

Matter of Iqbal v Taxi and Limousine Commn. of the City of N.Y.
2010 NY Slip Op 32629(U)
August 27, 2010
Supreme Court, New York County
Docket Number: 114598/09
Judge: Joan A. Madden
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SCANNED ON 9/7/2010

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JOAN A. MADDEN

PRESENT: J.S.C.
Justice

PART 11

Parvaiz Iqbal

INDEX NO.

114598/09

MOTION DATE

MOTION SEQ. NO.

MOTION CAL. NO.

Taxi & Limousine
Commission of The
City of NY

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 ~~motion~~ Article 78 proceeding and petition are deforced in accordance with the annexed decision, 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 141B).

Dated: August 27, 2010

J
HON. JOAN A. MADDEN ^{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 11

-----X

In the Matter of the APPLICATION OF
PARVAIZ IQBAL,

Petitioner,

Index No. 114598/09

PURSUANT TO ARTICLE 78 of the CPLR,

TAXI AND LIMOUSINE COMMISSION
OF THE CITY OF NEW YORK,

Respondent.

-----X

Joan A. Madden, J.:

Petitioner Parvaiz Iqbal brings this Article 78 proceeding challenging the ruling of respondent Taxi and Limousine Commission of the City of New York (TLC), revoking his taxi license.

The facts, elucidated in a hearing, are not in dispute. Petitioner has been a New York City licensed taxicab driver since 1987. On July 23, 2008 at around 8:18 a.m., petitioner picked up two gentlemen at 83rd Street and Third Avenue, seeking to take a short ride to 79th Street and Lexington Avenue.¹ The two passengers were actually undercover inspectors for the TLC,

¹The record contains conflicting evidence as to the destination. The inspectors' reports and the TLC charges list the destination as 74th Street and Lexington Avenue, but at the hearing Inspector Johnson testified that the destination was 79th Street and Lexington Avenue, which is consistent with the ALJ's decision.

participating in a sting operation called "Operation Secret Rider" a/k/a "Technology Passenger Enhancement Program," or "TPEP." According to the inspectors, the main objective of the sting operation was to monitor taxi drivers' compliance with TLC rules for new technology that gives passengers the option of paying by credit card through the use of touch screens installed in the back seat of all medallion cabs, specifically to ensure that drivers were not refusing passengers wanting to use credit cards.

Upon entering petitioner's taxi, the inspectors noted that he was talking on a cell phone, with a headset, a fact he does not deny. The ride took approximately four minutes, and when the inspectors reached their destination, the meter registered a fare of \$4.50. Petitioner pushed a button on his console which automatically indicated payment in cash and prevented the inspectors from using the TPEP touch screen to choose the option of paying by credit card. The inspectors told petitioner that they only had a credit card and had no cash, and asked him to put the touch screen back up, so they could use the credit card. Petitioner told the inspectors to go to an ATM, but they said they did not want to pay the fees for using a bank where they did not have an account. Petitioner then told them to "get out," and admits that he stated something to the effect that "this is

why we don't take Black people."² When one inspector responded "Excuse me?," petitioner repeated the remark. At that time, the investigators revealed themselves as such.

On or about July 28, 2008, the TLC served petitioner with a Petition and Notice of Hearing (TLC petition), advising that the TLC "by service of these charges is commencing a proceeding against you . . . which may result in the revocation of your TLC license, suspension of said license, substantial fines, or a combination of the aforementioned." The TLC petition also advised that a hearing was scheduled for September 4, 2008 at the Office of Administrative Trials and Hearings (OATH), and listed the following three charges:

- 1) You are charged with violating Rule 2-60(a) of the Taxicab Drivers Rules (35 RCNY 2-60[a]), in that on or about July 23, 2008 at approximately 8:18 a.m., in the vicinity of 74th Street and Lexington Avenue, New York, NY, you verbally harassed a passenger by stating to him, "This is why we don't pick up Black people."
- 2) You are charged with violating Rule 2-25(h) of the Taxicab Drivers Rules (35 RCNY 2-25[h]), in that on or about July 23, 2008 at approximately 8:18 a.m., in the vicinity of 74th Street and Lexington Avenue, New York, NY, you used a cell phone while operating your taxicab.
- 3) You are charged with violating Rule 2-45(c) of the Taxicab Drivers Rules (35 RCNY 2-45[c]), in that on or about July 23, 2008 at approximately 8:18 a.m., in the vicinity of 74th Street and Lexington Avenues, New York, NY, you refused to let a passenger pay with a credit card.

