

**Matter of Donmez v New York City Dept. of  
Consumer Affairs**

2014 NY Slip Op 30577(U)

March 6, 2014

Supreme Court, New York County

Docket Number: 401769/13

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

PRESENT: \_\_\_\_\_  
Justice

PART 55

IBRAHIM DONMEZ,

INDEX NO. 401769/13

-v-

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

NEW YORK CITY DEPT. OF CONSUMER  
AFFAIRS,

MOTION SEQ. NO. 01

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

RECEIVED  
MAR 12 2014  
GENERAL CLERK'S OFFICE  
NYS SUPREME COURT - CIVIL

FILED  
MAR 12 2014  
NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 3/6/14

CR, J.S.C.

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

- 1. CHECK ONE: .....  CASE DISPOSED .....  NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER .....  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
In the Matter of the Application of

IBRAHIM DONMEZ,

Petitioner,

Index No. 401769/13

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

**DECISION/ORDER**

-against-

NEW YORK CITY DEPARTMENT OF CONSUMER  
AFFAIRS,

Respondent.

-----X  
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 : \_\_\_\_\_

**FILED**

Papers

Numbered  
MAR 12 2014

Notice of Petition and Affidavits Annexed.....	NEW YORK	1
Answering Affidavits and Cross Motion.....	COUNTY CLERK'S OFFICE	
Replying Affidavits.....		3
Exhibits.....		4

Petitioner Ibrahim Donmez brings the instant petition pursuant to Article 78 of the CPLR for an Order (a) declaring respondent New York City Department of Consumer Affairs' ("DCA") Notice of Suspension of petitioner's pedicab driver license illegal and unconstitutional; (b) directing the DCA to serve a proper notice for a hearing for the suspension of his pedicab driver license; and (c) directing the DCA to hold a proper hearing for the suspension of petitioner's pedicab driver license. For the reasons set forth more fully below, the petition is denied.

The relevant facts are as follows. Petitioner has been a pedicab driver since 2005 and has

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had a pedicab driver license since October 2009 when DCA began issuing such licenses. On September 21, 2012, petitioner was observed by two Department of Parks and Recreation (“DPR”) officers picking up passengers in his pedicab in a restricted area of the Central Park Boathouse parking lot, in violation of New York City Administrative Code (“Admin. Code”) § 20-259(a). The DPR officers also observed that the pedicab’s interior did not have a copy of petitioner’s pedicab driver information visible to passengers, in violation of Admin. Code § 20-258(b). As a result, petitioner was issued Notice of Hearing 183 (“NOH 183”) which charged him with the two violations and required that petitioner appear at DCA for a hearing.

On January 9, 2013, petitioner’s hearing took place at DCA’s Hearing Tribunal (the “Hearing”) before Administrative Law Judge Eryn De Fontes (“ALJ De Fontes”). At the Hearing, petitioner was represented by counsel and both parties had an opportunity to present testimony. On or about January 28, 2013, ALJ De Fontes issued a Decision and Order finding petitioner guilty of the two violations, ordering petitioner to pay an aggregate fine of \$1,000 (\$500 for each violation) and noting that “[f]ailure to comply with [the] order within (30) days shall result in the suspension of the license at issue, and may result in the suspension of any other [DCA] license(s) held by [petitioner].” In February 2013, DCA received a request from petitioner to appeal and stay enforcement of the fines assessed for NOH 183. On March 13, 2013, Appeals Judge David Wolfe granted petitioner’s request for a stay of enforcement of ALJ De Fontes’ Decision and Order pending the appeal. On June 28, 2013, DCA Director of Adjudication Bruce M. Dennis issued a determination denying petitioner’s appeal and affirming ALJ De Fontes’ Decision and Order (the “Appeal Determination”). On September 19, 2013, DCA sent petitioner a Notice of Suspension stating that the \$1,000 fine assessed following the

Appeal Determination was past due and advised petitioner that DCA must receive payment of the \$1,000 fine no later than September 30, 2013 or petitioner's pedicab driver license would be suspended. When petitioner failed to pay DCA the \$1,000 fine by September 30, 2013, petitioner's pedicab driver license was suspended pending satisfaction of the outstanding fine.

