



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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HEARINGS OFFICER'S ORDER

APPEAL OF JUDY TOBLER

CASE NO. 1080345

DESCRIPTION OF VEHICLE: Ford Probe (OR 045CXS)

DATE OF HEARING: December 4, 2008

APPEARANCES:

Judy Tobler, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

The Hearings Officer, on substantial evidence and based upon the record as a whole, finds as follows:

Ms. Judy Tobler, Appellant, appeared and testified on her own behalf. The Hearings Officer makes this decision based upon the testimony of Ms. Tobler and the exhibits admitted into the evidentiary record (Exhibits 1 through and including 11).

The police officer who ordered Appellant's vehicle towed submitted a written report (exhibit 7). The officer's written report, in relevant part, states:

"SB displayed Allstate Insurance card with R/O's name on it. He said vehicle belonged to him mom, Judy Tobler. Insurance card did not have Vest's name on it. I called Allstate to see if Vest insured to drive and spoke to Jason. He told me Vest was not insured under this policy. Vest had no other insurance. Vehicle inventoried and towed. Vest issued citation for driving uninsured."

The Hearings Officer notes that ORS 806.080 (1)(b) requires that an insurance policy must list the named insured and all other persons insured. The Hearings Officer also notes that ORS 806.080 (1)(b) states, "the policy must include in its coverage all persons who, with the consent of the named insured" use the motor vehicle.

The police report (Exhibit 7) indicated Mr. Vest (Ms. Tobler's son) was driving his mother's vehicle. Ms. Tobler testified that she gave permission to her son to drive her vehicle on the date it was towed. The Hearings Officer finds, based upon the evidence in the record, that the driver of the vehicle (Vest) was not listed on the insurance car as an insured driver. However, the Hearings Officer finds that the

evidence strongly indicates that the officer was aware the driver was the vehicle owner's son, and was driving the vehicle with the owner's permission. As such, the police officer could not have probable cause to believe that the vehicle was being operated without insurance. The Hearings Officer finds a person who operates a vehicle with permission from the vehicle's owner who has the *vehicle* properly insured is driving insured under Oregon law.

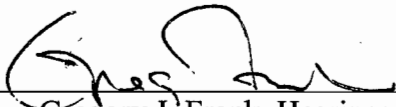
The Hearings Officer finds the tow is not valid.

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: December 9, 2008

GJF: rs/cb



Gregory J. Frank, Hearings Officer

Bureau: Police
Tow Number: 31873

Enclosure

If a refund has been authorized, it will be sent from the City's Accounts Payable Office. Please allow at least 4 weeks.

Exhibit #	Description	Submitted by	Disposition
1	Hearing request letter	Tobler, Judy	Received
2	Letter from Richard G. Hansen, Allstate	Tobler, Judy	Received
3	Allstate Oregon auto Liability Insurance Identification	Tobler, Judy	Received
4	Tow Desk printout	Hearings Office	Received
5	Hearing Notice	Hearings Office	Received
6	Tow Hearings Process Info. sheet	Hearings Office	Received
7	Traffic Violation Tow Report	Police Records	Received
8	Notice of Impoundment Towing	Police Records	Received
9	Citation	Police Records	Received
10	Duplicate copies of Exh. 7-9 sent via interoffice mail	Police Bureau	Received
11	Receipts	Tobler, Judy	Received