

Taxi & Limousine Comm'n v. Cruz

OATH Index No. 921/23 (Oct. 21, 2022), *adopted*, Comm'r Dec. (Oct. 24, 2022), **appended**

Petitioner suspended respondent's Taxi Driver License following her arrest for an off-duty incident where the police issued her a desk appearance ticket. At a post-suspension hearing, evidence failed to show that respondent poses a continuing direct and substantial threat to public health or safety. Lifting of suspension recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
TAXI AND LIMOUSINE COMMISSION
Petitioner
- against -
IVELINA CRUZ
Respondent

REPORT AND RECOMMENDATION

KEVIN F. CASEY, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("TLC"), brought a summary suspension proceeding against respondent, Ivelina Cruz, holder of a TLC Driver License. Admin. Code § 19-512.1 (Lexis 2022); 35 RCNY §§ 68-15(a)(1), 68-15(d) (Lexis 2022). After receiving notice of respondent's arrest on September 13, 2022, for criminal mischief and assault, petitioner suspended respondent's TLC Driver License (Pet. Ex. 3). Petitioner now seeks a finding that continued license suspension is needed, pending the outcome of the criminal case, because respondent poses a direct and substantial threat to the public (Pet. Ex. 1). Opposing continued suspension of her license, respondent contends that, based on the facts leading to her arrest, her exemplary TLC driving record, and her character, she does not pose a direct and substantial threat to the public.

At a post-suspension hearing on October 12, 2022, conducted via videoconference due to the COVID-19 pandemic, petitioner and respondent presented documentary evidence. Respondent and another witness testified on her behalf. For the reasons below, I find that the evidence failed to show that respondent poses a direct and substantial threat to the public, and I recommend that the suspension of respondent's TLC Driver License be lifted.

ANALYSIS

New York City's Administrative Code allows petitioner 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." 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 petitioner has the burden of proving by a preponderance of evidence that the charges, "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).

In determining whether a licensee poses a "direct and substantial threat to public health or safety," relevant considerations include the circumstances underlying the criminal charges; the connection between the alleged offense and the duties of a licensee; and the respondent's driving record, criminal record, and character. 35 RCNY 68-15(d)(5). *See Nnebe v. Daus*, 931 F.3d 66, 82 (2d Cir. 2019) (factors to be considered in determining whether to lift suspension include "the conduct underlying the arrest and the overall record and character of the driver"). Even if a driver is charged with an act that endangered public health or safety, that may be "insufficient to demonstrate that the driver would *continue* to pose a threat if allowed to retain his or her license." *Id.* (emphasis in original). *Compare Taxi & Limousine Comm'n v. Frimpong-Manson*, OATH Index No. 1841/20 (May 5, 2020), *adopted*, Comm'r Dec. (May 26, 2020) (suspension continued for driver charged with assault and attempted criminal obstruction of breathing, where driver offered no mitigating testimony or explanation), *with Taxi & Limousine Comm'n v. Encarnacion*, OATH Index No. 2457/22 at 3 (June 17, 2022), *adopted*, Comm'r Dec. (June 22, 2022) (suspension lifted, despite allegation that, following a verbal dispute, licensee placed hand around the complainant's throat and applied pressure, where the complainant did not seek medical attention and provided conflicting version of events, and driver presented evidence of good character).

On September 13, 2022, the police issued respondent a desk appearance ticket after arresting her for criminal mischief in the third degree and assault in the third degree (Pet. Ex. 4 at 3; Pet. Ex. 5 at 1). The Queens County District Attorney later reduced the charges to criminal mischief in the fourth degree and assault in the third degree, class A misdemeanors, and harassment in the second degree, a violation (Pet. Ex. 6). *See* Penal Law §§ 145.00(1) (intentionally damaging another person's property); 120.00(1) (intentionally causing injury to another person); 240.26(1)

(striking, kicking, or subjecting another person to physical contact, or attempting or threatening to do the same). At the post-suspension hearing, petitioner specified that it was seeking continued suspension of respondent's Taxi Driver License based on the pending assault charge (Tr. 16, 26, 29; Pet. Ex. 5).

According to the Criminal Court Complaint, respondent's arrest was based on an incident that occurred at about 12:30 a.m. on September 2, 2022, on 95th Avenue in Queens (Pet. Ex. 6). The complainant alleged that she fell and sustained bleeding and abrasions to her knees when respondent pushed her to the ground (*Id.*). The complainant also claimed that respondent pulled her hair, scratched her neck, and pulled and broke her necklaces (*Id.*).

According to the online complaint report prepared by the police, the complainant's injuries were apparently "minor" and she "refused treatment" (Pet. Ex. 4 at 7). The report further noted that the complainant said the incident occurred when she was walking home after getting out of respondent's husband's taxi (*Id.* at 7). The complainant told police that respondent's husband was her friend, she had never met respondent before, and respondent called her a "whore" (*Id.* at 7-8).

