

**Matter of Greater New York Taxi Assn. v New York
City Taxi & Limousine Commn.**

2014 NY Slip Op 31678(U)

June 27, 2014

Sup Ct, New York County

Docket Number: 100519/14

Judge: Cynthia S. Kern

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

PRESENT: KERN
Justice

PART 55

GREATER NEW YORK TAXI ASSOCIATION

INDEX NO. 100519/14

THE N.Y.C. TAXI AND LIMOUSINE COMMISSION

MOTION DATE _____

MOTION SEQ. NO. 01

MOTION CAL. NO. _____

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

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED

JUL 01 2014

COUNTY CLERK'S OFFICE
NEW YORK

is decided in accordance with the annexed decision.

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

Dated: 6/27/14

CK
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

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

GREATER NEW YORK TAXI ASSOCIATION,

Petitioner,

Index No. 100519/14

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

DECISION/ORDER

-against-

THE NEW YORK CITY TAXI & LIMOUSINE
COMMISSION,

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 : _____

Papers

FILED
Numbered

Notice of Petition and Affidavits Annexed.....
Answering Affidavits.....
Replying Affidavits.....
Exhibits.....

1 JUL 01 2014
2
COUNTY CLERK'S OFFICE
4 NEW YORK

Petitioner Greater New York Taxi Association ("Greater New York") commenced the instant proceeding by Order to Show Cause pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR") seeking (1) to vacate, annul and set aside a determination announced in respondent the New York City Taxi & Limousine Commission's ("TLC") Industry Notice #14-14 dated March 31, 2014 (the "Notice") that all New York City (the "City") taxi medallion owners must pay an annual fee of \$260 per medallion (the "Taxi Accessibility Fee") to fund the third year of a program that dispatches wheelchair accessible taxis to pick up handicapped riders

in Manhattan (the “Dispatch Program”) under Chapter 58 of the TLC Rules; and (2) a preliminary injunction enjoining TLC from collecting the Taxi Accessibility Fee and from taking any actions to enforce the Notice pending the determination of this proceeding. For the reasons set forth more fully below, the petition is denied in its entirety.

The relevant facts are as follows. Petitioner is a trade association comprised of yellow medallion taxicab fleets in the City. Specifically, Greater New York consists of seven member fleets and approximately 1,700 yellow medallion taxis, representing almost twenty percent of all corporate medallions. Greater New York also represents the fleets with the highest percentage of wheelchair accessible and hybrid taxicabs in the City. Respondent TLC is an administrative agency created by section 2300 of the New York City Charter and its purpose is, *inter alia*, to regulate the taxi and limousine industry and to establish safety standards for drivers and standards for noise and pollution control. David Yassky, the former Chairman of the TLC, resigned in December 2013 and the TLC was without a Chairperson until Meera Joshi was approved by the New York City Council (the “City Council”) on April 10, 2014.

In 2002, the City Council enacted legislation that created the “wheelchair accessible medallion,” to be used only with a wheelchair accessible vehicle. The TLC issued a total of 231 wheelchair accessible medallions from 2004 to 2008. From July 2008 to June 2010, the City conducted a pilot dispatch program known as a “demonstration program” to match mobility-impaired individuals with accessible taxicabs, improve service to this segment of the riding public and identify the necessary components of an effective sustainable dispatch program. At the conclusion of the demonstration program, TLC concluded, *inter alia*, that with the appropriate level of funding, outreach, incentives and enforcement, a viable service for mobility-

impaired individuals in the City could be provided through a medallion taxicab accessible dispatch program for trips that originate in Manhattan.

After a public hearing was held on December 15, 2011, the TLC announced that it was promulgating rules “to implement a program under which mobility impaired individuals will be able to call for an accessible vehicle” (the “Taxi Dispatch Rules”). Specifically, sections 58-03(e) and 58-16(f) of the TLC’s Rules allow the TLC to charge the Taxi Accessibility Fee, which is to be paid by all medallion owners to a dispatcher that provides accessible service to passengers that use wheelchairs. The Taxi Dispatch Rules further state that “[t]he Taxi Accessibility Fee shall be set in accordance with the terms of an agreement between the Commission and an approved vendor and will be based on the per medallion cost to the vendor for equipment, administrative expenses associated with operation of the dispatch system, outreach and Dispatch fees.” Pursuant to the Taxi Dispatch Rules, such costs include salaries for dispatch staff to operate the incoming service calls and direct the call to a driver; supplying dispatch equipment to participating taxicabs; software and hardware installation; software fees; public outreach, marketing and advertising; and the driver dispatch fee, which is the fee paid to the driver of the wheelchair accessible taxicab to cover the costs of driving from the location of the taxicab at the time of the dispatch to the pickup location of the passenger (the “deadhead fee”). Pursuant to section 58-16(f) of the Taxi Dispatch Rules, if a medallion owner fails to timely pay the Taxi Accessibility Fee, the TLC may revoke or suspend the medallion, deny renewal of the medallion and issue monetary penalties.

