

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

AMAZING TICKETS, INC.)	CASE NO.
6551 Wilson Mills Road, Suite 107)	
Mayfield Village, Ohio 44143)	JUDGE:
)	
and)	
)	
DENVER TICKET COMPANY)	
6955 Broadway)	
Denver, Colorado 80221)	
Plaintiffs,)	
)	
vs.)	
)	
THE CITY OF CLEVELAND)	
601 Lakeside Avenue, Room 122)	
Cleveland, Ohio 44113)	<u>COMPLAINT FOR DECLARATORY</u>
)	<u>JUDGMENT; TEMPORARY AND</u>
and)	<u>PERMANENT INJUNCTION; MONEY</u>
)	<u>DAMAGES AND OTHER RELIEF</u>
DEDRICK STEPHENS, COMMISSIONER)	
CITY OF CLEVELAND – DIVISION OF)	
ASSESSMENTS AND LICENSES)	
601 Lakeside Avenue, Room 122)	
Cleveland, Ohio 44114)	
Defendants.)	

Now come the Plaintiffs, Amazing Tickets, Inc. and Denver Ticket Company, by and through their duly authorized counsel, L. Bryan Carr, and for their Complaint against the Defendants, the City of Cleveland and Dedrick Stephens, Commissioner, state as follows:

THE PARTIES

1. Plaintiff, Amazing Tickets, Inc., is a corporation duly incorporated under the laws of the State of Ohio, whose primary business is obtaining tickets to sporting and other entertainment events. Amazing Tickets purchases tickets from various sources (including the host of the event) and re-sells them, at times, above “face value” and for a profit.

2. Plaintiff, Denver Ticket Company, Inc. is a corporation duly incorporated under the laws of the State of Colorado, whose primary business is obtaining tickets to sporting and other entertainment events. Denver Ticket purchases tickets from various sources (including the host of the event) and re-sells them, at times, above “face value” and for a profit.

3. Defendant, the City of Cleveland (hereinafter the “City”), is a municipal corporation situated in Cuyahoga County, Ohio and is governed by a Mayor, Council, various committees, commissions and boards as well as administrative officials.

4. Defendant, Dedrick Stephens (“Stephens”) is the Commissioner of the City’s Division of Licenses and Assessments (Tax Administrator) and enforces Chapter 195 of the City’s Codified Ordinances (“C.O.”). Stephens is being sued in his official capacity.

5. The City of Cleveland and its agents and employees performed all acts described herein under color of state law and in accord with established policies, practices and customs.

6. Plaintiffs are similarly situated in that the City of Cleveland has demanded each comply with C.O. 195 or face civil and/or criminal penalties. (See *Exhibits A and B*)

THE ADMISSION TAX

7. Chapter 195 of the Codified Ordinances of the City of Cleveland (hereinafter “C.O. 195”) is commonly known as the City’s “Admissions Tax.”

8. The admission tax is a tax levied on the consideration paid for the privilege of admission to places of amusement, athletic events and/or the use of amusement devices.

9. The admission tax is imposed on the issuance, purchase, sale or use of tickets for the events of amusement.

10. The admission tax is paid to the City only once.

11. The intent of C.O. 195 is collection of the admission tax from a facility of a sporting or other entertainment event.

12. The admissions tax is a tax imposed on attending a recreational event, wherein a municipality taxes the facility for admission.

13. The admission tax is incorporated into or "built-in" the ticket price.

14. The hosting facility passes the admission tax onto the purchasers of the tickets in the "face value" of the admission ticket.

15. The admission tax is levied upon persons paying a fee to attend an event or enter an entertainment facility and not upon businesses/persons charging admission.

16. The business/person charging admission is charged with the responsibility of withholding the tax.

17. Event sponsors are required to collect admissions tax and report and remit it to the City on a monthly basis.

18. Ticket brokers obtain tickets to events and sell to customers. Ticket brokers are not patrons, event sponsors, businesses or persons charging admission.

19. C.O. 195 was significantly revised/amended by the City in 2009.

20. C.O. 195 was revised as a direct result of ticket brokers and the sums brokers were/are able to charge for their tickets.

21. C.O. 195 is concerned with "transactions that occur between ticket holders and purchasers at prices exceeding the face value of the tickets originally established by the event sponsors." As a result of this concern, the City unlawfully targeted ticket brokers (and the secondary ticket market) and created an "excise tax" on such transactions. Specifically, the City

has unlawfully mandated 8% of the amount paid in excess of the established “face value” of the ticket be paid as an “admission tax.”

22. Defendants have cloaked themselves with the power “to order any person ‘presumed’ to have knowledge of the facts to appear before him or her and compel the production of books, papers, records and other information whenever the Commission ‘believes’ that person to have knowledge of the facts of a transaction under investigation.

23. Defendants cloaked themselves with authority “to investigate and examine books, papers, records and other information of any person ‘believed’ to be subject to the tax.”

24. C.O. 195 unlawfully cloaks Defendants with unfettered and absolute authority to demand and compel production of: “books, papers, records and other information of any person subject to, or whom the Commissioner ‘believes’ is subject to...this chapter...”

25. As the City is enforcing C.O. 195 on Plaintiff Denver Ticket Company, the Admission Tax (C.O. 195) has extraterritorial effect.

FACTUAL ALLEGATIONS

26. To the Plaintiffs’ best knowledge and belief, from 1955 to 2011, as it did not pertain to ticket brokers, the City did not enforce C.O. 195 against ticket brokers.

27. On March 22, 2011, under the guise of C.O. 195, Defendants served an “Administrative Subpoena” upon Plaintiff Amazing Tickets, demanding proprietary, confidential and privileged information and documentation. It is believed that Defendants were seeking payment of admissions tax from Amazing Tickets. (See *Exhibit C*)

28. Under C.O. 195, there is no method of challenging or otherwise questioning the validity (or seeking a Protection Order) of the “Administrative Subpoena.”

29. The “Administrative Subpoena” issued by the Defendants demanded the following confidential information from Plaintiff’s business transactions: (a) the User ID and/or account moniker of the seller; (b) the first and last name of the selling party; (c) the mailing address of the selling party; (d) the e-mail address of the selling party; (e) phone number of the selling party; (f) selling price of the ticket; (g) the face value of the ticket; (h) the User ID and/or account moniker of the buying party; (i) the first and last name of the buying party; (j) the mailing address of the buying party; (k) the e-mail address of the buying party; (l) the phone number of the buying party; and (m) the method of payment used by the buying party.

30. On September 28, 2011, Defendants, under the guise of C.O. 195, litigated Case Number 11-CVH-17543 against Amazing Tickets, asking the Cleveland Municipal Court to enforce the “Administrative Subpoena” against Amazing Tickets. (*Exhibit C*).

31. On April 16, 2015, under the guise of C.O. 195, Defendants served another “Administrative Subpoena” upon Plaintiff Denver Ticket Company, demanding proprietary, confidential and privileged information and documentation. (See *Exhibit D*)

32. On April 16, 2015, under the guise of C.O. 195, Defendants served another “Administrative Subpoena” upon Amazing Tickets, Inc., demanding proprietary, confidential and privileged information and documentation. (See *Exhibit E*)

33. On June 25, 2015, under the guise of C.O. 195, Defendants filed with the Cleveland Municipal Court an “Application for Order to Require [Plaintiffs] to Comply with Administrative Subpoena *Duces Tecum*.” (See *Exhibit F*)

34. The Plaintiffs are neither the facilities (hosting events) nor attendees of events which the Defendants are taxing or seeking to tax.

35. The Defendants have taken inconsistent positions with regard to the Plaintiffs such as: (1) they are looking for “information relevant to ‘the investigation;” (2) they are looking for “material knowledge and information with respect to...violations;” (3) they are looking for “tax due” from Plaintiffs; and (4) Plaintiffs “are not the target(s) of any tax enforcement...” However, Defendants know Plaintiffs are ticket brokers.

36. The Defendants have not enforced C.O. 195 against the Cleveland Browns, Cleveland Cavaliers, Cleveland Indians and/or their secondary ticket markets.

37. The City has imposed strict liability for violations of C.O. 195 and classified a violation as a first-degree misdemeanor, which carries with it the possibility of incarceration.

38. C.O. 195 is an unlawful tax on the Plaintiffs, as they are neither the hosts nor attendees of any events to which they buy, sell or obtain tickets.

COUNT ONE
Declaratory Judgment

39. The Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 38 above, as if fully rewritten herein.

40. Declaratory relief from this Court will resolve these controversies and limit the uncertainties created by the Defendants’ establishment of an unconstitutional tax and unconstitutional processes (and procedures) under the guise of an admissions tax.

