

Ali v New York City Taxi and Limousine Commission
2001 NY Slip Op 30052(U)
August 29, 2001
Supreme Court, New York County
Docket Number:
Judge: Eileen Bransten
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: BRANSTEN

Justice

PART 21

Ali

INDEX NO.

107490/01

MOTION DATE

5/2/01

MOTION SEQ. NO.

01

MOTION CAL. NO.

9

Taxi & Limousine

The following papers, numbered 1 to 3 were read on this motion to renew ALJ's decision

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits

Replying Affidavits

PAPERS NUMBERED

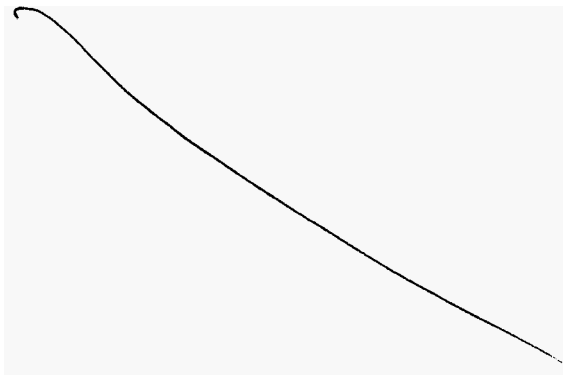
1

2

3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying memorandum decision.



Dated: 8-29-01

Eileen Bransten

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

EILEEN BRANSTEN

**EILEEN BRANSTEN
J.S.C.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

-----X

AHMED ALI,

Petitioners,

For a Judgment Pursuant to CPLR Article 78

Index No. 107490/01

Motion Date: 5/01/01

Motion Seq. No.: 001

Motion Cal. No.: 9

-against-

THE NEW YORK CITY TAXI AND LIMOUSINE
COMMISSION,

Respondent.

-----X

PRESENT: EILEEN BRANSTEN, J.

Petitioner, Ahmed Ali (“Ali”), seeks an order annulling the determination of respondent the New York City Taxi and Limousine Commission (the “TLC”) revoking Ali’s hack operator license (the “license”), and reinstating the license.

On February 11, 2000, Ali received two summonses pursuant to TLC’s Taxicab Drivers Rules, 35 Rules of the City of New York (“RCNY”) 2-61 (a) (2) and 2-50 (b), for failing to stop for Edward Williams (“Williams”), an African-American undercover TLC inspector. See, Petition, Exh. B. Section 2-50 (b) prohibits taxi drivers from refusing to pick up passengers (a “refusal”) “without justifiable grounds,” *see* 35 RCNY 2-50 (b), 2-50 (e), and section 2-61 (a) (2) precludes “willful act[s] of omission or commission [by taxi drivers] which [are] against the best interests of the public.” *See* 35 RCNY 2-61 (a) (2).

Ali’s charges were subsequently amended to include violations for driving off with an open taxi door while the passenger was holding on to the door in violation of Vehicle and

Traffic Law § 1162 pursuant to 35 RCNY 2-21 (b) (2); abuse of a passenger pursuant to 35 RCNY 2-60 (a) because of the section 2-21 (b) (2) violation; and use or attempted use of physical force against a passenger pursuant to 35 RCNY 2-60 (b), also because of the section 2-21 (b) (2) violation. See, Verified Answer, Exh. B. The notice of amended charges also informed Ali that the TLC would seek discretionary revocation of his license pursuant to 35 RCNY 8-14.’

A TLC administrative law judge (the “ALJ”) held a hearing on the charges against Ali on March 3, 2000. The ALJ found Williams’ recitation of the facts “credible and persuasive.” See, *id.*, Exh. D. Williams testified that he was standing on Second Avenue and 13th Street with another inspector when he stretched his hand and arm out to hail Ali’s taxi as it traveled west on 13th Street. At the time, the taxi’s “For Hire” light was illuminated. Williams testified that he made “eye contact” with Ali as the car stopped for the red light. When Williams approached the car and opened the rear door, the light changed to green and Ali drove off with the door open. As Williams watched, Ali drove to 12th Street with the door still ajar where he stopped for a red light. Williams and his partner

¹ The TLC may seek revocation of a license for a TLC violation in discretionary revocation proceedings on the recommendation of an administrative law judge, even if the penalty for violation of the rule is not license revocation. See, 35 RCNY 8-14(a).

then approached Ali, identified themselves as TLC inspectors and issued two summonses. *See, id.*

Ali stated in his defense that by the time he saw Williams, the light was already green; that he thought Williams' signal meant that he wished to cross the street against the light, even though he had never seen a pedestrian do that; that he only slowed at the light as he turned from 13th Street onto Second Avenue; that the car was moving as Williams opened the door; that he thought that Williams was angry and would assault him for not being allowed to cross against the light; and that he could not stop anyway because he had to meet his medallion owner at 6:30 p.m. *See, id.*

Upon the ALJ's recommendation, the TLC Chairperson found Ali guilty of the 2-50 (b), 2-21 (b) (2) and 2-61 (a) (2) violations, and dismissed the other charges. *See, Petition, Exh. C.* As a result of the guilty findings, Ali was fined a total of \$500.00 for the 2-50 (b) and 2-21 (b) (2) violations, and his license revoked for the 2-61 (a) (2) violation. *See, id.*

