

Taxi & Limousine Comm'n v. Camara

OATH Index No. 1015/21 (Jan. 12, 2021), *adopted*, Comm'r Dec. (Jan. 14, 2021), **appended**

Petitioner suspended respondent's TLC Driver's License based on his arrest for assault in the third degree. At a summary suspension hearing, the evidence established that respondent's continued licensure pending outcome of the criminal charges would not pose a direct and substantial threat to public health or safety. ALJ recommends that suspension of respondent's license be lifted.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
TAXI AND LIMOUSINE COMMISSION
Petitioner
- against -
BOUBACAR CAMARA
Respondent

REPORT AND RECOMMENDATION

ASTRID B. GLOADE, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("Commission"), commenced this summary suspension proceeding against respondent, Boubacar Camara, holder of a TLC Driver License, 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. Admin. Code § 19-512.1 (Lexis 2020); 35 RCNY § 68-15(d) (Lexis 2020). The Commission suspended respondent's license after it received notice that he had been arrested on December 5, 2020, and charged with assault in the third degree and harassment in the second degree. Petitioner seeks to continue suspension of respondent's license during the pendency of the criminal charges on the ground that respondent's continued licensure poses a direct and substantial threat to the health or safety of the public (Pet. Ex. 1).

At a post-suspension hearing conducted on December 17, 2020, held remotely via videoconference because of the COVID-19 pandemic, petitioner relied on documentary evidence. Respondent testified on his own behalf, called two witnesses, and submitted documentary evidence. For the reasons below, I find that petitioner failed to prove that respondent poses a

continuing direct and substantial threat to the public health or safety and recommend that respondent's license suspension be lifted.

ANALYSIS

Section 19-512.1(a) of the New York City Administrative Code authorizes the Commission to 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.” If the suspension is based solely on an arrest, a licensee may challenge the suspension at a post-suspension hearing at which 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 2020).

The Second Circuit has held that due process requires 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). In order to justify continued suspension, petitioner must establish that the driver poses a continuing threat to the public that is both “direct” and “substantial.” *Id.* at 82. Relevant considerations in this inquiry include the conduct underlying the arrest, the driver’s overall record, and the driver’s character. *Id.* The Court 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 [the driver] remains licensed” and that “[d]epending on the surrounding circumstances and the driver’s history, the threat may also be more or less ‘substantial.’” *Id.* 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.*

Our cases have applied this standard. *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. Warren*, OATH Index No. 1081/20 at 6 (Dec. 27, 2019), *adopted*, Comm’r Dec. (Jan. 29, 2020) (suspension of license lifted where driver presented compelling evidence that

complainants, his ex-wife and her sisters, were the aggressors, they reported no injuries or refused medical attention, and the driver had a good record as a TLC licensee and Uber driver).

Here, respondent's license was suspended after he was arrested on December 5, 2020, and charged with assault in the third degree, Penal Law § 120.00(1), a class A misdemeanor, and harassment in the second degree, Penal Law 240.26(1), a violation (Pet. Ex. 1). At the hearing, petitioner relied on the Police Department's complaint report, an arrest report, and the Criminal Court complaint, for details of the events leading to respondent's arrest (Pet. Exs. 4, 5, 6).

According to the arrest and complaint reports, on November 30, 2020, respondent's wife complained that she had been assaulted on November 22, 2020 at respondent's apartment. The narrative section of the complaint report notes that the complainant said she was visiting her children, who live with respondent because he has temporary custody. She contended that she was concerned for her 14- and 11-year-old children because respondent left them alone in his apartment while he was at work. After cooking at respondent's apartment, the complainant stated, she wanted to rest, but respondent did not want her to remain in the home and kicked her out. She said that as she tried to grab some of her belongings, respondent "started to punch her multiple times all over her body causing pain" (Pet. Ex. 4). The complaint report notes that the reporting officer did not observe any visible marks or injuries on the complainant. Respondent surrendered at the precinct at 12:30 a.m. on December 5, 2020, was arraigned and released on his own recognizance with issuance of a temporary order of protection. His next court date is February 17, 2021 (Pet. Exs. 4, 6).

The unsworn criminal court complaint dated December 5, 2020, signed by the arresting officer, Officer Blake, is largely consistent with the arrest and complaint reports. In addition, Officer Blake noted that "the defendant stated, in sum and substance: I just wanted her out of the house, and she should not have been here (Pet. Ex. 5).

Petitioner produced documents relating to respondent's licensing history. Most significantly, these documents indicate that respondent's license was suspended from December 2018 to April 2019, incident to an arrest for criminal possession of a weapon, menacing, and harassment (Pet. Exs. 8, 9). Relying on Criminal Procedure Law ("CPL") section 160.50, respondent objected to the admission of those documents into evidence, arguing that "unless there was a conviction, and it appears there was not, this is a sealed record" (Tr. 32, 35). Respondent's argument is unsupported by the plain language of CPL 160.50.