41. A real, substantial and immediate controversy is presented regarding the rights, duties and obligations of the parties and whether Plaintiffs are subject to an admissions tax or other provisions of C.O. 195. Plaintiffs request declaratory judgment from this Court pursuant to the Ohio Rules of Civil Procedure and Revised Code that the City, through its Ordinance, has violated the law and, specifically, Plaintiffs’ rights under Ohio and United States Constitutions.

42. Defendants have violated and continue to violate Plaintiffs' rights to due process under the First and Fourteenth Amendments of the Ohio and U.S. Constitutions.

43. C.O. 195 imposes an unconstitutional tax, imposes a double tax, and imposes unconstitutional burdens on innocent parties.

44. C.O. 195 is unconstitutional as it is being applied to the Plaintiffs.

45. C.O. 195 is unconstitutional on its face.

46. C.O. 195 is not applicable to the Plaintiffs and the Defendants have no authority to enforce any provision of C.O. 195 against the Plaintiffs.

47. C.O. 195 is unconstitutional as it charges an excessive tax on an innocent party.

48. C.O. 195 cloaks the Defendants with unconstitutional authority.

49. C.O. 195 is unconstitutional as it fails to pass the strict scrutiny test mandated by Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue, 460 U.S. 575 (1983).

COUNT TWO

Violation of Civil Rights – 42 U.S. C. 1983

Deprivation of Right to Equal Protection/Selective Enforcement

50. The Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 49 above, as if fully rewritten herein.

51. Defendants, at all times relevant hereto, are state actors who acted under color of law or are actors who were cloaked with the power and authority of state actors, whose conduct was approved and ratified by state actors.

52. Defendants acted under color of law to deprive the Plaintiffs of their civil rights, namely, their right to Equal Protection which is guaranteed to them and secured by the United States and Ohio Constitutions.

53. C.O. 195 is unconstitutional and fails to pass the strict scrutiny test mandated by Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue, 460 U.S. 575 (1983).

54. The Defendants are selectively enforcing the provisions of C.O. 195 against the Plaintiffs and not against other similarly situated entity/person.

COUNT THREE
Violation of Civil Rights – 42 U.S.C. 1983
Deprivation of Right to Substantive/Procedural Due Process of Law

55. The Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 54 above, as if fully rewritten herein.

56. Defendants, at all times relevant hereto, are state actors whose employees, agents and/or officials acted under color of law or are actors who were cloaked with the power and authority of state actors, whose conduct was approved and ratified by state actors.

57. Defendants acted under color of law in depriving the Plaintiffs of their civil rights, namely, their right to Due Process of Law, which is guaranteed to them and secured under the United States and Ohio Constitutions.

COUNT FOUR
Injunctive Relief

58. The Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 57 above, as if fully rewritten herein.

59. Plaintiffs will be irreparably harmed by Defendants' actions in enforcing C.O. 195, and by demanding confidential, proprietary information and payment of unlawful taxes.

60. Plaintiffs seek a temporary restraining Order, preliminary and permanent injunctive relief enjoining the Defendants from enforcing the provisions of C.O. 195 set forth herein against Plaintiffs, their employees or other representatives.

COUNT FIVE
Tortious Interference with Business/Invasion of Privacy

61. The Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 60 above, as if fully rewritten herein.

62. The aforementioned, tortious acts of Defendants have wrongfully intruded into the business and private affairs of the Plaintiffs, as defined under Ohio and Colorado Law.

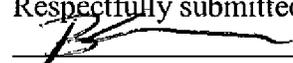
63. The tortious interference of the Plaintiffs' business and privacy, by Defendants, have resulted in damages to the Plaintiffs.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- A. Enter a declaratory judgment finding that C.O. 195 is unconstitutional as applied, as alleged in the Complaint.
- B. Enter a declaratory judgment finding that C.O. 195 is not applicable to the Plaintiffs, as alleged in the Complaint.
- C. Enter a declaratory judgment finding that C.O. 195 is unconstitutional as written, as alleged in the Complaint.
- D. Grant a temporary restraining order, preliminary and permanent injunctions enjoining the City of Cleveland from enforcing against Plaintiffs the provisions of Chapter 195 and from otherwise interfering with the Plaintiffs' lawful business within the City of Cleveland.
- E. Award actual and consequential damage to compensate Plaintiffs for depriving them of their rights, as well as all equitable and other damages.
- F. Award costs, reasonable attorney fees and other relief as is just and necessary.

Respectfully submitted,



L. BRYAN CARR (0066649)
1392 SOM Center Road
Mayfield Heights, Ohio 44124
(440) 473-2277 – phone
carrlawfirm@aol.com
Attorney for the Plaintiffs