

## ***Taxi & Limousine Comm'n v. Francois***

OATH Index No. 651/20 (Nov. 25, 2019), *adopted*, Comm'r Dec. (Dec. 24, 2019)

At a summary suspension hearing, petitioner failed to establish that driver, who received a desk appearance ticket for leaving the scene of an accident involving personal injury, posed a direct and substantial threat to the public. ALJ recommends that suspension of respondent's TLC Driver License be lifted.

---

### **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**TAXI AND LIMOUSINE COMMISSION**  
*Petitioner*  
*-against-*  
**FANFAN FRANCOIS**  
*Respondent*

---

### **REPORT AND RECOMMENDATION**

**FAYE LEWIS**, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("TLC"), brought this summary suspension proceeding against respondent, FanFan Francois, holder of TLC Driver License 5223573. Admin. Code § 19-512.1 (Lexis 2019); 35 RCNY §68-15(d) (Lexis 2019). On September 13, 2019, petitioner suspended respondent's TLC Driver License after receiving notice of his arrest on September 12, 2019, for leaving the scene of an accident causing personal injury (Pet. Ex. 6). Petitioner asserts that respondent's continued licensure during the pendency of his criminal case would pose a direct and substantial threat to the public health and safety and seeks a finding that his suspension should be continued pending the outcome of the criminal case (Pet. Ex. 1). Respondent opposes continued suspension, asserting that, based on the facts underlying his arrest, his record as a licensee, and his character, his continued licensure would not pose a "direct and substantial" threat to the public.

At a post-suspension hearing held on November 8, 2019,<sup>1</sup> petitioner relied solely upon documentary evidence. Respondent testified in his own behalf and also presented documentary

---

<sup>1</sup> The case was originally scheduled for October 22, 2019, but was adjourned twice at respondent's request.

evidence. For the reasons below, I find that, even if the charges underlying respondent's arrest are presumed to be true, petitioner failed to establish that respondent poses a continuing direct and substantial threat to the public health or safety. I recommend that respondent's suspension be lifted.

### ANALYSIS

Under New York City's Administrative Code, petitioner may suspend a TLC Driver License before a hearing "for good cause shown relating to a direct and substantial threat to the public health or safety." Admin. Code § 19-512.1 (Lexis 2019). If a license is suspended based solely on an arrest, the licensee may challenge that at a post-suspension hearing, where the issue is "whether the charges underlying the Licensee's arrest, if true, demonstrate that the continuation of the License while awaiting a decision on the criminal charges would pose a direct and substantial threat to public health or safety." 35 RCNY § 68-15(d)(3) (Lexis 2019).

In interpreting this TLC rule, the Second Circuit has held that "a hearing that in effect conclusively presumes that suspension is appropriate based solely upon the abstract relationship of the elements of a charged offense to safe driving provides inadequate process." *Nnebe v. Daus*, 931 F.3d 66, 86 (2d Cir. 2019). The Court stressed that the rule "is focused not on the threat posed by the charges, but rather on the threat posed to the public by *the driver's licensure*." *Id.* at 82 (emphasis in the original). Although a post-suspension hearing that "does not open the question of the driver's factual guilt of the criminal charges" will pass constitutional muster, to satisfy due process, "a meaningful hearing ... must give the driver an opportunity to show that his or her particular licensure does not cause a threat to public safety." *Id.* at 83, 90. As the Court explained, relevant considerations in this inquiry include "the conduct underlying the arrest and the overall record and character of the driver." *Id.* at 82. The emphasis is on whether the driver poses a continuing threat to the public, and whether the threat is both "direct" and "substantial." *Id.* at 82.

