

**DOCKET NUMBERS 452-16-0050.TOW
TDLR Number 20150012936**

TEXAS DEPARTMENT OF LICENSING AND REGULATION	§	BEFORE THE STATE OFFICE
	§	
	§	OF
v.	§	ADMINISTRATIVE HEARINGS
	§	
ATLAS TOWING AND STORAG D/B/A ATLAS TOWING AND STORAGE, LLC	§	
	§	
	§	

PETITIONER’S REPLY TO RESPONDENT’S EXCEPTIONS

EXCEPTION NO. 1

Respondent raises an apparent conflict in testimony regarding who parked the vehicle which was towed on March 26, 2015 from the Lakeside Villa Apartments. Finding of Fact 17 (Ms. Sousa parked the vehicle).

The Administrative Law Judge is properly entitled to assign weight and make credibility determinations. This is especially true where the conflict in testimony involves the personal knowledge of a witness and the hearsay memory of another witness.

Importantly, Respondent does not define how any legal conclusion reached by the Administrative Law Judge would be changed depending on whom, as between Ms. Sousa and Mr. Holley, parked the vehicle. The legal violation at issue occurred after the car had been parked.

Exceptions Nos. 2 & 3

Respondent challenges the Administrative Law Judge’s Conclusion of Law No. 7 which it incorrectly paraphrases. Respondent’s Exceptions No. 2 & 3, pages 2 and 3. (“Respondent respectfully excepts to the Court’s conclusion that since a parking facility owner may not have a vehicle towed for displaying expired license plates or registration insignia, a vehicle displaying no license plate should likewise be prohibited from towed.” [sic]

This was not, however, the conclusion of law reached by the ALJ. The ALJ, tracking statutory language, concluded that a car may not be towed “merely because the vehicle does

not display an unexpired license plate or registration insignia. Conclusion of Law No. 7, *citing and quoting in part*, TEXAS OCCUPATIONS CODE §2308.253(d).¹

There was no dispute, the vehicle did “not display an unexpired license plate” at the time it was parked and towed; the Legislature has addressed this issue very clearly in TEX. OCC. CODE §2308.253(d) and (e)(allowing vehicle to be towed for failing to display an unexpired license plate only upon ten days written notice to the owner or operator of the vehicle).

The vehicle was not towed because of its failure to display a license plate. Respondent, through Mr. Venegas, testified that the tow was based exclusively on the vehicle being “abandoned” or “inoperable.” The lack of a license plate on a parked vehicle is insufficient, by itself, to establish abandonment or inoperability.

EXCEPTION TO ARGUMENT OF “INOPERABLE” OR “ABANDONED”

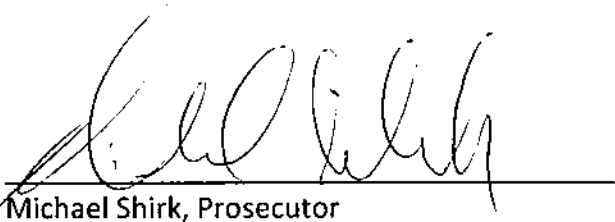
Respondent hints at further exception based on an argument that the vehicle was properly towed as an “abandoned” or “inoperable” vehicle. Exceptions, *passim*.

Petitioner’s evidence established that the vehicle was neither abandoned nor inoperable and that there was no reasonable basis for a tow operator to conclude that the vehicle was abandoned or inoperable.

Importantly, San Antonio Police Detective Michalek testified that Mr. Venegas misrepresented and fabricated information provided during a police investigation of the tow. The marking of the vehicle’s right, front, tire *after* the tow occurred in order to support an abandoned or inoperable justification significantly undermines any purported good-faith or reasonableness of Respondent’s action. A party which has acted justly and in compliance with law does not need to fabricate.

Petitioner requests that Respondent’s Exceptions be denied.

¹ TEX. OCC. CODE §2308.253(d) states, in relevant part, “a parking facility owner may not have a vehicle removed from the parking facility merely because the vehicle does not display an unexpired license plate”



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served upon Respondent's counsel, R. David Fritsche, by transmitting same to him on May 17, 2016 at facsimile number 210.227.5550.

A copy was also mailed to Mr. Fritsche by regular mail on May 17, 2016 at:

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