

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Haitham A. Noufal
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings (“OATH”) Taxi and Limousine Appeals Unit (“Appeals Unit”) regarding summons 1331901A, alleged violation of TLC Rule 6-16(U)(1), is **reversed**. The imposed penalty of a \$200.00 fine and a three point demerit to Respondent’s TLC license shall be vacated.

The decision of the Appeals Unit regarding summons 1331902A, alleged violation of TLC Rule 6-16(C)(1), is **upheld**. The imposed mandatory penalty of a \$50.00 fine shall stand.

FINDINGS OF FACT

Respondent was issued two summonses: summons 1331901A for using his cell phone in violation of Taxi & Limousine Commission (“TLC”) Rules 6-16(U)(1); and summons 1331902A for being unlawfully parked in a zone marked “Taxi Stand/ No Standing Anytime, Except Taxis” in violation of Rule 6-16(C)(1).¹

At a hearing held on March 10, 2011, before an Administrative Law Judge (“ALJ”) of the OATH Taxi and Limousine Tribunal, Respondent conceded that at the time the aforementioned summonses were issued, he had pulled his for-hire vehicle (“FHV”) into a “No Standing/Taxi Stand” zone in order to assess the minor damage to the car after a hit-and-run. Respondent argued that he was not using his cell phone because it was not working at that time, and presented documentation from his cell phone provider, which shows that the cell phone’s internet capabilities were not working on the day after the violation. Conversely, the TLC Inspector testified that he saw Respondent talking on his cell phone, with the phone held to his left ear.

The ALJ weighed the credibility of each witness and found Respondent guilty of two violations: using a portable or hands-free device while operating a for-hire vehicle (while not lawfully standing or parked); and a stationary traffic violation.² The ALJ found that Respondent’s evidence of the damage to his car had no bearing on his being pulled over into a No Standing zone. Regarding the cell phone violation, the ALJ considered Respondent’s evidence and found that it did not support Respondent’s testimony that he was not using his cell phone at the time of the violation.

¹ Under the new TLC rules (effective July 1, 2011), Rule 6-16(U)(1) is listed as Rule 55-14(g), and Rule 6-16(C)(1) is listed as Rule 55-13(a)(1).

² Rules 6-16(U)(1) and 6-16(C)(1), respectively

Respondent argued on appeal that he was permitted to park in the No Standing/Taxi Stand zone because he was driving a FHV. Respondent reiterated his claim that his cell phone was not working on the day of the citation, and again pointed to the documentation which shows that his phone was not fully functional on the day following the violation. The Appeals Unit found that Respondent's FHV was not a taxicab, and thus was not lawfully standing in the Taxi Stand. The Appeals Unit's determination did not address the cell phone violation.

ANALYSIS

The Appeals Unit's determination regarding summons 1331902A, alleged violation of TLC Rule 6-16(C)(1), is correct.

The Appeals Unit found that Respondent was parked or standing in a FHV while in a No-Standing/Taxi Stand zone. The Rules of the Taxi & Limousine Commission clearly define a FHV as "[a] motor vehicle..., which is not a taxicab as defined by NYS law." Accordingly, the Appeals Unit was correct in its determination that Respondent was guilty of a stationary traffic violation as described in Rule 6-16C(1), because Respondent was parked in a No Parking/Taxi Stand zone, and was not driving a taxicab.³

The Appeals Unit was further correct in its deference to the ALJ's finding that the traffic accident that immediately preceded Respondent's standing in the No-Standing Zone was inconsequential, because there is no statutory provision or case law that would except Respondent from the applicable traffic law (34 RCNY 4-08 (c)(2)) in such a factual scenario. Accordingly, the decision of the Appeals Unit regarding summons 1331902A is upheld.

The Appeals Unit's determination regarding summons 1331902A, alleged violation of TLC Rule 6-16(U)(1), is incorrect because it lacks legal analysis to support its conclusion, and there is substantial evidence to sustain a conclusion contrary to the ALJ's.

The Appeals Unit is bound by the ALJ's findings, so long as those findings are based on "substantial evidence," which is such evidence that "a reasonable mind may accept as adequate to support a conclusion or ultimate fact."⁴ However, regarding Respondent's citation for unpermitted cell phone use, the Appeals Unit's decision states only the legal conclusion that "the ALJ's findings are supported by substantial evidence"⁵ The Appeals Unit offered no analysis or support for its conclusion that the evidence on which the ALJ relied in finding that Respondent was using his cell phone at the time of the violation rose to the standard of "substantial evidence." Upon review, the findings of fact in the decision support a conclusion contrary to the ALJ's.

³ Title 34 RCNY §4-08(c)(2) "Taxi Stand, Standing Prohibited"

⁴ See *Taxi & Limousine Commission v Exec U Car Limo Inc., Lic. No. 5179939* (Sept. 27, 2007) citing *300 Gramatan Ave. Assoc. v. State Div. of Human Rights*, 45 NY2d 176 (July 13, 1978).

⁵ *Taxi & Limousine Commission v Haitham A. Noufal Lic. No. 5247700* (Aug. 31, 2011)

New York State Courts have held in similar cases that where there is substantial evidence, the Commissioner is empowered to substitute his judgment for that of the ALJ.⁶ Thus, while it is true that the record made at the hearing was subject to interpretations of credibility, the Commissioner is not bound by the ALJ's findings and is free to reach a contrary conclusion that is supported by substantial evidence.⁷

The ALJ found that Respondent appeared sincere in his testimony that he was not using his cell phone because it was inoperable at the time of the violation, and Respondent provided documentation that his cell phone was experiencing service problems on the day immediately following the violation. Conversely, the TLC Inspector testified only that he observed Respondent talking on his cell phone because the phone was held to Respondent's left ear. The TLC Inspector stated that there were several other FHV's parked in the same No-Standing/Taxi Stand zone, and that he issued tickets to some of these cars but some were able to drive away. The TLC Inspector did not state for how long he observed Respondent on the phone, nor did the Inspector explain how he was able to distinguish Respondent from the several other FHV drivers he ticketed immediately prior to and following Respondent. Thus, the weight of the evidence provided by Respondent is adequate to support the conclusion that he was not using his cell phone in violation of rule 6-16(U)(1). Accordingly, the decision of the Appeals Unit regarding summons 1331901A is reversed, and the penalty imposed by the ALJ shall be vacated.

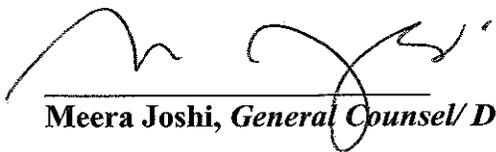
DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Haitham A. Noufal (TLC Lic. No. 5247700), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons 1331901A, alleged violation of TLC Rule 6-16(U)(1), is reversed. The imposed penalty of a \$200.00 fine and a three point demerit to Respondent's TLC license shall be vacated.

The decision of the Appeals Unit regarding summons 1331902A, alleged violation of TLC Rule 6-16(C)(1), is upheld. The imposed mandatory penalty of a \$50.00 fine shall stand.

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

So Ordered: January 12, 2012



Meera Joshi, General Counsel/ Deputy Commissioner of Legal Affairs

⁶ See *Dobrin v Safir*, 272 AD2d 134

⁷ See Title 35 RCNY §68-16; *Maggiore v. Dep't of Bldgs.*, 294 A.D.2d 304