



CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF KUNDIN NADEW

CASE NO. 3120093

DATE OF HEARING: March 15, 2012

APPEARANCES:

Mr. Kundin Nadew, Mr. Nadew

Ms. Kathleen Butler, on behalf of City

HEARINGS OFFICER: Ms. Kimberly M. Graves

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Mr. Kundin Nadew ("Mr. Nadew") appeared at the hearing and testified on his own behalf. Ms. Kathleen Butler, Regulatory Division Manager for the City of Portland Revenue Bureau ("Ms. Butler") appeared and represented the City. Mr. Frank Dufay, Regulatory Program Administrator for the City of Portland Revenue Bureau ("Mr. Dufay") appeared as a witness for the City.

Ms. Butler offered Exhibits 1 through, and including, 10 to be admitted into the evidentiary record. Mr. Nadew appeared after the start of the hearing, and was not present when the exhibits were offered into the evidentiary record. The Hearings Officer admitted all offered exhibits into evidence.

Exhibits 6 and 8, letters from Mr. Dufay to Mr. Nadew sent on January 24, 2012, list the sections of the Portland City Code ("PCC") the City alleges Mr. Nadew has violated, and the conduct which led to the alleged violations. Exhibit 2 is a letter from Mr. Nadew offering an explanation for the conduct which led to the alleged violations.

Exhibits 6 and 8 allege that Mr. Nadew violated PCC 16.40.150A and PCC 16.40.190B. As a result of the alleged violations, the City, in Exhibit 6 and 8, assessed civil penalties (PCC 16.40.540A). Specifically, the City alleges, in Exhibits 6 and 8, that Mr. Nadew violated PCC 16.40.150A and PCC 16.40.190B by operating an unpermitted taxicab, and unpermitted taxicab company, in downtown Portland on December 10, 2011, and again on January 21, 2012.

PCC 16.40.150A states, "No person or entity may conduct business as a taxicab company without a valid, current company permit issued by the City under Chapter 16.40." 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 or advertising the same." PCC 16.40.030II defines "taxicab company" as "any entity operating taxicabs other than as a driver. . ." PCC 16.40.030KK defines "taxicab" as "any vehicle that carries passengers for-hire where the destination and route traveled may be controlled by a passenger and fare is calculated on the basis of an initial fee, distance traveled, waiting time or any combination thereof." PCC 16.40.190B states, "No taxicab vehicle may be used as a for-hire transportation vehicle without a valid and unobstructed taxiplate issued by the City under Chapter 16.40."

The Hearings Officer, in this case, relies upon the oral testimony offered by Ms. Butler, Mr. Dufay and Mr. Nadew at the hearing on March 15, 2012, and the exhibits entered into the evidentiary record.

Evidence

Ms. Butler testified on behalf of the City. Ms. Butler testified that Mr. Nadew was previously employed as a taxi driver within the City of Portland. Ms. Butler testified that Mr. Nadew previously worked for Green Transportation and for Broadway Taxi. Ms. Butler testified that when Mr. Nadew was an employee of a taxi company, Mr. Nadew obtained a taxi driver permit. Ms. Butler testified that Mr. Nadew's taxi driver permit was issued in May 2011 and is good through May 2012. Ms. Butler indicated that there are three permits, driver, vehicle, and company, issued with respect to taxi operation within the City. Ms. Butler testified that Mr. Nadew has a permit as a taxi driver, but that his vehicle does not have a permit nor does his company. Ms. Butler testified that if Mr. Nadew operates his company in Beaverton lawfully, he is allowed to transport riders into the City. However, without the required permits, Mr. Nadew is not permitted to pick up passengers within the City.

Mr. Dufay testified on behalf of the City. Mr. Dufay testified that he received a report from the Portland Police Bureau ("PPB") on December 12, 2011, indicating that they had contact with Mr. Nadew on December 10, 2011. The PPB report is included in the record as Exhibit 5. Mr. Dufay testified that a police officer reported seeing Mr. Nadew on December 10, 2011, driving a vehicle which had a taxi light on the top, and the name "Kundin Taxi" painted on the side. The officer reported seeing four females enter the vehicle while it was stopped on NW 4th Avenue in Portland. The officer's report indicates that the vehicle began driving after the passengers were inside. Mr. Dufay testified that the officer contacted Mr. Nadew on NW 4th Avenue after seeing him make an illegal turn. Mr. Dufay testified that the officer asked the passengers whether they arranged the ride with Mr. Nadew, or whether they "flagged him down" for a ride. Mr. Dufay testified that the passengers indicated that they had "flagged down" the vehicle. The PPB report indicates that the officer contacted Mr. Nadew at 1:50 a.m.