Petitioner commenced the instant Article 78 proceeding by filing an Order to Show Cause and Verified Petition on October 1, 2013 ("Proceeding No. 1") which was heard by Justice Paul Wooten. The petition requests an Order (a) declaring the DCA's Notice of Suspension of petitioner's pedicab driver license illegal and unconstitutional; (b) directing the DCA to serve a proper notice for a hearing for the suspension of his pedicab driver license; and (c) directing the DCA to hold a proper hearing for the suspension of petitioner's pedicab driver license. Additionally, petitioner sought a temporary restraining order ("TRO") prohibiting DCA from suspending petitioner's pedicab driver license pending a determination of his petition. Following oral argument, Justice Wooten denied the TRO and made the case returnable before this court on October 29, 2013. At that scheduled appearance, this court ordered the parties to submit papers responding to the petition in Part 55 on November 26, 2013.

As an initial matter, that portion of petitioner's petition for an order declaring the DCA's Notice of Suspension of petitioner's pedicab driver license illegal and unconstitutional on the ground that it did not afford petitioner due process is denied. "[E]nactments of the Legislature...are presumed to be constitutional; those who challenge statutes [as void of procedural due process] bear a heavy burden of proving unconstitutionality beyond a reasonable doubt." *City of New York v. State of New York*, 76 N.Y.2d 479, 485 (1990); *see also Pringle v. Wolfe*, 88 N.Y.2d 426 (1996).

“Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). It is well-settled that the suspension of a pedicab driver license for statutorily defined cause implicates a protected property interest. See *Mackey v. Montrym*, 443 U.S. 1 (1979). To determine what process is due to protect against an erroneous deprivation of such property interest, the court must consider “[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

In the instant proceeding, the DCA’s Notice of Suspension of petitioner’s pedicab driver license was not illegal or unconstitutional as petitioner was afforded sufficient due process to protect against an erroneous deprivation of his pedicab driver license. Admin. Code § 20-104(e)(3) authorizes the DCA “to suspend the license of any person pending payment of [a] fine or civil penalty or pending compliance with any other lawful order...” Petitioner’s assertion that such authorization is unconstitutional as he is entitled to a separate hearing on the suspension of his pedicab driver license so that he will be provided with the right to present evidence and an opportunity to hear the claims of the opposing party is without merit. Although petitioner has a strong interest in maintaining his pedicab driver license as he alleges that it is his only source of income, such interest is outweighed by the fact that there is little to no risk that the deprivation of his license was erroneous based on the procedures used and the value of the procedural

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safeguards afforded to petitioner. Initially, after petitioner was issued the two violations, a hearing was held at which petitioner was represented by counsel and was given the opportunity to present evidence and to hear the DCA's claims against him. Thereafter, the ALJ found petitioner guilty of the two violations, ordered him to pay a fine of \$1,000 and notified him that failure to pay would result in the suspension of his license as suspension of such license is DCA's remedy when licensees maintain outstanding violations. Petitioner was provided with an opportunity to appeal the determination and after doing so, the DCA denied his appeal and affirmed the ALJ's decision. Therefore, as it is undisputed that petitioner was given such procedural safeguards prior to the issuance of such fines, the DCA's Notice of Suspension of his pedicab license was constitutional and legal.

Petitioner's reliance on other sections of the Admin. Code pertaining to the DCA for the proposition that due notice and a hearing is required prior to the suspension of his pedicab driver license is without merit. Unlike those other sections of the Admin. Code, the New York City Council specifically empowered DCA in Section 20-104(e)(3) to suspend a license without a separate prior or post-suspension hearing after a licensee has failed to satisfy a civil penalty assessed against him. The intent behind this provision was that such assessed penalty would be based on a hearing and an opportunity to present evidence afforded to the petitioner prior to suspension of the license. Here, the DCA's suspended petitioner's pedicab driver license based solely on the fact that he has failed to comply with penalties assessed against him for certain violations after he was afforded a hearing on the merits of those violations. Therefore, petitioner has failed to meet his burden of proving the unconstitutionality of Admin. Code § 20-104(e)(3) beyond a reasonable doubt.

