, Conditions.

ORDER AND DETERMINATION:

1. The appeal of Sergeants Towing is granted.
2. This order has been mailed to the parties on November 23, 2011.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: November 23, 2011

KMG: jeg



Kimberly M. Graves, Hearings Officer

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form page 1	Gaylord, Marian	Received
2	Appeal Form page 2	Gaylord, Marian	Received
3	11/7/11 Staff Report	Gaylord, Marian	Received
4	Tow Complaint Form	Gaylord, Marian	Received
5	Email string	Gaylord, Marian	Received
6	Private Property Impound Invoice	Gaylord, Marian	Received
7	Email string	Gaylord, Marian	Received
8	Phone printout	Gaylord, Marian	Received
9	Tow Desk printout	Gaylord, Marian	Received
10	10/12/11 Letter to Sergeants Towing	Gaylord, Marian	Received
11	Email printout	Gaylord, Marian	Received
12	Photos	Gaylord, Marian	Received
13	10/27/11 - Letter to Jesse Copeland from Marian Gaylord	Gaylord, Marian	Received

<u>14</u>	Email from Jesse Copeland to Marian Gaylor	Gaylord, Marian	Received
<u>15</u>	Notice of Hearing	Gaylord, Marian	Received
<u>16</u>	Photos	Sergeants Towing,	Received