



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF ALLEN A. JAHANI

CASE NO. 1120169

DESCRIPTION OF VEHICLE: Ford F456 (WA B31352F)

DATE OF HEARING: September 27, 2012

APPEARANCES:

Mr. Allen Jahani, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Jahani 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. Jahani and the documents admitted into evidence (Exhibits 1 through and including 10).

Summary of Evidence:

Mr. Jahani submitted a Tow Hearing Request Form, Exhibit 1, regarding the tow of his truck on September 10, 2012. Mr. Jahani writes that he received a notice on his truck indicating that his truck was "abandoned". Mr. Jahani writes that he called the number on the notice and told the woman who answered that this was his work truck, and that it was not abandoned. Mr. Jahani writes that he told the woman that he would be moving the truck on September 10. Mr. Jahani testified at the hearing that he drives his truck regularly and that it is functioning and not abandoned. Mr. Jahani testified that a notice was placed on his truck initially when it was parked on "Hancock St." and that when the truck was towed it was parked on "Tillamook". Mr. Jahani testified that he believed that his truck was considered abandoned if it didn't move in a 72 hour period. Mr. Jahani testified that he did not know that his truck wasn't allowed to be parked "legally" on the street. Mr. Jahani testified that his truck is a "Ford F450" with a box on the back. Mr. Jahani testified that he thought after he told the city that his truck was not abandoned, that the issue was resolved. Mr. Jahani testified that on the green notice placed on his truck, the portion marked indicated that his truck was "abandoned". The green notice, according to Mr. Jahani, did not indicate that his truck was a "prohibited" truck.

The City submitted Exhibits 5 through, and including, 9 for the Hearings Officer's consideration. Exhibit 5 is a Tow Hearing Report indicating that Mr. Jahani's truck was towed on September 10, 2012 from NE Tillamook. The report indicates that the truck was warned on 8/8/12 and 8/31/12. The report indicates that the notices placed on the truck indicated that the truck was a "prohibited truck" under PCC 16.20.120H, I. Exhibit 6 is a narrative

report from the Abandoned Autos Section of the Bureau of Transportation. The report indicates that after the second notice was placed on the truck, Mr. Jahani called the Abandoned Autos Section and indicated that he needed an "extension" until September 10, 2012. The report says that the extension was granted, and that the truck was towed on September 10, 2012 at 4:35 p.m. Exhibit 7 reiterates the information contained in the narrative report. Exhibit 8 is a copy of the citation issued to Mr. Jahani when his truck was towed. The citation indicates that the truck was towed because it was an "Abandoned Auto" under PCC 16.20.120P. Exhibit 9 contains 4 photos related to the tow of the truck. The photos show the truck from a number of angles, but the tow notice is not visible in any of the photos.

Applicable Law:

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 or the vehicle appears inoperative or disabled. 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 (PCC 16.30.225 B.).

Findings of Fact and Conclusions of Law:

The Hearings Officer finds that there is a discrepancy between the information contained in the narrative report from the city, Exhibit 6, and the citation issued to Mr. Jahani, Exhibit 8. The narrative report indicates that Mr. Jahani's truck was a "prohibited truck" under PCC 16.20.120H, I, while the citation issued indicates that Mr. Jahani's truck was an abandoned auto under PCC 16.20.120P. The Hearings Officer finds that the citation is the controlling document for purposes of determining the validity of the tow. The citation served as notice to Mr. Jahani regarding the basis for the tow, and the Hearings Officer considers only the PCC section listed in the citation when determining the validity of the tow. The Hearings Office finds that an abandoned automobile is one that fits the definition contained in PCC 16.90.005. The Hearings Officer finds that there is no evidence in the record to demonstrate that Mr. Jahani's truck was an abandoned automobile within the PCC definition. The Hearings Officer finds that because Mr. Jahani's truck did not meet the PCC definition of an abandoned automobile, it could not be lawfully towed under PCC 16.20.120P. The Hearings Officer finds the tow of Mr. Jahani's truck to be invalid.

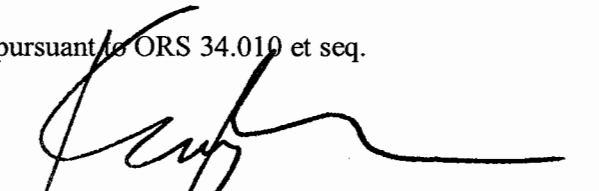
Order:

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 Office by October 29, 2012.

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

Dated: September 28, 2012
KMG:m1


Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Abandoned Autos
Tow Number: 14051

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	Tow Hearing Request Form	Jahani, Allen A.	<u>Received</u>
2	Tow Desk printout	Hearings Office	<u>Received</u>
3	Notice of Hearing	Hearings Office	<u>Received</u>
4	Statement of Rights and Procedures	Hearings Office	<u>Received</u>
5	Tow Hearing Report	Abandoned Autos	<u>Received</u>
6	Attachment A	Abandoned Autos	<u>Received</u>
7	Detail for Case No: AUT2012-008724	Abandoned Autos	<u>Received</u>
8	Parking Violation #HA11540667	Abandoned Autos	<u>Received</u>
9	Photos	Abandoned Autos	<u>Received</u>
10	Tow Warning Example	Hearings Office	<u>Received</u>