

**Matter of Mankarios v New York City Taxi &
Limousine Commn.**

2006 NY Slip Op 30577(U)

October 31, 2006

Supreme Court, New York County

Docket Number: 107087/2006

Judge: Karen Smith

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publication.

PRESENT: **KAREN SMITH**

PART 44

Index Number : 107087/2006

MANKARIOS, BOUTROS

vs TAXI & LIMOUSINE COMMISSION

Sequence Number : 001

ARTICLE 78

INDEX NO. _____

MOTION DATE 8/28/06

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

_____ papers, numbered 1 to _____ were read on this motion to ~~for~~ Article 78 petition.

Petition - Memorandum
Notice of Motion, ~~Order to Show Cause~~ - Affidavits - Exhibits ...

Answering Affidavits - Exhibits - ~~Memorandum~~

Replying Affidavits Memorandum

PAPERS NUMBERED	
_____	<u>1</u>
_____	<u>2</u>
_____	<u>3</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition is

decided in accordance with the attached memorandum decision, ~~and order, and judgment.~~

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 41B).

Dated: 10/31/06

K.S.S.

KAREN SMITH J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 44

-----X
In the Matter of the Application of
BOUTROS MANKARIOS,

Petitioner,
-against-

Index no.: 107087/2006
Motion seq.: 001
Motion date: 8/28/06

NEW YORK CITY TAXI AND LIMOUSINE
COMMISSION,
Respondents.

**DECISION, ORDER
AND JUDGMENT**

PRESENT: KAREN S. SMITH, J.S.C.:

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or a duly authorized representative must appear in person at the County Clerk's Desk (Room 41B).

This petition brought pursuant to Article 78 of the CPLR to review a determination by the Chairperson of the New York City Taxi and Limousine Commission is granted for the reasons set forth more fully below.

Petitioner Boutros Mankarios (hereinafter "Mankarios") brought this Article 78 proceeding to review a determination of the Chairperson of the New York City Taxi and Limousine Commission (hereinafter "TLC"), who denied Mankarios' application to renew his TLC operator's license. Mankarios seeks to annul the TLC's decision dated February 8, 2006 and asks the court to issue an order directing the TLC to grant his application for a TLC operating license.

Mankarios held a TLC operating license from 1998 until January 2003. According to the record submitted by the TLC, a consumer complaint was filed against Mankarios by two passengers transported by him on October 28, 2002. Mankarios was subsequently informed that

the TLC planned to hold a hearing on the charges. Before a hearing could be held, Mankarios entered into a stipulation with the TLC, dated January 9, 2003, which provides, in relevant part:

WHEREAS, the TLC has charged the Respondent [Mankarios] with a violation of TLC Rule 2-60(a) in that on October 28, 2002, at approximately 4:30 p.m., in the borough of Manhattan, while performing your duties as a licensee, you verbally harassed two 12 year-old female passengers in your taxicab by making unwelcome comments of a sexual nature.

NOW, THEREFORE, the parties hereby agree as follows:

1. Respondent Boutros Mankarios . . . hereby enters a plea of guilty to violation of Rule 2-60(a) [harassing passengers].
* * *
3. Respondent understands that his TLC license is revoked, and hereby voluntarily surrenders his license to the TLC.
4. Respondent shall not reapply for any license issued by the TLC for a period of one (1) year from the date hereof. If Respondent should elect to reapply at a future date, the application will be referred for a fitness review. . . .

* * *

In October 2005, Mankarios applied for another TLC operator's license. Pursuant to the terms of the stipulation agreement, the TLC ordered that a fitness hearing be held to determine whether Mankarios was fit to hold an operator's license. Section 19-505(b) of the New York City Administrative Code, sets out the requirements for holding an operator's license. The broadest requirement set forth therein is that the applicant "[b]e of good moral character." (NYC Admin. Code § 19-505(b)(5)). This requirement allows the TLC to evaluate the character of an applicant and take into consideration factors that fall outside the other, more specific, requirements set forth in that section. The TLC is authorized to hold fitness hearings to determine if an applicant meets all the requirements of holding such a license, and where the subject of the hearing has held a license previously, the administrative law judge (hereinafter "ALJ") who presides over the hearing is charged with issuing a recommendation to the

chairperson, who renders a final agency decision. (35 RCNY § 8-15).

While both parties have submitted much evidence and make several arguments as to the validity of the complaint and charge leading to the stipulation, this proceeding does not involve a review of the stipulation or the underlying consumer complaint. As the stipulation obviated the need for a full hearing on the charges, for purposes of this proceeding, the facts surrounding the stipulation and guilty plea in January 2003 are limited to the stipulation itself and the record¹ and findings from the fitness hearing.