Section 160.50 states, in pertinent part, that where a criminal action or proceeding against a person is terminated “in favor of such a person,” the records of the action or proceeding are to be sealed and the court clerk where the criminal action or proceeding was terminated is required to “notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies” that the criminal action was favorably terminated and that the record of the action shall be sealed. CPL § 160.50. However, respondent’s counsel provided no basis from which to conclude that the Commission falls within the ambit of entities required to seal records of criminal court proceedings, enumerated in section 160.50 as heads of criminal justice services, police departments, and other law enforcement agencies. Moreover, respondent produced no documentary evidence to establish that the criminal proceeding relating to the 2018 arrest was resolved, much less that it was resolved in respondent’s favor. Respondent simply testified that his prior arrest had been dismissed “in the interest of justice” (Tr. 49). The fact that respondent’s license was reinstated, as his counsel highlights, fails to establish that the criminal charge against him was resolved in his favor to trigger the sealing requirement of CPL 160.50.

In sum, respondent failed to establish that CPL 160.50 requires that the proffered evidence of suspension of respondent’s TLC license in 2018 incident to in his arrest be sealed. Accordingly, the evidence of respondent’s licensing history with the Commission was admitted over respondent’s objection (Tr. 35, 41). *See Taxi & Limousine Comm’n v. Flete*, OATH Index No. 510/21 at 3 (Oct. 28, 2020), *adopted*, Comm’r Dec. (Nov. 12, 2020) (admitting licensing documents that showed prior suspensions predicated on arrests over respondent’s objection, noting “under *Nnebe*, both ‘the conduct underlying the arrest’ and the driver’s ‘overall record’ is to be considered as to whether it ‘confirms or disproves the arrest’s relation to public health or safety.’” 931 F.3d at 82.”).

For similar reasons respondent’s request to redact the decision based on CPL section 160.50 is denied. Respondent requested that his name be redacted from this decision pursuant to section 1-49 of this tribunal’s rules because if his December 5, 2020 arrest does not result in a conviction, the criminal records relating to that arrest are likely to be sealed (Tr. 41-45).¹

¹ Respondent’s counsel also requested that respondent’s name not be included in the decision because of “the sensitive nature” of some information revealed in the trial (Tr. 71-72). That request is denied. This tribunal’s proceedings are presumptively open to the public. Absent a legally cognizable basis for redaction, its decisions are published without redaction in furtherance of the public interest. *See* 48 RCNY § 1-49 (Lexis 2020). Further, respondent’s counsel did

At its essence, respondent's contention that CPL section 160.50 forms a basis for removing his name from the decision rests on conjecture. The criminal case against respondent remains pending and therefore has not been terminated in his favor. Thus, even were respondent to establish that CPL 160.50 applies to this matter, which he failed to do, there is no evidence that the criminal matter has been terminated in his favor so as to trigger a sealing requirement. *Compare Taxi & Limousine Comm'n v. N.S.*, OATH Index No. 395/15 at 1 n. 1 (Nov. 14, 2014), *rejected*, Comm'n Dec. (Dec. 18, 2015) (unopposed application to redact licensee's name granted after criminal charges were dismissed and criminal records sealed).

The Commission's licensing documents establish that respondent applied for a license in September 2014 (Pet. Ex. 2). His license was suspended between December 2018 and April 2019, following his arrest for criminal possession of a weapon in the fourth degree, menacing in the second degree, and harassment in the second degree. Although the licensing documents also show that in 2015, respondent was issued several summonses that were resolved by settlement, they provide insufficient information about the underlying bases for these summonses for this information to be relevant in assessing whether respondent's continued licensure would pose any risk to the public. Accordingly, the 2015 licensing history was afforded no weight.

Respondent testified as to the circumstances underlying the pending charges and subject himself to cross-examination. His testimony was credible, consistent, and convincing. Respondent has five children, including two who reside with him and two who are students at a university in New York City (Tr. 46-47). He explained that his wife suffers from mental illness and was admitted to an inpatient psychiatric facility between December 2019 and March 2020. She does not reside in the family home, but has weekly court-ordered visits with their minor children on Monday and Wednesday for one hour on each day. Those visits are supervised by staff from the Administration for Children's Services ("ACS") (Tr. 49-50, 58).