For example, the Court noted, the crime for which the driver is arrested "may have been unrelated to his duties . . . or a sole infraction in an otherwise spotless record," or the underlying conduct, "while perhaps satisfying the elements of a crime," may establish that "the offense was technical or mitigated, such that continuation of the driver's record did not pose the kind of threat conjured by the general nature of the crime charged." *Id.* The Court also noted that "in the majority of cases, the further removed the crime is from the driver's job, the less "direct" the

threat may be if he or she remains licensed. Depending on the surrounding circumstances and the driver's history the threat may also be more or less "substantial." *Id.*

Even before the Circuit's decision in *Nnebe*, this tribunal has consistently analyzed on a case-by-case basis, whether a licensee's suspension should continue because of a "direct and substantial threat" to public health or safety, considering factors including the nexus between the charge and licensed activity, the driver's character, and the likelihood of recurrence. *See Taxi & Limousine Comm'n v. Singh*, OATH Index No. 701/20 at 3 (Nov. 1, 2019), *adopted*, Comm'r Dec. (Nov. 19, 2019) (citing cases); *Taxi & Limousine Comm'n v. Sow*, OATH Index No. 467/20 at 4-5 (Oct. 15, 2019), *adopted*, Comm'r Dec. (Oct. 17, 2019) (same).

Post-*Nnebe*, this tribunal has decided a number of cases expressly applying the considerations set forth by the Circuit. In *Singh*, this tribunal found, and the Commission agreed, that a driver's suspension, based on his arrest for assault and criminal possession of a weapon, should be lifted because petitioner failed to prove that his continued licensure posed a direct and substantial threat to the public's health and safety. The decision highlighted that "detailed, credible testimony" from two witnesses supported the driver's assertion that drunken partygoers attending a birthday party at his house had been the initial aggressors, he had defended himself, and he had called the police first. *Singh*, OATH 701/20 at 5. Also noted was that the driver had an unblemished record as a TLC driver, had never been accused of threatening or assaulting a passenger, had no prior arrests, and supported himself and his parents from his income as a TLC driver. *Id.* at 6.

Conversely, in two other decisions also adopted by the Commission, this tribunal found that petitioner had met its burden of showing that continued licensure posed a direct and substantial threat to the public. *See Taxi & Limousine Comm'n v. Azad*, OATH Index No. 142/20 at 6 (Aug. 15, 2019), *adopted*, Comm'r Dec. (Oct. 15, 2019) (suspension of driver continued where driver was arrested for second degree assault, the criminal complaint alleged that the driver repeatedly struck his 15-year old nephew with a stick and referred to hospital medical records showing that the nephew was taken for treatment and diagnosed with a sprained wrist and abrasion to his arm, and the driver failed to offer any evidence in mitigation of his alleged abuse); *Taxi & Limousine Comm'n v. Baig*, OATH Index No. 179/20 (Aug. 15, 2019), *adopted*, Comm'r Dec. (Oct. 15, 2019) (suspension of driver continued where driver was arrested on April 15, 2019, for third degree assault and forcible touching, and again arrested on June 1, 2019, for second degree criminal contempt for violating an order of protection, the initial

criminal complaint contained detailed allegations made by respondent's wife, the complainant, and respondent's testimony about what occurred was limited to identifying his wife's name on the complaint and stating that he was not on duty at the time of his arrest). In *Azad*, OATH 142/20 at 6, ALJ Garcia noted that there were "favorable factors" for the respondent, such as his good driving record, lack of previous license suspension, and lack of evidence of a prior criminal record, but found these factors to be outweighed by the "seriousness of the charges combined with the underlying facts as detailed in the criminal complaint."

Here, petitioner presented evidence that respondent, a 59 year-old man, was arrested at his home in Brooklyn on September 12, 2019, and issued a desk appearance ticket for leaving the scene of an accident involving personal injury (first offense) in connection with an incident occurring on September 5, 2019, in midtown Manhattan (Pet. Exs. 3, 4, 5). He was later arraigned in criminal court and his criminal case is pending (Pet. Ex. 3). The complaint report (Pet. Ex. 3) indicated that the incident occurred at about 7:30 p.m. on September 5, at the northwest corner of Broadway and 45<sup>th</sup> Street (Pet. Ex. 3). According to the narrative section of the complaint report, the complainant said that he was taking a photo "next to the curb on the shoulder of the street when a taxi struck him, causing pain and injury, and fled the scene." The complainant said his coworkers put him in an Uber and sent him to the hospital. A 911 call was not made. According to the narrative, the complainant had "video of the incident and was able to obtain license plate." (Pet. Ex. 4). The arrest report is less specific, stating in the details section, "Deft. Did get into a motor vehicle collision with a pedestrian causing physical injury, then failed to stay on scene and wait for police" (Pet. Ex. 5). The complainant reported the incident to the police the next morning, at 2:00 a.m., as a "walk-in" (Pet. Ex. 4).