On or about January 13, 2012, the TLC entered into a contract with the vendor/dispatcher, a Connecticut corporation known as Transportation General, Inc. d/b/a Metro Taxi (“Metro

Taxi”) entitled “Dispatch Program For Wheelchair-Accessible Medallion Taxi Cabs in the City of New York Agreement, Contract PIN No. 156 11P00347” (the “ADP Contract”). Metro Taxi was selected as the TLC’s vendor in response to a Request for Proposals issued by the TLC on April 20, 2011. Pursuant to the ADP Contract, Metro Taxi is required to provide a dispatch program for accessible medallion taxicabs for trips originating in Manhattan. The ADP Contract further requires Metro Taxi to operate the Dispatch Program seven days a week, 24 hours a day, including holidays and to have at least one dedicated contact person available during such time for the TLC and the City to ensure proper customer service. Additionally, the ADP Contract provides that “[f]unds to cover all contract and service related costs and expenses in fulfillment of this Agreement will be collected directly from taxicab medallion owners” and that Metro Taxi shall invoice medallion owners and collect a fee at a minimum on an annual basis to cover the costs of “financing the administrative, technological and outreach costs, as well as paying drivers for the deadhead portion of their trips (including tolls), and any ‘no show’ fees,” also known as the Taxi Accessibility Fee. The ADP Contract had a two-year term with the TLC retaining the option to renew for up to three additional one-year terms. Additionally, the ADP Contract set forth the proposed budget, provided by Metro Taxi, for each year of the Dispatch Program.

In its Notice of Promulgation, the TLC anticipated that the initial annual Taxi Accessibility Fee would be \$98 for the first year and \$54 for the second year but stated that a more precise amount for the second year would be calculated at the end of the first year. Additionally, the Notice of Promulgation stated that a portion of the annual fee would be held in reserve to cover costs incurred in the event of late or nonpayment of fees and would be rolled over to the following year to reduce future fees. In the spring of 2012, during the first year of the

Dispatch Program, Metro Taxi issued invoices to medallion owners for the Taxi Accessibility Fee in the amount of \$98 per medallion. The \$98 fee paid by all 13,237 medallion owners did not meet the full cost of the original Year 1 budget of \$1,300,720, set forth in the ADP Contract. The maximum amount that could be collected from the 13,237 medallion owners was \$1,297,226 and thus, the TLC updated the difference of \$3,494 in the Year 1 budget in an ADP Contract extension to fix the error. In Year 1, there were only 231 wheelchair accessible taxicabs in the Dispatch Program and due to savings realized from the deadhead fee budget and equipment costs, the actual cost for Year 1 of the Dispatch Program was only \$1,122,544.04 and the money left over was rolled into the budget for Year 2 of the program.

In February 2013, TLC staff discussed the Year 2 budget with Metro Taxi staff, which included the 231 wheelchair accessible taxicabs in operation at that time. After reviewing the expenditures for Year 1 and the expected expenditures for Year 2, the TLC decided to set the Taxi Accessibility Fee at \$54 per medallion, the same amount specified in the ADP Contract. As a result, Metro Taxi collected \$714,798 from the 13,237 medallion owners. However, this did not meet the full cost of the original Year 2 budget, which was \$717,217. Thus, the TLC updated the difference of \$2,419 in the Year 2 budget in an ADP Contract extension to fix the error. However, respondent alleges that there was an increase in costs during Year 2 with the actual cost of the Dispatch Program totaling \$1,006,519, resulting in a deficit of \$291,721. The deficit was allegedly caused by a number of factors, including, *inter alia*, that demand for the rides with the wheelchair accessible taxicabs increased from an estimated 7,000 trips to a total of 36,650 trips.

