

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Yuzan Miao
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings (“OATH”) Taxi and Limousine Appeals Unit (“Appeals Unit”) regarding summons 300410P is **reversed**. The imposed penalty of a \$3,050 fine is vacated.

FINDINGS OF FACT

Respondent is licensed by the TLC as a for-hire vehicle (“FHV”) driver. Respondent purchased a FHV in 2011, and on September 30, 2011, presented the new car to the TLC in order to transfer the license from his old vehicle. On that date, Respondent paid the \$25 transfer fee and TLC inspectors conducted an inspection of the vehicle. The vehicle passed this inspection and was issued at least one of the three TLC decals that all for-hire vehicles are required to possess.

On October 12, 2011, TLC sent Respondent a Notice of Violation (“NOV”) instructing him to “report to [TLC’s Woodside inspection facility] with your taxi to get window decals” before November 2, 2011.¹ TLC records are unclear which, if any, of the necessary decals were missing from Respondent’s vehicle. The NOV states: “Failure to correct these violations and obtain a condition corrected receipt from the TLC Woodside inspection facility will result in a summons which can result in fines and suspension.” At or around this time, TLC also sent Respondent a “Directive to Appear for Your Required Vehicle Inspection” (“Directive”), which informed Respondent that he was scheduled for a biennial license-renewal inspection at the Woodside facility on October 19, 2011.

Respondent appeared at Woodside for the scheduled renewal inspection on October 19, 2011, and his vehicle received a passing grade. TLC’s general practices dictate that, upon the vehicle’s passing inspection, Respondent was given a full set of three new two-year renewal FHV decals at that time. Respondent was also given DMV inspection stickers and a “TLC FHV Vehicle Inspection Report” (“Inspection Report”), which reflects the passing grade.

On November 3, 2011, TLC issued summons #300410P to Respondent for violation of TLC Rule 59A-27(d), due to his alleged failure to obtain vehicle decals prior to November 2, 2011. The summons states: “If you have a Condition Corrected Receipt, you must bring it with you to

¹ The Appeals Unit’s decision incorrectly states that the NOV was personally served on Respondent. The NOV itself shows that it was served by mail.

[the] hearing to prove that the condition cited on the notice of violation was corrected... the penalty for violation...is \$50 for each day you failed to correct the [failure] after the [deadline].”

Respondent appeared at the hearing for summons #300410P on January 3, 2012. At the hearing, the TLC representative conceded that Respondent did in fact correct the condition stated in the NOV when he was issued the new decals on October 19, 2011. Upon this concession, the ALJ asked the TLC representative: “Is it [Respondent’s] responsibility to make the folks at Woodside give him the sheet they’re supposed to give him [i.e. the condition corrected receipt]?” The TLC representative responded that it was not Respondent’s responsibility to insist that TLC issue him a condition corrected receipt in addition to the Vehicle Inspection Report, which proved that he had corrected the defect.

The ALJ dismissed the summons. The ALJ’s decision states: “I find the respondent...returned to the Woodside facility...and had...the proper decals put on. I find the FHV Inspection report that states the respondent’s vehicle passed inspection on 10/19/2011 as proof that the respondent complied with the [NOV] that he corrected a condition.” TLC appealed the ALJ’s decision on the grounds that compliance with the NOV required Respondent to obtain a condition corrected receipt.

On February 22, 2012, the Appeals Unit reversed the ALJ’s decision and held that the TLC established a violation of Rule 59A-27(d) by showing that Respondent failed to timely comply with the NOV because he did not obtain a condition corrected receipt by November 2, 2011. The Appeals Unit imposed a fine of \$3,050, which represents \$50 per day from November 3, 2011 (the day after Respondent’s deadline to comply with the NOV) until the date of the hearing on January 3, 2012, for a total of 61 days.

ANALYSIS

TLC Rule 59A-27(d) states: “A For-Hire Vehicle Owner must comply with all Commission notices and directives to correct defects in the Vehicle.” The penalty for violation of the Rule is a fine of “\$50 per day until information is supplied.” It is uncontested that Respondent corrected the condition listed in the NOV. The issue is whether or not Respondent complied with the NOV.

