



CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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HEARINGS OFFICER'S ORDER

APPEAL OF JOSEPH S. VACARELLA

CASE NO. 1110067

DESCRIPTION OF VEHICLE: ACURA LEGEND
(VIN# JH4KA7657NCO36628 / VIN# JH4KA7659NCO36629)

DATE OF HEARING: JUNE 2, 2011

APPEARANCES:

Mr. Joseph Vacarella, Appellant

HEARINGS OFFICER: Ms. Kimberly M. Graves

Mr. Vacarella 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. Vacarella and the documents admitted into evidence (Exhibits 1 through and including 15).

Summary of Evidence:

Mr. Vacarella submitted a Tow Hearing Request Form, Exhibit 1, in which he writes that he purchased the towed vehicle on May 5, 2011. Mr. Vacarella writes that he attempted to register the vehicle with the DMV on May 12, 2011, but was unable to due to not having a sufficient bill of sale. Mr. Vacarella writes that he was given a "trip permit" on May 12, 2011, which he believed allowed him to legally drive the vehicle. Mr. Vacarella appeared at the hearing and testified that on May 11, 2011, he had switched the license plate on the vehicle from his "truck" because he didn't want the vehicle to be towed from the street. On May 12, 2011, he was driving the vehicle with the switched plate and trip permit when he was stopped by the police as he exited an apartment complex and turned onto N Columbia Boulevard. Mr. Vacarella testified that he stopped his vehicle on the side of N Columbia Boulevard. Mr. Vacarella testified that he did not have an insurance card in the vehicle, but that his insurance policy number was on the trip permit.

The City submitted Exhibits 8 through, and including, 15 for the Hearings Officer's consideration. Exhibit 8 is a Traffic Violation Tow Report completed by Officer Hansen-Tuma in which the officer indicates that Mr. Vacarella had no insurance or inadequate insurance information which led her to believe that he was driving uninsured. In the narrative portion of the report, Officer Hansen-Tuma writes that on May 12, 2011, she observed a vehicle fail to signal 100 feet before turning onto N Columbia Boulevard. Before stopping the vehicle, a DMV check was done which showed the vehicle to have "switched plates." Officer Hansen-Tuma writes that she

contacted the driver, Mr. Vacarella, and asked him about the switched plates and insurance for the vehicle. Officer Hansen-Tuma writes that Mr. Vacarella appeared nervous and that it was difficult to get information from him. Exhibit 9 is a Notice of Tow form completed by the officer which indicates that the vehicle was towed for "Driving Uninsured (806.010)."

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 and the Oregon Revised Statutes ("ORS"). ORS 806.011 provides that;

"an unexpired card issued as provided in ORS 742.447, or other current proof of compliance with financial or future responsibility requirements approved by rule by the Department of Transportation, shall be carried in each motor vehicle that is operating in this state . . . Failure of the driver of a motor vehicle to show a valid card or other proof of compliance when asked to do so by a police officer is reasonable grounds for the officer to believe that the person is operating the vehicle in violation of ORS 806.010." (Emphasis added.)

ORS 806.010 indicates that a person commits the offense of driving uninsured if the person operates a motor vehicle without being insured under a motor vehicle liability insurance policy. PCC 16.30.220K1 authorizes an officer to tow a vehicle, without notice, when the officer has probable cause to believe that the vehicle's operator has committed the offense of Driving Uninsured under ORS 806.010.

Findings of Fact and Conclusions of Law:

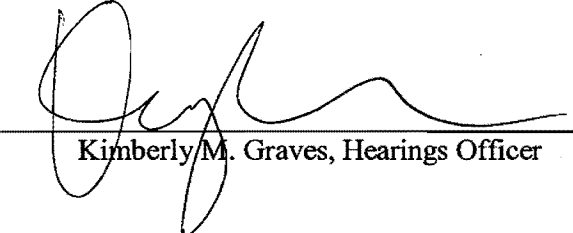
The Hearings Officer finds that on May 12, 2011, Mr. Vacarella was stopped by police on N Columbia Boulevard after committing a traffic violation. The Hearings Officer finds that Mr. Vacarella stopped his vehicle on N Columbia Boulevard in an area in which the parking of vehicles is prohibited. The Hearings Officer finds that when Mr. Vacarella was stopped he did not have proof of insurance, i.e. a valid insurance card, in his possession. The Hearings Officer finds that Mr. Vacarella's failure to provide proof of insurance to the officer, when asked to do so, provided reasonable grounds for the officer to believe that Mr. Vacarella was driving without insurance in violation of ORS 806.010. The Hearings Officer finds that the tow of Mr. Vacarella's vehicle is valid.

Order:

Therefore, it is ordered that all towing and storage charges against the vehicle shall remain the responsibility of the vehicle's owner.

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

Dated: June 3, 2011
KMG:jeg/rs


Kimberly M. Graves, Hearings Officer

Enclosure

Bureau: Police
Tow Number: 8619

Exhibit #	Description	Submitted by	Disposition
1	Tow Hearing Request Form	Vacarella, Joseph S.	Received
2	Notice of Transaction Submitted	Vacarella, Joseph S.	Received
3	Vehicle Title and Transfer	Vacarella, Joseph S.	Received
4	DMV Application for Title and Registration	Vacarella, Joseph S.	Received
5	Tow Desk printout	Hearings Office	Received
6	Hearing Notice	Hearings Office	Received
7	Statement of Rights and Procedures	Hearings Office	Received
8	Traffic Violation Tow Report	Police Records	Received
9	Notice of Tow	Police Records	Received
10	Property/Evidence Receipt	Police Records	Received
11	Towed Vehicle Record	Police Records	Received
12	LEDS printout	Police Records	Received
13	Oregon Driver License and Farmers Certificate of Liability Insurance	Police Records	Received
14	DMV Notice of Transaction Submitted	Police Records	Received
15	Vehicle Release	Police Records	Received