At the end of Year 2 of the Dispatch Program and after negotiations between the TLC and

Metro Taxi, the TLC approved the Year 3 budget of \$3,538,958.34 and set the Taxi Accessibility Fee at \$260 per medallion due to an increase in wheelchair accessible medallions. On or about March 31, 2014, the TLC issued the Notice, notifying all yellow taxicab medallion owners that the Taxi Accessibility Fee for the third year of the Dispatch Program was set at \$260 per medallion and was due to be paid by April 18, 2014. The Notice explained that the

fee for 2014-2015 increased to cover costs associated with adding more accessible taxicabs to the Accessible Dispatch program. The TLC recently sold 400 wheelchair accessible medallions and will sell 250 more in the near future for a total of 650 new wheelchair accessible medallion taxicabs.

With the addition of 650 new taxis, the Accessible Dispatch program will operate with a fleet of 881 wheelchair accessible cabs in the coming year.

The total cost of the program is \$3.5 million. The budget will cover program administration and operating costs for a fleet of 881 wheelchair accessible taxis: call-taking and dispatch costs as well as administrative costs; new hardware and software technology for 650 accessible taxis; outreach, advertising, and marketing; a dispatch fee to administer the Accessible Dispatch program; driver dispatch costs of "deadhead"; and prior year costs.

On or about April 14, 2014, the TLC issued an update to the Notice and extended the due date for payment of the Taxi Accessibility Fee from April 18, 2014 to May 19, 2014. Thereafter, in order to help medallion owners achieve compliance, the TLC again extended the date by which the Taxi Accessibility Fee was due to May 27, 2014 and extended it a final time to June 9, 2014. By Notice of Public Hearing and Opportunity to Comment on Proposed Rules, the TLC scheduled a public hearing to take place on April 30, 2014 on rules that would "create two funds to finance improvements in the taxicab and street hail livery industries." The Statement of Basis and Purpose of the Rule states that the proposed rule would impose a thirty cent per ride

“surcharge on taxicab and street hail livery trips that will finance these funds” (the “Surcharge Rule”). However, the Surcharge Rule has not yet gone into effect.

Thereafter, by way of Order to Show Cause and Verified Petition dated May 9, 2014, Greater New York commenced the instant proceeding seeking to challenge the decision to set Year 3's Taxi Accessibility Fee at \$260 and seeking a preliminary injunction enjoining TLC from collecting the Taxi Accessibility Fee and from taking any actions to enforce the Notice pending the determination of this proceeding.

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 (1st 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).

As an initial matter, this court finds that the TLC’s decision to set the amount of the Year 3 Taxi Accessibility Fee at \$260 per medallion was made on a rational basis. The TLC has provided the affidavit of Cynthia Davidson, TLC’s Director of Policy and Governmental Affairs,

who has affirmed that the \$260 Taxi Accessibility Fee for Year 3 was arrived at based on the necessary requirements of running the Dispatch Program. Specifically, Ms. Davidson has affirmed that in reaching said determination, the TLC and Metro Taxi considered all relevant factors, including dispatch equipment; administrative expenses associated with the operation of the dispatch system; outreach and dispatch fees; increased demand for service; and expenses for addition additional wheelchair accessible taxicabs to the Dispatch Program, as provided for in the ADP Contract. Further, respondent has affirmed that the costs to administer and operate the Dispatch Program increased in Year 3 for several reasons. First, the TLC increased the driver dispatch fee, or "deadhead" budget, to account for the increased customer demand in utilizing the Dispatch Program. Second, the budget includes costs to add an additional 950 wheelchair accessible vehicles to the Dispatch Program. Third, the deficit from Year 2 was rolled over into the budget for Year 3. Ms. Davidson has also affirmed that the equipment costs of the Dispatch Program increased dramatically in Year 3 because of the increase in medallions sold. Specifically, Ms. Davidson has affirmed that vehicles are made ready to receive dispatches in one of two ways. In some vehicles, Metro Taxi adds software to the existing taxicab technology system that is installed in the taxicab ("TPEP") to allow dispatches to be shown on the driver information monitor ("DIM"). TPEP provides electronic trip records, processes credit cards and sends messages to the drivers from TLC. For other vehicles, Metro Taxi installs a second DIM which only displays dispatches from Metro Taxi. The type of equipment that is installed depends on the type of the taxicab technology TPEP system that is already installed. Taxicabs with TPEP systems provided by VeriFone use two DIMs where taxicabs supported by Creative Mobile Technologies TPEP systems have the option of using the existing DIM for dispatching by

installing additional software in the TPEP DIM instead of installing a second DIM. Ms. Davidson has affirmed that in the original budgets for Year 1 and Year 2, the TLC anticipated that all new medallions coming into service would operate with two DIMs.

