

# ***Taxi & Limousine Comm'n v. Mia Salim***

OATH Index No. 1770/24 (Jan. 2, 2024), *adopted*, Comm'r Dec. (Jan. 4, 2024), **appended**

Petitioner suspended respondent's TLC driver license based on his arrest for robbery in the third degree and grand larceny in the fourth degree. At a post-suspension hearing, petitioner failed to establish that respondent's continued licensure would pose a direct and substantial threat to public health or safety. ALJ recommends that the suspension of respondent's TLC driver license be lifted.

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## **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**TAXI AND LIMOUSINE COMMISSION**  
*Petitioner*  
*- against -*  
**MOHAMMED MIA SALIM**  
*Respondent*

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### **REPORT AND RECOMMENDATION**

**MICHAEL D. TURILLI**, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("TLC"), brought this summary suspension proceeding against respondent, Mohammed Mia Salim, holder of TLC driver license 5826521. Admin. Code § 19-512.1 (Lexis 2023); 35 RCNY § 68-15(d) (Lexis 2023). Petitioner suspended respondent's TLC driver license after receiving notice of his arrest on December 7, 2023, for robbery in the third degree. Respondent was later charged with robbery in the third degree, grand larceny in the fourth degree, and other related charges. Petitioner contends that respondent's continued licensure during the pendency of criminal charges would pose a direct and substantial threat to public health or safety and seeks a recommendation that the suspension be continued. Respondent opposes the continued suspension of his TLC driver license and maintains that his continued licensure would not pose a direct and substantial threat to the public.

A post-suspension hearing was held before me on December 22, 2023. The proceedings were held remotely via videoconference. Petitioner did not call any witnesses and relied solely upon documentary evidence. Respondent testified on his own behalf through an interpreter and did not offer any documentary evidence.

For the reasons set forth below, I find that petitioner failed to prove that respondent's continued licensure poses a direct and substantial threat to public health or safety and recommend that the suspension of respondent's TLC driver license be lifted.

### ANALYSIS

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 petitioner “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). Factors relevant to the determination include: the particular facts and circumstances underlying the criminal charges; the connection between the alleged offense and the duties of a TLC licensed driver; the respondent’s driving record, including any history of serious violations or license suspension; the respondent’s previous criminal record, or lack thereof; and the respondent’s character and standing in the community. *Id.*; see *Nnebe v. Daus*, 931 F.3d 66, 88 (2d Cir. 2019) (requiring that a post-suspension hearing “encompass[] some level of conduct-specific findings based upon the facts underlying the complaint and the driver’s history and characteristics”). As the Second Circuit noted in *Nnebe*, “[i]t is possible for a driver to be charged with an act that itself endangered public health or safety, but that is insufficient to demonstrate that the driver would *continue* to pose a threat if allowed to retain his or her license.” *Id.* at 82 (emphasis in original). The Second Circuit further explained 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 he or she remains licensed,” and “[d]epending on the surrounding circumstances and the driver’s history, the threat may also be more or less ‘substantial.’” *Id.*

At the post-suspension hearing, petitioner presented various documents related to respondent’s arrest and prosecution. Petitioner largely relied on the complainant’s hearsay statements contained in the New York Police Department complaint and arrest reports (Pet. Ex. 4). According to the complaint report, at approximately 11:30 p.m. on October 24, 2023, while respondent was driving the complainant home in a yellow taxi, he pulled over on Ocean Avenue

in Staten Island and started to yell at the complainant regarding the cab fare (*Id.*). The complainant, who had been sleeping, called 911 to report being harassed by respondent (*Id.*). The complainant stated that respondent then pushed him, wrestled with him, forcibly removed his iPhone 14, and drove away with the cellphone (*Id.*). The complainant walked home and called 911 from his home phone, reporting the incident at approximately 2:00 a.m. (*Id.*). According to the complaint report, the complainant was not injured and refused medical attention at the scene (*Id.*). On December 7, 2023, respondent was arrested for robbery in the third degree (Pet. Exs. 3, 4). According to the arrest report, the charges resulted from respondent's verbal and physical altercation with the complainant on October 24, 2023, during which respondent hit the complainant multiple times, causing pain and swelling to the complainant's left hand, removed the cellphone from the complainant's hand, and fled in the vehicle (Pet. Ex. 4). The allegations that respondent hit the complainant multiple times and caused the complainant injury appear in the arrest report but do not appear in the complaint report.

