

CALIFORNIA DEPARTMENT OF TRANSPORTATION

PRECEDENT DECISIONS

State v. Reliable Finance, Inc, OAH No. N2005060459
"Proposed Decision," August 19, 2005

CTODA-07-001

State vs. Regency Outdoor Advertising, OAH Nos.
N2005120219, N2005120220, "Order on Respondent's
Motion to Compel Discovery," February 17, 2006

CTODA-07-002

CALIFORNIA DEPARTMENT OF TRANSPORTATION
PRECEDENT DECISIONS
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(February 1, 2007)

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BEFORE THE
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

In the Matter of the Accusation Against:

RELIABLE FINANCE, INC.

Respondent.

OAH No. N2005060459

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on August 15, 2005, in Sacramento, California.

O.J. Solander, Attorney, Department of Transportation, represented complainant.

There was no appearance by, or on behalf of, Reliable Finance, Inc.

The case was submitted for decision on August 15, 2005.

FACTUAL FINDINGS

1. The California Department of Transportation (Department) is the agency of the State of California responsible for the enforcement of the Outdoor Advertising Act (Act). (Bus. & Prof. Code, § 5200 et seq.) When the Department determines a permanently placed display violates the Act, it may give written notice to the owner that the display is subject to removal, and the owner is liable for all statutory penalties and, if the display is removed by the Department, actual costs of removal.

2. Complainant James Arbis is the Program Manager of the Department's Outdoor Advertising Program. He filed the Accusation in his official capacity.

3. Reliable Finance, Inc. (respondent) maintained an advertisement on a billboard located in Riverside County, Route 15, post mile 21.56R, .52 miles south of Route 74.

4. On February 16, 2005, District 8 Outdoor Advertising Inspector Chris Jiminez inspected respondent's billboard at the above described location. He determined that respondent had violated the Act by placing the advertisement without first securing a written

permit from the Department. He also determined that the advertising display was placed less than 500 feet from an existing permitted display on the same side of the highway. The Department informed respondent by Notice of Violation dated February 16, 2005, that the display was in violation of the Act; specifically, Business and Professions Code sections 5350, and 5408, subdivision (d). The Notice of Violation advised respondent that it was to do one of the following: 1) correct the violation, 2) remove the display, or 3) appeal the Department's Notice of Violation. Respondent did not correct the violation, remove the display or request an appeal.

5. On March 22, 2006, Chris Jiminez prepared and sent a Violation Worksheet to the Department's Maintenance Division in Lake Elsinore, California, for the removal of respondent's display. An attempt was made to remove the display but the maintenance crew was unable to gain access to the property where the display was located.

6. The Department filed an Accusation on June 16, 2005, defining the two issues as follows:

- (a) Whether Respondent Reliable violated section 5350 of the Act by placing an advertising display without a permit;
- (b) Whether Respondent Reliable violated section 5408(d) of the Act by placing an advertising display within 500 feet of another advertising display on the same side of the any portion of an interstate highway or a primary highway that is a freeway.

The Department also filed a Waiver of Notice of Defense that gave notice to respondent that the Department was treating respondent's failure to request an appeal as "a waiver of your right to a hearing, and subsequently a waiver of Notice of Defense." The Department properly served the Accusation, Waiver of Notice of Defense and Notice of Hearing on respondent. The hearing proceeded by way of default under Government Code section 11520.

7. The declaration of Christopher Jimenez was considered as direct evidence on the issues of display without a permit, and on the placement of respondent's display. It was established that respondent placed an advertising display without a permit at the Riverside County location, Route 15, post mile 21.56R, .52 miles south of Route 74. It was also established that this display was within 500 feet of another advertising display on the same side of the highway.

8. The advertising display has since been removed.¹ The Department remains concerned that respondent may reconstruct the billboard and therefore wishes a decision confirming that respondent was in violation of the act.

¹ The Department believes that the sign was blown down by winds sometime before August 1, 2005, and the debris was cleaned up thereafter.

LEGAL CONCLUSIONS

1. Business and Professions Code section 5350 provides: "No person shall place any advertising display within the areas affected by the provisions of this chapter in this state without first having secured a written permit from the director or from his authorized agent." Business and Professions Code section 5408, subdivision (d) provides: "No advertising display shall be placed within 500 feet from another advertising display on the same side of any portion of any interstate highway or a primary highway that is a freeway."

2. Business and Professions Code section 5485, subdivision (b)(2) provides:

If the advertising display is placed or maintained in a location that does not conform to the provisions of this chapter or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the advertising display is located, a penalty of ten thousand dollars (\$10,000) plus one hundred dollars (\$100) for each day the advertising display is placed or maintained after the department sends written notice shall be assessed.

3. Cause exists for assessment of a penalty against respondent under Business and Professions Code section 5485, subdivision (b)(2). Respondent placed an advertising display without having a permit to do so, and placed the display within 500 feet from another advertising display on the same side of the highway. (Bus. & Prof. Code, §§ 5350, 5408 subd. (d).) Service of the Notice of Violation upon respondent by the Department was made on February 17, 2005. The advertising display remained up until August 1, 2005, or 136 days. It has not been reconstructed. Although the Department is entitled to \$26,500 in penalty assessments, a reasonable assessment in this case is \$20,000 given that the signs have already been removed, and the Department will not be required to enter the property to remove the display.

ORDER

Respondent Reliable Finance, Inc. shall pay \$20,000 to the Department of Transportation pursuant to Legal Conclusion 3.

DATED: 8/19/05



JONATHAN LEW

Administrative Law Judge
Office of Administrative Hearings

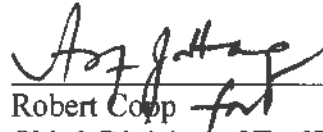
DESIGNATION OF PRECEDENT DECISION – OUTDOOR ADVERTISING

The Department of Transportation designates the following as a precedent decision pursuant to Government Code section 11425.60, effective upon posting on the webpage of the Outdoor Advertising Section:

State v. Reliable Finance, Inc., OAH No. N2005060459
August 19, 2005

Designation No: CTODA 07-001

Dated: January 31, 2007



Robert Copp
Chief, Division of Traffic Operations
Designee of the Director for Outdoor
Advertising matters

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Accusation by the
STATE OF CALIFORNIA,
DEPARTMENT OF
TRANSPORTATION,

Complainant,

vs.

REGENCY OUTDOOR
ADVERTISING, INC.,

Respondent.

OAH Nos. N2005120219
N2005120220

**ORDER ON RESPONDENT'S MOTION
TO COMPEL DISCOVERY**

The Motion to Compel Further Discovery brought by respondent Regency Outdoor Advertising, Inc. (Regency), came on regularly for a telephonic hearing before Administrative Law Judge Timothy S. Thomas (ALJ) on February 17, 2006, at Los Angeles, California.

Regency was represented by Alene M. Taber and Kathryn M. Casey, Attorneys at Law. The California Department of Transportation (Caltrans) was represented by O. J. Solander, Attorney at Law, and Beckie Haley, Senior Legal Analyst.

The parties agreed that the issues in dispute had been narrowed to the following:

1. In case number N2005120219, whether respondent is entitled to statements of witnesses Ibarra and Gerda pursuant to Government Code section 11507.6, subdivision (c);
2. In case number N2005120220, whether respondent is entitled to statements of witnesses Ibarra, Gerda and Williams;
3. In case number N2005120220, whether respondent is entitled to documents in response to its Additional Information request number 9, "Other Caltrans' decisions to revoke permits involving landscaping designations and all documents related to the same."

The ALJ, having read and considered the moving and opposition papers filed by the parties, and having heard and considered the arguments made orally at the hearing, rules and orders as follows on respondent's motion:

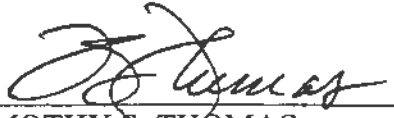
1. Respondent's motion to compel the production of witness statements from witnesses Ibarra and Gerda is denied. The statements do not exist and Government Code section 11507.6, subdivision (c), does not require complainant to prepare statements of their anticipated testimonies.

2. Respondent's motion to compel the production of witness statements from witnesses Ibarra, Gerda and Williams is denied. The statements do not exist and Government Code section 11507.6, subdivision (c), does not require complainant to prepare statements of their anticipated testimonies.

3. Respondent's motion to compel the production of other Caltrans' decisions to revoke permits involving landscaping designations and all documents related to the same is denied. The agency's decisions relating to other outdoor advertisers, not parties to this matter, are not relevant. With respect to respondent's claim that the records should be produced pursuant to the Public Records Act (Government Code section 6250, et seq.), the Administrative Procedure Act does not provide the ALJ with the authority to enforce the Public Records Act. Respondent's remedy for a refusal to respond affirmatively to a proper request for public records lies with the Superior Court.

IT IS SO ORDERED.

DATED: February 17, 2006


TIMOTHY S. THOMAS
Administrative Law Judge
Office of Administrative Hearings


DESIGNATION OF PRECEDENT DECISION – OUTDOOR ADVERTISING

The Department of Transportation designates the following as a precedent decision pursuant to Government Code section 11425.60, effective upon posting on the webpage of the Outdoor Advertising Section:

State v. Regency Outdoor Advertising
OAH Nos. N2005120219, N2005120220
“Order on Respondent’s Motion to Compel Discovery”
February 16, 2006

Designation No: CTODA 07-002

Dated: January 31, 2007


Robert Copp
Chief, Division of Traffic Operations
Designee of the Director for Outdoor
Advertising matters