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| <b>Matter of Ghulam v New York City Taxi &amp; Limousine<br/>Commn.</b>  |
| 2011 NY Slip Op 31188(U)   |
| April 1, 2011  |
| Sup Ct, NY County  |
| Docket Number: 111375/10   |
| Judge: Cynthia S. Kern   |
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SCANNED ON 4/4/2011

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

PRESENT: CYNTHIA S. KERN  
J.S.C. Justice

PART 52

Index Number : 111375/2010  
GHULAM, JULLIANI  
VS.  
NYC TAXI AND LIMOUSINE COMMISSION  
SEQUENCE NUMBER : 001  
ARTICLE 78

INDEX NO. 111375/10

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 01

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

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 is decided in accordance with the attached decision.

**FILED**

APR 04 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 4/3/11

CK  
CYNTHIA S. KERN J.S.C.  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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 52

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In the Matter of the Application of

JILLANI GHULAM,

Petitioner,

Index No. 111375/10

For an Order Pursuant to Article 78  
of the Civil Practice Law and Rules,

**DECISION/ORDER**

-against-

NEW YORK CITY TAXI AND LIMOUSINE  
COMMISSION, and CHARLES R. FRASER,  
as Deputy Commissioner for Legal Affairs/  
General Counsel of the NEW YORK CITY TAXI  
AND LIMOUSINE COMMISSION,

**FILED**

APR 04 2011

Respondents.

NEW YORK  
COUNTY CLERK'S OFFICE

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**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

| Papers   | Numbered |
|--|----------|
| Notice of Motion and Affidavits Annexed.....         | <u>1</u> |
| Notice of Cross Motion and Answering Affidavits..... | <u>2</u> |
| Replying Affidavits.....                             | <u>3</u> |
| Exhibits.....  | <u>3</u> |

Petitioner Jillani Ghulam brought this petition pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking to vacate and annul a determination made by the New York City Taxi and Limousine Commission (the "TLC"), dated April 26, 2010 (the "Determination"). In the Determination, the TLC's Deputy Commissioner ("Deputy Commissioner") denied petitioner's application for a license to operate a for-hire vehicle ("FHV license"). For the

reasons set forth below, the petition is hereby granted.

The relevant facts are as follows. In or about June 1990, the TLC issued petitioner a taxicab medallion operator's license ("taxi license"). That taxi license was revoked in September 1998 pursuant to a discretionary revocation hearing at the Office of Administrative Trials and Hearings, following an accident involving petitioner which caused physical injury to pedestrians. Petitioner commenced an Article 78 proceeding thereafter to challenge the revocation of his taxi license, but was unsuccessful.

In or about November 1998, petitioner applied for a new FHV license under the name Mohammad A. Baber, using a different social security number and DMV license than his own. The TLC granted this FHV license to petitioner under the assumption it was granting an FHV license to a Mr. Baber. Despite the fact that petitioner had possession of this FHV license, he continued to apply for a new taxi license and a new FHV license using his own credentials from 2002 until 2009, but was denied each time.

Petitioner filed application No. 5103173 on February 19, 2002 requesting a taxi license, but was denied after a fitness hearing because the Deputy Commissioner found petitioner unfit to hold either type of license. Although the Administrative Law Judge ("ALJ") found petitioner fit to obtain an FHV license and recommended approving petitioner's application for an FHV license to the Deputy Commissioner, the Deputy Commissioner denied petitioner's application.

Petitioner next applied for a license in 2003 and another fitness hearing was held on August 14, 2003 conducted by ALJ J.R. Schneider ("ALJ Schneider"). At this hearing, ALJ Schneider found petitioner was fit to hold a TLC operator's license. By letter dated September 25, 2003, the Deputy Commissioner accepted ALJ Schneider's recommendation and approved

petitioner's application for an FHV license. However, the TLC never released petitioner's license because it discovered that shortly after petitioner's initial license revocation in 1998, he had applied for and received an FHV license under the name Mohammad A. Baber using false information and failed to disclose this other license on his license application.

On May 6, 2004, petitioner was arrested and pled guilty to Tampering with Public Records in the 2<sup>nd</sup> Degree and was sentenced to a \$500.00 fine. On June 8, 2004, a fitness hearing was held before ALJ Gcanine Towers ("ALJ Towers") after which ALJ Towers recommended that both the license under the name Mohammad A. Baber and the recently approved license for petitioner be revoked. By letter dated August 4, 2004, the Deputy Commissioner accepted ALJ Towers' recommendation, revoking petitioner's license maintained under the name Mr. Baber and rescinding petitioner's recently approved license application. Thereafter, petitioner continued to apply for a new FHV license and was unsuccessful.

From the time of petitioner's conviction in 2004 until petitioner filed his most recent application for a license in 2009, petitioner applied for an FHV license many times. Specifically, petitioner re-applied for an FHV license during the years 2005, 2006, 2007 and 2008. The first three times petitioner re-applied for a license subsequent to his conviction, in 2005 and 2006, the applications were denied because the TLC felt petitioner was not fit at that time to obtain a license. However, beginning in 2007, petitioner re-applied for a license and fitness hearings were conducted for each re-application pursuant to 35 RCNY § 8-15. After these hearings, each ALJ found petitioner fit, rehabilitated, credible and of good moral character and recommended that petitioner's license be granted.