Respondent was later charged with robbery in the third degree (a class D felony), grand larceny in the fourth degree (a class E felony), and other related charges (Pet. Ex. 5). *See* Penal Law §§ 155.25, 155.30, 160.05, 165.40 (Lexis 2023). On December 7, 2023, respondent was released on his own recognizance and a temporary order of protection was issued (*Id.*). The criminal case is pending in Richmond County Criminal Court, with the next court date scheduled for January 25, 2024 (*Id.*). The felony robbery and grand larceny charges pending against respondent are offenses enumerated in petitioner's rules upon which it may summarily suspend a TLC license. 35 RCNY § 68-15(d)(1).

Respondent is 44 years old, has lived in the United States for the past eight years, and has worked as a TLC licensed driver since 2017 (Tr. 20-21; Pet. Ex. 2). He drives a yellow taxi for a limousine company and relies upon this income to support his wife, two children, and parents (Tr. 21-23). Prior to this incident, his TLC driver license had never been suspended (Tr. 22). He has no serious TLC violations on his driving record (*Id.*). He has never assaulted or threatened a passenger or been accused of assaulting or threatening a passenger (Tr. 21). Prior to this incident, he had never been accused of taking property from a passenger (Tr. 30).

Despite the pending criminal prosecution, respondent testified regarding the circumstances underlying his arrest. Respondent explained that he picked up a young male passenger on 9th Avenue in Manhattan late at night and drove him to Staten Island (Tr. 25-26, 28). The fare was

approximately \$86 plus tolls (Tr. 25). When they arrived at the passenger's home and the passenger's credit card was declined six or seven times, the passenger told respondent that he would get money from inside his home (Tr. 24-26). Respondent asked the passenger to leave something, such as a phone or identification card, in the taxi while he went inside for money to ensure that he would come back (Tr. 28, 31-32). The passenger left his phone with respondent, went inside the home, but did not come back (Tr. 26). Respondent waited 15 to 20 minutes for the passenger to return and then drove home (Tr. 26). Respondent denied grabbing the phone from the passenger or having any physical confrontation or fight with him (Tr. 27, 29).

Respondent testified that he thought the passenger would call the taxi company for his phone using the telephone number listed on the receipt respondent provided him, but no one ever called (Tr. 26-27, 30). After the incident, respondent forgot he still had the passenger's phone, which he never used or tried to sell (Tr. 27, 33). After receiving a call from the police on December 3, 2023, respondent voluntarily went to the 120th Precinct with the passenger's phone and was arrested (Tr. 23, 27). Respondent testified that he did not call the police regarding the unpaid fare and was unaware of any TLC rule regarding nonpayment of a fare by a passenger (Tr. 33, 35). He explained that he did not know what to do and therefore decided to "place a condition" for the passenger to retrieve money from his home (Tr. 33-35).

Petitioner failed to meet its burden of proving that respondent's continued licensure poses a direct and substantial threat to public safety. The alleged conduct involving theft from a passenger is serious and directly implicates respondent's duties as a TLC licensed driver. *See Taxi & Limousine Comm'n v. Roach*, OATH Index No. 1864/23 at 6 (Feb. 3, 2023), *adopted*, Comm'r Dec (Feb. 8, 2023) (finding that robbery charge was "directly relate[d] to respondent's responsibilities as a TLC driver because the incident involved on-duty conduct with a passenger"); *Taxi & Limousine Comm'n v. Motmaien*, OATH Index No. 645/22 at 11 (Nov. 5, 2021), *adopted*, Comm'r Dec. (Nov. 23, 2021) (noting that larceny charges "concern[ed] respondent's on-duty conduct and thus show a close nexus between the charges and the duties of a licensed TLC driver and to the public safety").