Respondent testified in much greater detail about the incident, his "overall record," and his "character." *Nnebe*, 931 F.3d at 82. Testifying with the aid of an interpreter, when needed,<sup>2</sup> respondent explained that he has been licensed as a driver with TLC since 1988. This has been his only occupation (Tr. 24-25). He has had his current license since 2006, because his previous license had expired while he was out of the country for about four or five months, requiring that he apply for a new license upon his return (Tr. 33). Before 2017, he drove for Uber and Lyft, as well as a limousine service, and has a very high Uber rating. Since 2017, until his suspension, he

---

<sup>2</sup> Respondent asked for a translator to be provided through Language Line, which provides interpreters by telephone, for use as needed. Initially respondent testified in English, but when he began to describe the incident, he began using the interpreter, who continued translating for the rest of his testimony (Tr. 43-44).

was driving a yellow cab (Tr. 34, 35). He lives with his wife, three children, and his sister. He and his wife are the sole support of his family. Since his license has been suspended, he has not been working (Tr. 30-31).

Respondent considers himself to be a safe driver. He testified that he has never been in an accident, except once in 2017 while he was stopped at a red light while driving his son to school and another driver rear-ended him. He stopped and called the police (Tr. 29, 36). Respondent said that he knows that if he is involved with an accident, he has to stop and call the police, and wait until they arrive (Tr. 37-38).

Regarding this incident, respondent explained as follows. On September 5, 2019, while driving a yellow cab which he leased, he picked up a passenger at 8<sup>th</sup> Avenue and West 45<sup>th</sup> Street (Tr. 40-42). On the way to the passenger's destination, respondent stopped at a red light on West 45<sup>th</sup> Street and 7<sup>th</sup> Avenue (Tr. 43, 44). He was in the right lane, next to the sidewalk (Tr. 51-52). A "couple of kids," on skateboards, came from his right and started "jumping" on their skateboards in the middle of the street, in front of his car (Tr. 43, 48, 55). Another person, who was with them but was not skateboarding, was recording or videoing their jumps. The person was "backing up" towards respondent's car (Tr. 52-53), and "hit" or "bumped" the front of respondent's car (Tr. 49, 56). The person did not fall in front of the taxi or onto the ground (Tr. 52, 58).

Once the person who was taking the video hit or bumped his taxi, respondent got out of the car "to check to make sure that the light" on the car "was not broken" (Tr. 49). He was concerned because he did not own but rather leased the taxi, so he wanted to "make sure" that the light was not broken (Tr. 49). He checked the light, which seemed to be "okay" (Tr. 49). Then respondent asked the person who was videoing, "Are you okay?" (Tr. 49). The person said, "yes" (Tr. 49). One of the skateboarders took a photo of respondent's license plate with his phone (Tr. 57, 58). Then the traffic light changed to green and the skateboarders, as well as the person who was taking the video, "just took off" (Tr. 50). Respondent also left, because the light had changed (Tr. 49).

Respondent took his passenger to his destination. He explained that he did not think that he had been in an accident. The person who backed into his car did not fall, and no one reported being hurt or injured (Tr. 58). When a detective telephoned him about a week later to ask if he got into a car accident, he told the detective that he had not (Tr. 31, 58).

