



CITY OF
PORTLAND, OREGON
OFFICE OF THE CITY AUDITOR
Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF FRANCO FERRUA

CASE NO. 1090269

DESCRIPTION OF VEHICLE: Mercedes 300E (OR WLT783)

DATE OF HEARING: December 11, 2009

APPEARANCES:

Mr. Franco Ferrua, appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

Mr. Franco Ferrua appeared at the hearing and testified on his own behalf. Ms. Marceline Canterbury appeared and testified as a witness on behalf of Mr. Ferrua. The Hearings Officer makes this decision based upon the testimony of Mr. Ferrua and Ms. Canterbury, and the documents admitted into the evidentiary record (Exhibits 1 through and including 10). The Hearings Officer notes that Mr. Ferrua did object to portions of Exhibit 2, but the Hearings Officer found all exhibits to be relevant to this case and admitted all documents. The Hearings Officer rejected Mr. Ferrua's requests to exclude exhibits on the bases of (1) hearsay, (2) failure of the City to have present at the hearing the person who ordered his vehicle towed present, and (3) alleged inconsistencies in the documents provided by the City. However, the Hearings Officer did inform Mr. Ferrua that the Hearings Officer would consider his arguments when determining the credibility and weight to be given to statements in the documents objected to by Mr. Ferrua.

Mr. Ferrua testified that the vehicle that was towed and is the subject of this case (Mercedes, OR License WLT783 and shall hereafter be referred to as the "Vehicle") had been "loaned, under strict guidelines", to Ms. Canterbury who was providing services to Mr. Ferrua's terminally ill sister. Mr. Ferrua stated that Ms. Canterbury did drive the Vehicle and park it in the vicinity of her residence in violation of the "strict guidelines." Mr. Ferrua stated that Exhibit 6, a document entitled "Tow Hearing Report" indicated that the vehicle was located at NW 24th/Flanders when towed. Mr. Ferrua testified, even though the quality is very poor, photographs (Exhibit 6) do not accurately depict NW 24th/Flanders. Mr. Ferrua stated that the photos more accurately reflect NW 24th/Marshall.

Ms. Canterbury testified that she did drive the Vehicle to a location very close to her residence (2323 NW Marshall). Ms. Canterbury stated that she parked on NW 24th across from an elderly care center.

Ms. Canterbury stated that she has been a resident of the area for a number of years and is familiar with temporary no parking restrictions placed in the area. Ms. Canterbury testified that she believes she returned to the Vehicle's location the next morning and observed there were not any temporary no parking signs and tried, unsuccessfully, to start the engine of the Vehicle. Ms. Canterbury stated she walks daily on NW 24th in the vicinity of NW Marshall and did not, during the relevant time frame, observe temporary no parking signs. Ms. Canterbury was 100% sure she had not parked the Vehicle on NW 24th at NW Flanders; a distance of approximately 8 to 9 blocks. Ms. Canterbury stated that on the evening she parked the Vehicle on NW 24th it was raining very hard and she was certain that she did not park 8 to 9 blocks from her residence and then walk home in the rain.

The City has the burden of persuasion in this case. The City has the burden to persuade the Hearings Officer that the person who ordered the Vehicle towed followed all of the relevant laws/rules. In this case the laws/rules most relevant are found in the Portland City Code ("PCC") Title 16. Of particular relevance to this case is PCC 16.30.210 B, which requires temporary no parking signs to be placed not less than 24 hours before a vehicle is ordered towed.

The City, in Exhibit 6, indicates that the Vehicle was towed from NW 24th/Flanders and that the temporary no parking signs, at that location were verified to be in place on December 2, 2009. The City, in Exhibit 7, indicates on a Parking Citation that the vehicle was towed from the 1000 block of NW 24th. This location would be close to NW 24th/Marshall. Exhibit 7 also indicates that the temporary no parking signs were verified on NW 24th/NW Flanders at 2:24 p.m. on December 2, 2009. It is clear that the person ordering the Vehicle towed and issuing the citation made a mistake in the location of the Vehicle.

The City also submitted two pictures (Exhibit 8). These pictures are of such poor quality that they cannot be considered credible evidence.

The Hearings Officer finds Mr. Ferrua and Ms. Canterbury to be credible witnesses. Ms. Canterbury, in testimony against her own interest, admitted that she had used the Vehicle outside the scope of permission given by Mr. Ferrua. As such, there is no reason to disbelieve Ms. Canterbury's testimony that she did not park the Vehicle at NW 24th/Flanders.


It is clear to the Hearings Officer that the City did present incorrect information regarding the location of the Vehicle when towed (it was not NW 24th/Flanders) and that the error does create some uncertainty as to the credibility of the statements made in documents submitted by the City (Exhibits 6, 7, and 8). As such, the Hearings Officer finds that the testimony of Mr. Ferrua and Ms. Canterbury is somewhat more credible than that of the statements provided by the City (Exhibits 6, 7, and 8). The Hearings Officer finds that the City, based upon the evidence in the record, did not carry its burden of persuasion and therefore, did not persuade the Hearings Officer that the person ordering the tow followed the relevant rules; primarily that the temporary no parking sign was placed/verified at the location where the Vehicle was towed more than 24 hours in advance of the tow. The Hearings Officer finds the tow of the Vehicle 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 21, 2009

GJF:rs/cb



Gregory J. Frank, Hearings Officer

Enclosure

Bureau: Parking Enforcement
Tow Number: 24030

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	Hearing request letter	Ferrua, Franco	Received
2	Tow Desk printout	Hearings Office	Received
3	Hearing Notice	Hearings Office	Received
4	Tow Hearings Process Info. sheet	Hearings Office	Received
5	Request to reschedule	Ferrua, Franco	Received
6	Tow Hearing Report	Parking Enforcement	Received
7	Parking Violation	Parking Enforcement	Received
8	Photos	Parking Enforcement	Received
9	Hearing Notice	Hearings Office	Received
10	Receipt	Ferrua, Franco	Received