Respondent testified about her background and the events that led to her arrest. She received her Taxi Driver License in April 2021 (Tr. 31). At first, respondent drove patients for a medical transportation company (Tr. 50). During the past seven months, respondent has been driving for Uber and Lyft, and she has earned passenger ratings of 4.98 and 5.0 out of 5, respectively, for each service (Tr. 31). Respondent has served about 1,700 passengers without receiving any complaints (Tr. 32). In April 2022, respondent signed a lease-to-own agreement for her car (Resp. Ex. E). She is not allowed to have another person drive the car without the leasing company's permission (*Id.*). The lease requires respondent to pay \$600 per week for 185 weeks (*Id.*). Never before has respondent been convicted of a crime, arrested, or accused of violating any of petitioner's rules (Tr. 32).

Though criminal charges are pending, respondent testified about the incident and subjected herself to cross-examination. "[F]or quite some time," she suspected her husband of cheating on her (Tr. 33, 35-37). On the night of the incident, respondent's husband told her that he was going to the gym and he took some clothes with him, which he never does (Tr. 33). Later that night, respondent received a call that her husband was at a restaurant with another woman (Tr. 33-34).

Respondent and a friend went to the restaurant, where respondent frequently dined with her husband (Tr. 33-34). After watching the complainant and respondent's husband leaving the

restaurant and getting into his car, respondent and her friend followed them (Tr. 34). Respondent saw her husband and the complainant park and remain in the car for approximately 30 minutes (Tr. 34). When respondent went by, she saw the complainant and respondent's husband going from the car's back seat to the front seat (Tr. 34).

Respondent's husband drove away, stopped to let the complainant out, and continued driving (Tr. 34). Crying and upset, respondent approached the complainant (Tr. 34). Respondent recognized the complainant as respondent's husband's "ex," who had been communicating with him via Facebook and Instagram (Tr. 34-35, 37). When respondent told the complainant that she should have more self-respect than to have relations in the back of a car, the complainant got very angry, told respondent not to bother her, and said that respondent should be talking to her husband (Tr. 34, 36). It was late at night and it seemed clear to respondent that the complainant had been drinking (Tr. 35).

As they exchanged more words, the complainant pushed respondent, who tried to defend herself by grabbing the complainant's arms (Tr. 35). The complainant, who was wearing high heels, fell (Tr. 35). After telling the complainant to stay away from her husband, respondent went home where she told her husband that she knew where he had been and that she did not want to be with him anymore (Tr. 35). Respondent later received a phone call from a detective and went to her local precinct where she was arrested (Tr. 33). She is now separated from her husband and seeking a divorce (Tr. 35).

Madelyn Fajardo testified that she has known respondent for more than ten years (Tr. 40). They went to high school together in the Dominican Republic, they see each other once or twice per week, and they often socialize (Tr. 40-41). Fajardo has never seen respondent threaten or engage in violence (Tr. 41). Respondent is not quick to anger (Tr. 41). According to Fajardo, respondent is "a very respectful person. I've never seen her treat anyone badly. She's always been a very humble person" (Tr. 41).

A post-suspension hearing is not intended to be a mini-trial and the criminal charges are presumed to be true. However, neither petitioner's rules nor the decision in *Nnebe* require this tribunal to accept every additional detail in a police report or complaint to be accepted as true. *See Taxi & Limousine Comm'n v. Singh*, OATH Index No. 701/20 at 4 (Nov. 1, 2019), *adopted*, Comm'r Dec. (Nov. 19, 2019). Instead, the complaint's incomplete account, based on multiple levels of hearsay, should be weighed against the rest of the evidence. *Id.* Here, there are

discrepancies in the Police Department's online complaint report. Under "classification" and "offenses," besides the references to criminal mischief and assault, there are also references to "cemetery desecration" and "riot," which are not mentioned in the narrative sections or in any other documents (Pet. Ex. 4 at 6). In that same document, respondent is described as a "stranger," but the complainant also refers to respondent by her full name and describes respondent as the wife of the complainant's friend (*Id.* at 7, 10).

In contrast to the complainant's sparse and inconsistent account, respondent provided more detailed information. Respondent impressed me as a credible witness. Without hesitation, she gave clear, straightforward answers to every question posed to her. Respondent acknowledged that she was, understandably, upset when she approached the complainant, they exchanged words, and they engaged in a struggle. I credited respondent's testimony that the complainant was the first to use force.