On January 19, 2007, after a fitness hearing was conducted, ALJ Schneider found

petitioner fit to hold an FHV license. ALJ Schneider found that “[o]ver eight years have elapsed since the accident that led to revocation and the incident was an aberration in a very good record. Futher, seven years have elapsed since the...[petitioner] applied under the Baber name and over four years have elapsed since his reapplication in the Ghulum name in which he failed to disclose the Baber license.” Moreover, ALJ Schneider found that petitioner had “taken responsibility for what occurred in connection with the Baber license, and...that he may at this time be relied upon to comply with TLC and DMV rules and regulations.” Despite ALJ Schneider’s recommendation, the TLC Chairperson denied petitioner’s application.

Again, on January 17, 2008, after a fitness hearing was conducted, ALJ Roberts found petitioner fit to hold an FHV license. Spccifically, ALJ Roberts stated that “as a result of his past dishonesty, the TLC penalized Mr. Ghulam continuously...With the denial of each of his applications, Mr. Ghulam was reminded of the consequences of his prior actions...Mr. Ghulam’s expression of remorse was genuine...His multiple applications demonstrated his rehabilitation and his strong desire to regain the privilege of having a TLC license.” Despite ALJ Roberts’ recommendation, the TLC Chairperson again denied petitioner’s application.

On September 10, 2008, after a fitness hearing was conducted, ALJ Roberts yet again found petitioner fit to hold an FHV license. Specifically, ALJ Roberts stated “I find Mr. Ghulam’s testimony and remorse to be credible. I find that he is rehabilitated...I find that he accepts responsibility for the wrong things he did...I conclude that from the persistence that he has shown, Mr. Ghulam would not be a risk to the riding public if he is given a TLC license.” Despite ALJ Roberts’ recommendation, the TLC Chairperson again denied petitioner’s application for a license.

Petitioner submitted his most recent application for an FHV license on January 21, 2009. By letter dated April 28, 2009, the TLC informed petitioner that he would have to attend a fitness hearing on June 23, 2009. By notices dated August 13, 2009 and December 21, 2009, the hearing was rescheduled for January 5, 2010. Petitioner attended and testified at the January 5, 2010 fitness hearing. On January 12, 2010, ALJ Flynn issued a recommendation to the Deputy Commissioner to grant petitioner's FHV license application No. 5321120. Specifically, ALJ Flynn found that:

Applicant testified credibly and sincerely expressed great remorse and sorrow for having used a false name to obtain a TLC license in 1999. Applicant recognizes the seriousness of his prior conduct that occurred during the period of time from 1998 to 2003...The TLC has a paramount interest in protecting the health, safety and welfare of the public and ensuring that its licensed drivers can be trusted to deal honestly with the public (see Corrections Law 753 (1) (h)). Tampering with Public Records, 2<sup>nd</sup> degree, an A misdemeanor, is a serious offense which is related to the license sought and which bears upon the fitness of Applicant to perform his duties honestly as a TLC licensee (see Corrections Law 753 (b), (c) and (f)). However, the record establishes that Applicant's TLC related criminal conduct occurred more than 6 years ago (see Corrections Law 753 (d)) and that he has not been convicted of any other crime. I find that Applicant has demonstrated that he has acted pursuant to rules and regulations during the last 6 years and that he can be trusted to follow TLC rules and regulations. I find that Applicant is credible and that he has rehabilitated himself and is a person of good moral character.

In the cover letter sent to petitioner with ALJ Flynn's recommendation, petitioner was notified that he had the opportunity to respond to the recommendation within ten days. Petitioner submitted a response dated January 22, 2010 in which he stated "I take full responsibility of [sic] my prior actions...I promise you that it shall never happen again."

Notwithstanding ALJ Flynn's recommendation, the Deputy Commissioner denied

petitioner's FHV license application. As a basis for the denial, the Deputy Commissioner stated:

While you have presented several letters of recommendation which indicating [sic] that you are presently employed part-time and attend religious services regularly, in light of the seriousness of your intentional deception of the TLC for the purposes of obtaining a license, I find them to be insufficient evidence that you can be relied upon not to engage in similar conduct in the future (see Corrections Law §753(1)(g)). Based on the totality of your record, I find that you cannot be trusted to transport the public safely or be honest with the TLC. Therefore, I regret to inform you that your application for TLC license number 5321120 is denied.

Thereafter, on or about August 24, 2010, petitioner brought this Article 78 proceeding seeking an order (1) annulling the April 26, 2010 final determination issued by the TLC which denied petitioner's application for an FHV license and (2) directing the TLC to grant petitioner's application for an FHV license.

