

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
City Transport Management Corp.
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings ("OATH") Taxi and Limousine Appeals Unit ("Appeals Unit") regarding summons # 400333C is **reversed**.

FINDINGS OF FACT

On September 23, 2011, a hearing was held at the Office of Administrative Trials and Hearings ("OATH") Taxi & Limousine Tribunal regarding summons #400333C, which charged Respondent with violation of TLC Rule 12-06(i).¹ Respondent is licensed by the New York City Taxi & Limousine Commission ("TLC") to provide for the management of several dozen taxicab medallions.

At the hearing, TLC's complaining witness testified that on January 25, 2011, one of Respondent's employees used physical force to remove the witness from Respondent's business premises. TLC's witness played an audio recording of the incident to verify his claim. Conversely, Respondent's representative stated that TLC's complaining witness was in fact asked to leave the premises, but denied that any unjustified force was used. The ALJ found Respondent guilty of violating Rule 12-06(i) and assessed a fine of \$350.00 and a 30-day suspension of Respondent's TLC license.

Respondent appealed the ALJ's decision. Respondent cited to Section 19-530(f) of the Administrative Code of the City of New York ("Code") and argued that the ALJ improperly found Respondent guilty of violating Rule 12-06(i), because the prohibited behavior was not committed by any of Respondent's principals.²

The OATH Taxi & Limousine Appeals Unit ("Appeals Unit") upheld the ALJ's decision and penalty assessment. The Appeals Unit's determination states in part: "Regarding penalties, Code

¹ An agent, while performing his or her duties and responsibilities as a taxicab agent, shall not use any physical force against any...other person.

² Code Section 19-530(f) provides: "The commission may deny an application for a license or renewal of a license or, after notice and hearing, revoke or suspend any license issued pursuant to this section, and/or impose a civil penalty not exceeding ten thousand dollars on a licensee, if it finds that an applicant, a licensee, any officer, director, partner, or owner of more than ten percent of the outstanding stock of an applicant or licensee, or the chief executive officer of an applicant or licensee has:... (3) violated any provision of this section or any applicable rule of the commission." Code Section 19-530(f) is mirrored in TLC Rule 12-02(e).

Section 19-530(f) cited by the respondent does not apply to this matter because this [is] not a license application or license renewal matter.”³

ANALYSIS

The Appeals Unit’s determination upholding the ALJ’s finding that Respondent was guilty of violating Rule 12-06(i) was incorrect.

The term “agent” is defined in TLC Rule 12-01 as “an individual, partnership or corporation acting, by employment, contract or otherwise, on behalf of one or more owners to operate or provide for the operation of a taxicab in accordance with... any rule promulgated by the Commission.” Respondent is licensed by the TLC and independently contracted by taxicab owners to provide for the management of taxicabs. Thus, Respondent is an agent as defined by TLC Rule 12-01.

TLC Rule 12-06(i) prohibits the use of physical force by a taxicab agent. However, Rule 12-06(i) does not proscribe conduct by employees of an agent nor does it extend liability to employees of an agent.⁴ Code Section 19-530(f) and TLC Rule 12-02(e) dictate that the TLC may impose penalties against an agent for violation of TLC Rule 12-06(i) only if the violation is committed by limited specified individuals: an applicant, a licensee, any officer, director, partner, or owner of more than ten percent of the outstanding stock of an applicant or licensee, or the chief executive officer of an applicant or licensee. Thus, generally speaking, only the conduct attributable to a principal of an agent can result in a civil penalty for the agent or the suspension of an agent’s license.

It is undisputed that the only individual who used physical force against TLC’s witness was Respondent’s employee. It is further established that the employee is not one of the individuals listed in Rule 12-02(e) and Code Section 19-530(f) whose actions would be imputed to Respondent. Rather, the employee merely works for Respondent as a dispatcher. As stated *supra*, Respondent is not liable for the actions of its employees under TLC Rule 12-06(i). Accordingly, the Appeals Unit erroneously attributed the actions of the offending employee to Respondent and incorrectly found Respondent guilty of violating TLC Rule 12-06(i). The Appeals Unit’s decision is reversed and the imposed \$350 fine and 30 day suspension of Respondent’s license must be vacated.

³ *Taxi & Limousine Commission v City Transport Management Corp.*, Lic. No. A0292 (Dec. 5, 2011). While the Appeals Unit’s decision cites Code Section 19-530(f) in full, the decision dismissed Respondent’s argument based only on the first disjunct of the statute (“The commission may deny an application for a license or renewal of a license...”). When read in its entirety, however, Code Section 19-530(f) makes explicitly clear that after notice and hearing, the TLC may impose civil penalty or suspend an agent’s license only if a rule violation is committed by one of the specified individuals.

⁴ The Administrative Code and TLC Rule 12-02(e) limit those persons for whose actions an agent may be liable for violations of TLC Rule 12-06(i). This is in contrast to other rules which hold an agent or medallion owner accountable for conduct by employees (see, e.g. TLC Rule 58-21(c)(5), which, with respect to the TLC’s Standard Lease Cap states: “In addition to a lease amount no greater than the Standard Lease Cap (as adjusted), an Owner/lessor (*as well as any agent or employee of the Owner/lessor*) must not request of or accept from any lessee... any money or other thing of value...” (emphasis added)).

DIRECTIVE AND ORDER

In the matter of New York City Taxi & Limousine Commission against City Transport Management Corp. (TLC Lic. No. A0292), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons # 400333C is reversed. **The imposed \$350 fine and the suspension of Respondent's TLC license is hereby vacated.**

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

So Ordered: January 27, 2012