² The record contains slightly different versions of the statement, with the phrase "pick up" used instead of the word "take."

A hearing was held on September 18, 2008, before Administrative Law Judge (ALJ) Tynia Richards, and petitioner was represented by counsel. One of the undercover inspectors, Andre Johnson, testified for the TLC, and petitioner testified on his own behalf. On October 20, 2008, the ALJ issued an Amended Report and Recommendation, finding that the TLC had proven all three charges, and recommended a three-month license suspension and a \$1,550 fine.³ Petitioner's counsel formally responded to the ALJ's recommendation by submitting a letter dated October 26, 2008, objecting to the penalty. Counsel argued that the ALJ did not have the discretion to impose a 90-day suspension, since the maximum suspension is 30 days for a violation of section 2-60(a). Counsel also argued that the "penalty is extremely harsh taken as a whole, [as] not only is the driver out of work for an extended period of time, but in addition, he is fined an excessive amount of money." Counsel further argued that the TLC should consider petitioner's "entire history," noting that he "has been working since 1987, 20 years, and this is his first serious violation."

By letter dated November 25, 2008, TLC Commissioner/Chair Matthew W. Duas notified petitioner that he was rejecting the ALJ's recommendation as to the penalty, and instead had

³Specifically, the ALJ recommended the maximum fine of \$200 for the use of the cell phone violation; the maximum fine of \$350 for the credit card violation; and a \$1,000 fine and a three-month suspension for the harassment violation.

determined to revoke petitioner's license and impose a fine of \$1,550. Commissioner/Chair Daus stated that he agreed with petitioner's counsel that the ALJ's recommendation of a 90-day suspension "exceeds the permissible maximum penalty under Rule 2-60(a)." Nevertheless, Daus accepted the ALJ's findings as to the three violations, and concluded that "[g]iven the seriousness of your misconduct, which involved racially discriminatory language, and the harassment of passengers, combined with the two other violations you committed, revocation is the more appropriate penalty. Therefore, upon careful review of the record before me, I reject the ALJ's recommendation and hereby revoke your TLC license and impose a fine of \$1,550."

On December 24, 2008, petitioner filed a Commission Appeal, seeking to "reverse" the revocation of his license on the grounds that his statement did not constitute "verbal harassment" sufficient to warrant such penalty. Citing other administrative decisions, petitioner argued that TLC Chair Daus should have considered his "entire record," including his 20-year record as a taxi driver, in which he had "minor infractions for the first ten years," three "minor violations" in the past eight years, and "no consumer complaints." Petitioner also argued that TLC Commissioner/Chair Daus gave no explanation as to why such a "harsh penalty" of revocation should be imposed, as opposed to a suspension, especially since petitioner did not use derogatory

words or racial epithets, and expressed remorse at the hearing, and in the absence of evidence that he was a "danger to public health, safety and welfare."

The TLC opposed the appeal, and submitted an Executive Appeal Reply Brief asserting that "the Commission has routinely revoked drivers for single acts of gross misconduct even when those licensees have excellent or no records at all," citing TLC v. Sandy, OATH Index No. 090362 and TLC v. Kharoufi, OATH Index No. 071277. The TLC also asserted that even though the case did not involve a service refusal, petitioner "verbally abused" passengers in his vehicle and "express[ed] sentiments that are indicative of drivers who do not pick up 'Black People,'" and "[s]uch an attitude is not consistent with a licensee who is expected to comply with TLC rules and not discriminate against prospective passengers because of the color of their skin."

By letter dated June 19, 2009, the Assistant General Counsel for the TLC notified petitioner's counsel that the appeal had been denied. The letter in its entirety states as follows: "Please be informed that at the Executive Session held today, June 19, 2009, the Commission affirmed the Chair's decision to revoke Mr. Iqbal's license and to impose a fine of \$1,550."

