

Taxi & Limousine Comm'n v. Shukurov

OATH Index No. 279/22 (Aug. 25, 2021), *adopted*, Comm'r Dec. (Aug. 26, 2021), **appended**

TLC suspended driver's license based on his arrest for assault in the third degree. Petitioner did not establish that driver's continued licensure would pose a direct and substantial threat to the health or safety of the public. Lifting of suspension recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
TAXI AND LIMOUSINE COMMISSION
Petitioner
- against -
BAKHTIYOR SHUKUROV
Respondent

REPORT AND RECOMMENDATION

NOEL R. GARCIA, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("TLC"), brought this summary suspension proceeding against respondent, Bakhtiyor Shukurov, holder of TLC driver license 5956377. Admin. Code § 19-512.1 (Lexis 2021); 35 RCNY § 68-15(d) (Lexis 2021). Petitioner suspended respondent's TLC driver license after receiving notice of his arrest on June 25, 2021, for assault in the third degree and harassment in the second degree (Pet. Ex. 3). The criminal charges were later amended to include attempted assault with intent to cause injury and menacing in the third degree (Pet. Exs. 1, 5). 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. Respondent opposes continued suspension, denies the criminal charges, and asserts that his continued licensure would not pose a "direct and substantial" threat to the public.

At a post-suspension hearing, petitioner relied solely upon documentary evidence. Respondent presented documentary evidence and testified in his own behalf with the aid of an Uzbek interpreter. For the following reasons, I find that respondent's TLC driver license suspension should 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(a). If a license is suspended based solely on an arrest, the licensee may challenge the suspension at a post-suspension hearing, where the issue is whether "the charges pending against the Respondent, if true, demonstrate that the continuation of the Respondent's License during the pendency of criminal charges would pose a direct and substantial threat to public health or safety." 35 RCNY § 68-15(d)(5).

Interpreting this TLC rule in a due process challenge from suspended drivers, 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 concluded that the TLC regulatory scheme was "intended to provide a meaningful process for drivers" to challenge their suspensions, that the criminal charge alone should not be "the only consideration relevant to the inquiry," and that "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. 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).

The Second Circuit further noted that to justify suspension of a license, TLC was required to show "good cause" that "relat[es] to a direct and substantial threat to the public health or safety." *Id.* at 82 (*citing* Admin. Code § 19-512.1(a)). The Court posited that "in the majority of cases, the further removed the crime is from the driver's job, the less 'direct' the threat," and that "[d]epending on the surrounding circumstances and the driver's history, the threat may be more or less 'substantial.'" *Id.* Other factors to be considered include whether 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.* The Court emphasized that it was not requiring "an inquiry into factual guilt or innocence to satisfy the due process inquiry." Instead, "a hearing that encompasses some level of conduct-specific

findings based upon the facts underlying the complaint and the driver's history and characteristics . . . would be sufficient." *Id.* at 88.

At trial, TLC submitted various documents into evidence, including an arrest report and a police complaint form (Pet. Ex. 4). The arrest report and complaint provide a brief narrative to the alleged events that led to respondent's arrest. According to these documents, on June 25, 2021, respondent "did punch" the complaining victim ("C.V.") "with [a]closed fist to the face causing physical injury and substantial pain." The documents also noted that respondent and the C.V. were "cross-complainants."

TLC argued that based on the charges, respondent's continued licensure poses a threat to public safety.

Respondent testified that he has held a TLC license since January 2020 and drives for Uber. As an Uber driver he has a 5.0 rating with over 2,800 rides (Resp. Ex. A). Respondent stated that he has never had a dispute with or assaulted a passenger, and that a passenger has never filed a complaint against him. Respondent further testified that he has never been previously arrested and submitted a recommendation letter from a prior employer stating that he has "excellent driving and communications skills" (Resp. Ex. B).

Regarding the present charges, respondent stated that his daughter was previously involved in a relationship with the C.V. in this matter. After discovering that the C.V. was married and had four children, his daughter broke off her relationship with him. She subsequently became engaged to another man.

