

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Enrique Pichardo
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings (“OATH”) Taxi and Limousine Appeals Unit (“Appeals Unit”) regarding summons #NU0000009 is **reversed**.

FINDINGS OF FACT

Respondent obtained a Street Hail Livery (“SHL”) License on July 8, 2013. On November 26, 2013, the TLC sent Respondent a notice titled “Immediate Action Required!,” which instructed Respondent to affiliate his License with a TLC licensed vehicle and have the vehicle “hacked up” and inspected by the TLC. The notice states: “A total of 141 days have elapsed since the purchase date of your permit[,] and our records indicate that you have not completed the process of putting your license in service. This is a reminder that your permit must be placed into service no later than 1/4/2014.” The date by which a SHL must be placed into service is set by Rule 82-06(b)(3), which requires that an SHL License be placed into service within 90 days of issuance, or in case of accessible vehicle, within 180 days of issuance.

More than six months after it was issued, Respondent failed to affiliate the SHL License with a vehicle. Accordingly, on February 6, 2014 – 213 days after his SHL License was issued – the TLC issued summons NU0000009 to Respondent for violation of Rule 82-09(f)(3).¹ The summons alleged that Respondent failed to comply with SHL inspection requirements.

On March 28, 2014, OATH Administrative Law Judge Elena Yun held a hearing on the matter. The TLC presented evidence that, as of the date of the hearing, Respondent had not yet attached a vehicle to his SHL permit or had a vehicle inspected. In his defense, Respondent testified that he was told by a friend that he had six or eight months to hack up a vehicle, and that he could not have an inspection because he did not have a car to inspect. On this logic – that failure to inspect a vehicle was inapplicable because there was no vehicle to inspect – the ALJ dismissed the summons. The ALJ’s decision states: “[t]here is no dispute the respondent does not have a vehicle at this time under the Street Hail Livery license and as such it is impossible for the respondent to comply with the charged violation of Rule 82-09(f)(3). Here, the Commission’s arguments and proofs were not in support of the charged violation but for a separate violation,” presumably a violation of Rule 82-06(b)(3).

¹ An SHL License must be revoked for non-use if for 60 or more days, the License holder fails to comply with inspection requirements. See RCNY 82-06(b).

On March 31, 2014, the TLC appealed dismissal of the summons on the grounds that the Hearing Officer misinterpreted Rule 82-30, which, among other things, requires that a vehicle pass TLC inspection before it is placed into service. The Appeals Unit affirmed the decision, relying on the reasoning of the Hearing Officer (that one cannot be found to have failed inspection requirements when one also fails to obtain a vehicle). Further, the Appeals Unit expressly stated that the TLC should have sought revocation under Rule 82-06(b)(3), not Rule 82-09(f)(3).

The TLC now petitions the Chairperson pursuant to Rule 68-12 to reverse the Appeals Unit's determination. The TLC argues that Rule 82-09(f)(3) requires a SHL License holder to comply with all inspection requirements – including the requirement to have the License-affiliated vehicle inspected within 60 days of the License's issuance – and mandates the penalty of revocation where those requirements are not met. The TLC further argues that the decision of the Appeals Unit is contrary to the permit procedure that requires active for-hire use of a SHL vehicle.

RULE INTERPRETATION

Rule 82-09(f)(3) states in full: A Street Hail Livery License will be revoked for non-use if for 60 or more days, the License holder fails to comply with the inspection requirements (as required by § 82-30 of this Chapter).

Rule 82-30 governs vehicle inspections. Specifically, Rule 82-30(a) provides that “[n]o new or replacement Street Hail Livery can operate for hire unless it has been inspected and approved by the Commission.” Rule 82-30(b) states that “[a] Licensee must have the Street Hail Livery inspected every six months at a date and time designated by the Commission and at any other time deemed necessary by the Commission.”

Rule 82-06(b)(3) is also relevant to our analysis. It requires that an SHL License be placed into service within 90 days of issuance, or in the case of an accessible license, within 180 days of issuance. The Chairperson can extend these dates for good cause.

