May 30, 2019

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

King County Courthouse
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SUMMARY ORDER

SUBJECT: King County For-Hire Licensing file no. **82636**

JOHN HENNINGS (REVOCATION)
For-Hire Driver Enforcement Appeal

For Hire Permit no.: 82636

Appellant: John Hennings
[redacted]
Seattle, WA 98102
[redacted]

Department: King County For-Hire Licensing
represented by **Marcia Thomas**
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After John Hennings doctored his for-hire driver's license, the County's Records and Licensing Section (RALS) revoked that license in May 2018. In June, he was able to talk his way out of the revocation. Instead, RALS assessed a $1,000 penalty, and of this only required him to pay $250, with the other $750 held in abeyance, only coming due if he committed an additional violation. Nonetheless, he appealed, demanding a full refund of the $250 he had paid.

We denied his appeal in August.[1] For the reasons partially summarized in the bulleted list on page 4 of today's order, we modified RALS' order so that the $750 RALS had held back would become due even absent an additional violation. KCC 20.22.030.B. We gave Mr. Hennings five months to pay the remaining $750, and stated that RALS could revoke his license if he failed to pay by that deadline. In October, we denied his motion for reconsideration.

Despite clear instruction that our 2018 decision would become final and conclusive unless he appealed it to superior court within 30 days, Mr. Hennings did not appeal. Nor did he pay the $750 by our January 2019 deadline. After the deadline ran out, RALS revoked his license. That he appealed.

It is rare that appellants come out worse from an appeal than their starting point, but it is an inherent risk in choosing to appeal. For example, in *Webb v. Ada County, Idaho*, 195 F.3d 524 (1999), the trial court awarded some, but not all, of plaintiff's requested attorney's fees. The plaintiff could have accepted that reduced fee and been done. Plaintiff instead appealed, arguing that the awarded fees were too low. On appeal, the Ninth Circuit determined that, under the correct legal standard, the trial court had *over*-awarded attorney's fees; the appeals court sent the case back to the trial court to *downwardly* modify the fees. *Id.* at 527–28. Here, Mr. Hennings decided to challenge the reduced penalty, and wound up, like the *Webb* plaintiffs, with a worse financial place than if he had accepted the initial ruling.

Most of the arguments Mr. Hennings makes now—that we lacked jurisdiction to increase the penalty, that he was denied due process, that our decision somehow violates *Seattle*'s code, that Licensing's request for hearing was late, that the code is void for vagueness, etc.—were ones he needed to make in 2018. In our August 2018 decision, we wrote that our "decision shall be final and conclusive unless appealed to superior court by *September 28, 2018*" (emphasis in original). Mr. Hennings timely moved us for reconsideration—which stayed the effect of appeal date. In our order denying his motion, we wrote that "the new deadline for applying for a writ of review in superior court, in accordance with chapter 7.16 RCW, is **November 5, 2018**" (emphasis in original). He elected not to apply for a writ. "Final decisions of the examiner in cases identified in K.C.C. 20.22.040 shall be final and conclusive action unless an appeal is timely filed with the appropriate court or tribunal." KCC 20.22.270; .040.M.

Our code allows us, in granting or denying an appeal, to "include any conditions, modifications and restrictions as the examiner finds necessary." KCC 20.22.030.B. That language was broad enough to encompass our August 2018 decision modifying the penalty so that the stayed portion would become due unconditionally. However, Mr. Hennings correctly notes in today's appeal that the hearing guide we prepared for RALS to send out to would-be appellants states that an examiner decision "may wholly grant the appeal, wholly deny the appeal, or do something in the middle (modify conditions, reduce fines, etc.)."

That is more restrictive language than the broader conferred on us by code. That guide language essentially states that the worst someone could do by filing an appeal is lose, not lose and face an *upward* penalty modification. It is fair to characterize our August 2018 decision as not being

[1] *See* https://kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/for-hire%20enforcement/2018/82636_Hennings_REPORT-upd.ashx?la=en.

"something in the middle": we wholly denied his appeal and then potentially upped the penalty as well. Under the RALS' June 2018 order, the "$750 [was] held in abeyance, on the condition that no additional violations of the same nature occur [before] August 9, 2019." Thus under the agency decision that Mr. Hennings appealed to us, he would owe the $750 *only* if he committed an additional violation. Our decision on his appeal effectively made the $750 due *regardless* of whether Mr. Hennings committed any additional violations.

As with most of Mr. Henning's other arguments this round, he should have taken it to superior court last fall, as we instructed on two occasions. Even if Mr. Hennings had timely sought a writ of review, the guide language likely would not have been a winning angle. As an initial matter, the first two lines of the guide caveat that it "is meant to help laypersons, and carries no legal weight." Our guide cannot legally expand or (in this case) reduce the examiner's authority. More fundamentally, most tribunals seem unmoved by such concerns.

In *Ending the Prison Industrial Complex ("EPIC") v. King County*, 3 Wn. App. 2d 1064 (2018) (unpublished), a Seattle department[2] issued a permit decision and instructed that appeals of the permit had to be filed with Seattle's hearing examiner. EPIC dutifully followed the department's instruction, timely appealing to the examiner. The department's instruction turned out to be incorrect; in reality, the department's decision was only appealable directly to superior court, not to the examiner. All three tribunals to review EPIC's appeal—the Seattle examiner, the superior court, and then our circuit court—dismissed EPIC's challenge to the permit as time-barred. That is not a misprint. EPIC entirely lost its right to challenge the merits *despite* dutifully followed Seattle's appeal instructions.

