

Taxi & Limousine Comm'n v. Baish

OATH Index No. 1023/22 (Jan. 19, 2022), *adopted*, Comm'r Dec. (Jan. 20, 2022), **appended**

At a summary suspension hearing, petitioner failed to establish that TLC driver arrested for Assault in the Third Degree poses a direct and substantial threat to public health or safety. Even assuming the truth of the charge, this incident was shown to be an isolated incident in an otherwise law-abiding life. In light of respondent's history of law-abiding behavior, excellent customer service history, good driving record, and credibility during testimony, this incident does not render respondent a direct or substantial threat to the public safety if the suspension is lifted until his criminal case is resolved. Lifting of suspension recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
TAXI AND LIMOUSINE COMMISSION
Petitioner
- against -
MAGDY BAISH
Respondent

REPORT AND RECOMMENDATION

ORLANDO RODRIGUEZ, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("TLC"), brought this summary suspension proceeding against respondent, Magdy Baish, holder of TLC Driver License No. 5532896. *See* Admin. Code § 19-512.1 (Lexis 2022); *See* 35 RCNY § 68-15(d) (Lexis 2022). On December 10, 2021, Petitioner suspended respondent's TLC Driver License after receiving notice of his arrest on December 8, 2021 for Assault in the Third Degree, pursuant to New York Penal Law section 120.00, a class A misdemeanor (Pet. Ex. 3).

Petitioner contends that respondent's suspension should be continued pending the outcome of his criminal case because his continued licensure would pose a direct and substantial threat to the health or safety of the public (Pet. Ex. 1). Respondent opposes continued suspension of his license and contends that, based on facts surrounding the alleged incident that led to his arrest, his unblemished record as a licensee, and his overall character, he does not pose a "direct and substantial" threat to the public. At the post-suspension proceeding on January 10, 2021,

conducted remotely due to the COVID-19 pandemic, petitioner relied on documentary evidence. Respondent, who was represented by counsel, testified on his own behalf, and submitted letters authored by individuals familiar with his character.

For the reasons below, I find that even if the charges underlying respondent's arrest were true, petitioner failed to prove that respondent poses a continuing direct and substantial threat to public health or safety.

ANALYSIS

Under New York City's Administrative Code, petitioner may suspend a TLC driver's 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 2022). If a license is suspended based solely on an arrest, the licensee may challenge the suspension at a hearing, where the "Commission must prove by a 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 criminal charges would pose a direct and substantial threat to public health or safety." 35 RCNY § 68-15(d)(5) (Lexis 2022). Evidence relevant to this issue includes the particular facts and circumstances underlying the charges, including any nexus between the driver's duties and the alleged offense; the licensee's driving record; the licensee's previous criminal record "or lack thereof;" and the driver's "character and standing in the community." *Id.*

The United States Court of Appeals for the Second Circuit has held that due process demands that the driver receive a "meaningful hearing," in that it must afford the driver, "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 support of its conclusion, the court noted the fact that the criminal charge alone should not be "the only consideration relevant to the inquiry," *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 original).

To maintain a license suspension, petitioner must establish that the driver poses a continuing threat to the public that is both "direct" and "substantial." *Id.* The court explained that, "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 also be more or less 'substantial.'" *Id.* at 82. Other considerations as to whether a driver poses a direct

and substantial threat to the public include: (1) whether the charged crime is the “sole infraction in an otherwise spotless record,” and (2) 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.* at 82. The court emphasized that it was not requiring “an inquiry into factual guilt or innocence to satisfy the due process inquiry.” *Id.* at 88. 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 the post-suspension proceeding, petitioner presented notification from the New York Police Department (“NYPD”) that respondent was arrested on December 8, 2021, and he was charged with Assault in the Third Degree (a class A misdemeanor) (Pet. Ex. 3).

Petitioner also submitted NYPD online arrest and complaint reports generated by Police Officer (“P.O.”) Renaud Richardson, the arresting officer (Pet. Ex. 4). The reports reflect information provided by the complaining victim (“CV”). Contained in the report is a summary of the alleged events leading to respondent’s arrest (Pet. Ex. 4). According to the reports, CV, unidentified in the reports by way of redaction, stated that on December 8, 2021 at approximately 8:00 p.m., in front of 112 East 11th street, Manhattan, CV and respondent “got into a verbal dispute about where his car was parked,” and that respondent approached CV and the two got into a physical altercation which resulted in a laceration to the left side of CV’s face (Pet. Ex. 4). According to CV the incident lasted ten minutes, and respondent was arrested at 8:54 p.m. at the scene of the incident (Pet. Ex. 4). CV refused medical attention when the police arrived (Pet. Ex. 4).

Although criminal charges are pending against him, Respondent elected to testify, but he was advised by his counsel not speak about circumstances surrounding the alleged incident. He testified that he has had his TLC license since 2014, and he has been driving for the same company, Empire CLS, a private chauffeured car service, since he first obtained his TLC license. He stated that driving for Empire CLS is his sole source of income.

