

**Matter of New York Master Cabbie Taxi Academy
Corp. v New York City Taxi & Limosine Commn.**

2013 NY Slip Op 32293(U)

September 26, 2013

Supreme Court, New York County

Docket Number: 100507/13

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS
Justice

PART 58

In the Matter of the Application of
NEW YORK MASTER CABBIE TAXI ACADEMY
CORPORATION,

Index No. 100507/13

Petitioner,
For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules

MOTION DATE _____

-against-

MOTION SEQ. No. (001) & 002

THE NEW YORK CITY TAXI AND LIMOUSINE
COMMISSION, et al.,

Respondents.

MOTION CAL No. _____

The following papers, numbered 1 to _____ were read on this motion _____.

PAPERS NUMBERED

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

1, 2, 5, 6

Answering Affidavits- Exhibits _____

3, 4, 7, 8

Replying Affidavits _____

UNFILED JUDGMENT

CROSS-MOTION: _____ YES NO

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 1418).

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH ATTACHED DECISION AND ORDER.

Dated: 9-26-13

Donna M. Mills

DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

_____ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 58

-----X

In the Matter of the Application of
NEW YORK MASTER CABBIE
TAXI ACADEMY CORPORATION

Petitioner,

for a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules,

DECISION AND JUDGMENT

Index No. 100507/2013
Motions 001 and 002

-against-

THE NEW YORK CITY TAXI AND
LIMOUSINE COMMISSION ("TLC"),
DAVID YASSKY, Commissioner and
Chair of the TLC, JEREMY HALPERIN,
procurement officer of the TLC and the
CITY UNIVERSITY OF NEW YORK,

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).

Respondents.

-----X

MILLS, J.:

In this decision, motion sequence numbers 001 and 002 are consolidated for disposition.

In motion sequence 001, petitioner the New York Master Cabbie Taxi Academy Corporation (Master Cabbie) moves, by order to show cause, for a judgment pursuant to CPLR 7804, setting aside the New York City Taxi and Limousine Commission's (TLC) decision to accept the City University of New York's (CUNY) proposal to administer the agency's driver training program. Petitioner also seeks a declaration that respondents have engaged in deceptive or anti-competitive conduct under General Business Law § 340 and 349.

In motion sequence 002, respondents TLC, David Yassky, Commissioner and Chair of the TLC, Jeremy Halperin, procurement officer of the TLC, and CUNY move for dismissal,

pursuant to CPLR 3211 (a) (5), on the grounds that this proceeding is time-barred and that petitioner failed to exhaust all of its available administrative remedies.

Master Cabbie is one of the four independent vendors that currently administer the TLC's driver training program. It has provided driver training classes for TLC nearly fifteen years. The parties have executed over four agreements establishing said services during that span of time.

TLC is a city administrative agency responsible for the administration of the rules, regulations, and policies concerning TLC licensed-drivers.

FACTS

On February 23, 2012, the TLC issued, pursuant to the New York City Procurement Policy Board Rules (PPB Rules), a request for proposal (RFP) entitled "Enhanced Education and Training Program for Drivers Regulated by the New York City Taxi and Limousine Commission" to consolidate and improve the TLC's driver training program, which, to date, has been administered by four different vendors. By consolidating its training to allow for only one vendor, TLC sought a more effective and efficient oversight of its training curriculum.

Proposals were due on March 15, 2012. However, the deadline was extended to March 22, 2012. Among the proposals received by the TLC was a submission by petitioner, Master Cabbie. TLC evaluated the 2012 proposals and selected CUNY's La Guardia Community College as the sole vendor to administer TLC's driver training program. On June 15, 2012, Master Cabbie was informed of TLC's decision to award the contract to CUNY. The letter instructed Master Cabbie that it could request a debriefing as to why its proposal had not been selected. However, that debriefing could not take place until the contract with CUNY was finalized and registered by the New York City Comptroller. On that same date, Master Cabbie

requested a debriefing. A week later, in a separate letter to the New York City Comptroller, Master Cabbie complained of alleged irregularities in TLC's selection of vendors for its training program. It appears that no further action was taken by Master Cabbie for eight months. On March 28, 2013, petitioner commenced this Article 78, proceeding by order to show cause. Petitioner's order to show cause sought a temporary restraining order (TRO) and a preliminary injunction, enjoining the TLC from implementing the RFP. On April 2, 2013, this court denied petitioner's request for a TRO and the parties agreed to brief this Article 78 proceeding on an expedited basis rather than submit additional papers.

