

**Awan v New York City Taxi & Limousine  
Comm.**

2007 NY Slip Op 32652(U)

July 26, 2007

Supreme Court, New York County

Docket Number: 0102085/2007

Judge: Sheila Abdus-Salaam

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. SHEILA ABDUS-SALAAM PART 13  
*Justice*

Mohammad Awan

INDEX NO. 102085/07

MOTION DATE 6/28/07

MOTION SEQ. NO. 001

- v -

New York City Taxi and Limousine Commission and  
Matthew W. Daus, as Chair of the New York City  
Taxi and Limousine Commission

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

The following papers, numbered 1 to \_\_\_\_\_ were read or referred to for  
Notice of Motion/ Order to Show Cause \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

**UNFILED JUDGMENT**  
This judgment has not been entered 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 141B).

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this petition is granted.

In this Article 78 proceeding, petitioner Mohammad Awan challenges respondents' determination denying his application for a taxicab driver's license. The record shows that petitioner had previously held a license for approximately nine months until a passenger filed a complaint against him with the Commission ("TLC") on January 8, 2000. The complaint alleged that Mr. Awan had kissed the complainant without her consent, had pushed her and had asked her out to dinner numerous times.<sup>1</sup> Petitioner's license was suspended pending a determination regarding the complaint.

A hearing was scheduled for April 4, 2000 at which Mr. Awan

<sup>1</sup>A copy of the complaint is not included in this record. The substance of the complaint is set forth in respondents' answer.

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

appeared by counsel. The complainant was not present. Mr. Awan entered into a Stipulation of Settlement dated April 4, 2000 in which he neither admitted nor denied the charges and voluntarily surrendered his license. The stipulation provided that he could not reapply for any license by the TLC for a year, and that should he reapply at a future date, he would be referred for a fitness review. It also provided that Mr. Awan was aware that the TLC will consider the stipulation at the fitness review and that there is no guarantee that the application will be approved in the future.

Petitioner applied for a new license in 2002. At the fitness hearing held on August 16, 2002 before Administrative Law Judge J.R. Schneider, Mr. Awan explained his version of the events involving the complainant. He testified that she had insisted upon sitting in the front seat and had repeatedly demanded that he drive faster. When he suggested that she take another taxi, she became angry and verbally abusive. He stated that during the ride, she was moving her arms and legs and moved closer to him, prompting him to push her away.

Regarding why he had entered into the stipulation, the ALJ's decision indicates that Mr. Awan told the ALJ that he didn't contest the charges because of the cost and because he had to travel to Pakistan to care for his seriously ill mother. He testified that he has five children and also supports his mother and father. The ALJ noted that Mr. Awan had been charged with sexually harassing a female passenger and being physically aggressive, that these are "extremely serious charges and directly relate to whether the applicant can be trusted to transport passengers safely and appropriately", and that although Mr. Awan denied the charges in that proceeding before the ALJ, he had an opportunity to contest them at the revocation hearing but instead had entered into a stipulation of settlement. The ALJ also noted that only about two and one-half years had elapsed since the incident and that Mr. Awan had only held a license for nine months prior to the incident. Thus, the ALJ concluded that there was "insufficient support for a

conclusion that the applicant can be relied upon not to engage in similar behavior in the future" and recommended that the application for an operator's license be denied.

Commissioner Daus adopted the recommendation, noting that Mr. Awan had now denied the allegations and was unwilling to accept responsibility for his actions (December 19, 2002 determination).

Petitioner reapplied for a license in 2003 and the hearing was held on August 29, 2003, again before ALJ Schneider. Regarding the stipulation that he had signed in 2000, Mr. Awan reiterated that he did not contest the charges because his mother was seriously ill in Pakistan. He explained that the TLC counsel had told him that the matter could not be resolved for several months if it were contested and his attorney advised him to sign the stipulation and reapply. He testified that since the revocation of his license, he had worked in sales and security but this income was insufficient to support his family.

The ALJ noted that the underlying charges had been serious and Mr. Awan denied any wrongdoing, but that the issues could not be "relitigated"<sup>2</sup> in that proceeding because Mr. Awan had signed the stipulation. The ALJ further noted that the incident had occurred almost four years ago, that Mr. Awan's testimony regarding the hardship experienced by his family was credible and that Mr. Awan had the capacity to abide by the TLC rules and regulations. This time, ALJ Schneider recommended that petitioner's application be approved.