On review of an Article 78 petition, "[t]he law is well settled that the courts may not overturn the decision of an administrative agency which has a rational basis and was not arbitrary and capricious." *Goldstein v Lewis*, 90 A.D.2d 748, 749 (1<sup>st</sup> Dep't 1982). "In applying the 'arbitrary and capricious' standard, a court inquires whether the determination under review had a rational basis." *Halperin v City of New Rochelle*, 24 A.D.3d 768, 770 (2d Dep't 2005); see *Pell v Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974) ("[r]ationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard.") "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified ... and whether the administrative action is without foundation in fact.' Arbitrary action is without sound basis in reason and is generally taken without regard to facts." *Pell*, 34 N.Y.2d at

231 (internal citations omitted).

In the instant action, the court finds that the Deputy Commissioner's denial of petitioner's application for a license is arbitrary and capricious. The Deputy Commissioner's Determination is not supported by a rational basis because it was taken without regard to pertinent facts in the record and the requirements for obtaining such a license under New York law. To obtain an FHV or taxi license from the TLC, an applicant must be of "good moral character." Admin. Code § 19-505(b). When the "Commission believes that a licensee or applicant for a license...does not meet...the qualifications for licensure," the applicant can be directed to appear for a fitness hearing before an ALJ. 35 RCNY § 8-15(a). The ALJ shall issue a recommendation "which shall include a determination as to the respondent's fitness to possess a license...The Chairperson, Deputy Commissioner for Licensing, or designee, may accept, reject or modify said Recommendation." 35 RCNY § 8-15(e). Although it is within the Deputy Commissioner's discretion to reject an ALJ's recommendation as to an applicant's fitness and "good moral character," the Deputy Commissioner cannot make such a determination in an arbitrary and capricious manner.

Additionally, there is no bright line rule stating that a person previously convicted of a misdemeanor cannot obtain a license from the TLC after the conviction. On the contrary, it is the public policy of this state to encourage previous offenders to apply for and obtain such a license. Under § 752 and § 753 of the Correction Law enacted to establish procedures to prevent unreasonable discrimination against former criminal offenders in regard to licenses and employment, a standard of review is set forth for determining the "good moral character" of an applicant. Section 753 of the Correction Law enumerates eight factors to be considered:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

ALJ Flynn determined that petitioner was entitled to a license after analyzing the above statutory factors and yet the Deputy Commissioner disregarded ALJ Flynn's recommendation. In doing so, it appears that the Deputy Commissioner has refused to engage in the proper assessment of petitioner's eligibility for a license under the above Correction Law and has instead created his own bright line rule, namely that a previous offender cannot obtain a license from the TLC, despite evidence of his rehabilitation.

Moreover, despite repeated recommendations by numerous ALJs that petitioner should be granted a license, the Deputy Commissioner consistently refuses to grant petitioner the license he seeks. The Deputy Commissioner's decision reflects the idea that the false representations made to his agency, undoubtedly a serious matter, leads him to believe that petitioner would be dishonest in the future. The Deputy Commissioner, however, does not discuss how this conclusion was reached. Nothing in petitioner's record provides a rational basis for the Deputy

Commissioner to believe that petitioner would be dishonest in the future.

Furthermore, petitioner committed the fraud offense eleven years ago and was convicted of that offense six years ago. Since then, petitioner has maintained a clean record and has not committed any other felony or misdemeanor offenses. Although all criminal conduct must be taken seriously, it must be noted that the misdemeanor at issue here is not a crime in which anyone was injured or sustained any loss or can reasonably be expected to in the future. Neither the presiding Judge in Criminal Court nor the District Attorney attempted to have petitioner incarcerated or placed on probation. Petitioner was sentenced to a payment of a \$500.00 fine which ended the matter for the criminal justice system.

In addition to the strong favorable findings of the ALJs discussed more fully above, petitioner presented several letters of recommendation to ALJ Flynn indicating that he was presently employed part-time and that he regularly attended religious services. While the Deputy Commissioner mentioned these letters of recommendation in his Determination, he found them to be insufficient evidence that petitioner could be relied upon not to engage in wrongful conduct in the future. Yet the Deputy Commissioner did not state what would be sufficient evidence of such rehabilitation.

Finally, petitioner's misdeeds would obviously be relevant to the job license if his single conviction was closely related to the performance of driving a motor vehicle or his fitness to perform that task, such as a conviction for driving while intoxicated. In this case, however, the misdemeanor of Tampering with Public Records in the 2<sup>nd</sup> Degree bears no relationship to whether petitioner can safely operate a motor vehicle. Moreover, since petitioner's accident over twelve years ago, he has established a good driving record and nothing in the record shows

petitioner's lack of ability to safely operate a motor vehicle. Additionally, petitioner completed accident prevention courses in 1999, 2000 and 2001. For the foregoing reasons, the court concludes that the TLC failed to comply with the Correction Law and abused its discretion by acting in an arbitrary and capricious manner.

Accordingly, this court grants petitioner's request for relief under Article 78 of the CPLR vacating and annulling the TLC's Determination, dated April 26, 2010, and hereby directs the TLC to grant petitioner's application for an FHV license in accordance with this court's decision. This constitutes the decision and order of the court.

Dated: 4/1/11

Enter: CK  
J.S.C.

**CYNTHIA S. KERN**  
J.S.C.

**FILED**

APR 04 2011

NEW YORK  
COUNTY CLERK'S OFFICE