Respondent also submitted a letter of support written by his direct supervisor at Empire CLS (Resp. Ex. A). The letter, which contained the company logo and the author’s contact information, noted that respondent, “is a soft-spoken, mild-mannered individual, who has never presented any behavioral problems.” (Resp. Ex. A).

As noted above, the issue to be determined is whether, assuming the pending criminal

charges against respondent to be true, petitioner has established that respondent's continued licensure would pose a direct and substantial danger to public health or safety. *Nnebe*, 931 F.3d at 82-83; 35 RCNY § 68-15(d)(5). Here, 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 unrefuted evidence demonstrated that this incident, even if true, is the sole blemish in an otherwise spotless record and atypical of respondent's demonstrated lifelong history of law-abiding behavior. See *Taxi & Limousine Comm'n v. Ayala-Casado*, OATH Index No. 2236/20 at 4, 6 (July 16, 2020), *adopted*, Comm'r Dec. (July 31, 2020) (suspension lifted where driver, who had been arrested for assault and criminal mischief, had an Uber rating over three years of 4.9 based on 9,400 trips, never had any physical confrontation with a passenger, and had never previously been arrested); *Taxi & Limousine Comm'n v. Askari*, OATH Index No. 1960/20 at 7-8 (June 16, 2020), *adopted*, Comm'r Dec. (June 22, 2020) (lifting suspension for driver arrested for criminal obstruction of breathing and endangering the welfare of a child where incident underlying arrest was completely out of character); *Taxi & Limousine Comm'n v. Singh*, OATH Index No. 1913/20 at 4-5 (Apr. 24, 2020), *adopted*, Comm'r Dec. (May 1, 2020) (suspension lifted where licensee, who had driven thousands of passengers without receiving complaints, was arrested for domestic violence charges but presented credible evidence that it was an aberrational incident). Respondent, 63 years old, has no criminal history, he has never violated petitioner's rules, received a passenger complaint, engaged in improper behavior towards a customer, received any traffic violations, suspensions, or has been involved in any traffic accidents. Additionally, respondent has safely driven as a chauffeur since 2014, and he is revered by his employers (Resp. Exs. A, C; Pet. Ex. 2).

Second, the evidence suggests that even if CV suffered any injury, it was a minor injury at most (Pet. Ex. 4); See *Taxi & Limousine Comm'n v. Ahmad*, OATH Index No. 1372/20 at 6 (Feb. 25, 2020) (suspension lifted where proof as to injury was limited, and the court noted that, "refusing medical attention may suggest that an injury is minor"); *Taxi & Limousine Comm'n v. Anonymous*, OATH Index No. 1081/20 at 5 (Dec. 27, 2019), *adopted*, Comm'r Dec. (Jan. 29, 2020) (suspension lifted for driver charged with assault where "there was no reliable evidence that any of the complainants sustained any significant injuries"). *Taxi & Limousine Comm'n v. Kamal*, OATH Index No. 1495/21 (Mar. 16, 2021), *adopted*, Comm'r Dec. (Mar. 18, 2021) (suspension lifted where there was no evidence that complainant suffered injury that required medical care).

As noted above, the NYPD arrest and complaint reports indicate that CV refused medical attention for his alleged injury. (Pet. Ex. 4). Consequently, I find that any injury sustained by CV was minor.

Based on the facts and circumstances adduced by both parties, I find that petitioner failed to prove that respondent would pose a direct or substantial danger to public safety if his license were restored pending the outcome of his criminal case. Instead, the pending criminal charges, the sole alleged infraction in an otherwise spotless record, appear to stem from an isolated incident. Further, the credible evidence established that respondent is a hard-working driver, who, at 63 years old, has a long history of law-abiding behavior. Accordingly, respondent's license suspension should be lifted.

FINDINGS AND CONCLUSIONS

1. Respondent was arrested for assault in the third degree.
2. Petitioner did not establish that respondent's continuing licensure during the pendency of his criminal case poses a direct and substantial threat to public health or safety.

RECOMMENDATION

I recommend lifting the suspension of respondent's TLC Driver license.

Orlando Rodriguez
Administrative Law Judge

January 19, 2022

SUBMITTED TO:

ALOYSEE HEREDIA JARMOSZUK
Commissioner/Chair

APPEARANCES:

EDWARD MURPHY, ESQ.
Attorney for Petitioner

THE NEW YORK COUNTY DEFENDER SERVICE
Attorney for Respondent
BY: MARIAH MARTINEZ, ESQ.



January 20, 2022

Aloysee Heredia Jarmoszuk
Commissioner and Chair

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Magdy Baish
[REDACTED]
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Re: TLC License No. 5532896

Licensee Baish:

Pursuant to TLC Rule 68-15, a summary suspension hearing was concluded on January 10, 2022 as a result of your December 8, 2021 arrest for assault in the third degree.

After hearing the evidence presented, the presiding Administrative Law Judge (“ALJ”), Orlando Rodriguez, 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: Orlando Rodriguez, *Administrative Law Judge*
Anita Armstrong, *Supervising Attorney, OATH Trials (TLC)*
Mariah Martinez, *Esquire (The New York County Defender Service)*