

**CHAIRPERSON'S FINAL DETERMINATION AND ORDER**

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*In the Matter of*  
New York City Taxi & Limousine Commission  
*Petitioner*  
*against*  
Naqman Iqbal  
*Respondent*

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**DETERMINATION**

The decision of the Office of Administrative Trials and Hearings (“OATH”) Taxi and Limousine Appeals Unit (“Appeals Unit”) regarding summons #1293920A is **reversed in part and modified**.

**FINDINGS OF FACT**

Respondent was issued summons #1293920A for violating TLC Rule 6-16(u)(1)(Title 35 RCNY §6-16(u)(1): use of an electronic device while operating a for-hire vehicle)<sup>1</sup>.

On May 12, 2010, a hearing was held on summons #1293920A. At the hearing, a TLC Inspector testified that he observed Respondent in a for-hire vehicle (“FHV”) typing on a laptop. The Inspector pulled over Respondent and Respondent stated that he was using the laptop in order to find directions to an address. Respondent testified that he was using the laptop, but that he typed only when stopped at a red light.

The ALJ found Respondent not guilty of the violation and dismissed the summons based on the finding that “the laptop in this instance does not fall under the definition of a portable or hands-free electronic device.” The TLC appealed the ALJ’s decision and argued that a laptop is a portable hands-free device prohibited under TLC Rule 6-16(u)(1).

The Appeals Unit reversed the ALJ’s decision. The Appeals Unit cited TLC Rule 2-01, which defines a “portable or hands free electronic device” to include a laptop computer or portable computer, and held: “[because] [R]espondent was using a portable or hands-free electronic device which was able to act as a laptop he is in violation of Rule 6-16[(u)(1)]”<sup>2</sup>. The Appeals Unit remanded the case for a new hearing.

**ANALYSIS**

This Decision does not disturb the findings of guilt made by the Appeals Unit. The Appeals Unit’s determination that Respondent was guilty of violating Rule 6-16(u)(1) was correct. However, the Appeals Unit erred in remanding the matter for a new hearing.

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<sup>1</sup> TLC Rule 6-16(u)(1) is codified in the Commission’s newly adopted rules under 35 RCNY §54-14(g)

<sup>2</sup> *Taxi & Limousine Commission v Naqman Iqbal*, Lic. No. 5301264 (November 4, 2011)

TLC Rule 6-16(u)(1) provides:

A driver shall not use a portable or hands-free electronic device while operating a for-hire vehicle, unless such for-hire vehicle shall be lawfully standing or parked.

“Use” of a portable or hands-free electronic device means that the driver is deploying any of the functions of the portable or hands-free electronic device....<sup>3</sup>

Violation of TLC Rule 6-16(u)(1) results in a mandatory \$200 fine.<sup>4</sup>

The ALJ reviewed the evidence and testimony presented at the hearing, and found that Respondent admitted to using a laptop when stopped at a red light while operating an FHV. The ALJ’s findings are not disturbed because they are based on a determination of credibility and are supported by substantial evidence.<sup>5</sup> However, the ALJ was incorrect in holding that Respondent’s actions do not constitute a violation of TLC Rule 6-16(u)(1). TLC Rule 6-01 provides the definition of “portable or hands-free electronic device” as it applies to Rule 6-16(u)(1).<sup>6</sup> This definition specifically includes “any electronic device able to... act as a laptop computer or portable computer.”<sup>7</sup> Accordingly, the ALJ erred in holding that the laptop did not qualify as a portable electronic device, and the Appeals Unit’s reversal of the ALJ’s decision was correct.

The TLC’s Petition for Review argues that the Appeals Unit erred by remanding the case because “it was clear... that Respondent was guilty of the violation and since the record on appeal is sufficient for the Appeals unit to correct an error of law, the appropriate penalty should have been imposed.” In his answer to TLC’s petition, Respondent presents the same defense put forth at the hearing. The issue is whether the Appeals Unit made a legal error by remanding the case for a new hearing.

The rules governing adjudications at the TLC state: “[o]n appeal, the determination of the ALJ can be affirmed, reversed in whole or in part, or modified. If the record on appeal is insufficient for the Appeals Unit to correct an error of law, the matter may be remanded...for a new Hearing.”<sup>8</sup> Therefore, upon finding reversible error, the Appeals Unit is required to determine whether the record is sufficient to correct the error of law. If the record is sufficient, the Appeals Unit must correct the error of law as necessary.

The record clearly demonstrates that Respondent used a laptop computer while operating an FHV. Therefore, upon determination that this fact established a violation of TLC Rule 6-16(u)(1), the Appeals Unit was obligated to correct the error of law and impose the attending violation. In cases such as this, where the record demonstrates a violation and the penalty for such violation is set by statute, the Appeals Unit must not remand the case for a new hearing. Rather, in such cases where no new findings of fact are required to establish a rule violation, the Appeals Unit must impose the prescribed penalty and issue the final disposition of the case.

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<sup>3</sup> 35 RCNY §6-16(u)(1)

<sup>4</sup> 35 RCNY §6-22

<sup>5</sup> see *Taxi & Limousine Commission v. Exec U Car Limo Inc., Lic. No. 5179939* (September 27, 2007) citing *300 Gramatan Ave. Assoc. v. State Div. of Human Rights*, 45 NY2d 176 (July 13, 1978)

<sup>6</sup> TLC Rule 2-01, which is cited in the Appeals Unit’s decision, provides an identical definition of “portable or hands-free electronic device,” but is used in the context of medallion taxicabs and not for-hire vehicles.

<sup>7</sup> 35 RCNY §6-01

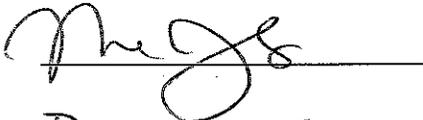
<sup>8</sup> Title 35 RCNY §68-15(f)

**DIRECTIVE AND ORDER**

In the matter of New York City Taxi & Limousine Commission against Nagman Iqbal, the decision of the OATH Taxi and Limousine Appeals Unit regarding summons # 1293920A is reversed in part and modified. **The Appeals Unit's finding that Respondent violated Rule 6-16(u)(1) is not disturbed by this Order. The Appeals Unit's determination to remand the case is reversed. The mandatory \$200 fine for Respondent's violation of Rule 6-16(u)(1) is hereby imposed.**

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

So Ordered: January 23 2012

  
DC. Meera Joshi