

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 Jimenez 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:

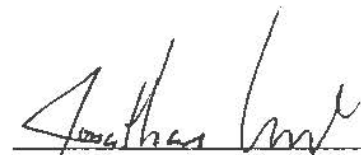
If the advertising display is placed or maintained in a location that does not conform to the provisions of this chapter or local ordinances, and is not removed within thirty days of written notice from the department or the city or the county with land use jurisdiction over the property upon which the 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 for 165 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

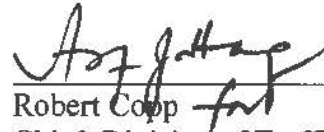
DESIGNATION OF PRECEDENT DECISION – OUTDOOR ADVERTISING

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