Respondent testified that he has never been suspended or had his license revoked (Tr. 26, 34, 61, 65). Counsel stipulated, however, that a TLC “suspensions list” (Pet. Ex. 7) indicates that respondent was suspended for seven days in 2009 and six days in 2013 for not timely taking a drug test (Tr. 65). The list also shows that respondent was suspended again in 2013 and 2017 for failing to pay fines (Pet. Ex. 7). Respondent denied that his license was suspended in 2017 for failing to pay a summons (Tr. 67). He also said that he had gotten a “ticket” from TLC for failing to take a drug test, a judge had dismissed it, but TLC said that the ticket was not dismissed and presented it to him again. He paid the ticket because he needed his license and needed to work, so he did so (Tr. 66).

Respondent submitted an “adjudication list” from TLC showing his driving record (Resp. Ex. A), as well as an “abstract” of his driving record from the Department of Motor Vehicles (“DMV”) (Resp. Ex. B). The adjudication list (Resp. Ex. A) shows that from 2006 through 2017, respondent pled guilty to one rule violation in 2006, for failing to follow rules relating to stationary vehicles. In 2009, 2013, and 2017, respondent was found guilty after a hearing of three different rule violations. The 2009 and 2013 violations were issued, respectively, for failure to follow rules involving moving vehicles and the rule prohibiting the solicitation of passengers. The 2017 rule violation involved refusing to transport a passenger. Respondent acknowledged that he got a “ticket” for not servicing a customer and that he was found guilty at a hearing (Tr. 70). Respondent also admitted that he received a complaint from a customer that he drove through a stop sign without stopping. He pled not guilty, but the TLC “judge” said he was guilty (Tr. 70). In 2017, respondent agreed to a settlement involving a summons issued for a moving violation.

Respondent’s DMV driving abstract (Resp. Ex. B), shows that his license was suspended in August 2017 for failure to answer a summons. That suspension was cleared on August 10, 2017. From 2013 to 2018, respondent was convicted of five traffic violations: disobeying a traffic device, improper signal, improper U-turn, improper signal, and an adult passenger not having a seat belt. All but the seat belt violation resulted in fines and points on his license. Respondent completed accident prevention courses in 2016 and 2017, which made him eligible for point reductions on his license for previous violations.

The issue under *Nnebe* is whether petitioner has demonstrated that respondent’s continued licensure would post a direct and substantial danger to public health or safety. The starting point is the criminal charges, which must be taken as “true.” The charge of leaving the

scene of an accident causing physical injury is a serious charge, requiring proof that a motorist was involved in an accident causing personal injury, knew or had reason to know of such injury, and left the scene without reporting it. *Taxi & Limousine Comm'n v. Pugati*, OATH Index No. 1245/14 at 5 (Dec. 27, 2013) (citing cases), *rejected*, Comm'r Dec. (Feb. 18, 2014) (recommending lifting of suspension where driver of car was removed from the scene handcuffed to a stretcher and transported to a hospital by an ambulance). The charge has a nexus with respondent's TLC Driver License because it is driving-related. *See Pugati*, OATH 1245/14 at 4; *Taxi & Limousine Comm'n v. Basar*, OATH Index No. 874/12 at 7 (Jan. 20, 2012), *adopted*, Comm'r Dec. (Feb. 8, 2012). Here, moreover, respondent was driving his TLC vehicle. Thus, this is not the case, noted in *Nnebe*, 931 F. 3d at 81, where a driver's alleged crime is so far removed from his job that the potential threat from his continuing licensure is not "direct."

However, the circumstances underlying the arrest suggest that the potential threat from respondent's continuing licensure is not "substantial," as required by the TLC rule and by *Nnebe*. Respondent, testifying through an interpreter, provided a consistent account of the circumstances leading up to his arrest. He maintained that he got out of his taxi after a person came into contact with the car, asked the person if he was okay, heard the person reply that he was okay, and then left the scene when the light changed. He asserted that the person had been taking a video of the skateboarders and had bumped into his taxi and that he got out of his car to make sure that the light on the car was not broken. He also indicated that the person did not fall and that no one claimed to be injured.

I did not fully credit respondent's explanation for getting out of the car, because it was unclear why a person who simply backed into his taxi would damage the lights on the exterior of the car. I found it more plausible that respondent's car made some contact, albeit minimal, with the person who was filming the skateboarders, which led respondent to get out of the car and inquire about the person. However, I credited respondent's consistent testimony that he got out of the car, asked if the person was okay, and after the person replied yes, left the scene when the light changed.

Neither the criminal complaint nor the arrest report is inconsistent with this testimony. These documents are sparse in their description of the incident, indicating only that respondent struck a pedestrian causing injury and then left the scene without waiting for the police. Oddly, the reports also indicate that the complainant did not call 911 for the police or for an ambulance, but took an Uber to the hospital, and reported the incident the next day. Although the complaint

states that the person sustained “pain and injury,” it provides no details of the nature of the injuries, diagnosis, or treatment. Notably, there was no evidence that any third party, such as a physician or police officer, saw any injury. Moreover, while the complaint refers to a video, there is no mention of what is included in the video, and no indication that any police officer had reviewed the video. Petitioner asserted that it did not have access to the video (Tr. 18). Thus, while this case lacks the witness corroboration in *Singh*, OATH 701/20, the sparseness of the arrest documents stands in stark contrast to the level of specificity in the criminal complaints in *Azad*, OATH 142/20, which included review of the complainant’s hospital medical records, as well as in *Baig*, OATH 179/20, which included detailed allegations of the assault.

Taking the criminal charge to be true requires a presumption that respondent should have known that he caused personal injury to the pedestrian, who clearly came into contact with his car. Respondent should have stayed at the scene and waited for the police. He did not. But given the limited detail in the police report and respondent’s consistent testimony that he got out of the car to speak to the pedestrian and was not aware of actual injury, this case is much different from those of other drivers whose license suspension following their arrest for leaving the scene of an accident was continued. *See, e.g., Taxi & Limousine Comm’n v. Basar*, OATH Index No. 874/12 (Jan. 20, 2012), *adopted*, Comm’r Dec. (Feb. 8, 2012) (recommending continuing suspension where driver hit pedestrian, who fell to the ground, driver stopped and then fled scene, and criminal court information stated that pedestrian suffered a fractured skull and shoulder and spent a month in the hospital); *see also Taxi & Limousine Comm’n v. Stanicic*, OATH Index No. 1223/08 (Dec. 18, 2007), *adopted*, Comm’r Dec (Jan. 8, 2008) (recommending continued suspension where driver hit pedestrian, stopped briefly, but then kept on going, without getting out of car; ALJ rejected as implausible driver’s assertion that he did not know that he hit anyone after driver testified that a figure had emerged from the dark and that something had hit his windshield). Here, respondent’s conduct is “mitigated.” *Nnebe*, 931 F.3d at 82.

Moreover, “the overall record and character” of the respondent falls short of establishing that he poses a continuing direct and substantial threat to the public safety. Although petitioner introduced information relating to his current license only (Pet. Exs. 2, 7), respondent testified without rebuttal that he has been driving for TLC for more than 30 years, which is an exceptionally long career. He and his wife are the sole support of their three children and his



sister. Although he has a disciplinary record, there was no evidence that he has ever been found guilty of, or even charged with, similar conduct.

In sum, I find that petitioner failed to establish that respondent's continued licensure poses a direct and substantial threat to the public health and safety.

### **FINDINGS AND CONCLUSIONS**

1. Respondent was arrested for leaving the scene of an accident causing personal injury.
2. Even assuming the truth of the pending criminal charges, petitioner did not prove that respondent's continuing licensure poses a direct and substantial threat to public health or safety.

### **RECOMMENDATION**

I recommend lifting the suspension of respondent's TLC Drivers License.

Faye Lewis  
Administrative Law Judge

November 25, 2019

SUBMITTED TO:

**BILL HEINZEN**  
*Acting Commissioner*

APPEARANCES:

**ASH HORN, ESQ.**  
*Attorney for Petitioner*

**PETER MAZER, ESQ.**  
*Attorney for Respondent*