

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Murray Jacobs
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings (“OATH”) Taxi and Limousine Appeals Unit (“Appeals Unit”) regarding summons CD00465, alleging violation of TLC Rule 2-07B, is **reversed**. The imposed revocation of Respondent’s TLC license shall be vacated.

FINDINGS OF FACT

Respondent was cited for violations of TLC Rule 2-07B (accumulating ten or more points against his Department of Motor Vehicles (“DMV”) license within a period of 15 months)¹, as stated in summons number CD00465. This rule is part of TLC’s “critical driver program,” which penalizes taxi drivers who accumulate excessive demerit points on their DMV licenses. This program is separate from TLC’s “persistent violation” rules, which address drivers with excessive demerit points on their TLC license.

At a hearing held on September 1, 2010, the presiding Administrative Law Judge (“ALJ”) found Respondent not guilty of the Rule 2-07B violation cited in summons CD00465. The ALJ’s decision states that Respondent provided evidence that he completed a defensive driving course on May 1, 2010, which qualified him for a two-point reduction from the 11 point total on his DMV license. The TLC presented Respondent’s DMV records, which showed that the DMV did not adjust the point total until July 17, 2010, which the TLC argued would disqualify Respondent from a point reduction. The ALJ held that Respondent satisfied his burden of proof that he completed a valid defensive driving course, and based on Respondent’s adjusted total of nine points on his DMV license, the ALJ found Respondent guilty of a 2-07A violation (accumulating six or more points against his DMV license within a 15-month period) and imposed the mandatory 30-day suspension. Respondent served his suspension from September, 2010 through October of 2010.

The TLC appealed the decision and argued that the ALJ erred in allowing the two-point reduction, as the receipt on which the ALJ relied stated on its face that: “This is a Receipt of Acknowledgement of Course Payment Attendance, not to be used for Insurance Discount or Point Reduction Benefits.”²

¹ Title 35 RCNY §54-27(a)(2)

² *Taxi & Limousine Commission v Murray Jacobs*, Lic. No. 369062 (Oct. 25, 2011)

The Appeals Unit reversed the ALJ's decision on the grounds that the ALJ made a legal error by acknowledging the two-point reduction and amending the violation to a Rule 2-07A violation, because the language on the receipt clearly states that such receipt cannot be used for "point Reduction Benefits."

ANALYSIS

TLC Rule 2-07B states: "The taxicab driver's license of any driver who, within a period of fifteen months, accumulates ten or more points against his license issued by the [DMV]...shall be revoked." Rule 2-07H states: "Any licensee who voluntarily attends and satisfactorily completes a motor vehicle accident prevention course approved by the DMV, and who furnishes the Commission with proof that the course was completed...shall have two (2) points deducted from the total number of points assessed pursuant to this Rule."

The plain language of Rule 2-07H provides that a driver will be eligible for point reduction if he voluntarily completes a defensive driving course and furnishes the TLC with proof that the course was completed. Contrary to the TLC's argument, Rule 2-07H contains no requirement that the course must be "acknowledged" by the DMV in order for the TLC to apply the point reduction.

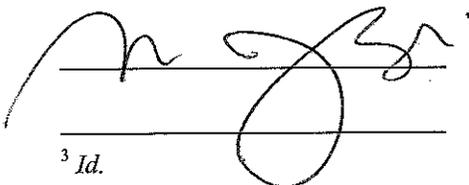
The Appeals Unit erred in reversing the ALJ's decision to apply the two point reduction based on the receipt presented by Respondent. The receipt bears the notice: "This is a Receipt of Acknowledgment of Course Payment and Attendance, Not to be Used for Insurance Discount or Point Reduction Benefits."³ The language on the receipt provides proof of Respondent's completion of the defensive driving course in satisfaction of TLC Rule 2-07H. The Appeals Unit's determination to the contrary that the language on the receipt prohibits the TLC from applying the two-point reduction is incorrect. As stated *supra*, TLC's internal calculations of a driver's DMV demerit points under Rule 2-07H is not contingent upon the DMV's acknowledgment of a point reduction resulting from a defensive driving course. Accordingly, the Appeals Unit's reversal of the ALJ's decision to apply the two-point reduction was incorrect. The Appeals Unit's directive to reschedule a new hearing in this matter was likewise incorrect.

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Murray Jacobs (TLC Lic. No. 369062), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons CD00465 is reversed. The imposed revocation of Respondent's TLC license shall be vacated.

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

So Ordered: January 18, 2012



A handwritten signature in black ink is written over two horizontal lines. The signature is stylized and appears to be the initials 'M. J.' followed by a large flourish.

³ *Id.*