



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF MARIE CUSUMANO

CASE NO. 1080295

DESCRIPTION OF VEHICLE: Acura Integra (OR 450DDA)

DATE OF HEARING: October 7, 2008

APPEARANCES:

Ms. Marie Cusumano, Appellant

HEARINGS OFFICER: Mr. Ian Simpson

The Hearings Officer, on substantial evidence and based upon the record as a whole, and receiving Exhibits 1 through 8 into the record without objection, finds as follows:

The towing officer's report (Exhibit 5) stated that on September 20, 2008 at about 8:30 a.m. the Appellant's vehicle was parked on the east side of SW 5th between SW Hall and Harrison. Temporary no parking signs on barricades were posted that read 'No Parking All Hours All Days, 9/20 – 10/3.' The report stated that the signs were installed and verified on September 15, were verified as still posted on September 18, and were posted on September 20 when the officer had the Appellant's vehicle towed.

The Appellant stated that she parked her vehicle on September 19 at about 11:30 p.m. and saw no such signs. She also provided a witness statement from Steven Englund (Exhibit 7). Mr. Englund stated that he was with the Appellant when she parked her vehicle and he saw no signs either. He also stated that he lives in the building adjacent to where the Appellant was parked and is very familiar with the area. The Appellant also stated that all six vehicles that were parked along the street where she parked were towed the next morning. She spoke with some of the other vehicle owners, who told her that they did not see any signs either.

The City has the burden to show that more probably than not the Appellant's vehicle was in a situation where an officer had authority to tow it, and there was adequate notice to the person parking the vehicle that the vehicle could be towed. The Hearings Officer finds that the evidence suggests two possible scenarios: the appellant and her witness did not see the posted signs the night she parked her vehicle. Or, the signs were removed from the street some time before she parked, and then posted again before the officer arrived in the morning and had the vehicle towed. The issue then is which scenario is better supported by the evidence and is more probable.

The Hearings Officer finds that, absent other factors, it is more probable that a person parking her vehicle, especially at night, simply failed to see the no parking signs, rather than that the signs were posted, then removed before the person parked, and then posted again after the person parked. However, in this case there

is the additional factor that there are two witnesses, the Appellant and Mr. Englund, who did not see any signs when the Appellant parked her vehicle. In addition, Mr. Englund lives at and is very familiar with the location. The Hearings Officer finds that in this case the evidence supports finding that both scenarios are comparably probable. Therefore, the Hearings Officer finds that the City has not carried its burden of proof.

Given these circumstances, this was an invalid tow. Please note the relevant City Code sections below concerning this matter.

16.30.210 When a Vehicle May be Towed.

(Amended by Ordinance Nos. 172788 and 179141, effective March 23, 2005.) A vehicle may be towed and held at the expense of the owner or person entitled to possession thereof from:

A. Any public right-of-way, public park or other public place or property, when:

1. The vehicle is parked in violation of a temporary or permanent parking restriction;

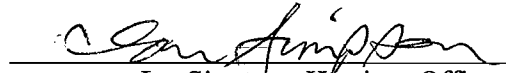
D. Temporary parking restrictions may be enforced by tow 24 hours after placement in any non meter area.

E. Temporary parking restrictions may be enforced by tow if the space reservation device and/or signs are in place by 12:30 p.m. the prior day in any meter district.

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.

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

Dated: October 10, 2008
IS: rs


Ian Simpson, Hearings Officer

Bureau: Parking Enforcement
Tow Number: 25689

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 2 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Cusumano, Marie	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Tow hearing report	Parking Enforcement	Received
6	Parking Violation	Parking Enforcement	Received
7	Letter from Steven Englund	Cusumano, Marie	Received
8	Tow receipt	Cusumano, Marie	Submitted after record closed