

<b>Iqbal v Taxi &amp; Limousine Commn. of the City of N.Y.</b>
2007 NY Slip Op 31226(U)
May 9, 2007
Supreme Court, New York County
Docket Number: 0102428/2007
Judge: Sheila Abdus-Salaam
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. SHEILA ABDUS-SALAAM  
*Justice*

PART 13

Ansar Iqbal

INDEX NO. 102428/07

MOTION DATE 3/15/07

- v -

MOTION SEQ. NO. 001

Taxi & Limousine Commission of the City of  
New York

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this petition is granted only to the extent of remanding this matter to respondent New York City Taxi and Limousine Commission ("TLC") to consider extending the expiration date of petitioner's license, in the exercise of its discretion pursuant to 35 RNCY § 2-10 (a)(2)(A) so that petitioner has an opportunity to comply with the drug testing requirement, and is otherwise denied.

The record shows that petitioner was first issued a taxicab driver's license in 1991, which was apparently renewed annually until February 1999, when the rules were changed and TLC began issuing two-year licenses. To maintain his license, petitioner was required to undergo drug testing every year. This annual drug testing requirement was retained after the change to the two-year license. Petitioner's most recent license was issued in December 2004 and expired December 28, 2006.

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

\* 2 ]

In November 2005, the rules regarding drug testing, as set forth in the Rules of the City of New York ("RCNY"), Title 35, Chapter 2 were amended on an emergency basis to allow for summary suspension of drivers who failed to timely take their annual drug tests. In February 2006, the amendments that had been adopted on an emergency basis were made permanent and further revisions were made to the drug-testing requirements. These amendments, which became effective March 16, 2006, required that drivers whose two-year licenses were up for renewal pass a drug test within the 30-day period immediately prior to the expiration of their licenses. The consequence for failing to meet this requirement was the license would expire and not be renewable. The rule provides as is relevant here:

§ 2-19(b)(1): [A] licensee ... shall be tested annually at the licensee's expense, for drugs or controlled substances, as set forth in § 3306 of the Public Health Law. For licensees in the first year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than, the date one year prior to the expiration date of such license. For licensees in the second year of a two-year license, such testing must occur no sooner than thirty (30) days prior to, and in any event no later than the expiration date of such license ....

§ 2-19(b)(4): Failure of a licensee in the second year of a two-year license to be tested by the expiration date of such license shall result in denial of a license renewal application, if any, and expiration of the license.

On or about September 20, 2006, pursuant to its practice, TLC mailed to petitioner a renewal packet approximately 90 days before his license was set to expire. Petitioner asserts that he did not receive the packet in time to renew his license before it expired because he was out of the country. Petitioner alleges that on or about September 16, 2006, he went to Pakistan to attend to family business with the intention of returning to New York in December 2006, but because his daughter took ill and became hospitalized on December 20, 2006, he did not return to New York until January 24, 2007. Petitioner alleges that he first became aware of the rule changes

\* 3 ]  
when he attempted to renew his license on January 25, 2007 by going to the TLC offices in Long Island City. According to petitioner, he was told by a clerk at the office that he could not renew his license. When he asked to speak to a supervisor, he was told a supervisor was unavailable. He further alleges that he returned about a week later to try to explain that he had been out of the county and unable to timely comply with the renewal requirements, but that he was unable to speak to someone with authority.

Petitioner alleges that the information in the renewal packet is misleading and inconsistent in that item #6 of the "Operator License Renewal Instructions" states that late fees will be charged after a license expires and that this indicates that a late renewal is permitted, but that respondent did not permit him to submit a late application. However, there are requirements for renewal that are administrative in nature, and are separate and distinct from the drug testing requirement. According to the document entitled "Requirements for Renewal of Operator's License", all renewal operators must submit, among other things, a renewal application, a Department of Motor Vehicle driver abstract, and two photographs (Section I). Regarding the renewal fee, the rule states that any renewal application received by the Commission or postmarked after the expiration of the date of the current license shall be subject to a \$25 late fee. (Section I (A)).

In contrast, there is a separate section of the rules with respect to the Drug Testing Requirements, and there is a notice, in capital letters at the top of the instructions that alerts drivers to those requirements. Section III provides, in bold print, as follows: "It is important to note, effective March 16, 2006, for all licenses expiring on March 16, 2006 and after, that failure of a licensee to be tested by the expiration date of his or her license shall result in denial of a license renewal application, if any, and expiration of the license." Thus, as opposed to a situation where a driver submits a late renewal application and is only subject to a late fee, where the driver fails to have a drug test prior to the expiration date of his license, his application for

license renewal is denied. These two rules are not inconsistent.

Petitioner also alleges that the new rule regarding drug testing is arbitrary and capricious in that it makes no provision for drivers who were unaware of the change in the policy and who had special circumstances, such as an illness in the family, to be permitted additional time to submit a renewal application. Additionally, he claims that the rule has a discriminatory impact on immigrants who he alleges often need to travel back to their countries of origin for extensive periods of time, because the TLC does not make any exceptions for cause. However, the Rules do provide that "[t]he Commission may, in its discretion, extend the expiration date of such license by up to an additional thirty-one days." (35 RCNY § 2-10 (a)(2)(A)). Thus, a driver may seek to have the expiration of his license extended.<sup>1</sup> If petitioner had been granted such an extension in this case, he could have taken the drug test within the time frame required by § 2-19(b)(4).

As has been noted above, petitioner alleges that he was told by a clerk at the TLC office on two occasions that he could not renew his license and that there was no supervisor available to speak to him. There is no indication in this record that petitioner was told that he could apply for an extension of the expiration date of his license. Given that petitioner alleges that he was out of the country and intended to return in December prior to the expiration of his license, but that his return was delayed due to the hospitalization of his daughter in Pakistan, and that he therefore did not see the renewal application and the notice about the new drug testing requirement prior to the expiration of his license, the circumstances of this case may well be an

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<sup>1</sup>Additionally, there is a separate provision that specifically addresses the situation where a driver whose renewal license expired between March 16, 2006 and June 23, 2006 (the new drug testing requirement went into effect on March 16, 2006) was absent from the New York City area during that time period. That driver could request an extension of time to submit a license renewal application (35 RCNY § 2-10 (D) (I)). That provision is not applicable to petitioner.

instance where discretion would be exercised to grant a driver an extension of the expiration date of his license.

Accordingly, the matter is remanded to respondent for consideration of an extension of the expiration date, nunc pro tunc, so that petitioner can be afforded an opportunity to comply with the drug testing requirement.

ADJUDGED that the petition is granted as indicated above.

Dated: May 9, 2007

*SAS*

J.S.C.

Check one:  FINAL DISPOSITION       NON-FINAL DISPOSITION

Check if appropriate:       DO NOT POST       REFERENCE

**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 1412).