Rule 82-09(f)(3) mandates that a SHL License will be revoked where the licensee fails to comply with the inspection requirements set forth in Rule 82-30. The inspection requirements set forth in Rule 82-30(a) are simple: a SHL must be inspected at any time deemed necessary by the TLC, and a SHL cannot operate for hire unless it has been inspected. The applicable “date and time deemed necessary by the Commission” is contained in Rule 82-06(b)(3), which requires that an SHL be hacked up and placed into service within 90 days (or 180 days, in the case of an accessible SHL License) of issuance. Taken together, these rules create a simple but definite requirement: a SHL must be placed into service, and therefore necessarily inspected, within 90 or 180 days of the SHL License's issuance. This rule sets a bright line that must be applied in all cases, except for good cause, which is a determination that is made solely at the Chairperson's discretion.

Accordingly, by this Order it is the TLC's determination that upon the issuance of an SHL license, the licensee has 90 days or, in the case of an accessible license, 180 days to submit a vehicle for inspection and approval by the TLC. If inspection is not completed within this time frame, the TLC must seek revocation under Rule 82-09(f)(3).

ANALYSIS

The TLC issued a SHL License to Respondent on July 8, 2013. The TLC notified Respondent on November 26, 2013 – 141 days after the License was issued – that the License needed to be placed into service by January 4, 2014, and that to place it into service, the License must be affiliated with a vehicle and that vehicle must be inspected. Respondent did not fulfill these requirements. Consequently, on February 6, 2014 – 213 days after the License was issued – the TLC issued a summons to Respondent for a violation of Rule 82-09(f)(3). At the OATH hearing, Respondent admitted to the violation and provided no defense or explanation for his failure to comply with TLC Rules, besides stating that he was “lazy.”²

The uncontested facts of the instant case demonstrate a clear violation of TLC Rule 82-09(f)(3) because Respondent failed to have a vehicle inspected and placed into service within the necessary timeframe after issuance of his SHL License. The Hearing Officer's reasoning that one could not be found guilty of failing to present a car for inspection if one does not have a car is wholly illogical; the requirement and purpose of presenting a car for hack up inspection is to prove that a licensee does in fact have a car that meets TLC's standards. To excuse a SHL Licensee's failure to meet the fundamental requirement of placing a car into service frustrates the entire purpose of requiring a vehicle to be presented for inspection – that is, to place that vehicle into service for the riding public. Therefore, the Hearing Officer's dismissal of the summons was reversible error.

The Appeals Unit erred in failing to correct the Hearing Officer's dismissal of the summons. The Appeals Unit adopted the faulty reasoning of the Hearing Officer, and further stated that the Commission “should have” proceeded against the respondent under a different rule. This presents two errors: first, for the reasons stated above, the facts of the case demonstrate that Respondent failed to present a vehicle for inspection within the date and time deemed necessary by the Commission. The Appeals Unit should have reversed the Hearing Officer and imposed the attending penalty for violation of TLC Rule 82-09(f)(3), which is revocation of the SHL License. Secondly, the Appeals Unit acted outside the scope of its authority in suggesting that TLC should have prosecuted Respondent for a different violation. The facts of the case supported a finding of guilt for the rule citation under which the TLC proceeded, and therefore the Appeals Unit should have reversed the dismissal of the summons.

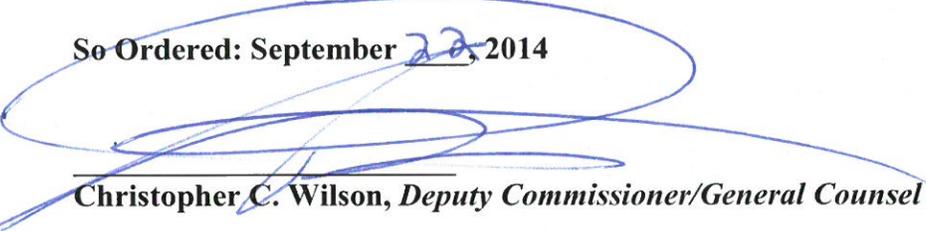
DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Enrique Pichardo (TLC Lic. No. AA229), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #NU0000009 is reversed. **The penalty of license revocation is hereby imposed.**

² The average time (including waiting time) to complete SHL inspection is 57 minutes.

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

So Ordered: September 22, 2014


Christopher C. Wilson, Deputy Commissioner/General Counsel