About 15 days before the incident in question, respondent came home from work and found the C.V., whom he did not know, in his house speaking to his wife and mother. As the C.V. was emotional and appeared to be under the influence of alcohol or drugs, he told the C.V. to leave or he would call the police. He later learned that the C.V. wanted to marry his daughter and was unhappy that she planned to marry someone else.

On the date of the incident, respondent was home with his family when he heard a knock on the door. His wife opened the door and the C.V. entered the home without permission. Respondent stated that the C.V. appeared under the influence of drugs and that his eyes were red. When respondent told the C.V. to leave the home, the C.V. told him to come outside to speak to him. Respondent stepped outside his home with the C.V. as he was concerned for the safety of his family. At some point the C.V. threatened to disrupt his daughter's wedding and to "take" his

daughter. When respondent answered that he would not allow it and that C.V. did not “understand,” the C.V. punched him in the face. In order to defend himself, respondent punched back at the C.V., believing that the C.V. would not stop hitting him unless he did so.

Subsequently, respondent’s wife, mother, and his cousin’s wife intervened to stop the altercation. At that moment the police, who were driving by, came and questioned him. Due to his limited English abilities, he was unable to explain to them that he was attempting to protect himself from the C.V. who had entered his home. The police arrested him and the C.V., and he was eventually issued a desk appearance ticket (Resp. Ex. D). Respondent added that to his knowledge the C.V. did not require any medical attention and only had a scratch on his lip. He, on the other hand, was bleeding heavily from his lip but did not seek medical attention. His daughter subsequently married her fiancée without incident.

Here, petitioner suspended respondent’s TLC driver’s license based on the pending criminal charges. Even presuming the criminal charges are true, as required by petitioner’s rules, there are several factors that weigh in respondent’s favor. First, the reports are sparse in their description of the incident, indicating nothing other than respondent punched the complainant. Second, there is no evidence that the C.V. required medical attention, suggesting that any alleged injury was minor. Further, respondent provided clear and consistent testimony regarding the incident that led to those charges, explaining that he acted in self-defense. Respondent also has no prior arrest or criminal convictions and has a high Uber rating. TLC presented no evidence that respondent has ever engaged in improper behavior towards a customer.

Therefore, under the circumstances here, petitioner failed to prove that respondent poses a continuing direct and substantial threat to public health or safety. Instead, the pending criminal charges, the sole alleged infraction in an otherwise spotless record, appear to stem from an isolated dispute with his daughter’s former boyfriend. Accordingly, respondent’s license suspension should be lifted.

FINDING AND CONCLUSION

Where respondent was charged with assault in the third degree, harassment in the second degree, attempted assault with intent to cause injury and menacing in the third degree, petitioner did not establish that respondent’s continued licensure would pose a direct and substantial threat to the health or safety of the public.

RECOMMENDATION

Respondent's license suspension should be lifted forthwith.

Noel R. Garcia
Administrative Law Judge

August 25, 2021

SUBMITTED TO:

ALOYSEE HEREDIA JARMOSZUK
Commissioner/Chair

APPEARANCES:

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Attorney for Petitioner

BROOKLYN DEFENDER SERVICES
Attorneys for Respondent
BY: ERIC EINGOLD, ESQ.



August 26, 2021

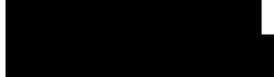
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Bakhtiyor Shukurov



Re: TLC License No. 5956377

Dear Licensee Shukurov:

Pursuant to TLC Rule 68-15, a summary suspension hearing was concluded on August 25, 2021, as a result of your June 25, 2021 arrest for assault in the third degree.

After hearing the evidence presented, the presiding Administrative Law Judge (“ALJ”), Noel R. Garcia, found that your suspension should be lifted.

I accept the ALJ’s Recommendation and lift the suspension of your TLC license.

Sincerely,

/s/ Ryan Wanttaja

Ryan Wanttaja
General Counsel

cc: Noel R. Garcia, *Administrative Law Judge*
Eric Eingold, *Attorney for Respondent, Brooklyn Defender Services*
Anita Armstrong, *Supervising Attorney, OATH Trials (TLC)*