



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## HEARINGS OFFICER'S ORDER

### APPEAL OF SHADY BOTROUS

CASE NO. 1120126

DESCRIPTION OF VEHICLE: Nissan Altima (WA AFV6602)

DATE OF HEARING: July 17, 2012

### APPEARANCES:

Mr. Shady Botrous, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Botrous appeared at the hearing and testified on his own behalf. No one appeared on behalf of the City. The Hearings Officer makes this decision based on substantial evidence upon the record as a whole, which includes the testimony of Mr. Botrous and the documents admitted into evidence (Exhibits 1 through and including 13).

### Summary of Evidence:

Mr. Botrous submitted a Tow Hearing Request Form, Exhibit 2, regarding the tow of his vehicle on June 30, 2012. Mr. Botrous also submitted a typewritten letter, Exhibit 3, in which he indicates that his rental vehicle was towed from NW Couch Street and NW 3<sup>rd</sup> Avenue. Mr. Botrous writes that he feels the tow was "unjustified" because his vehicle was parked behind a sign that indicated that parking was prohibited between 7 a.m. and 6 p.m. Mr. Botrous writes that he parked his vehicle at approximately 10:45 p.m. and that the vehicle was towed at approximately 11:45 p.m. Mr. Botrous writes that the "Police Only Parking" sign was approximately 20 feet in front of the No Parking sign. Mr. Botrous appeared at the hearing and testified that he talked with an officer in the area who showed him the "Police Only Parking" sign. Mr. Botrous stated that he only saw one sign designating the area for police parking. Mr. Botrous submitted Exhibit 13, photos of the area, to illustrate the location of his vehicle prior to towing and the signage in the area. Mr. Botrous testified that he returned to the area a week after his vehicle had been towed, and still only noticed one "Police Only Parking" sign, and noted that the temporary No Parking sign was still in place.

The City submitted Exhibits 11 and 12 for the Hearings Officer's consideration. Exhibit 11 is a Towed Vehicle Record indicating that Mr. Botrous' vehicle was towed for being parked in a No Parking zone. Exhibit 12 is an Investigation Report from the Portland Police Bureau. The report indicates that on June 30, 2012, the officer observed Mr. Botrous' vehicle parked on NW 3<sup>rd</sup> and NW Couch in an area reserved for police vehicles. The

report indicates that there are "two metal signs posted saying no parking and paint markings on the street." The report does not contain any photos or description of the signs the officer refers to in his report.

The Hearings Officer concluded that a site view would be helpful in determining what signage was posted when Mr. Botrous' vehicle was towed. With Mr. Botrous' permission, the Hearings Officer conducted a site view of the location on July 20, 2012. In conducting the site view, the Hearings Officer drove South on NW 3<sup>rd</sup> Avenue past NW Couch Street. The Hearings Officer notes that two "Police Only Parking" signs are present on the block which designates the outer edges of the police parking zone. The Hearings Officer noted the absence of any temporary No Parking sign on the block.

**Applicable Law:**

The Hearings Officer must find a tow is valid if 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. 16.30.210A1 provides that a vehicle may be towed and held at the expense of the owner from any public right-of-way when the vehicle is parked in violation of a permanent parking restriction. PCC 16.30.220B permits any authorized officer to tow a vehicle without prior notice when the vehicle is illegally parked in a conspicuously posted restricted space, zone, or traffic lane.

**Findings of Fact and Conclusions of Law:**

The Hearings Officer notes that the signage present at the time of the tow, and at the time of the site view, is different. The Hearings Officer bases this decision on the evidence contained in the record, and not on any information obtained via the site view. The Hearings Officer finds that on June 30, 2012, Mr. Botrous' vehicle was parked near NW Couch and NW 3<sup>rd</sup>. The Hearings Officer finds that at the time Mr. Botrous' vehicle was towed, there was conflicting signage on the block. The Hearings Officer finds that there was temporary signage indicating that parking after 6 p.m. was permitted in an area which was supposed to be reserved 24 hours a day for police parking only. The Hearings Officer notes that the Portland Police Officer does not describe, in Exhibit 12, the type of signage which was present at the time of the tow. The Hearings Officer notes that if two police parking only signs were present, there would not be a need for the temporary No Parking sign. The Hearings Officer finds Mr. Botrous credible in his statement that he only saw one sign designating the area for police vehicles only. The Hearings Officer finds that the City has failed to meet its burden with respect to the tow of Mr. Botrous' vehicle. The Hearings Officer finds the tow of Mr. Botrous' vehicle is not valid.

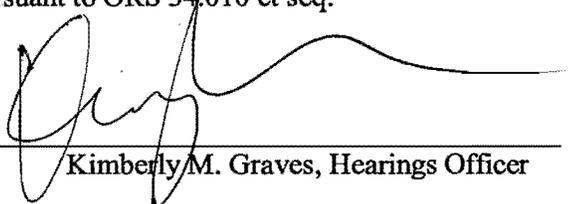
**Order:**

Therefore, the Hearings Officer finds that 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.

**In order for the appellant to receive reimbursement, a complete and legible copy of the towing and storage bill must be furnished to the Hearings Officer by September 10, 2012.**

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

Dated: July 24, 2012  
KMG:c2/c1

  
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Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police  
Tow Number: 10369

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

<b>Exhibit #</b>	<b>Description</b>	<b>Submitted by</b>	<b>Disposition</b>
1	Fax Transmittal	Botrous, Shady	Received
2	Tow Hearing Request Form	Botrous, Shady	Received
3	Attachment	Botrous, Shady	Received
4	Enterprise Rental Sheet	Botrous, Shady	Received
5	Department of Licensing	Botrous, Shady	Received
6	Certificate of Self-Insurance	Botrous, Shady	Received
7	Security Towing & Recovery Receipt	Botrous, Shady	Received
8	Tow Desk printout	Hearings Office	Received
9	Notice of Hearing	Hearings Office	Received
10	Statement of Rights and Procedures	Hearings Office	Received
11	Towed Vehicle Record	Police Records	Received
12	Investigation Report	Police Records	Received
13	Photos	Botrous, Shady	Received