Even assuming, as petitioner's rules require, that respondent committed an assault, there was no evidence that any weapon was used or that the complainant received any serious injuries. There was no indication that the complainant saw any doctor or sought any treatment. As noted, the police report described the injuries as "minor," and specifies that the complainant "refused medical attention" (Pet. Ex. 4 at 7). Furthermore, the incident occurred at about 12:30 a.m. on September 2, 2022, but there was no indication that the complainant ever called 911 (*Id.*). Instead, the complainant waited until after 8:00 p.m. to go to a police precinct (*Id.* at 6). Respondent was not arrested until she voluntarily went to the precinct where she received a desk appearance ticket.

There is an allegation that the incident occurred after the complainant got out of respondent's husband's taxi. But there was no credible evidence that the complainant was a fare-paying customer or that this incident was directly linked to respondent's duties as a licensee. Rather, the evidence established that this was an off-duty incident stemming from an affair between the complainant and respondent's husband. There is a nexus between an off-duty assault and a licensee's activities because petitioner expects licensees to deal with stressful circumstances and treat people with respect. However, this appears to be an isolated incident in an otherwise law-abiding life. Moreover, respondent made a major financial commitment by signing a long-term lease to pay for her car to earn a living as an Uber and Lyft driver. That obligation, along with the hardship that respondent has already suffered as a result of this suspension, will be a powerful incentive for her to avoid any future confrontation.

Respondent has had no prior contact with the criminal justice system. She has never before been accused of violating any of petitioner's rules. And she has never received a passenger complaint. Indeed, her passengers have given her near-perfect ratings. Though respondent has only been a licensee for 18 months, that does not minimize the fact that she has served 1,700 passengers without incident, she has received stellar reviews, and she has a spotless driving record. *See Taxi & Limousine Comm'n v. Lekchung*, OATH Index No. 2234/21 at 5 (July 7, 2021), *adopted*, Comm'r Dec. (July 13, 2021) (suspension lifted, based in part on driver's unblemished record, even though he was arrested for assault and harassment only six months after receiving his Taxi Driver License). And there was credible testimony, from someone who has known respondent for more than a decade, confirming that respondent is a law-abiding, peaceful person.

In sum, the evidence does not show that respondent poses a direct and substantial threat to public health and safety. This was an isolated, off-duty incident that is unlikely to recur, there were no significant injuries, and respondent has an outstanding reputation as a licensee and a hardworking, law-abiding member of her community. Her suspension should be lifted. *See, e.g., Taxi & Limousine Comm'n v. Zagre*, OATH Index No. 1934/21 at 5-7 (May 25, 2021), *adopted*, Comm'r Dec. (May 25, 2021) (suspension lifted, even though driver charged with assault following a fare-dispute with a passenger, who claimed that she was punched in the face, where driver was the person who contacted the police, there was no evidence that complainant sought medical attention, and evidence suggested that this was an isolated incident); *Taxi & Limousine Comm'n v. Mota*, OATH Index No. 2010/20 at 5-6 (June 17, 2020), *adopted*, Comm'r Dec. (June 29, 2020) (suspension lifted where licensee was arrested for assault and harassment following an off-duty incident where complainant may have initiated force, respondent may have been protecting another person from harm, and evidence showed that respondent was a hard-working driver with a history of law-abiding behavior); *Taxi & Limousine Comm'n v. Ibrahim*, OATH Index No. 891/20 at 3-5 (Nov. 25, 2019), *adopted*, Comm'r Dec. (Dec. 9, 2019) (suspension lifted where evidence showed that Uber driver was arrested following an on-duty dispute with a person who got into his car without permission and grabbed his TLC license, licensee was not the initial aggressor, and conduct was completely out of character).

FINDINGS AND CONCLUSIONS

1. Respondent was arrested after an off-duty incident and is currently charged with assault in the third degree, criminal mischief in the fourth degree, and harassment in the second degree.
2. Even assuming the truth of the pending criminal charges, the record fails to show 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.

Kevin F. Casey
Administrative Law Judge

October 21, 2022

SUBMITTED TO:

DAVID DO
Commissioner and Chair

APPEARANCES:

ANITA ARMSTRONG, ESQ.
Attorney for Petitioner

DANIEL ACKMAN, ESQ.
Attorney for Respondent



October 24, 2022

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Ivelina Cruz

██████ ██████████
████████████████████

Re: TLC License No. 5961248

Licensee Cruz:

Pursuant to TLC Rule 68-15, a summary suspension hearing was concluded on October 12, 2022 as a result of your September 13, 2022 arrest for assault in the third degree and related charges.

After hearing the evidence presented, the presiding Administrative Law Judge (“ALJ”), Kevin F. Casey, found that your suspension should be lifted.

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

Sincerely,

/s/ Sherryl A. Eluto

Sherryl A. Eluto
Acting General Counsel

cc: Kevin F. Casey, *Administrative Law Judge*
Anita Armstrong, *Supervising Attorney, OATH Trials (TLC)*
Daniel Ackman, *Esquire (Attorney for Respondent)*