



CITY OF PORTLAND

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HEARINGS OFFICER'S ORDER

APPEAL OF DUSTIN WILLIAM EDMISTON, DBA VIP AND EMERALD LIMOUSINE

CASE NO. 3110122

DATE OF HEARING: April 14, 2011

APPEARANCES:

Ms. Kathleen Butler, for the City

Mr. Dustin Edmiston, Appellant

HEARINGS OFFICER: Mr. Gregory J. Frank

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Ms. Kathleen Butler ("Butler"), Manager Regulatory Division, City of Portland Revenue Bureau (the "City") appeared at the hearing as the City's representative. Mr. Frank Dufay ("Dufay"), Regulatory Program Administrator, for the City, testified on behalf of the City. Mr. Dustin Edmiston ("Edmiston") appeared at the hearing as Appellant's representative and as a witness. Mr. Gary Schiedler ("Schiedler") appeared as a witness for Appellant. Exhibits 1 through and including 11 were admitted at the hearing into the evidentiary record. Exhibits 12 and 13 were submitted after the hearing and admitted into the evidentiary record. The Hearings Officer makes this decision based upon the testimony of Butler, Dufay, Edmiston and Schiedler and the documents admitted into the evidentiary record.

The City sent a letter to Edmiston, as the authorized representative of VIP and Emerald Limousine Service (the "Appellant"), on March 3, 2011, indicating that Appellant violated Portland City Code ("PCC") 16.40.130.A and 16.40.190.A (Exhibit 4 – hereafter the "Determination Letter"). Specifically, the City alleged, in the Determination Letter, that a vehicle owned and/or operated by Appellant, was seen at 209 SW 3rd Avenue, Portland, on November 12, 2010 conducting Limited Passenger Transportation (LPT) for-hire business without having a City permit. The Determination Letter alleged that Appellant violated PCC 16.40.130.A by advertising LPT for-hire business services within the City. As a result of the alleged violations, the City assessed civil penalties in the amount of \$2,500. The Determination Letter alleged that Appellant violated PCC 16.40.190.A by operating a LPT for-hire vehicle, in the City, without having a valid decal placed upon Appellant's vehicle (vehicle observed on

November 12, 2010). As a result of the alleged violations, the City, in Exhibit 4, assessed civil penalties against Appellant in the amount of \$2,500.

Appellant appeals the City's allegations of violations as set forth in the Determination Letter (Exhibits 1 and 1a). In summary, Appellant asserts that Appellant is an Albany company and the customers transported to Portland on November 12, 2010 were picked up in Albany and not within the City of Portland. Appellant asserted that on November 12, 2010, the customers asked Appellant to wait for them to eat dinner and then return them to Albany. Appellant argues that the City of Portland requirement of a LPT for-hire license of an Albany company is not appropriate and discourages Albany residents from coming to Portland and spending money in Portland.

Dufay testified that on April 28, 2010, the City sent a "Warning Notice" letter to Appellant (Exhibit 10). Dufay noted that Exhibit 10 was dated April 28, 2009, but that date was incorrect; the correct date being April 28, 2010. Exhibit 10 indicated that Appellant had operated two LPT for-hire limousines within the City without having proper permits. Exhibit 10 also indicted that Appellant was advertising doing business in the City. Exhibit 10 also noted stated that continued violation of the LPT for-hire regulations could result in the assessment, against the Appellant, of civil penalties.

Dufay testified that a letter, from the City, was sent to Appellant on November 4, 2010 (Exhibit 9). Dufay stated that the City had received additional complaints regarding Appellant operating unpermitted limousines in the City after April 24, 2010, and during that time Appellant had not submitted application materials for LPT for-hire permits. Exhibit 9 alleged that Appellant had operated two limousines in the City on April 24, 2010 in violation of PCC 16.40.130.A and also advertised that Appellant was doing business in the City in violation of PCC 16.40.130.A. Exhibit 9 alleged that Appellant violated PCC 16.40.190.A by failing to have a valid LPT for-hire decal on the limousines doing business in the City. Civil penalties were assessed Appellant, in Exhibit 9, based upon the alleged violations of PCC 16.40.130.A and PCC 16.40.190.A.

Dufay testified that he received a Private for Hire Transportation Program Complaint Form (Exhibit 11) related to Appellant. The complainant's statement, in Exhibit 11, described events in downtown Portland on November 12, 2010. Dufay stated that following the receipt of Exhibit 11, the Determination Letter was issued.

Schiedler testified that his wife "Betty" is the owner of "the company." Schiedler stated that he answers phones and on occasion drives for the "company." Schiedler stated that if he is asked, during a telephone conversation inquiring about Appellant's services, that Appellant "can't run Portland" and he does not refer such calls to other limousine companies.

Edmiston testified that he has no ownership interest in the limousine business operated by Appellant. Edmiston stated that his is the general manager/bookkeeper. Edmiston stated that Appellant's website has not been upgraded/updated for "more than 2 years." Edmiston stated that copy in Appellant's advertising that Appellant "serves Portland" means that Appellant will pick up limousine customers in cities "close to Portland and drive around Portland." Edmiston stated that Appellant does have a Portland phone number where calls are forwarded to the Albany office. Edmiston stated that Appellant's website advertising has not been updated since the City's 2009 regulations imposing permitting requirements on the limousine business. Edmiston agreed that the driver of Appellant's limousine on November 12, 2011 (event that is subject of the Determination Letter) did drop off

customers at Ruth Chris' steakhouse and wait for the customers to have dinner before once again boarding those customers for a return trip to Albany. Edmiston stated that Appellant's website did need to be updated to reflect current City LPT for-hire regulations. Edmiston stated that he opens all mail received by Appellant and that he had not received, to the best of his recollection, Exhibit 10.

