

## CHAIRPERSON'S FINAL DETERMINATION AND ORDER

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*In the Matter of*  
New York City Taxi & Limousine Commission  
*Petitioner*  
*against*  
Samfes Yo Corporation  
*Respondents*

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### DETERMINATION

The decision of the Office of Administrative Trials and Hearings (“OATH”) Taxi and Limousine Tribunal Appeals Unit (“Appeals Unit”) regarding summons #1438404A is **reversed and remanded**.

### FINDINGS OF FACT

The New York City Taxi and Limousine Commission (“TLC”) summonsed Respondent Samfes Yo Corporation (the owner of a vehicle unlicensed by the TLC) for violating section 19-506(b)(1) of the New York City Administrative Code (“Administrative Code”). Section 19-506(b)(1) prohibits “any person [from] operat[ing] any vehicle as a taxicab,... or for-hire vehicle in the city, without first having obtained an appropriate license therefor...”<sup>1</sup>

A hearing was held on the matter before Hearing Officer Sandra Frelix on July 3, 2012. At the hearing, the sworn-to summons was entered as evidence. The summons alleged that a TLC inspector observed Respondent’s unlicensed vehicle stop to pick up a street hail, and that computer verification at the time of the stop confirmed that the vehicle was: “not duly licensed by NYC TLC [and] ha[d] no for hire vehicle insurance.” The Hearing Officer dismissed the summons on the ground that the TLC failed to show that the Respondent dispatched the unlicensed vehicle to be used for illegal for-hire activity: “A presumption of dispatch [for illegal activity] will not be inferred unless the presumption is expressly stated in the applicable Rule.”<sup>2</sup>

TLC appealed the Hearing Officer’s decision on the ground that there is a presumption of a vehicle owner’s permission where unlicensed for-hire activity is shown. On August 22, 2012, the Taxi and Limousine Tribunal Appeals Unit affirmed Hearing Officer Frelix’s decision. The Appeals Unit’s decision held that, because no presumption of dispatch is provided for in section 19-506(b), there was therefore insufficient evidence to establish that the owner permitted the driver to operate for hire.

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<sup>1</sup> NYC Admin. Code §19-506(b)(1), as it appeared prior to amendments made in 2012.

<sup>2</sup> Citing *Taxi & Limousine Commission v Delgados Livery Service Corp.*, Lic. No. 5372979 [June 14, 2012]

Pursuant to TLC Rule 68-16(a)<sup>3</sup> TLC now petitions the Chairperson to reject the Appeals Unit's decision on the grounds that the Appeals Unit's interpretation of section 19-506(b)(1) of the Administrative Code is incorrect.

### RULE INTERPRETATION

Section 19-506(b)(1) of the Administrative Code states:

[]any person who shall permit another to operate or who shall knowingly operate or offer to operate for hire any vehicle as a taxicab ... or for-hire vehicle in the city, without first having obtained or knowing that another has obtained a license for such vehicle ... shall be guilty of a violation.

Local Law 32 of 2012 amended Section 19-506(b)(1) in order to increase penalties for vehicles that are unlicensed by the TLC and illegally pick up street-hail passengers and transport passengers for-hire. Specifically, the amendments more than doubled the criminal penalties for this unlicensed illegal activity – increasing the fines from a range of \$400 to \$1,000 to an amended range fine of \$1,000 to \$2,000 and up to sixty days imprisonment – and increased civil penalties from a range of \$200 to \$1,500 to an amended range of \$1,500 to \$2,000. Review of public commentary from the amending bill's sponsors makes clear that the intention was to “drastically increase[] [penal]ties for unlicensed for hire vehicles,” as a “matter of public safety.”<sup>4</sup>

The Appeals Unit, in recognition of the legislative intent demonstrated by the 2012 amendments, previously interpreted Section 19-506(b)(1) of the Administrative Code to create a presumption that the owner of a vehicle used in illegal for-hire activity consented to such activity: “Ownership of a vehicle observed engaging in for-hire activity creates a presumption that the vehicle was operated for-hire with the owner's permission, whether express or implied ...”<sup>5</sup> However, in the instant case, the Appeals Unit departed from precedent and held that the presumption of an owner's consent will not be inferred unless the presumption is expressly stated in the applicable Rule.

