

**CHAIRPERSON'S FINAL DETERMINATION AND ORDER**

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*In the Matter of*  
New York City Taxi & Limousine Commission  
*Petitioner*  
*against*  
Gurjeet Singh  
*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 #1321164A is **reversed in part and modified**.

**FINDINGS OF FACT**

Respondent was issued summons # 1321164A for violation of TLC Rule 2-25(h) (Title 35 RCNY §2-25(h): use of an electronic device while operating a taxicab)<sup>1</sup>.

On April 29, 2011, a hearing was held on the violation cited in summons # 1321164A. At the hearing, a TLC Inspector testified that he observed Respondent with a cell phone earpiece in his ear while driving a passenger. The Inspector testified that he did not examine the earpiece or the phone. Respondent testified that he had used the phone earlier in the day but that he had detached the phone from the earpiece and placed the phone on the dashboard. Respondent stated that he was not using the phone, but that he had forgotten he still had the earpiece in his ear.

The ALJ found Respondent’s testimony to be credible. The ALJ dismissed the summons on the basis that the earpiece was not attached to the phone. The TLC appealed the ALJ’s decision and argued that the cell phone does not have to be in use for a Rule 2-25(h) violation to be found.

The Appeals Unit reversed the ALJ’s decision and held that “the act of having an earpiece in the ear with a wire that allows connection of the device to a cell phone is the deployment of a device in violation of Rule 2-25(h).”<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 2-25(h) was correct. However, the Appeals Unit erred in remanding the matter for a new hearing.

TLC Rule 2-25(h) provides:

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<sup>1</sup> TLC Rule 2-25(h) is codified in the Commission’s newly adopted rules under 35 RCNY §54-14(e)(1)

<sup>2</sup> *Taxi & Limousine Commission v Gurjeet Singh*, Lic. No. 500973 (Nov. 2, 2011)

A driver shall not use a portable or hands-free electronic device while operating a taxicab... "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, or has a device that permits the hands-free use of a portable or hands-free electronic device in the immediate proximity of the driver's ear.<sup>3</sup>

Violation of TLC Rule 2-25(h) results in a mandatory \$200 fine.<sup>4</sup>

The ALJ reviewed the evidence and testimony presented at the hearing, and found that Respondent had a cell phone earpiece in his ear, though it was not connected to a phone at the time of the citation. 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 Rule 2-25(h). It is settled case law that "use" of an electronic device under TLC Rule 2-25(h) is established if a driver has an earpiece in his ear, even if the earpiece is not in use with the cell phone.<sup>6</sup> Therefore, the Appeals Unit's determination that Respondent was guilty of violating Rule 2-25(h) was correct and the Appeals Unit's reversal of the ALJ's decision is upheld.

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>7</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 had a cell phone earpiece in his ear while he was operating a taxicab. Therefore, upon determination that this fact established a violation of Rule 2-25(h), 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.

### **DIRECTIVE AND ORDER**

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<sup>3</sup> 35 RCNY §2-25(h)

<sup>4</sup> 35 RCNY §2-86

<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)

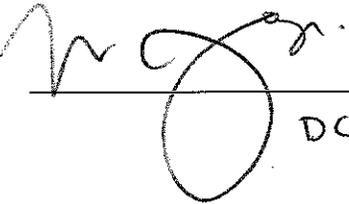
<sup>6</sup> *Taxi and Limousine Commission v Md M. Uddin*, Lic. No. 5287609 (November 4, 2011)

<sup>7</sup> Title 35 RCNY §68-15(f)

In the matter of New York City Taxi & Limousine Commission against Gurjeet Singh, the decision of the OATH Taxi and Limousine Appeals Unit regarding summons # 1321164A is reversed in part and modified. **The Appeals Unit's finding that Respondent violated Rule 2-25(h) 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 2-25(h) is hereby imposed.**

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

So Ordered: January 23, 2012

  
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DC. Meera Joshi