Mr. Dufay testified that he received a second report from PPB on January 21, 2012, indicating that Mr. Nadew was again seen by an officer driving a vehicle with a taxi light on the top in the area of NW 3rd Avenue. The PPB report is included in the record as Exhibit 7. The report indicates that the officer flagged down Mr. Nadew after seeing him turn onto a one-way street heading in the wrong direction. The report indicates that the officer noted that there was not a City of Portland taxi placard on the vehicle. Mr. Dufay testified that the passengers in the vehicle told the officer that they had gotten into the vehicle at SW 2nd and SW Ankeny. The PPB report indicates that the officer contacted Mr. Nadew at 12:10 a.m.

Mr. Nadew testified on his own behalf. Mr. Nadew testified that he has a permit to operate his business in Beaverton and that he transports people from Beaverton to Portland. Mr. Nadew testified that he is sometimes in the area of NW Portland at 2:00 a.m. and that intoxicated people will jump into his car against his will. Mr. Nadew testified that he tells them to exit, but sometimes they won't. Mr. Nadew testified that on January 21, 2012, before he was contacted by the police, he "lost control" and made a wrong turn. Mr. Nadew testified that he made a mistake.

In response to questions from Ms. Butler, Mr. Nadew testified that he had previously spoken with Ms. Butler about not picking up passengers within the City of Portland. Mr. Nadew testified that he had also spoken with Ms. Butler about how to deal with unwanted passengers. Mr. Nadew testified that on December 10, 2011, the passengers entered his vehicle just 30 seconds after his paying fare passenger exited. Mr. Nadew testified that he did not have a receipt to show the time that he transported the paying fare passenger. Mr. Nadew testified that the light on his vehicle is attached by magnets, and that it was on his vehicle and illuminated on December 10, 2011. Mr. Nadew testified that he did not take any steps between December and January to prevent passengers from entering his vehicle against his will. Mr. Nadew testified that on January 21, 2012, he did not purposely stop to pick up passengers. Mr. Nadew did not offer any further testimony or argument.

Ms. Butler argued that company permits are necessary to limit the number of taxis in the city, to ensure that vehicles respond in an appropriate amount of time, and to ensure that ADA compliant vehicles are available. Ms. Butler added that the vehicle taxiplate is required to ensure that vehicles are in working order and are insured. Ms. Butler argued that the PCC regulations are in place to protect passengers and the public, and that violations of the regulations create a risk to the public.

Application of PCC 16.40.150A and PCC 16.40.190B to the City's Alleged Violations

The first issue to be addressed by the Hearings Officer is whether Mr. Nadew's vehicle is a "taxicab," and whether it is used as a "for-hire transportation vehicle." The relevant portion of PCC 16.40.190B states, "No taxicab vehicle may be used as a for-hire transportation vehicle without a valid and unobstructed taxiplate issued by the City under Chapter 16.40."

PCC 16.40.030KK defines "taxicab" as "any vehicle that carries passengers *for-hire* where the destination and route traveled may be controlled by a passenger and fare is calculated on the basis of an initial fee, distance traveled, waiting time or any combination thereof." (emphasis added) The term "used" is not defined in PCC 16.40.030 but is defined in the Merriam-Webster Online Dictionary as "to put into action or service." The Hearings Officer finds that Mr. Nadew's vehicle contains an illuminated taxi sign and a company name, and operates on a for-hire basis. The Hearings Officer finds that a vehicle with an illuminated taxi sign, and a company name, is a taxicab and use of the vehicle as a for-hire transportation vehicle requires a taxiplate as provided in PCC 16.40.190B.

The next issue to be addressed by the Hearings Officer is whether Mr. Nadew's conduct in using his vehicle, displaying a company name, to pick up passengers, within the City of Portland, meets the definition of "conduct business as a taxicab company" as defined in PCC 16.40.030J.

The relevant portion of PCC 16.40.150A states, "No person or entity may conduct business as a taxicab company without a valid, current company permit issued by the City under Chapter 16.40."

The phrase “conduct business as a taxicab company” is not specifically defined in PCC 16.40.030. 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 or advertising the same.” PCC 16.40.030II defines “taxicab company” as “any entity operating taxicabs other than as a driver. . .”

The Hearings Officer finds that phrase “conduct business as a taxicab company” as used in PCC 16.40.150.A can reasonably be interpreted to mean the offering of transportation services, under a company name, to passengers for a fare within the City of Portland city limits. The Hearings Officer finds that picking up passengers in a vehicle designated with a company name, and transporting them, for a fare, within the City of Portland city limits requires a permit as provided in PCC 16.40.150.A.

Is there substantial evidence in the record to support findings that Mr. Nadew violated PCC 16.40.150.A and/or PCC 16.40.190.B?

As stated above, the Hearings Officer finds that a violation of PCC 16.40.150.A and/or PCC 16.40.190.B occurs if the Hearings Officer makes a finding that Mr. Nadew picked up a passenger within the Portland city limits in a taxicab.

City witness Mr. Dufay testified about two PPB reports received regarding Mr. Nadew’s use of a taxicab to pick up passengers within the City of Portland. The testimony described the appearance of Mr. Nadew’s vehicle, including a taxi light on top of the vehicle and the words Kundin Taxi painted on the side of the vehicle. The testimony also indicated that Mr. Nadew had passengers in his vehicle when he was contacted by PPB officers. The reports submitted by PPB were entered into the evidentiary record.