At the conclusion of the hearing the Hearings Officer proposed to Edmiston and Butler that Appellant be given an opportunity to update its website to eliminate references to operating its business in the City. The Hearings Officer suggested to Butler that if Edmiston provided written evidence that the website had been updated, to reflect the City's LPT for-hire regulations, or, Appellant secured a City LPT for-hire permit, that the assessment of civil penalties, in Exhibit 4, would be withdrawn. Edmiston and Butler agreed with the Hearings Officer's suggestion and Appellant was given until 4:30 p.m. on May 13, 2011 to provide written evidence to the City. As of May 14, 2011, no evidence had been received by the Hearings Officer, from the Appellant or the City, indicating Appellant's website had been updated to reflect City LPT for-hire regulations.

The Hearings Officer finds that there is no dispute between the Appellant and City that on November 12, 2011, a limousine operated by Appellant picked up customers in the City of Albany, Oregon and traveled to downtown Portland, Oregon (Ruth's Chris Steakhouse), dropped off the customers and waited for the customers to eat dinner before picking up the customers once again for the return trip to Albany. The Hearings Officer finds that such activity is the operation of an LPT for-hire transportation business. The Hearings Officer finds there is no dispute between the Appellant and City that Appellant did not have, at times relevant to this case, a LPT for-hire permit issued by the City. The Hearings Officer finds that Appellant's actions, as described above, constitute a violation of PCC 16.40.130.A.

The Hearings Officer finds that there is no dispute between the Appellant and City as to the existence of a website for Appellant as evidenced by Exhibits 5 and 8. The Hearings Officer finds that Exhibit 5 states the following: "Emerald & VIP Limousine Service(s), Limousine, Sedan & Van Service, We tailor OUR service to YOUR needs. Serving Portland...since 1989." In addition, Exhibit 5 states, "We offer both Eight Passenger @ \$55/hr & Fifteen Passenger @ \$65/hr chauffeur-driven van's- perfect for corporate tours and or bachelor & bachelorette parties! * Sunday -Thursday...3 Hours Portland market." Exhibit 8 makes similar statements.

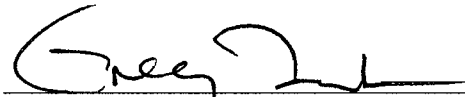
The Hearings Officer finds that "conduct" of a LPT for-hire transportation business, pursuant to PCC 16.40.030 J, includes advertising for limousine business to be conducted within the City. The Hearings Officer finds that Exhibits 5 and 8 do advertise Appellant's LPT for-hire transportation business within the City. The Hearings Officer finds Appellant's business website, exemplified by Exhibits 5 and 8, do advertise Appellant's LPT for-hire transportation is conducted within the City. The Hearings Officer finds that Exhibits 5 and 8 do demonstrate Appellant's violation of PCC 16.40.130.A by conducting business by advertising services within the City.

At the conclusion of the hearing the City and Appellant agreed that if Appellant corrected the advertising related violations, the City would waive the \$2,500 penalty assessed in the Determination Letter; said deadline extended to May 31, 2011. On May 31, 2011, a letter was received by the Hearings Office, from the City, indicating that "they have met our compliance requirements resulting from the hearing, and we have cancelled the penalty assessed against them" (Exhibit 13). The Hearings Officer finds that Appellant satisfied the advertising related violations and therefore finds it reasonable and appropriate that the \$2,500 civil penalty, as assessed in the Determination Letter, be waived.

ORDER AND DETERMINATION:

1. The Determination Letter is valid (subject to the assessed civil penalty of \$2,500 being waived by the City); Appellant's appeal is denied.
2. This order has been mailed to the parties on June 3, 2011.
3. This order may be appealed to a court of competent jurisdiction pursuant to ORS 34.010 et seq.

Dated: June 3, 2011



Gregory J. Frank, Hearings Officer

GJF:rs

Enclosure

Exhibit #	Description	Submitted by	Disposition
1	Appeal form page 1	Butler, Kathleen	Received
1a	Appeal letter from Dustin Edmiston, V.I.P. & Emerald Limousine Service	Butler, Kathleen	Received
2	Appeal form page 2	Butler, Kathleen	Received
3	3/18/11 Staff Report	Butler, Kathleen	Received
4	3/3/11 letter, Frank Dufay to Edmiston, dba VIP & Emerald Limousine Service	Butler, Kathleen	Received
5	Emerald & VIP Limousine Service(s) webpage	Butler, Kathleen	Received
6	Mailing List	Hearings Office	Received
7	Hearing Notice	Hearings Office	Received
8	Limo.net printout	Butler, Kathleen	Received
9	Letter from Frank Dufay	Butler, Kathleen	Received
10	Letter from Frank Dufay	Butler, Kathleen	Received
11	Private for Hire Transportation Program Complaint Form	Butler, Kathleen	Received
12	5/13/11 Memo - Request for Extension of Time for Compliance	Butler, Kathleen	Received
13	5/31/11 Memo from Frank Dufay	Butler, Kathleen	Received