

## CHAIRPERSON'S FINAL DETERMINATION AND ORDER

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*In the Matter of*  
New York City Taxi & Limousine Commission  
*Petitioner*  
*against*  
Tab Operating Co. and Rutabaga Cab Corp.  
*Respondents*

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### **DETERMINATION**

The decisions of the Office of Administrative Trials and Hearings ("OATH") Taxi and Limousine Tribunal Appeals Unit ("Appeals Unit") regarding summonses #AD07071 and #AD07087 are **reversed**.

### **FINDINGS OF FACT**

#### Tab Operating Co.

Respondent Tab Operating Co. ("Tab") was charged with violating TLC Rule 58-12(d)(1), which prohibits medallion owners from allowing drivers to operate a taxicab without a current TLC license, when it permitted medallion #6L26 to be operated by driver Muhtar Baba (TLC license #5347757) on January 4, 2012.

A hearing was held on the matter before Hearing Officer Baranoff on July 30, 2012. At the hearing, the TLC presented evidence that Muhtar Baba's TLC license was suspended from December 28, 2011, until January 9, 2012. The TLC presented further evidence that Muhtar Baba drove medallion #6L26 from 5:45 pm on January 3, 2012, until 2:58 am on January 4, 2012. Tab did not contest that Muhtar Baba operated medallion #6L26 during this time. Rather, Tab offered the defense that Muhtar Baba was listed on the TLC website as possessing a valid and current TLC license throughout Mr. Baba's shift. The Hearing Officer rejected this argument and found Tab guilty. The Hearing Officer's decision states, in relevant part:

"I find the evidence submitted by [the TLC] to be credible, and that it establishes the charges. [Tab] has failed to set forth a valid legal defense. In TLC v. Our Cab Corp, Lic. No. 9N37, 4/5/12, the Appeals Board held that "Being on the Commission's list of current medallion drivers the Thursday and Friday prior to the date of violation is not a valid legal defense to a Rule 58-12(d)(1) violation..."

Here, the facts are essentially the same as in the Our Cab Corp case. As such, the law itself, and the Appeals Board decisions in that case, must be followed in the instant matter."

Tab appealed the decision and reiterated its earlier defense. On September 7, 2012, the Appeals Unit affirmed the decision on the grounds that the decision was based on substantial evidence.

Tab petitions the Chairperson to reject the Appeals Unit's decision on the grounds that it relied on the licensees list published on the TLC website when it dispatched Mr. Baba to drive medallion #6L26.

#### Rutabaga Cab Corp.

Respondent Rutabaga Cab Corp. ("Rutabaga") was likewise charged with violating TLC Rule 58-12(d)(1) when it permitted medallion #7G12 to be operated by Ibrahima Sanoh (TLC license #5347737) on January 2, 2012.

A hearing was held on the matter before Hearing Officer Baranoff on July 30, 2012. At the hearing, the TLC presented evidence that Ibrahima Sanoh's TLC license was suspended from December 28, 2011, until January 10, 2012. The TLC presented further evidence that Ibrahima Sanoh drove medallion #7G12 on January 2, 2012. Rutabaga did not contest that Ibrahima Sanoh operated medallion #7G12 on January 2, 2012. Rather, Rutabaga offered the defense that Ibrahima Sanoh was listed on the TLC website as possessing a valid and current TLC license on January 2, 2012. The Hearing Officer found Rutabaga guilty. The Hearing Officer's decision states, in relevant part:

"I find the evidence submitted by [the TLC] to be credible, and that it establishes the charges. [Rutabaga] has failed to set forth a valid legal defense. In TLC v. Our Cab Corp, Lic. No. 9N37, 4/5/12, the Appeals Board held that "Being on the Commission's list of current medallion drivers the Thursday and Friday prior to the date of violation is not a valid legal defense to a Rule 58-12(d)(1) violation..."

Here, the facts are essentially the same as in the Our Cab Corp case. As such, the law itself, and the Appeals Board decisions in that case, must be followed in the instant matter."

As was the case in Tab, Rutabaga appealed the decision and reiterated its earlier defense. On August 20, 2012, the Appeals Unit affirmed the decision on the grounds that the decision was based on substantial evidence.

Echoing Tab's argument, Rutabaga petitions the Chairperson to reject the Appeals Unit's decision on the grounds that it relied on the licensees list published on the TLC website when it dispatched Mr. Sanoh to drive medallion #7G12.