If we are reading *EPIC* correctly, it stands for the proposition that the government is not to be trusted, and shame on people for relying what the government tells them. Only in the most cynical worldview view should one not be able to depend on the government when the government provides written instructions on how to appeal its *own* decision. If someone is searching for a reason not to have faith in government, *EPIC* seems Exhibit A. Thankfully, *EPIC* is an unpublished decision and thus is not binding on anyone. GR 14.1(a). We have rejected *EPIC*'s application in our cases, instead holding the County accountable.

For example, in one instance a County agency mailed an order stating that an examiner appeal was due within 24 days "from *your receipt* of this Notice and Order." That was incorrect. By law, the appeal was actually due within 24 days of the "date of *issuance* of the decision" (there, the date the agency mailed the decision). There was a several-day gap between the agency mailing the order and the appellant receiving it. Appellant got her appeal to the agency within 24 days of her *receipt*, but not within 24 days of the order's *issuance*. The agency nonetheless moved to dismiss her appeal as untimely. Rejecting *EPIC*, we adjudged her appeal timely, because it was timely under the instructions the agency provided. We ruled that the agency "will need to live with the consequences" of its misinformation. We denied the agency's motion to dismiss, and we allowed the appellant to litigate the merits.

[2] Despite the case name, King County was only a permit *applicant*, not the decision-maker; Seattle was the decision-maker.

Here, the shoe is on the other foot, as it is our own writing that created confusion. When we drafted our guide, we did not anticipate a perfect storm like this, where an appellant:

- doctored his license so that his license had a fake endorsement that would seemingly allow him to him pick up passengers outside Seattle;
- illegally picked up over four dozen rides outside Seattle;
- was able to talk his way out of the initial revocation and into a $250 fine, with the other $750 held in abeyance;[3]
- nonetheless appealed the $250 penalty, demanding a full refund;
- at hearing (and in post-hearing filings), exhibited a breathtaking lack of accountability digging his hole deeper with each evasion, excuse, and failure to take responsibility;
- claimed he did not know the Seattle license did not allow him to pick up passengers outside Seattle city limits, despite understanding why it would be advantageous to tamper with the license endorsement to make it appear as if such pickups were authorized;
- tried to throw his girlfriend under the bus, claiming that the license tampering was "completely" her doing;
- blamed RALS for not earlier enforcing the pickup rules, as if that made it okay for him to pick up passengers outside Seattle; and
- repeatedly downplayed the severity of his actions.

To date, in our role as the examiner we have handled 832 appeals. We have never—either before this case or since—tackled another appeal we felt warranted an *upward* adjustment to the agency's sanction. Even with the full benefit of hindsight, we are reticent to revise our hearing guide. If we explained that we could upwardly adjust a penalty, it might discourage legitimate, would-be appellants, when, going by our numbers to-date, there is an approximately one-tenth of one percent chance we would modify an agency decision in a way that *adds* to the sanction the agency imposed.

Changing course and not requiring Mr. Hennings to pay the remaining $750 penalty is not justice as it applies specifically to today's case. We would be hard-pressed to recall a less deserving appellant. However, it is justice in the sense that if we are convinced that *EPIC* undermines faith in government, and if we believe that the government should be held to what it writes about its own appeal processes, then we need to put our money where our mouth is, as distasteful as the result may be today. Living with the consequences of how we worded our

[3] We contrast the penalty reduction RALS accepted here with its non-reduction in a recent case. During what our Executive called "February's unprecedented snowstorm," "one of the biggest winter storms we've seen in decades," and a "once in a generation event," a for-hire licensee not able to get his registered Civic out was able to get his Hummer going and pick up stranded passengers. Despite him doing this only during a period where our Governor declared a state of emergency and King County Metro Transit activated its emergency snow network for the first time ever, RALS fined him the full $1,000 penalty for using the Hummer. The appellant accepted responsibility, only arguing that "the punishment should fit the crime" and for a penalty *reduction*, not for a full waiver. Even in the face of our pointed probing at hearing about whether the emergency circumstances warranted a downward penalty departure, RALS steadfastly maintained that we should sustain the entire $1,000. We ultimately reduced the penalty to $100, but that was a reduction we *ordered* RALS to make, not one RALS was talked into accepting. *See* https://kingcounty.gov/~/media/independent/hearing-examiner/documents/case-digest/appeals/for-hire%20enforcement/2019/75532_Holzgraf.ashx?la=en.

guide is justice in the broader, across-the-board sense, as strange as using the word "justice" to describe today's result sounds.

We thus RESCIND the portion of our August 2018 appeal denial making the $750 penalty unconditional. We REINSTATE RALS's June 2018 order concluding that the $750 is "held in abeyance, on the condition that no additional violations of the same nature occur [before] August 9, 2019." RALS's revocation of Mr. Hennings' license for failing to pay the $750 by our January 2019 deadline is thus MOOT. Provided Mr. Hennings does not commit an additional violation before August 9, the $750 will not come due.

DATED May 30, 2019.

David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *July 1, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

DS/ds

May 30, 2019

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CERTIFICATE OF SERVICE

SUBJECT: King County For-Hire Licensing file no. **82636**

JOHN HENNINGS (REVOCATION)
For-Hire Driver Enforcement Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **SUMMARY ORDER** to those listed on the attached page as follows:

☒ EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

☒ placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED May 30, 2019.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator

Cantu, Eddie
King County For-Hire Licensing

Hennings, John
Hardcopy

Kham, Joanna
Finance and Admin Srvcs, Consumer Protection Div

MacLeod, Cherie
Finance and Admin Srvcs, Consumer Protection Div

Megow, John
Finance and Admin Srvcs, Consumer Protection Div

Shapiro, Ken
Finance and Admin Srvcs, Consumer Protection Div

Thomas, Marcia
King County For-Hire Licensing