Ms. Butler testified that Mr. Nadew does not have a vehicle permit or a company permit to conduct business within the City of Portland.

Mr. Nadew’s only explanation for his conduct was that he was in the downtown area dropping off a fare when people entered his vehicle against his will. Mr. Nadew offered no explanation about why he proceeded to transport the passengers who entered his vehicle. Mr. Nadew admitted to not having a vehicle or company permit to conduct business within the City of Portland.

The Hearings Officer finds that the testimony of Mr. Dufay is credible and his reliance on the PPB reports is reasonable. The Hearings Officer finds that the PPB reports are credible, and accurately reflect the contact with Mr. Nadew on December 10, 2011, and January 21, 2012. The Hearings Officer finds that Ms. Butler’s testimony that Mr. Nadew lacks the required permits to conduct business within the City of Portland is credible. The Hearings Officer finds that Mr. Nadew’s explanation for his conduct is not credible, given his transportation of the passengers after they entered his taxi, and the repeated nature of the violations. The Hearings Officer finds that Mr. Nadew’s statement that he lacks the required permits to conduct business within the City of Portland is credible.

The Hearings Officer finds, based upon the testimony of Mr. Dufay and written reports from the PPB, that on December 10, 2011, and January 21, 2012, Mr. Nadew used a taxicab displaying a company name to pick up passengers within the City of Portland limits. The Hearings Officer finds that on December 10, 2011, and January 21, 2012, Mr. Nadew did not have the required permits to use his vehicle as a taxicab or to conduct business as a taxi company within the City of Portland.

Conclusions

PCC 22.03.080.B and ADM 9.01 – 11(b) state that “the burden of presenting evidence to support a fact or proposition rests on the proponent of that fact or proposition.” In this case, the City has the burden to show, by a preponderance of the evidence, that (1) Mr. Nadew’s vehicle was a taxicab and was used within the City of Portland limits without having a valid and unobstructed taxiplate issued by the City under Chapter 16.40 and/or (2) Mr. Nadew conducted business within the City of Portland limits as a taxicab company without a valid, current company permit issued by the City under Chapter 16.40.

As discussed in the findings above, the Hearings Officer finds that the picking up of passengers in a taxicab, within the City of Portland, is providing for-hire transportation and in violation of PCC 16.40.190.B if the taxicab does not display a valid taxiplate issued by the City of Portland. The Hearings Officer finds that picking up passengers in a taxicab containing a company name for a fare within the City of Portland limits is conducting business as a taxicab company within the City of Portland in violation of PCC 16.40.150.A. The Hearings Officer finds, based upon the testimony of Mr. Dufay and the reports of the PPB, that Mr. Nadew did pick up passengers on December 10, 2011, and January 21, 2012, while using a taxicab, and operating a taxicab company, within the City of Portland limits.

The Hearings Officer finds that at the time of the violations on December 10, 2011, and January 12, 2012, Mr. Nadew did not have the required permits to operate a taxicab or a taxicab company within the City of Portland limits.

The Hearings Officer finds, based upon the evidence in the record, that the City has met its burden to prove by a preponderance of the evidence that Mr. Nadew engaged in conduct which was in violation of PCC 16.40.150.A and PCC 16.40.190.B, and that the associated fines are appropriate. The Hearings Officer finds the allegations contained in Exhibits 6 and 8 are proven and Mr. Nadew’s appeal is denied.

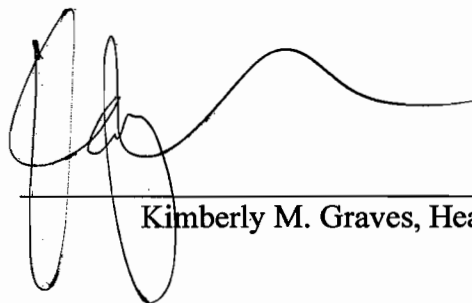
ORDER AND DETERMINATION:

1. Allegations contained in Exhibits 6 and 8 are proven; Mr. Nadew’s appeal is denied.
2. This order has been mailed to the parties on March 30, 2012.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: March 30, 2012

KMG:jeg/rs

Enclosure



Kimberly M. Graves, Hearings Officer

Exhibit #	Description	Submitted by	Disposition
1	Appeal Form Page 1	Butler, Kathleen	Received
2	Attachment to Appeal Form by Kundin Nadew	Butler, Kathleen	Received
3	Appeal Form page 2	Butler, Kathleen	Received
4	2/15/12 Memo from Frank Dufay	Butler, Kathleen	Received
5	PPB Special Report: 11-106736	Butler, Kathleen	Received
6	1/24/12 Determination	Butler, Kathleen	Received
7	PPB Special Report: 12-005981	Butler, Kathleen	Received
8	1/24/12 Determination	Butler, Kathleen	Received
9	Mailing List	Hearings Office	Received
10	Notice of Hearing	Hearings Office	Received