CONTENTIONS

Master Cabbie contends that its petition should be granted because TLC's determination, which rejected petitioner's proposal to administer the taxi and for-hire vehicle driver training program was: (1) arbitrary and capricious; (2) invalid because the award was not made to the lowest possible bidder; (3) an impermissible monopolization under General Business Law § 340; and (4) a deceptive practice under General Business Law § 349.

TLC contends that Master Cabbie's petition should be denied because: (1) the petition was not commenced within four months of either the RFP's issuance or the the TLC's proposal selection, and therefore, it is time-barred; (2) respondent has failed to exhaust its administrative remedies by submitting a protest letter with the TLC, and, thus, this petition is not ripe for judicial review; and (3) TLC's selection of CUNY's proposal was rational, fair, and in compliance with the requisite laws.

TLC's motion is granted and Master Cabbie's petition is denied.

ANALYSIS

As a threshold issue, TLC contends that this petition is not amenable to judicial review because petitioner's claims are time-barred. "Pursuant to CPLR 217 (1), any proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner" (*Matter of Cowan v Kelly*, 89 AD3d 572, 572 [1st Dept 2011]). The Court of Appeals identifies an administrative determination as having become final and binding once it "has its impact upon the petitioner who is thereby aggrieved" (*Matter of Essex County v Zagata*, 91 NY2d 447, 453 [1998] [internal quotation marks and citation omitted]). First, "the agency must have arrived at a definite position on the issue inflicting actual injury," and secondly, "the injury may not be significantly ameliorated either by further administrative action or steps taken by the complaining party" (*Matter of Comptroller of City of N.Y. v Mayor of City of N.Y.*, 7 NY3d 256, 262 [2006]).

As stated above, in lieu of Master Cabbie's proposal, TLC accepted CUNY's proposal on June 15, 2012 (*See* exhibit B to affidavit of William H. Vidal, dated April 28, 2013) (Vidal Aff.). Master Cabbie promptly requested a debriefing and review of TLC's determination on the same date (*See* exhibit C to Vidal Aff.). TLC's decision became final and binding on June 15, 2012, when Master Cabbie was no longer in the running to administer the driver training program. TLC's arrival at a definite position on the issue inflicted actual injury upon Master Cabbie, and, furthermore, it appears from the record that the injury may not be significantly ameliorated by further administrative action or steps taken by the complaining party (*id.*). Two weeks later, on June 27, 2012, petitioner filed a complaint with the New York City Comptroller's office, questioning the validity of TLC's selection process (*See* exhibits E and F to Vidal Aff.).

Consequently, the time to file an Article 78 petition began to accrue on June 15, 2012, the date Master Cabbie learned that it was not selected as a vendor. The commencement of this Article 78 petition on or about March 26, 2013, was beyond the four-month period of limitations, and, thus, Master Cabbie's petition is dismissed as time-barred.

Accordingly, it is

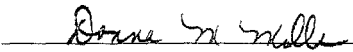
ORDERED that the motion of defendants The New York City Taxi and Limousine Commission, David Yassky, Commissioner and Chair of the Taxi and Limousine Commission, Jeremy Halperin, procurement officer of the Taxi and Limousine Commission, and the City University of New York to dismiss the petition (motion sequence no. 002) is granted; and it is further

ADJUDGED that the New York Master Cabbie Taxi Academy Corporation's petition is denied.

This constitutes the decision and judgment of this Court.

Dated: 9-26-13

ENTER:


J.S.C.
DONNA M. MILLS. J.S.C.

UNFILED JUDGMENT

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