On November 18, 2005, a TLC ALJ conducted a fitness hearing to determine whether Mankarios' application for a new operator's license should be granted. The ALJ received evidence and took testimony, and the respondents here have submitted the ALJ's decision and the transcript of Mankarios' testimony before the ALJ. In the recommended decision, the ALJ describes the incident which led to the charges against Mankarios in 2003:

The applicant appeared *pro se* and testified that he had had two teenage female passengers who started talking to him about sex, opened the window and shouted and waved as he was driving, and opened the door and exited but returned in the middle of Times Square. He took them to their destination, gave them precise change and a receipt. He was later notified by the TLC and by the police that there was a problem. He was subsequently informed that the girls' parents had complained that he spoke "dirty" to them, failed to give them a receipt or change, and followed them into The Gap and grabbed one of them by the arm.

The ALJ also noted that during the time since his license was revoked, Mankarios obtained a BA in accounting, has worked as a volunteer auditor, has been an Arabic instructor for the Army and

¹ Although respondents submitted the transcript of Mankarios' testimony at the fitness hearing, it is of limited use to the Court, as a good majority of the testimony was inaudible and could not be transcribed. Therefore, since the Court is charged with reviewing the ALJ's decision itself, the Court will most closely scrutinize the facts relied upon by the ALJ in coming to his recommended decision.

is currently studying to be a certified public accountant.

In recommending that the TLC chairperson deny Mankarios' application, the ALJ noted that the incident involved young passengers and that only three years has elapsed to support his conclusion that "there is insufficient support for a conclusion at this time that the applicant may be relied upon to comply with the rules and regulations of the TLC and New York State."

Matthew Daus, the TLC chairperson, issued a final agency determination on February 8, 2006 after reviewing the ALJ's recommendation and a letter submitted by Mankarios' attorney. In his decision denying Mankarios' application, Daus stated that he accepted the ALJ's findings and that he found the arguments put forth by Mankarios' attorney in response to the ALJ's decision, unpersuasive.

The proper standard of review in a matter such the one currently before the Court is whether the administrative determination is arbitrary and capricious. (CPLR § 7803(3)). An administrative determination is considered arbitrary and capricious if it is without sound basis in reason or was generally made without regard to the facts. (*See Pell v Board of Education*, 34 NY2d 222 [1974]).

In the instant petition, the TLC's decision to deny Mankarios' operator's license application is arbitrary and capricious. In his recommendation to Daus, the ALJ provides only two reasons for a finding that Mankarios is unfit: 1) the 2002 incident involved young consumers, and 2) only three years have passed since the incident. Daus provided no further support for his decision to deny Mankarios' license, but stated that he agreed with the ALJ's recommendation.

The TLC had an opportunity to prosecute and punish Mankarios for the 2002 incident,

and chose to enter a stipulation with the following terms: a plea of guilt to the charge of harassing passengers, a \$350 fine, relinquishment of Mankarios' operator's license, and the inability to reapply for a period of one year. Had the TLC believed then that the youth of the complaining passengers warranted a longer wait period before Mankarios could reapply, it had the opportunity to fashion an appropriate penalty that included a longer wait period in the 2003 stipulation. It did not. The TLC cannot now seek to impose a harsher penalty for an already adjudicated charge.

The TLC, in its opposition papers, notes that at the time of Mankarios' license revocation in 2003, he had three other violations on his TLC record, and four traffic violations issued by the New York Police Department between 1999 and 2002. These violations, it argues, provide further support for the ALJ's determination that Mankarios cannot "be relied upon to comply with the rules and regulations of the TLC and New York State." This argument is unavailable for several reasons. First, in his recommendation, the ALJ specifically describes the TLC violations as "no[t] serious"; while noting the NYPD violations, he includes them as a fact but does not indicate that they factor into his decision at all. Second, the TLC never pursued any action to suspend or revoke Mankarios' license on the basis of his violations before 2003. There is no evidence in the record that his prior violations played any part in the TLC's decision to revoke his license in 2003. The TLC cannot, *post hoc*, support its decision with facts that it did not find determinative at the time of the decision to deny Mankarios a license. Finally, the fitness hearing was conducted to determine his fitness to carry an operator's license in 2006, not 2002. There is no evidence that Mankarios has been issued any violations or has been convicted of any crime between 2002 and 2006. In fact, there is no evidence in the record of any moral

turpitude or criminal violations other than the incidents already adjudicated and addressed by the 2003 stipulation.

By denying Mankarios' license in 2006 for the same reasons upon which it based its decision to revoke his license and fine him in 2003, the TLC has treated Mankarios as if no time has passed and no facts have changed. Such treatment is irrational and without regard to the facts.

Accordingly, it is

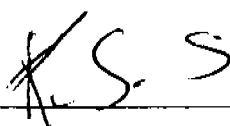
ORDERED that the decision of the respondent New York City Taxi and Limousine Commission denying petitioner's application for an operator's license is vacated and annulled; and it is further

ORDERED that the respondent New York City Taxi and Limousine Commission is directed to grant petitioner Boutros Mankarios' application for an operator's license.

The foregoing constitutes the decision and order of this court.

Dated: October 31, 2006

ENTER:



Hon. Karen S. Smith, J.S.C.

UNFILED JUDGMENT
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