On October 16, 2009, petitioner commenced the instant Article 78 proceeding, challenging only the penalty revoking his license. Petitioner contends the TLC's determination is not

rational or reasonable, as the revocation of his license is shocking to the conscience in view of his 20-year record as a taxi driver with no consumer complaints, and the undisputed facts that he did not use profanity or racial epithets, and did not refuse service. Petitioner asserts that he made a "dumb" or "stupid" remark out of frustration, and that the other "minor violations are committed by drivers on a regular basis."

Petitioner also contends that the ALJ "clearly understood" that she could have recommended revocation, but chose not to do so, and that the TLC Chairperson "must have some legal basis for such an extreme penalty in overriding the ALJ." Petitioner further contends that the TLC's decision "does not fall into line with previous TLC decisions."

In opposing Article 78 relief, the TLC first argues that this proceeding raises an issue of substantial evidence that must be transferred to the Appellate Division pursuant to CPLR 7804(g). Additionally, the TLC argues that the revocation of petitioner's license was rational and reasonable, as it was within TLC's discretion pursuant to 35 RCNY § 8-14(a), which provides that the TLC "may institute proceedings to seek the revocation of any license for the violation of any Commission Rule, whether or not the penalty of revocation is provided therein." The TLC also argues that the revocation in this case is not inconsistent with past determinations, and under its

rules, the ALJ makes only a recommendation, so as long a rational basis exists for his decision, the TLC Chair may accept, reject or modify the ALJ's recommendation.

At the outset, the court finds that the TLC's substantial evidence argument is without merit, since the evidence in this proceeding is entirely undisputed. The only issue petitioner raises is whether the penalty imposed by the TLC constitutes an abuse of discretion as a matter of law, which is properly before this court. See Kelly v. Safir, 96 NY2d 32 (2001).

It is well settled that "[j]udicial review of an administrative penalty is limited to whether the measure or mode of penalty or discipline imposed constitutes an abuse of discretion as a matter of law." Id at 38. "[A] penalty must be upheld unless it is 'so disproportionate to the offense as to be shocking to one's sense of fairness,' thus constituting an abuse of discretion as a matter of law." Id (quoting Pell v. Board of Education of Union Free School District No. 1, 34 NY2d 222, 237 [1974]). As the Court of Appeals explains, "[t]his calculus involves consideration of whether the impact of the penalty on the individual is so severe that it is disproportionate to the misconduct, or to the harm to the agency or the public in general." Id.

Applying the foregoing standard, the court concludes that respondent did not abuse its discretion by imposing the penalty.

of revoking petitioner's license. Even though petitioner has been a New York City licensed taxicab driver for 20 years with no record of prior consumer complaints, the racial implications of his statement, "this is why we don't take [pick-up] Black people," are clear and cannot be condoned. Moreover, this is not a case of one isolated violation, as petitioner admittedly violated three separate taxicab drivers' rules within a matter of minutes, by using his cell phone while operating his taxicab, refusing to let his passengers pay with a credit card and verbally harassing his passengers.

Notably, in evaluating petitioner's statement, the ALJ concluded that it was "offensive and harassing for obvious reasons," as "[i]t reflects a pernicious stereotype against African-Americans, essentially accusing African-Americans of deserving discriminatory treatment." The ALJ also found "[a]t first glance one would think that Mr. Iqbal was berating his passengers for refusing to pay the fare, but they did not refuse" and "were merely asserting their right - made explicit in the Taxicab Drivers Rules - to pay by credit card."

Analyzing the testimony, the ALJ concluded that petitioner's "outburst arose from his own misconduct, denying his passengers the ability to pay by credit card," and that "[h]e admitted that the inspectors who were respectful to him and did not raise their voices, did not provoke the incident." The ALJ further found

that the "unprovoked remark was more than offensive, suggesting also that Mr. Iqbal feels free to discriminate against Black riders."