Petitioner's assertion that TLC's decision to set Year 3's Taxi Accessibility Fee at \$260 per medallion was arbitrary and capricious because "the slow and gradual addition of a few more wheelchair accessible taxis cannot conceivably support an immediate and unforeseen 500% increase in the cost of running the Dispatch Program" is without merit. Under the Street Hail Livery Law ("HAIL Act"), the TLC was authorized to issue up to 2,000 wheelchair accessible yellow taxicab medallions. The TLC has affirmed that it auctioned 200 wheelchair accessible medallions in November 2013, 168 wheelchair accessible medallions in February 2014 and 32 wheelchair accessible medallions in March 2014 for a total of 400 new wheelchair accessible medallions. The TLC has also affirmed that it anticipates selling 250 additional wheelchair accessible medallions at an auction in October 2014 and 300 additional wheelchair accessible medallions at an auction in February 2015. As a result of these auctions, the TLC affirms that it expects 1,181 medallions, which includes the existing 231 medallions plus 950 newly auctioned medallions, to participate in the Dispatch Program. Of the newly auctioned 950 medallions, the TLC alleges that 650 medallions will definitely operate in Year 3 but that the Year 3 budget accounts for the possibility that the additional 300 taxicabs will be able to participate in the Dispatch Program during that year as well. This increase in wheelchair accessible taxicabs is significant and hardly just "a few more" as petitioner suggests. As affirmed by respondent, all of the new taxicabs will need both hardware and software to participate in the Dispatch Program and Metro Taxi will need additional dispatchers to address the expected additional requests from

wheelchair-using passengers and to reach out to the wheelchair accessible taxicabs to arrange for the pick-ups. Thus, the budget and the Taxi Accessibility Fee of \$260 includes these costs on the basis of increased customer demand. Respondent further alleges that in the event that less than 950 wheelchair accessible taxicabs are added to the Dispatch Program and there is a surplus at the end of Year 3, the remaining funds will be rolled over into the budget for Year 4, potentially lowering the Taxi Accessibility Fee for that year.

Further, petitioner's assertion that the TLC's decision to set Year 3's Taxi Accessibility Fee at \$260 per medallion was arbitrary and capricious because no public hearings were held prior to the TLC making its determination is without merit. In December 2011, the TLC promulgated the Taxi Dispatch Rules which govern the Dispatch Program. Prior to doing so, TLC gave notice, an opportunity for comment and held a public hearing. Pursuant to said rules, the definition of Taxi Accessibility Fee "is the fee required by these rules to be paid by Owners to the Accessible Taxi Dispatcher to provide accessible service to Wheelchair using Passengers. The Taxi Accessibility Fee shall be set in accordance with the terms of an agreement between the Commission and the approved vendor and will be based on the per medallion cost to the vendor for equipment, administrative expenses associated with operation of the dispatch system, outreach and Dispatch Fees." Further, Metro Taxi, the approved vendor, was secured following all New York City Procurement Policy Board procedures. However, there is no mechanism in the TLC's rules or the ADP Contract for TLC to hold a public hearing or seek public comment on the amount of each annual Taxi Accessibility Fee. Rather, both the rules and the ADP Contract allow the TLC to work with Metro Taxi to come to a reasonable fee after determining a budget for the upcoming year based on all anticipated costs. Although no formal procedural

mechanism exists to gather public comment at that point in the process, the TLC has affirmed that it either met or spoke with representatives of the Committee for Taxi Safety ("CTS"), the League of Mutual Taxi Owners ("LOMTO"), the Metropolitan Taxicab Board of Trade ("MTBOT") as well as petitioner to discuss the amount of the Year 3 Taxi Accessibility Fee. Indeed, at that time, both petitioner and CTS complained to the TLC that the \$260 Year 3 Taxi Accessibility Fee was due at the same time as their annual taxes and thus, the increased charges were a burden. In response to such complaints, the TLC pushed back the collection date by a month to May 19, 2014, then by another week to May 27, 2014 and finally by almost two more weeks to June 9, 2014.

Petitioner's assertion that the TLC's decision to set Year 3's Taxi Accessibility Fee at \$260 per medallion was arbitrary and capricious because there was no TLC Chair in place when it made its determination is also without merit. Pursuant to the Taxi Dispatch Rules, the TLC delegated authority over the Dispatch Program to the Chair and TLC's staff, who were charged with negotiating and approving the ADP Contract. Accordingly, the TLC and Metro Taxi entered into the ADP Contract when the TLC was chaired by Mr. Yassky, pursuant to which Metro Taxi developed and implemented the Dispatch Program. The ADP Contract, in turn, creates a process whereby the Taxi Accessibility Fee is adjusted every year. However, this adjustment is an automatic process, as provided for in the ADP Contract, and does not require any further approval or action by the TLC or the Chair once the ADP Contract was in place. Therefore, pursuant to the rules and the ADP Contract, the TLC staff has been delegated responsibility for adjusting and approving the Taxi Accessibility Fee each year. Moreover, any argument that the TLC ceased to operate between the time Mr. Yassky resigned in December

2013 and the time Ms. Joshi was approved by the City Council on April 10, 2014 is meritless. During this period, the TLC issued licenses and summonses, collected fees and sought license revocations and petitioner has offered no evidence to suggest that managing the Dispatch Program in accordance with the terms of the ADP Contract was prohibited. The suggestion that “an employee at the TLC merely approved Metro Taxi’s outlandish request without undertaking any real analysis of the actual costs” is without basis as the TLC has provided evidence that there were many meetings regarding Metro Taxi’s proposed budget and that the proposed budget was examined closely by the TLC’s staff and based on data provided by Metro Taxi.

Petitioner’s assertion that the TLC’s decision to set Year 3’s Taxi Accessibility Fee at \$260 per medallion was arbitrary and capricious because the Notice did not inform petitioner that there would be an increased demand in use of the Dispatch Program that would justify increased administrative costs or personnel costs by Metro Taxi is without merit. Respondent has affirmed that it is authorized, pursuant to the HAIL Act, to issue up to 2,000 wheelchair accessible medallions. Further, it was made clear to petitioner that the Taxi Accessibility Fee is based on the number of participating taxicabs and the costs of operating the Dispatch Program based on that number. Additionally, the TLC has put forward evidence that there has been an increase in demand for wheelchair accessible taxicabs and that it will continue to rise as the Dispatch Program continues and more wheelchair accessible medallions are sold.

Petitioner’s assertion that the TLC’s decision to set Year 3’s Taxi Accessibility Fee at \$260 per medallion was arbitrary and capricious because the “TLC did not consider the effect and availability of funds generated from the Surcharge Rule” is without merit. As an initial matter, while the Surcharge Rule has been approved by the TLC, the TLC has affirmed that the

final rule has not yet been published in the City Record and thus has not yet gone into effect. Additionally, if the rule is published and not challenged, the actual thirty cent surcharge to be paid by passengers will not be collected until January 1, 2015. Therefore, TLC could not consider the monies arising out of a rule that has not yet been published in the City Record or monies that have not yet been collected. Furthermore, the TLC has affirmed that even if it actually starts collecting the surcharge in January 2015, it has not yet determined what percentage of the thirty cents is going towards the Dispatch Program itself. Thus, it was rational for the TLC not to consider the future surcharge fund monies when reaching its determination setting the \$260 Year 3 Taxi Accessibility Fee.

Further, petitioner's assertion that the TLC's decision to set Year 3's Taxi Accessibility Fee at \$260 per medallion violated its own rules because it did not approve Metro Taxi's "bill" prior to issuing the Notice is meritless. It appears that petitioner is asserting that the TLC issued its Notice without approving the amount set forth in the Notice. However, the TLC has provided evidence that it did indeed approve the "bill" prepared by Metro Taxi and that it based said approval on authorized anticipated expenses and the costs associated with dispatching taxis and that the "bill" did not seek amounts "greatly in excess of anticipated expenses." The TLC has affirmed that Year 3's Taxi Accessibility Fee was adjusted to reflect excessive costs from Year 2 and that it was also based on data submitted by Metro Taxi regarding the operation of the Dispatch Program such as costs proposals, service reports, trip data, invoices and other reporting requirements as specified in the ADP Contract.

Finally, that portion of the petition which seeks a preliminary injunction enjoining the TLC from collecting the Taxi Accessibility Fee and from taking any actions to enforce the Notice

