

## **Chapter 5**

### **Rules Applicable to Violations of Laws or Regulations Enforced by the Taxi and Limousine Commission**

#### **§ 5-01 Scope of this Chapter**

This chapter applies to all charges of violations of any laws, rules and regulations enforced by the Taxi and Limousine Commission (TLC). Adjudications of such charges are conducted pursuant to the rules in Chapter 6 of this Title. Where there is a conflict between this chapter and Chapter 6, this chapter takes precedence. Definitions in section 6-01 apply to terms used in this chapter.

#### **§ 5-01a Appearances**

(a) Appearances by Respondent. A Respondent's appearance at a hearing is timely if the Respondent appears and is ready to proceed no more than ninety (90) minutes after the scheduled hearing time.

(b) Appearances by Petitioner. If the Petitioner fails to appear within thirty (30) minutes of the timely appearance of the Respondent and does not make a timely request to reschedule the hearing pursuant to § 6-05 of this title, the Tribunal will dismiss the summons.

(c) If the hearing does not begin within three (3) hours of the timely appearance of both the Respondent and the Petitioner, the Tribunal will dismiss the summons without prejudice.

#### **§ 5-02 Respondent's Right to Confront Complaining Witness**

(a) Pursuant to Administrative Code § 19-506.1, the TLC must produce the complaining witness in person where such witness's credibility is relevant to the summons being adjudicated. If the TLC is unable to produce such witness in person, the TLC must make reasonable efforts to make the witness available during the hearing by videoconferencing or teleconferencing.

(b) If the TLC is unable to produce the witness in person or by videoconference or teleconference, it must provide the Hearing Officer with a statement outlining its efforts to produce the witness. If the Hearing Officer determines that the TLC's efforts were inadequate, the Hearing Officer will dismiss the summons.

(c) If the Respondent previously requested an adjournment to obtain the testimony of the complaining witness, the non-attendance of the complaining witness will be considered a failure by the TLC to produce a complaining witness under paragraph (b) and may be grounds for the Hearing Officer to dismiss the summons.

#### **§ 5-03 Respondent's Right to Challenge a Default Decision**

Pursuant to Administrative Code § 19-506.1, a Respondent may move to vacate a default decision by filing a written motion to vacate within two (2) years from the date of entry of the default decision.

## **§ 5-04 Appeals**

(a) If a Hearing Officer issues a decision imposing a reduced penalty pursuant to § 5-06(c) of this chapter, the party seeking to appeal the Hearing Officer's underlying decision must file an appeal with the Tribunal within fifty (50) days of the date of the decision.

(b) Pursuant to Administrative Code § 19-506.1(c), a Respondent will not be required to pay the fines, penalties, or restitution imposed in the decision in order to file a timely appeal.

(c) Expedited appeals. Either party may appeal a decision pursuant to section 6-19. Where the appeal involves the suspension or revocation of a TLC-issued license, the Appeals Unit will issue an expedited decision.

(d) A party responding to a request for appeal where the appeal involves the suspension or revocation of a TLC-issued license must file the response with the Tribunal within seven (7) days after being served with the appeal. The responding party must also serve a copy of the response on the appealing party, and file proof of such service with the Tribunal.

(e) Requests for hearing recording. Pursuant to Administrative Code § 19-506.1(d), if a Respondent appealing a decision requests in writing a copy of the hearing recording, the recording will be produced to the Respondent within thirty (30) days after receipt of the request. If the recording cannot be produced within the thirty (30) day period, the determination being appealed will be dismissed without prejudice.

(f) Finality. A decision of the Appeals Unit becomes the final determination [of the Tribunal] in the case, unless either party petitions the TLC Chairperson in accordance with § 68-12(c) of Chapter 68 of Title 35 of the Rules of the City of New York (RCNY).

## **§ 5-05 Chairperson Review**

(a) Scope of Review of Appeals Unit Decisions. The TLC Chairperson or, if designated by the TLC Chairperson, the General Counsel for the TLC, may review any determination of the Appeals Unit that interprets any of the following:

- (1) A rule in Title 35 of the RCNY;
- (2) A provision of law in Chapter 5 of Title 19 of the Administrative Code;
- (3) A provision of law in Chapter 65 of the Charter.

(b) Decision. Upon review, the TLC Chairperson or General Counsel may issue a decision adopting, rejecting or modifying the Appeals Unit decision. The TLC Chairperson or General Counsel will be bound by the findings of fact in the record and will set forth his or her decision in a written order. The TLC Chairperson or General Counsel's interpretation of the TLC's rules and the laws it administers will be considered agency policy and must be applied by the Tribunal in future adjudications involving the same rules or statutes.

## **§ 5-06 Special Procedures**

(a) Summary suspension based on a failure to be timely tested for drug use. When the TLC submits to the Tribunal written documentation pursuant to 35 RCNY § 68-16(d) submitted by a Licensee, as defined in 35 RCNY § 51-03, refuting summary suspension based on a failure to be timely tested for drug use, the Tribunal will issue a decision based on the written documentation. The decision will include findings of fact and conclusions of law. The decision may be appealed in accordance with the process established in § 6-19.

(b) Unlicensed activity. Pursuant to § 19-529.2 of the Administrative Code, a decision on unlicensed activity with a commuter van will be issued within one (1) business day of the conclusion of the hearing or the default.

(c) Discretion of Hearing Officers to Reduce Penalties.

- (1) A Hearing Officer may, in the interest of justice, impose a reduced penalty for a violation, except for a violation of § 19-507 of the Administrative Code, after determining that such reduction in penalty is appropriate on the ground that one or more compelling considerations or circumstances clearly demonstrates that imposing such penalty would constitute or result in injustice. In determining whether such compelling consideration or circumstance exists, the Hearing Officer must, to the extent applicable, consider, individually and collectively, the following factors:
  - (i) The seriousness and circumstances of the violation;
  - (ii) The extent of harm caused by the violation;
  - (iii) The evidence supporting or refuting the violation charged, whether admissible or inadmissible at a hearing;
  - (iv) The history, character, and condition of the Respondent;
  - (v) The effect of imposing upon the Respondent the penalty set by the TLC;
  - (vi) The impact of a penalty reduction on the safety or welfare of the community;
  - (vii) The impact of a penalty reduction on public confidence in the TLC, the Tribunal, and the implementation of laws by the city;
  - (viii) The position of the Petitioner regarding the proposed fine reduction with reference to the specific circumstances of the Respondent and the violation charged; and
  - (ix) Any other relevant fact indicating whether a decision to impose the penalty set by the TLC on the Respondent would serve a useful purpose.
- (2) Upon determining that a penalty should be reduced, the Hearing Officer will set forth in the decision the monetary penalty, if any, to be imposed on the Respondent, the amount of the reduction, and the reasons for such reduction.
- (3) Within twenty (20) business days of receipt of the Hearing Officer's decision, the TLC Chairperson or the Chairperson's designee may, upon determining that such decision is not in the interest of justice, pursuant to the factors set forth in paragraph (1) of this subdivision, re-impose the full penalty demanded by the TLC or increase the penalty imposed by the Hearing Officer.