During the evening of Sunday, November 22, 2020, respondent's wife came to his home, even though it was not one of the court-mandated days for a visit and ACS supervision was not present (Tr. 50). Respondent asked his wife to leave because she was "emotionally distressing"

not specify the "sensitive" information that forms the basis of this request. To the extent that respondent's concern is testimony regarding his wife's mental health, no medical records were submitted, and she is not specifically identified in the decision. Accordingly, there is no legally cognizable reason for removing respondent's name from this decision. *See Taxi & Limousine Comm'n v. Sow*, OATH Index No. 467/20 at 1 n.1 (Oct. 15, 2019), *adopted*, Comm'r Dec. (Oct. 17, 2019); 48 RCNY § 1-49(d) (Lexis 2020) (all decisions will be published without redaction unless the administrative law judge finds that there are legally recognized grounds to omit information from a decision).

their minor children, but she did not do so (Tr. 50). He asked one child to leave the room and the other was already out of the room, and spent about 10 minutes trying to persuade her to leave. Respondent maintained that because of his wife's mental illness, she often does not pay attention when he speaks to her. He took her bag and placed it outside the apartment in the hallway, at which point she told him not to touch her belongings and became aggressive. She punched and cursed respondent, who tried to stop her blows by holding her hands. Respondent adamantly denied hitting his wife during this incident (Tr. 51-52, 53).

The police did not contact respondent regarding his encounter with his wife until about a week after it occurred, when Officer Blake telephoned him. After respondent gave his account of the incident to the officer and provided photographs of marks on his neck that he maintained were caused by his wife striking him, Officer Blake indicated that they both might be arrested. Respondent told the officer that he did not want his wife arrested, partly because he did not "want to put her through that" and also because he was concerned about the impact her arrest would have on their children (Tr. 52-53, 61).

Officer Blake telephoned respondent a second time, on December 4, 2020, during which call respondent informed the officer that he had an attorney. Respondent was advised that he would be arrested and should turn himself in, which he did at a police precinct the next day. Respondent was arrested on December 5, 2020, nearly two weeks after the altercation with his wife (Tr. 53-54).

Respondent's testimony that his wife was barred from the family home was supported by testimony from the attorney who represents him in the family and criminal court matters. Joseph Kasper, Esquire, represents respondent in a Queens County Family Court matter concerning allegations that respondent and his wife neglected their children. He also represents respondent in the criminal court proceeding stemming from his arrest on December 5, 2020. Mr. Kasper testified that respondent has custody of his minor children and two other children are university students (Tr. 12-14, 15). According to Mr. Kasper, a family court judge issued an oral order barring respondent's wife from entering the family home except for supervised visits with the minor children. This order was in effect on the date of the incident (Tr. 21-22). Although that oral order "may have been reduced to a written order" Mr. Kasper noted that the court has been physically closed to the public and its proceedings conducted virtually (Tr. 14, 17). He testified that he was

“pretty sure” the order was issued by e-mail or some other form, but did not have access to his office files due to inclement weather on the day of this hearing (Tr. 17-18).²

More generally, respondent testified that he has never assaulted a passenger or been accused of assaulting a passenger and has never been convicted of a crime (Tr. 47-48). According to respondent, he has made over 11,000 trips as an Uber driver and over 6,000 as a Lyft driver, with passenger ratings of 4.8 out of 5.0 and 5.0 out of 5.0, respectively (Tr. 48).

Mr. Khan, the imam at respondent’s mosque, testified as to respondent’s good character. He has known respondent since 2005 and respondent is not only a member of the mosque, but also serves as clergy when Mr. Khan is unavailable. According to Mr. Khan, he has never seen respondent act violently or aggressively (Tr. 64). Instead, he described respondent as a peacemaker when there are arguments at the mosque and helpful to members of his community. By way of example, Mr. Khan noted that respondent transports members of the mosque to and from local airports free of charge and has helped people in Mali, where respondent was born, improve their housing and obtain needed goods (Tr. 65-66).

Under petitioner’s rules, it is to be assumed that the arrest charges are true and the issue to be determined is whether petitioner has established that respondent’s continued licensure would pose a direct and substantial danger to public health or safety. The arrest charge here is assault in the third degree, Penal Law section 120.00, which is the intentional infliction of physical injury to another person.³ An important consideration in making this determination is “the conduct underlying the arrest.” *Nnebe*, 931 F.3d at 82. As noted in *Nnebe*, “. . . 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.” *Id.*

Here, the alleged offense, which involves domestic violence allegations, occurred off-duty. Nevertheless, this tribunal has recognized that “there is a nexus between domestic or intimate partner violence and the job of a TLC licensee, because drivers must maintain self-control and professionalism in their many interactions with passengers, other drivers, and other members of the public.” *Taxi & Limousine Comm’n v. Masum*, OATH Index No. 2012/20 at 6 (June 1, 2020), *adopted*, Comm’r Dec. (June 12, 2020); *Frimpong-Mason*, OATH 1841/20 at 4; *Taxi & Limousine*

² I afforded respondent’s counsel an opportunity to keep the record open to allow Mr. Kasper time to retrieve documents from his files given the inclement weather, but counsel did not believe it necessary to do so (Tr. 19-21).