The Appeals Unit in the instant case based its holding on the decision in *Taxi and Limousine Commission v Delgados Livery Service Corp.*, Lic. No. 5372979 [June 14, 2012]. *Delgados* held that TLC Rule 59A-11(b)(1), which prohibits a vehicle owner from dispatching the vehicle unless its driver possesses a valid for-hire driver's license, does not expressly provide for a presumption of dispatch and therefore the Commission must prove that the owner dispatched the unlicensed driver. The Appeals Unit's reliance on the holding in *Delgados* is misplaced and incorrect.

Administrative Code Section 19-506(b) is used to prosecute owners and drivers of vehicles that are not licensed by the TLC who illegally use the vehicles to transport passengers for-hire. Dispatch is not an element of a 19-506(b)(1) violation. Rather the elements are two-fold: (1)

<sup>3</sup> 35 RCNY §68-16(a)

<sup>4</sup> N.Y. City Council Comm. on Transp., *Intro 735*, Reg. Sess. Tr. at 3/21-22, 58/9-25, 59/2-7 (June 12-13, 2012)

<sup>5</sup> *Taxi & Limousine Commission v. Yukanov Fuzaylov*, Lic. No. U65098 (April 29, 1994)

operating or permitting another to operate a vehicle for-hire, (2) without obtaining or ensuring that another has obtained the proper license for that activity. Accordingly, the Appeals Unit erred in applying the standard set forth in *Delgados* to the instant case, because *Delgados* specifically addressed the presumption of dispatch in the context of a 59A-11(b)(1) violation. Furthermore, the Appeals Unit's decision to apply the *Delgados* holding to a Section 19-506(b)(1) analysis is contrary to the plain language of the statute and the legislative intent of the New York City Council.

The purpose of Section 19-506(b)(1) of the Administrative Code is to enable the TLC to protect the riding public by effectively prosecuting and deterring illegal for-hire activity committed by unlicensed vehicles. This legislative intent is demonstrated by the City Council's recent amendments to Section 19-506 to increase penalties for vehicles that transport passengers for-hire but are not properly licensed by the TLC, as well as the unequivocal statements made by Council Members that the intention was to promote public safety by harshly penalizing vehicle owners who have not been through the rigorous TLC licensing process, yet hold themselves out to the public as such. By removing the presumption of an owner's consent to illegal activity, the Appeals Unit's decision hampers the TLC's ability to effectuate the plain purpose of Section 19-506(b)(1) of the Administrative Code, which is to protect the safety of passengers.

Accordingly, by this order, the TLC interprets Section 19-506(b) of the Administrative Code to create the presumption that where a driver engages in illegal for-hire activity in violation of Section 19-506(b) of the Administrative Code, the owner of the vehicle is presumed to have consented to the activity.

### ANALYSIS

In the instant case the TLC presented a sworn summons issued by a TLC inspector that clearly set forth the elements of an illegal street-hail violation: "... I saw the above driver operating the [] vehicle for hire [in Brooklyn]. Passengers stated that they were being dropped off ... for \$2.00 each. Per TLC computer check, vehicle is not duly licensed by NYC TLC. Vehicle also has no for hire vehicle insurance." Accordingly, the TLC's evidence presented a prima facie case of an unlicensed vehicle being used for illegal for-hire activity in violation of Section 19-506(b)(1) of the Administrative Code. However, the Hearing Officer incorrectly dismissed the violation on the grounds that the TLC presented no evidence that the owner consented to the activity. The Appeals Unit upheld the decision.

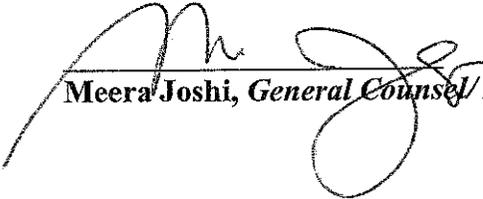
The Appeals Unit's decision is incorrect. Upon establishing that the vehicle was used for illegal for-hire activity, the TLC was entitled to the presumption that the owner consented to the illegal activity. The Appeals Unit's decision must be vacated and the case must be remanded in order to properly include the presumption that Respondent consent to illegal street-hail activity.

### DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Samfes Yo Corporation (TLC Lic. No. 5442130), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #1438404A is reversed and remanded for further proceedings consistent with this Order.

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

So Ordered: November 30, 2012

  
Meera Joshi, *General Counsel/ Deputy Commissioner of Legal Affairs*