As to petitioner's remorse, the ALJ concluded that "[a]lthough [petitioner's] admissions at trial and the apology for his conduct suggest recognition of the inappropriateness of his conduct, they provide little mitigation as they must be viewed in light of his desire to mitigate his penalty and save his livelihood. Conversely, [petitioner's] penalty is exacerbated by the fact that his comment was entirely unprovoked by his passengers." Quoting Arif v. New York City Taxi & Limousine Commission, 3 AD3d 345, 346 (1st Dept), app withdrawn 3 NY3d 669 (2004), the ALJ found that petitioner's "statement and conduct constitute *serious misconduct* that 'perpetuate[s] the insidious problem of discrimination'" (emphasis added).

In rejecting the ALJ's recommendation as to a three-month suspension and deciding that revocation was warranted, TLC Commissioner/Chair Daus focused on the ALJ's findings as to the "serious" nature of petitioner's misconduct. Specifically, Daus determined that "[g]iven the seriousness of your misconduct, which involved racially discriminatory language, and the harassment of passengers, combined with the two other violations you committed, revocation is the more appropriate penalty."

Finally, petitioner argues that the penalty of revoking his licence is inconsistent with previous TLC decisions. "[A]bsent an explanation by the agency, an administrative agency decision, which, on essentially the same facts as underlaid a prior agency determination, reaches a conclusion contrary to the prior determination is arbitrary and capricious.'" Claim of Martin (Troy Publishing Co. - Roberts), 70 NY2d 679, 681 (1987) (quoting Matter of Charles A. Field Delivery Service, Inc. (Roberts), 66 NY2d 516, 518 [1985]).

Here, the facts in the TLC decisions cited in petitioner's papers are not sufficiently similar to the case at bar to support petitioner's argument. See e.g. Taxi & Limousine Commission v. Sobczak, OATH No. 1691/08 (April 7, 2008, modified May 9, 2008) (where taxi driver verbally harassed a fellow taxi driver, the TLC Commissioner/Chair rejected the ALJ's recommendation of a \$350 fine, and imposed the maximum fine of \$1,000 and a 30-day suspension); Taxi & Limousine Commission v. Sandy, OATH No. 362/09 (September 8, 2008) (driver's for-hire vehicle license revoked where he visited a TLC's licensing facility to apply for a taxicab driver's license, became "argumentative," raised his voice, became abusive and directed "extremely offensive vulgarities" at a TLC employee); Taxi & Limousine Commission v. Shavel, OATH No. 2410/07 (August 23, 2007) (for-hire vehicle driver's license revoked and a \$1,700 fine imposed, where he made

a racial slur about a TLC administrative law judge, harassed another judge, and made misrepresentations to TLC representative, Taxi & Limousine Commission v. Kharoufi, OATH No. 1277/07 (March 12, 2007) (taxi driver's licence revoked where he physically assaulted, threatened and verbally harassed passenger, refused to take passenger to his final destination, and failed to have his hack license in the appropriate frame); Taxi & Limousine Commission v. Nazir, OATH No. 1362/90 (August 16, 1990, modified October 25, 1990) (where taxi driver punched passenger in the head to restrain her from leaving without paying, TLC Commissioner revoked the driver's license and rejected the ALJ's recommendation of a \$300 fine and a three-week license suspension). The one decision petitioner cites with similar facts, is the decision in Taxi & Limousine Commission v. Park, OATH No. 1014/00 (February 2, 2000, modified May 25, 2000), where the taxicab driver was found guilty of a first-time violation of refusing to take a passenger based on race. In that case, the TLC Commissioner/Chair rejected the ALJ's recommendation of a \$350 fine, and revoked the driver's license.

Based on the foregoing, under the circumstances presented, where petitioner engaged in serious misconduct involving three separate violations of the TLC's rules governing licensed taxicab drivers, including the use of a racially motivated statement, the court cannot conclude that the imposition of the penalty of

revocation is "so disproportionate to the offense as to be shocking to one's sense of fairness," so as to constitute an abuse of discretion. See Kelly v. Safir, supra.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is denied and the proceeding is dismissed.

ENTER: August 27, 2010

ENTER:



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 authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).