On appeal, an Executive Session of the TLC Commissioners ("the Commissioners") affirmed the Chairperson's decision without modification. *See, id., Exhs. G & H.*

Ali then brought this petition, asserting that the revocation of his license was arbitrary, capricious, unreasonable, contrary to the law and unsupported by substantial evidence. *See, Petition, ¶ 22.* Ali contends that he should not have been charged with 35 RCNY § 2-61 (a) (2) for his first refusal; that the ALJ's finding of a 35 RCNY § 2-61 (a)

(2) violation was unsupported by the evidence; and that he has suffered \$20,000.00 in damages as a result of his license revocation.

Discussion

Ali challenges revocation of his license on two grounds: that he should not have been charged with violations of both 35 RCNY 2-50 (b) and 2-61 (a) (2); and that the ALJ's recommendation, adopted by the TLC, was not supported by the record.

The question of whether the TLC's determination was supported by substantial evidence must be transferred to the Appellate Division because it resulted from a hearing held pursuant to law at which evidence was taken. *See*, CPLR 7804 (g). However, Ali's claim that he should not have been charged with violations of both 35 RCNY 2-50 (b) and 2-61 (a) (2), if sustained could "terminate the proceeding," thus this Court must resolve that issue. *See, id.*

It is well settled that the TLC may establish standards for passenger safety and service. *See*, N.Y.C. Charter §§ 2300, 2303 (b); N.Y.C. Admin. Code § 19-503; *N.Y.C. Comm. for Taxi Safety v. N.Y.C. Taxi & Limousine Comm'n.*, 177 Misc.2d 855, 861 (N.Y. Co., 1998), *aff'd*, 256 A.D.2d 136 (1st Dept. 1998). Courts will accord the TLC a high degree of deference in the exercise of its rule-making authority, "especially when the [TLC] acts in the area of its particular expertise." *See, Consolation Nursing Home, Inc. v. N.Y.S. Health Facilities Ass'n, Inc.*, 85 N.Y.2d 326, 331 (1995); *United Car & Limousine Found., Inc. v. N.Y.C. Taxi & Limousine Comm'n.*, 178 Misc.2d 734, 737 (Sup. Ct. N.Y. Co., 1998).

Here, Ali asserts that the 2-61 (a) (2) charge is duplicative of the 2-50 (b) charge. However, the TLC clearly has the authority to charge Ali with a 2-61 (a) (2) violation. The New York City Administrative Code (the “N.Y.C. Admin. Code”) provides that the TLC may seek license revocation “for good cause shown relating to a threat to the public health or safety” *See*, N.Y.C. Admin. Code § 19-512.1.

Additionally, although 35 RCNY 2-87 prescribes penalties for 2-50 (b) violations depending on the number of violations within a three year period, section 2-87 explicitly does not “limit or restrict” the TLC from exercising any other authority it may have to revoke a license. *See*, 35 RCNY 2-87 (a) (1). Thus, the TLC may also charge Ali with a 2-61 (a) (2) violation and institute discretionary revocation proceedings even if the violated rule does not mandate license revocation. *See*, 35 RCNY 8-14 (a), (g).

Further, the 2-61 (a) (2) violation may be justified on grounds independent of the refusal. First, driving away with an open taxi door is a different type of misconduct from a refusal. Next, the violation may be based on any “willful act of omission or commission . . . against the best interests of the public,” without limitation, including acts not specifically mentioned in the rules. *See*, 35 RCNY 2-61 (a) (2).

Thus, section 2-61 (a) (2) may be interpreted to preclude acts “plainly within the ambit of [2-61 (a) (2)].” *See*, *Fernandez v. N.Y.C. Taxi & Limousine Comm’n.*, 193 A.D.2d 423 (1st Dept. 1993). Ali undisputedly threatened Williams’ and the public’s health and safety by driving for at least a block with an open taxi door. A “person of ordinary

intelligence” would agree that it is against the public interest for taxicab drivers to drive with open doors. *See, Fernandez v. N.Y.C. Taxi & Limousine Comm’n.*, 193 A.D.2d 423. For all the foregoing reasons, the TLC has the authority to charge **Ali** with the 2-61 (a) (2) violation and revoke his license.

In view of the foregoing, it is

ORDERED that the petitioner’s application to annul the respondents’ determination to revoke his hack operator license and to reinstate the license on the ground that he was denied due process and wrongfully charged with two offenses is denied; and it is further

ORDERED that petitioner’s application to annul the respondents’ determination to revoke his hack operator license and to reinstate the license on the ground that the Commission’s determination is not supported by substantial evidence is respectfully transferred to the Supreme Court, Appellate Division, First Department for disposition pursuant to CPLR 7804(g).

The Clerk of the Court is directed to transfer the file to the Appellate Division, First Department, upon petitioner’s service upon the Clerk of a copy of this order with notice of entry.

This constitutes the decision and order of the Court.

Dated: New York, New York
August 29, 2001

ENTER:


HON. EILEEN BRANSTEN