Commissioner Daus rejected the ALJ's recommendation and denied the application, writing to petitioner that it has been four years since the incident and "in that time you have not sufficiently demonstrated remorse for your actions and continue to deny any wrongdoing" (February 3, 2004

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<sup>2</sup>The issues were never in fact litigated because the complainant did not appear at the hearing and evidently no testimony was taken.

determination).

Petitioner reapplied for a license in 2006 and a hearing was held on July 18, 2006 before a different ALJ, Cohen. The ALJ notes in the decision that Mr. Awan had vehemently denied the underlying charges and expressed regret for allowing the passenger to sit in the front seat. ALJ Cohen observed that more than six and one-half years had elapsed since the incident and that Mr. Awan has an excellent DMV record and lives in a stable environment with his wife and 5 children. The ALJ concluded that Mr. Awan's testimony regarding his family hardships "provide a strong incentive for Mr. Awan to abide by the rules of the TLC" and recommended that the license be granted (July 19, 2006 Recommendation to the TLC Chairperson).

Commissioner Daus rejected the ALJ's recommendation and denied petitioner's application for a license. In his determination, the Commissioner stated that the TLC considered the charges to be very serious, that "[i]t has been six years since this incident occurred, and you continue to deny any wrongdoing or demonstrate any remorse for your actions. Furthermore, there is a nexus between sexual harassment and/or physical aggression and a licensee's ability to properly interact with members of the public. Given the seriousness of this conduct, I conclude that you are not presently fit to safely and responsibly serve the riding public." (November 2, 2006 Determination).

Petitioner has demonstrated that this determination lacks a rational basis. ALJ Cohen had the opportunity (as did ALJ Schneider at two prior hearings) to assess the credibility and fitness of Mr. Awan, and ALJ Cohen recommended that Mr. Awan be granted a license. In rejecting that recommendation, the Commissioner implicitly assumed that Mr. Awan was guilty of the underlying charges and faulted Mr. Awan for continuing to deny any wrongdoing. If Mr. Awan had in fact committed all of the acts alleged in the complaint, then there would be a rational basis for denying his application for a license. However, there is absolutely no proof in this record

that Mr. Awan sexually harassed or kissed the complainant. The complainant did not ever appear before the TLC. There is no testimony from her or any witness to corroborate the allegations of the complaint, a copy of which is not included in this record. On the other hand, Mr. Awan has continued to state under oath that the complainant was lying, while he does admit that he permitted her to sit in the front seat and that he pushed her away from him. The stipulation that Mr. Awan signed neither denied nor admitted the charges, and Mr. Awan has explained why he agreed to sign the stipulation. Yet, the Commissioner in rejecting the recommendation of ALJ Cohen that Mr. Awan be granted a license, and aware of the fact that ALJ Schneider had previously also recommended that the application be approved, did so based only on the assumption that the charges levied against Mr. Awan were true. There was no other reason stated for the denial. As for the Commissioner's observation that Mr. Awan had failed to demonstrate any remorse, it is not reasonable to expect an individual to express remorse for actions that he vehemently denies he committed. Additionally with respect to remorse, the court notes, as was stated by ALJ Cohen, Mr. Awan did in fact state that he regretted permitting the passenger to sit in the front seat.

" [T]he test of judicial review is to determine whether the agency acted arbitrarily or capriciously (Matter of Fink v. Cole, 1 NY2d 48, 53). Of course, in reviewing administrative determinations, a court may not overturn an agency's decision merely because it would have reached a contrary conclusion (citation omitted)." (Matter of Sullivan County Harness Racing Assn. v. Glasser, 30 NY2d 269, 278 [1972]). Under these circumstances, where there is no evidence that Mr. Awan sexually harassed a passenger, many years have elapsed since the complaint was filed, and there is nothing in the record to support a determination that Mr. Awan is unfit to hold a license, the court concludes that the determination to deny him a license lacks a rational basis. In granting the petition, I am not substituting my judgment for that of the Commissioner. Rather, I am

concluding that there is no rational basis in the record for respondents' determination.

Accordingly, the petition is granted and this matter is remanded to respondents.

Dated: 7/26/07

SA-A

J.S.C.

Check one:  FINAL DISPOSITION     NON-FINAL DISPOSITION  
Check if appropriate:     DO NOT POST     REFERENCE

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