

**CHAIRPERSON'S FINAL DETERMINATION AND ORDER**

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*In the Matter of*  
New York City Taxi & Limousine Commission  
*Petitioner*  
*against*  
A&A Trading Corp.  
*Respondent*

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**DETERMINATION**

The decisions of the Office of Administrative Trials and Hearings (“OATH”) Taxi and Limousine Appeals Unit (“Appeals Unit”) regarding summonses INR000490, INR000491, and INR000492 are **reversed in part and modified**.

**FINDINGS OF FACT**

Respondent was cited for violations of TLC Rules 6-11(d), 6-18(g), and 6-11(r)(2) in each of summons #INR000490, INR000491, and INR000492. The TLC later dismissed the charges of violating TLC Rules 6-11(d) and 6-11(r)(2) on all three summonses.

On January 20, 2011, a hearing was held on the alleged violations of TLC Rule 6-18(g) (failure to comply with Commission directives) as cited in each of summons #INR000490, INR000491, and INR000492. A single ALJ presided over all three summonses and the decisions for all three summonses are identical. The ALJ dismissed all of the summonses. The ALJ found that the Respondent failed to comply with the TLC’s directive to submit proof of insurance coverage within the time specified in the notice to comply. The ALJ further found that Respondent was out of the country and therefore unable to comply. The ALJ held that “Respondent attempted to comply with the directive, and...his attempt...amounts to a valid defense to 6-18G... Summonses dismissed.” The TLC appealed the ALJ’s decision.

On November 6, 2011, the Appeals Unit reversed the ALJ’s decision for each of the three summonses. The Appeals Unit’s decisions held that “[t]he ALJ’s finding that the respondent attempted to comply with the directive is not a valid defense to the Rule 6-18(g) violation<sup>1</sup>,” and “[t]he only relevant issue for the ALJ to consider at the hearing was whether or not the respondent timely and properly complied with the directive. Since the ALJ’s decision is based upon an invalid defense, the ALJ’s decision is reversed.”<sup>2</sup> In each case the Appeals Unit remanded the summons for a new hearing.

**ANALYSIS**

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<sup>1</sup> *Taxi & Limousine Commission v A&A Trading Corp.*, Lic. No. 5119016

<sup>2</sup> *Taxi & Limousine Commission v A&A Trading Corp.*, Lic. No. 5301729 and *Taxi & Limousine Commission v A&A Trading Corp.*, Lic. No. 5367789 citing *Taxi & Limousine Commission v Erwin Almaddany*, Lic. No. 5158869 (March 31, 2009)

This Decision does not disturb the findings of guilt made by the Appeals Unit. The Appeals Unit's determination to reverse the ALJ's decision was correct. However, the Appeals Unit erred in remanding the matters for new hearings.

TLC Rule 6-18(g) holds TLC licensees responsible for complying with all directives from the Commission within ten days of notification. Violation of the rule results in a \$200 fine per violation and two demerit points to the licensee's TLC license. In the instant case, Respondent argued that he was unable to timely comply with TLC's directive because he was out of the country. Review of applicable case law suggests that TLC licensees are strictly liable for conformity with TLC Rule 6-18(g). TLC Rules provide no defense to a violation of Rule 6-18(g) and case law has consistently held that the only issue valid for an ALJ's consideration is whether or not the respondent timely and fully complied with all TLC directives.<sup>3</sup> Therefore, the Appeals Unit's decision to reverse the ALJ's dismissal of the Rule 6-18(g) violations was correct.

The TLC's Petition for Review argues that the Appeals Unit erred by remanding the case because "it was clear... that Respondent was guilty of the violation and since the record on appeal is sufficient for the Appeals unit to correct an error of law, the appropriate penalty should have been imposed."

The rules governing adjudications at the TLC state: "[o]n appeal, the determination of the ALJ can be affirmed, reversed in whole or in part, or modified. If the record on appeal is insufficient for the Appeals Unit to correct an error of law, the matter may be remanded...for a new Hearing."<sup>4</sup> Therefore, upon finding reversible error, the Appeals Unit is required to determine whether the record is sufficient to correct the error of law. If the record is sufficient, the Appeals Unit must correct the error of law as necessary.

The record clearly demonstrates that Respondent failed to timely comply with TLC's directive. Therefore, upon determination that this fact established a violation of TLC Rule 6-18(g), the Appeals Unit was obligated to correct the error of law and impose the attending violation. In cases such as this, where the record demonstrates a violation and the penalty for such violation is set by statute, the Appeals Unit must not remand the case for a new hearing. Rather, in such cases where no new findings of fact are required to establish that a respondent is guilty of a rule violation, the Appeals Unit must impose the prescribed penalty and issue the final disposition of the case.

### **DIRECTIVE AND ORDER**

In the matter of New York City Taxi & Limousine Commission against A&A Trading Corp., the decision of the OATH Taxi and Limousine Appeals Unit regarding summonses INR000490, INR000491, and INR000492 is reversed in part and modified.

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<sup>3</sup> *Taxi & Limousine Commission v. Hui Tong*, Lic. No. 5143151 (November 22, 2010); *Taxi & Limousine Commission v. All Around Trans, Inc.*, Lic. No. 5376519 (November 10, 2011)

<sup>4</sup> Title 35 RCNY §68-15(f). By virtue of Mayor's Executive Order 148, TLC Rule 68-15(f) will be transferred to the Office of Administrative Trials and Hearings upon that agency's adoption of the rule.

**The Appeals Unit's finding that Respondent violated TLC Rule 6-18(g) is not disturbed by this Order. The Appeals Unit's determination to remand the case is reversed. The mandatory penalty for each violation of Rule 6-18(g) is hereby imposed.**

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

So Ordered: March 26, 2012

  
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**Meera Joshi, Deputy Commissioner/General Counsel**