



Taxi & Limousine Tribunal
A Division of the Office of Administrative Trials and Hearings

Taxi & Limousine Tribunal
Appeals Unit
32-02 Queens Blvd. 3rd Floor
Long Island City, NY 11101

Taxi & Limousine Commission v. Samfes Yo Corporation, Lic. No. 5442130

DECISION

The appeal of Samfes Yo Corporation (the “respondent”) is **denied**.

The decision of the Administrative Law Judge (the “ALJ”) is **affirmed**.

BACKGROUND

On May 8, 2013, the respondent appealed ALJ Richard Stein’s decision dated April 23, 2013. In that decision, the ALJ found the respondent in violation of New York City Administrative Code (“Code”) section 19-506B(1)¹ stated in summons number 1438404A.

The ALJ’s decision states:

The [Taxi and Limousine Commission (the “Commission” or “TLC”)] was represented by David Ross. The Respondent was represented by Gail Ellington. Inspector Robyn Stanley credibly testified for the Commission that she observed driver Jacob Jason pick up 4 male and 5 female passengers and drop off one of the passengers. That passenger informed the Officer that she paid the driver a fare. A check of the records revealed that the vehicle is not licensed as a for hire vehicle with the TLC. Under questioning by Ms. Ellington, the Officer stated that she had no knowledge whether the owner of the vehicle, the Respondent in this case, had any knowledge that the driver was using his vehicle as a for hire vehicle. Ms. Ellington argued that there is no presumption of the owner’s knowledge in Administrative Law section 19-506(b)(1) and accordingly the Commission did not prove one of the elements of the summons and therefor the summons should be dismissed. This specific summons remanded for this hearing from an appeal to the Chairperson, in accordance with the TLC rules. In the Chairperson’s final determination and order, which remanded the case for further proceedings consistent with the Chairperson’s ruling, the Chairperson specifically found that, in this case, there is a presumption that the owner consented to the illegal activity of the driver. As I find in this case, based on the Inspector’s

¹Any person who shall permit another to operate or who shall knowingly operate or offer to operate for hire any vehicle as a taxicab, coach, wheelchair accessible van, HAIL vehicle or for-hire vehicle in the city, without first having obtained or knowing that another has obtained a license for such vehicle shall be guilty of a violation.



credible testimony, that the driver engaged in illegal activity by driving the Respondent's vehicle as a for-hire vehicle, without having a for-hire vehicle license, I must find the owner guilty, based on the presumption. I must follow in the Chairperson's determination. Accordingly, I find the Respondent guilty of this summons.

On appeal, the respondent argues, through its attorney Gail Ellington, Esq. that the ALJ erred in his decision since Code section 19-506B(1) does not contain a rebuttable presumption. The Commission must prove that the owner permitted another to operate the owner's vehicle for hire. The Appeals Unit has consistently held that there is no presumption of permission and the inspector testified that she had no knowledge of whether the owner gave the driver permission to use the vehicle for hire.

The Commission did not submit a response to the respondent's appeal.

ANALYSIS

The decision of the ALJ is correct.

This matter was first heard on July 3, 2012 before ALJ Sandra Felix. The summons was dismissed upon the ground that the TLC did not show that the respondent dispatched the unlicensed vehicle to be used for illegal for-hire activity and a presumption of dispatch for illegal activity will be inferred unless the presumption is expressly stated in the applicable Rule. The ALJ's decision was affirmed by the Appeals Unit. Pursuant to Rule 68-16A (RCNY section 68-16A), the TLC petitioned the Chairperson to reject the Appeals Unit's decision. The Chairperson's Final Determination and Order reversed the Appeals Unit's decision and the matter was remanded for further proceedings consistent with the Order. The Chairperson's decision was predicated upon a conclusion that the TLC was entitled to the presumption that the owner consented to the illegal activity by the driver and the matter had to be remanded in order to properly include the presumption.

The ALJ who presided over the new hearing found the respondent guilty based upon the presumption and stated that he had to follow the Chairperson's determination. The ALJ was correct. The Chairperson's ruling was on the specific summons before the ALJ and the ruling that the TLC was entitled to a presumption became the law of the case which the ALJ was required to follow. The Appeals Unit must also abide by the law of the case involving the specific summons before it on which the Chairperson has ruled. The decision of the ALJ is therefore affirmed.

Dated: May 30, 2013

OATH Taxi and Limousine Tribunal Appeals Unit

By: Thomas Bonanno
Administrative Law Judge

