New York Taxi Workers Alliance v New York City Taxi & Limousine Commn.
2024 NY Slip Op 34995(U)
March 28, 2024
Supreme Court, New York County
Docket Number: Index No. 154424/2023
Judge: Nicholas W. Moyne
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M

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NEW YORK TAXI WORKERS ALLIANCE, NORMAN BUENAVENTURA, AMARA SANOGO

Petitioner,

- v -

THE NEW YORK CITY TAXI & LIMOUSINE COMMISSION, DAVID DO, THE CITY OF NEW YORK,

Respondent.

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INDEX NO. 154424/2023

MOTION DATE 05/15/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 24, 25, 26, 28, 35, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

This is an Article 78 proceeding seeking to enjoin and/or halt a pilot program implemented by the New York City Taxi and Limousine Commission ("TLC"). The pilot program plans to issue approximately 2,500 licenses for a new type of Street-Hail-Livery ("SHL") or green cab vehicle that would not be authorized to be hailed on the street and would require the issuance of 2,500 new for-hire vehicle licenses ("FHV"). Petitioners argue that the SHL pilot program is in violation of state law and would flood the market with drivers at a time when, according to the petitioners, the available number of drivers significantly outpaces the demand for trips.

The petitioners claim that the SHL pilot program violates the state HAIL Act, which requires, *inter alia*, that all SHLs be available for street pickup. The pilot program prohibits the new SHL vehicles from picking up street hails in order to compel the drivers to focus on prearranged trips. The petitioners claim the pilot program disregards the mandates of the HAIL Act by : (1) allowing for trips to be performed in areas the HAIL Act deems off-limits to SHL vehicles; (2) failing to comply with the HAIL Act's requirements concerning the percentage of wheelchair accessible vehicles to be licensed; (3) failing to require taximeters and; (4) waiving fees for the SHL permits that are mandated by the HAIL Act. The petitioners also claim that the TLC failed to engage in the review of FHV licenses required by N.Y.C. Admin. Code § 19-550(b) and its own rules prior to issuing the FHV licenses required for the pilot program. Because of this failure to review, the petitioners believe that the TLC has not taken into account the fact that the pilot program is uneconomical and will negatively impact driver income. They

allege that the determination by TLC to enact the pilot program was irrational and/or arbitrary and capricious. They ask this Court to set it aside.

In opposition to the petition, the respondents argue that the petitioners lack standing to challenge the pilot program. The respondents also take issue with the petitioners' claim that TLC failed to conduct the review required by Administrative Code § 19-550(B) and 35 RCNY § 59A-06. They also assert that the enactment of the pilot program was a proper exercise of TLC's regulatory powers and not arbitrary or capricious.

The threshold issue in this case is whether the petitioners have standing to assert their claims challenging the implementation of the SHL Pilot program. Standing is a threshold requirement for any litigant seeking relief from a court (*see N.Y. State Ass'n of Nurse Anesthetists v Novello*, 2NY3d 207, 211 [2004]; *see also Matter of Assn. for a Better Long Is., Inc. v New York State Dept. of Envtl. Conservation*, 23 NY3d 1, 6 [2014] ["Petitioner has the burden of establishing both an injury-in-fact and that the asserted injury is within the zone of interests sought to be protected by the statute alleged to have been violated"]). It is well-settled that in order to establish standing, the petitioners must show an "injury-in-fact," meaning they must demonstrate that they will suffer actual harm as a result of the challenged actions (*id.*). The injury must be concrete and definite, as opposed to speculative or based on conjecture about future events (*id.*). Second, the injury asserted must fall within " the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted" (*see Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 773 [1991]). Finally, it must be direct and immediate, such that it cannot be prevented or significantly ameliorated by administrative action or by steps available to the petitioners (*see Acevedo v New York State Dept. of Motor Vehicles*, 29 NY3d 202, 218 [2017]).

Here, the petitioners assert that the pilot program will cause an oversaturation of the market for drivers for-hire without increasing the demand for such drivers, thereby lowering income for everyone. Specifically, they allege that "[t]he addition of 2,500 new cars to the road at this juncture will further dilute driver earnings," by increasing competition for a finite number of available trips (Second Amended Petition §6). Respondents maintain that this alleged harm is too speculative and hypothetical to constitute the type of concreate injury necessary to confer standing on the petitioners. Petitioners maintain that the alleged harm is not hypothetical and in fact has already occurred. However, a claim based on the number of drivers added to the road by virtue of the pilot program is clearly speculative at this juncture. Furthermore, "a competitive injury, in and of itself, does not confer standing to challenge an administrative determination" (*Subway Check Cashing Serv., Inc. v Considine*, 158 AD2d 406 [1st Dept 1990]). While the number of SHL Pilot participants is capped at 2,500, the increase in the number of vehicles for hire could be far less. According to TLC, approximately 106,551 vehicles for hire were licensed in New York City when the pilot Program was enacted. At most, the SHL program will bring the number of licensed vehicles to 109,051, an increase of 2.34%. While this increase may not be entirely

negligible, it is far from a given that it would impact the market in any meaningful way. Additionally, since many SHL permits have been previously surrendered to the TLC, it is more likely that the increase in drivers caused by participation in the pilot program will be minimal, particularly given their limited ability to operate in Manhattan. Furthermore, none of the individual petitioners allege that they submitted an application for inclusion in the SHL Pilot Program or express any interest in participating in the program. Thus the claimed harm is even more speculative or hypothetical (*see Lotaj v City of New York*, 127 AD3d 605, 606 [1st Dept 2015]; *Christian v City of New York*, 139 AD3d 457, 458 [1st Dept 2016]). The other claims asserted by the petitioner are equally speculative. Accordingly, the petitioners have failed to demonstrate an "injury-in-fact" as the alleged harm is speculative and based on conjecture about future events. Therefore, the petitioners lack standing to bring the instant Article 78 proceeding.

Given the finding by this Court that the petitioners lack standing, the Court need not address the underlying merits of the petition at this time. Accordingly, for the reasons set forth hereinabove, it is hereby

ORDERED that the petition is denied.

This constitutes the decision and order of the court.

3/28/2024
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE