

Taxi & Limousine Comm'n v. Ault

OATH Index No. 2261/21 (July 15, 2021), *adopted*, Comm'r Dec. (July 26, 2021), **appended**

Petitioner established that driver arrested for conspiracy to commit money laundering posed a direct and substantial threat to public health and safety. Suspension of respondent's TLC Driver License should be continued pending the outcome of her criminal case.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
TAXI AND LIMOUSINE COMMISSION
Petitioner
- against -
STACEY AULT
Respondent

REPORT AND RECOMMENDATION

JULIA H. LEE, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("Commission" or "TLC"), commenced this summary suspension proceeding against respondent, Stacey Ault, holder of TLC Driver License 5739836, pursuant to the Commission's rules, title 35 of the Rules of the City of New York ("RCNY"), and the New York City Administrative Code. *See* 35 RCNY § 68-15(a)(1) and (d) (Lexis 2021); Admin. Code § 19-512.1 (Lexis 2021). On June 14, 2021, petitioner suspended respondent's TLC Driver License after receiving notice of her arrest on June 9, 2021, pursuant to a federal arrest warrant for conspiracy to commit money laundering, 18 U.S.C. § 1956(h) (Pet. Exs. 1, 3, 4).¹ Petitioner seeks to continue the suspension until the resolution of the criminal charges on the ground that respondent's continued licensure while the criminal charges are pending would pose a direct and substantial threat to the health or safety of the public (Pet. Ex. 1).

Upon respondent's request for a hearing, petitioner scheduled a summary suspension hearing on July 7, 2021. At the hearing, respondent appeared without counsel. In keeping with rule 103(A)(8) of Appendix A to title 48 of the Rules of the City of New York, respondent was

¹ At the time of her arrest, respondent was charged with grand larceny in the 1st degree and identity theft in the 1st degree, Penal Law sections 155.42 and 190.80, respectively. The only remaining charge is conspiracy to commit money laundering, 18 U.S.C. § 1956(h) (Pet. Exs. 1, 3, 5).

advised of her right to be represented by an attorney. Respondent elected to proceed without counsel. After being advised of her Fifth Amendment privilege against self-incrimination, respondent elected to testify on her own behalf. The nature of the proceedings and the procedural aspects of the hearing were also explained to respondent. Petitioner relied on documentary evidence. Respondent also presented documentary evidence and testified on her own behalf.

For the following reasons, I find the evidence sufficient to continue suspension of respondent's license.

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. If a license is suspended based solely on an arrest, the licensee may challenge that at a post-suspension hearing, where "the Commission must prove by the preponderance of the evidence that the charges pending against the Respondent, if true, demonstrate that the continuation of the Respondent's License during the pendency of the criminal charges would pose a direct and substantial threat to public health or safety." 35 RCNY § 68-15(d)(5) (Lexis 2021).

In interpreting this rule, the Second Circuit has held that due process demands that the driver receives "an opportunity to show that his or her particular licensure does not cause a threat to public safety." *Nnebe v. Daus*, 931 F.3d 66, 83 (2d Cir. 2019). The issue to be determined is whether the driver poses a continuing threat to the public that is both "direct" and "substantial." *Id.* at 82. Relevant considerations include "the conduct underlying the arrest" and "the overall record and character of the driver." *Id.* In "the majority of cases, the further removed the crime is from the driver's job, the less 'direct' the threat." Moreover, "[d]epending on the surrounding circumstances and the driver's history, the threat may also be more or less 'substantial.'" *Id.* More particularly, it is relevant if the charged crime is the "sole infraction in an otherwise spotless record" and whether the underlying conduct, even if it satisfies the elements of a crime, "was technical or mitigated, such that continuation of the driver's license did not pose the kind of threat conjured by the general nature of the crime charged." *Id.*

In summary suspension decisions, this tribunal has applied *Nnebe* by analyzing both the circumstances underlying the arrest and the driver's overall record and character. *Compare Taxi & Limousine Comm'n v. Frimpong-Manson*, OATH Index No. 1841/20 (May 5, 2020), *adopted*, Comm'r Dec. (May 26, 2020) (continuation of suspension recommended for long-term driver charged with assault and attempted criminal obstruction of breathing where the complainant, his wife, alleged injury and was taken to the hospital, and the driver offered no mitigating testimony or explanation); *with Taxi & Limousine Comm'n v. Singh*, OATH Index No. 1913/20 at 4 (Apr. 24, 2020), *adopted*, Comm'r Dec. (May, 1, 2020) (suspension lifted for licensee charged with assault where credible testimony of driver and two other witnesses showed that he "reacted to extraordinary provocation" and he presented unrefuted evidence of an unblemished TLC record).

Petitioner presented evidence that on June 9, 2021, respondent was arrested on a federal arrest warrant issued by the Honorable Roanne L. Mann of the Eastern District of New York pursuant to an indictment in the Western District of Texas for conspiracy to commit money laundering (Pet. Exs. 4, 5). Respondent was released on \$50,000 bond (Pet. Ex. 6).

A federal complaint and indictment provided details of the underlying crime that led to respondent's arrest (Pet. Ex. 4, Ex. A). According to the indictment, respondent, along with other co-conspirators, is alleged to have engaged in a "business email compromise" ("BEC") scheme which is "a type of computer intrusion to a business email system that compromises one or more email addresses used by employees for business purposes" (Pet. Ex. 4, Ex. A at 3). In one common BEC scheme, "the criminal actor monitors incoming and outgoing email messages to determine when a large financial transaction is scheduled to take place. After initial transfer or wiring instructions are conveyed between legitimate parties to the transaction, the intruder sends a phony follow-up email that appears to be coming from the original legitimate sender. This "spoofed" email contains a change of plans, instructing that the money to be wired instead go to a different account - one that is controlled by the criminal actor, or a conspirator of the criminal actor, and that is set up for the purpose of receiving and redirecting funds acquired illegally from the BEC scheme." (Pet. Ex. 4, Ex. A at 3-4). The indictment further explains that "conspirators, acting in concert with the criminal actors behind the BEC attack, may include people known as "Money-Mules" who move and divert the stolen money." (Pet. Ex. 4, Ex. A at 4).

Specifically, the indictment alleges that on or about May 9, 2019 and May 15, 2019, two companies in Texas were the victims of BEC fraud totaling over \$300,000 and \$600,000, respectively. From the stolen funds, cashier checks in various amounts were purchased. Two of the cashier checks were purchased and made payable to Tammy Botha, respondent's alias identity, in the amounts of \$50,000 and \$150,000. These checks were deposited into accounts under the name of Tammy Botha and the monies were then withdrawn from those accounts by respondent (Pet. Ex. 4, Ex. A at 8-11).

Respondent did not testify about the underlying crime that led to her arrest. Instead, respondent testified that she had been a TLC licensee for four years with a good driving record, had worked for Lyft, Uber, and other private car companies, and that driving as a TLC licensee was her main means of support as a single parent (Resp. Exs, C, D). She presented a letter of reference from Limo Seven Transportation Company (Resp. Ex. A) and posited that her TLC license should not be suspended based only on allegations.

I find that petitioner has demonstrated that respondent's continued licensure would pose a direct and substantial danger to public health or safety. The analysis is "focused not on the threat posed by the *charges*, but rather on the threat posed to the public by the driver's *licensure*." 931 F.3d at 82 (emphasis in the original). The federal charge against respondent is a serious one. Under TLC rules, allegations of fraud, even involving small sums of money, have been punishable by revocation. See *Taxi & Limousine Comm'n v. Kastner*, OATH Index No. 835/11 at 4 (Oct. 12, 2010) (citing *Taxi & Limousine Comm'n v. Dhillon*, OATH Index No. 364/08 (Sept. 7, 2007) (driver's license revoked where conviction of petit larceny and identity theft was proof of unfitness). Here, the allegations against respondent are far more severe involving the use of fraudulent schemes and criminal activities to conceal large sums of illegally obtained money, almost a million dollars in total, affecting interstate commerce (Pet. Ex. 4, Ex. A).

Moreover, crimes involving drivers' honesty have been found to pose a direct and substantial threat to public health or safety as they have a "direct nexus to their willingness to follow regulations and qualifications for continued licensure, since a driver's interactions with the public include accepting cash or credit card payments, making change, and safeguarding valuables in his or her car." *Taxi & Limousine Comm'n v. Flete*, OATH Index No. 510/21 at 7 (Oct. 28, 2020), *adopted*, Comm'r Dec. (Nov. 12, 2020) (continuing suspension for driver's arrest for felony grand larceny and forgery and criminal trespass charges); *see also Taxi &*

Limousine Comm'n v. Singh, OATH Index No. 689/14 (Oct. 23, 2013), *adopted*, Comm'r Dec. (Jan. 30, 2014) (continuing license suspension based upon driver's arrest for bribing a public servant where driver did not testify about the circumstances underlying his arrest or offer any evidence demonstrating that, even if the charges were true, his continued licensure would not pose a threat to public health or safety); *Taxi & Limousine Comm'n v. Singh*, OATH Index No. 2861/08 at 5 (July 16, 2008), *adopted*, Comm'r Dec. (Aug. 15, 2008) (continuing suspension based upon driver's arrest for grand larceny where evidence which driver submitted at trial did not support his contention that the arrest stemmed only from a misunderstanding).

Respondent has not proffered any evidence to the contrary. While other considerations under *Nnebe* include the driver's overall record and character, respondent's good driving history during her four-year tenure as a TLC licensee and potential financial hardship as a result of the suspension are not sufficient to persuade this Court to lift the suspension. *See Taxi & Limousine Comm'n v. Al-kafi*, OATH Index No. 580/14 at 5 (Nov. 7, 2013), *adopted*, Comm'r Dec. (Jan. 2, 2014) (driver's financial burden is not a proper basis for lifting a suspension).

FINDINGS AND CONCLUSIONS

1. Respondent was arrested for conspiracy to commit money laundering.
2. Petitioner established that respondent's continuing licensure during the pendency of her criminal case poses a direct and substantial threat to public health or safety.

RECOMMENDATION

Respondent's license suspension should be continued pending the outcome of her criminal case.

Julia H. Lee
Administrative Law Judge

July 15, 2021

SUBMITTED TO:

ALOYSEE H. JARMOSZUK

Commissioner

APPEARANCES:

DANIEL WILLIAMSON, ESQ.

Attorney for Petitioner

STACEY AULT

Respondent



July 26, 2021

Aloysee Heredia Jarmoszuk
Commissioner and Chair

Ryan Wanttaja
General Counsel/
Deputy Commissioner of
Legal Affairs
wanttajar@tlc.nyc.gov

33 Beaver Street,
22nd Floor
New York, NY 10004

+1 212 676 1135 tel
+1 212 676 1102 fax

Stacey Ault

[REDACTED]
[REDACTED]

Re: TLC License No. 5739836

Licensee Ault:

Pursuant to TLC Rule 68-15, a summary suspension hearing was concluded on July 7, 2021, as a result of your June 9, 2021 arrest for conspiracy to commit money laundering.

After hearing the evidence presented, the presiding Administrative Law Judge (“ALJ”), Julia H. Lee, found that your suspension should remain in place until the criminal charges are resolved.

On July 15, 2021, you were mailed a copy of the ALJ’s decision and a letter advising you of the right to submit a written response within ten (10) days to the Chairperson of the Commission. More than ten days have passed and you have failed to submit any written comments.

I accept the ALJ’s recommendation and will keep the suspension of your TLC license in place.

Sincerely,

/s/ Ryan Wanttaja

Ryan Wanttaja
General Counsel

cc: Julia H. Lee, *Administrative Law Judge*
Anita Armstrong, *Supervising Attorney, OATH Trials (TLC)*