### **RULE INTERPRETATION**

TLC Rule 58-12(d)(1) provides:

No Taxicab can be operated for hire unless the driver has in his or her possession a Valid Taxicab Driver's License.

OATH case law has correctly held that Rule 58-12(d)(1) places the burden on medallion owners to ensure that taxicabs are only operated by drivers with valid TLC licenses.<sup>1</sup> By this order, the TLC interprets a medallion owner to have met this burden by confirming a driver's name on the TLC licensees lists.

Respondents correctly contend that they are entitled to rely on the information presented in TLC's published licensees lists. In 2005, the TLC began posting a list of all current medallion taxicab licensees authorized to provide service. The licensees lists provide the only accessible means for medallion owners to obtain the status of a driver's TLC license. It is the TLC's policy that medallion owners may rely on the licensees lists.<sup>2</sup> Accordingly, for purposes of compliance with Rule 58-12(d)(1), medallion owners may rely on the licensees list in order to determine the current status of a driver's license.<sup>3</sup>

### ANALYSIS

In the current cases, Respondents claim that the drivers appeared on the licensees lists on the relevant dates. Muhtar Baba, the driver in the Tab case, was summonsed for driving without a valid license on January 4, 2012. However, as argued at hearing, Mr. Baba was listed as having a current license during the driver's shift. A licensees list was uploaded to the TLC website at approximately 3:00 pm on January 3, 2012. Mr. Baba is listed as having a current and valid TLC license on this list. Mr. Baba's shift began several hours later at 5:45 pm on January 3, 2012. When Mr. Baba's shift ended at 2:58 am on January 4, 2012, the January 3, 2012, list was still posted on the TLC website and still listed Mr. Baba as possessing a valid and current TLC license. Although the driver is *not* listed as possessing a valid TLC license in the next subsequent list posted on January 4, 2012, this list was posted approximately twelve (12) hours *after* Mr. Baba's shift ended. Therefore, at all times during Mr. Baba's shift, the driver was listed on the TLC website as possessing a valid and current TLC license.

Ibrahim Sanoh, the driver in the Rutabaga case, was summonsed for driving without a valid license on January 2, 2012. At hearing, Rutabaga argued that Mr. Sanoh was listed as having a current license during the driver's shift. The licensees list that was available on TLC's website during Mr. Sanoh's shift was created and uploaded on December 30, 2011. The December 30, 2011, licensees, list remained on the TLC website, and thus could be relied on by Rutabaga, from Friday, December 30, 2011, until approximately 3:00 pm on Tuesday, January 3, 2012. A licensees list was not created on Monday, January 2, 2012, due to the observed holiday. In addition to the December 30, 2011, licensee list, the driver was also listed as possessing a valid and current TLC license in the January 3, 2012, list. Mr. Sanoh appeared on the December 30,

<sup>1</sup> See *Taxi & Limousine Commission v. Suresh and Indira Chato*, Lic. No. 3F93 (August 16, 2011), and *Taxi & Limousine Commission v. Rpper Phillippe*, Lic. No. 1B45 (August 29, 2011).

<sup>2</sup> In addition to licensees, third-party vendors rely on the current licensees lists. T-PEP vendors offer a "lock-out" service to vehicle owners. The "lock-out" service restricts use of a vehicle's T-PEP system to those drivers with current TLC licenses.

<sup>3</sup> TLC licensed drivers are provided notice of any changes to their license status by the TLC or OATH TLT. Accordingly, unlike medallion owners, drivers may not rely on the information provided in the licensees list to determine their current license status.

Taxi & Limousine Commission v Tab Operating Co. (Summons #AD07071) & Rutabaga Cab Corp.  
(Summons #AD07087)

2011, list as having a valid and current TLC license. As was the case in Tab, at all times during Mr. Sanoh's shift, the driver was listed on the TLC website as possessing a valid and current TLC license.

**DIRECTIVE**

In the matter of New York City Taxi & Limousine Commission against Tab Operating Co. (TLC Lic. No. 6L26), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #AD07071 is reversed. **The imposed \$400.00 fine and the suspension of Respondent's TLC license is hereby vacated.**

In the matter of New York City Taxi & Limousine Commission against Rutabaga Cab Corp. (TLC Lic. No. AD07087), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #AD07087 is reversed. **The imposed \$400.00 fine and the suspension of Respondent's TLC license is hereby vacated.**

This constitutes the final determination of the TLC in these matters.

So Ordered: October 23, 2012



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