³ “Physical injury” is defined as “impairment of physical condition or substantial pain.” Penal Law § 10.00(9).

Comm'n v. Zulfiqar, OATH Index No. 1575/20 at 5 (Mar. 16, 2020), *adopted*, Comm'r Dec. (Apr. 13, 2020) (crimes involving domestic violence may demonstrate “a general lack of self-control, concern for the welfare of others, and disregard for the law”).

While finding that there is a nexus between domestic violence and the duties of a TLC licensee, this tribunal has declined to establish a bright line rule that a suspension should be continued in every instance in which the arrest charge stems from a domestic violence incident. Indeed, to do so would be antithetical to the mandate in *Nnebe* that there be an individualized assessment of the circumstances of each case, including any evidence in mitigation relating to the incident leading to the arrest and the overall record and character of the driver. *Masum*, OATH 2012/20 at 6-7 (“Mitigating evidence relating to the incident may include evidence relating to the circumstances precipitating the arrest incident as well as the type and nature of force used during the incident.”).

There is compelling mitigating evidence. Respondent credibly testified that his wife’s visits with their children are on a court-ordered schedule and under ACS supervision, which was corroborated by his attorney. It is reasonable to believe that her appearance at his home on a date when she was not supposed to be there caused instability and disruption such that respondent asked her to leave, leading to a physical altercation. Respondent did not deny that the encounter turned physical, but he insisted that he merely tried to block his wife’s blows. It is notable that respondent’s wife did not report the incident until approximately one week after it occurred, there is no evidence that she sought medical attention at the time of the incident, and the arresting officer did not observe any visible injuries. All this strongly suggests that if there was any force directed towards her it was minimal and that she did not sustain any injuries. Also credible was respondent’s testimony that although his wife had been the aggressor, he did not want to have her arrested because of the potentially detrimental effect on their children.

Where, as here, a driver offers compelling mitigating evidence about the circumstances leading up to the arrest, that weighs heavily in his favor. *See Taxi & Limousine Comm'n v. Warren*, OATH Index No. 1081/20 at 6 (Dec. 27, 2019), *adopted*, Comm'r Dec. (Jan. 29, 2020) (lifting suspension where driver presented compelling testimony of himself and three witnesses to show that the complainants, his ex-wife and her sisters, were the aggressors); *Taxi & Limousine Comm'n v. Ibrahim*, OATH Index No. 891/20 (Nov. 25, 2019), *adopted*, Comm'r Dec. (Dec. 9, 2019)

(lifting suspension where driver credibly testified that the complainant had grabbed his driver's license, refused to return it, and bitten him).

Respondent's undisputed evidence establishes that he has held a TLC license since 2014, is highly rated by his passengers, and has never been accused of assaulting or threatening a passenger. Although his license was previously suspended incident to an arrest for weapon possession, his license was reinstated. There is no evidence that he was convicted of weapon possession. Further, there is no evidence of any significant recent blemishes on his record.

Finally, Mr. Khan convincingly testified that respondent is a responsible and generous member of his community who has served as a peacemaker in his mosque and helped those in his community and beyond. Considering the evidence in mitigation, including the circumstances underlying the arrest and respondent's overall driving record and character, petitioner failed to establish that respondent's continued licensure would pose a direct and substantial threat to the health or safety of the public. Accordingly, suspension of his license should be lifted.

FINDINGS AND CONCLUSIONS

1. Respondent was arrested and charged with assault in the third degree and another lesser charge.
2. Petitioner failed to establish that respondent's continued licensure during the pendency of the criminal case poses a direct and substantial threat to public health or safety.

RECOMMENDATION

I recommend that suspension of respondent's TLC Driver License be lifted.

Astrid B. Gloade
Administrative Law Judge

January 12, 2021

SUBMITTED TO:

ALOYSEE H. JARMOSZUK
Commissioner

APPEARANCES:

ASH B. HORN, ESQ.

Attorney for the Petitioner

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January 14, 2021

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Boubacar Camara

[REDACTED]

Re: TLC License No. 5568163

Dear Licensee Camara:

Pursuant to TLC Rule 68-15, a summary suspension hearing was concluded on December 17, 2020, as a result of your December 5, 2020 arrest for assault in the third degree and harassment in the second degree.

After hearing the evidence presented, the presiding Administrative Law Judge ("ALJ"), Astrid B. Gloade, 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
Acting General Counsel

cc: Astrid B. Gloade, *Administrative Law Judge*
Daniel Ackman, *Attorney for Respondent*
Anita Armstrong, *Supervising Attorney, OATH Trials (TLC)*