Generally, a condition corrected receipt is required to prove full compliance with an NOV.² In the instant case, however, the crucial evidence that proves Respondent complied with the terms of the NOV is the passing Inspection Report and the issuance of new decals. These documents demonstrate Respondent’s full compliance with TLC’s directives and render the requirement to obtain a condition corrected receipt redundant and unnecessary.

² In *Taxi & Limousine Commission v Bangelio v Manzueta*, Lic. No. 5244555 (Oct. 4, 2011), the respondent testified that he showed his FHV to a TLC inspector after receiving an NOV, but did not obtain any proof of his visit. The Appeals Unit held that the Commission conclusively established that the respondent did not provide proof that he had complied with the NOV by the deadline, while the respondent testimony that he had showed his vehicle to an inspector demonstrated only partial compliance.

TLC FHV licenses are valid and renewable for two-year terms.³ Three TLC-issued decals, which are valid for the term of the FHV license, must be affixed by TLC staff to all FHVs.⁴ FHVs are inspected three times per year, at four-month intervals, and confirmation that decals are current and properly displayed is part of the inspection.⁵ New TLC decals are issued when the FHV license is renewed or when the vehicle is replaced.⁶

The NOV was sent one week prior to Respondent's scheduled license renewal inspection. Thus, even if Respondent had disregarded the contemporaneous Directive and immediately had the decals attached to his FHV prior to the inspection, those same decals would have been removed and replaced at the scheduled renewal inspection only a few days later. When Respondent did in fact have the necessary decals affixed to his FHV, he was issued a Certificate of Inspection reflecting that fact. It would have been illogical, and as the TLC representative conceded at the hearing, unnecessary, for Respondent to insist that TLC issue him a condition corrected receipt, when the Certificate of Inspection that was provided by the TLC unequivocally proves that the condition was indeed corrected. Furthermore, it is important to recognize that the sequence in which TLC issued documents to Respondent – NOV, followed by the Directive, and lastly the Vehicle Inspection Report – suggests that Respondent came to the logical assumption that the Directive and subsequent passed inspection superseded the NOV, because compliance with the former necessarily satisfied the latter.

The Appeals Unit erred in reversing the ALJ's decision because that decision was supported by uncontested facts and consistent with TLC Rule 59A-27(d). Rule 59A-27(d) is in place to ensure that FHV drivers timely correct any defects that render an FHV non-compliant with TLC rules and the unchallenged findings in the record show that Respondent did precisely that. Respondent did in fact correct the condition listed on the NOV when he presented his FHV for inspection and was issued updated decals before the November 2, 2011, deadline. Furthermore, when questioned by the ALJ, TLC's representative conceded at the hearing that Respondent was not "responsible to make the folks at Woodside give him the sheet they're supposed to give him" in addition to the credentials that the inspector had already provided.

The Appeals Unit's decision places form before substance. Respondent relied in good faith on the reasonable assumption that, because the inspectors at the Woodside facility had done precisely what was required in order to comply with the NOV, his obligation to correct the defect was met. It would therefore be improper and inequitable to penalize Respondent for his failure to obtain a pro forma document that would supply no new information that was not already indicated on the Certificate of Inspection.

³ §§35 RCNY 59A-06(a), (b)

⁴ 35 RCNY 59A-29(a)(1)

⁵ 35 RCNY 59A-26(a)(1)

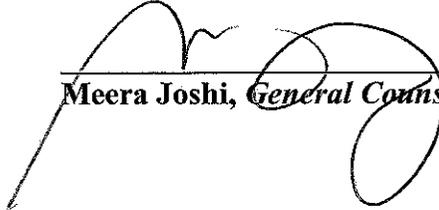
⁶ 35 RCNY 59A29(a)(2)

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Yuzan Miao (TLC Lic. No. 5280894), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons 300410P is reversed. The imposed penalty of a \$3,050 fine is hereby vacated.

This constitutes the final determination of the TLC in this matter.

So Ordered: May 16, 2012


Meera Joshi, *General Counsel/ Deputy Commissioner of Legal Affairs*