Despite such a nexus and presuming that the criminal charges against respondent are true, respondent presented compelling and credible mitigating evidence regarding the circumstances leading up to his arrest that tends to demonstrate that his continued licensure would not pose a direct and substantial public safety threat. *See Taxi & Limousine Comm'n v. Singh*, OATH Index

No. 1913/20 at 3-4 (Apr. 24, 2020), *adopted*, Comm’r Dec. (May 1, 2020) (lifting suspension where driver presented “credible, complete, and compelling testimony about the incident” which demonstrated that “he reacted to extraordinary provocation”); *Taxi & Limousine Comm’n v. Anonymous*, OATH Index No. 1081/20 at 5-6 (Dec. 27, 2019), *adopted*, Comm’r Dec. (Jan. 29, 2020) (lifting suspension where driver “presented compelling testimony to show that [the complainants] were the aggressors and that he tried to avoid the dispute”). Respondent admitted that he took possession of his passenger’s cellphone because the passenger did not pay the fare. Respondent should have followed the TLC rule regarding nonpayment of fares and reported the incident to the police. *See* 35 RCNY § 80-17(b) (“If a Taxicab or Street Hail Livery Passenger refuses to pay the metered fare, the Driver of the Taxicab or Street Hail Livery must . . . record the amount of the fare . . . and proceed directly to the nearest police precinct, present the facts to the police and follow their instructions for resolving the dispute.”). Instead of notifying the police, respondent engaged in self-help by asking to hold onto the passenger’s phone as collateral while the passenger went inside for money and did not return. Respondent credibly explained that he did not use or try to sell the passenger’s phone after the incident and brought it to the precinct as soon as the police called him. *See Roach*, OATH 1864/23 at 8 (lifting suspension of driver charged with robbery of a passenger’s cellphone where respondent credibly testified that she went directly to the police precinct to report the unpaid fare and the phone was found in the back seat of her car); *cf. Motmaien*, OATH 645/22 at 9 (continuing suspension of driver charged with theft of a passenger’s cellphone where respondent’s testimony that he delivered the phone to the passenger without demanding any money in return was not credible).

I credited respondent’s testimony that he did not engage in any physical altercation with the passenger over the unsworn hearsay statements in the police reports. *See Taxi & Limousine Comm’n v. Perez*, OATH Index No. 2524/22 at 6 (July 8, 2022), *adopted*, Comm’r Dec. (July 11, 2022) (“[N]either *Nnebe* nor petitioner’s rules require that every detail in a police report or criminal court complaint be taken as true.”). The police reports indicate that respondent pushed, wrestled, and repeatedly hit the passenger. However, the passenger did not suffer any injury and refused medical attention. This discrepancy suggests that the passenger may have exaggerated the physical force used by respondent when reporting the incident to the police. *See Taxi & Limousine Comm’n v. Kamal*, OATH Index No. 1495/21 at 7 (Mar. 16, 2021), *adopted*, Comm’r Dec. (Mar. 18, 2021) (lifting suspension of driver charged with assault where the complainant provided inconsistent

accounts of the nature of the force used). Moreover, the passenger's account seemed implausible, in that respondent, without any provocation, allegedly pulled over mid-route and started a physical fight with his passenger over the fare.

The record reflects that this was an isolated incident in respondent's otherwise law-abiding life. *See Nnebe*, 931 F.3d at 82 ("The crime may have been . . . a sole infraction in an otherwise spotless record."). There is no evidence that respondent has any prior arrests or criminal convictions on his record. Respondent has worked as a TLC licensed driver for six years. Prior to this incident, his TLC driver license had never been suspended and he had never been accused of threatening, assaulting, or stealing from a passenger. There is also no evidence of any serious driving violations or passenger complaints.

In sum, petitioner failed to establish that respondent's continued licensure pending the outcome of his criminal case would pose a direct and substantial threat to public health or safety.

### **FINDINGS AND CONCLUSIONS**

1. Respondent was arrested on December 7, 2023, and charged with robbery in the third degree and grand larceny in the fourth degree.
2. Petitioner failed to prove 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 the suspension of respondent's TLC driver license be lifted.

Michael D. Turilli  
Administrative Law Judge

January 2, 2024

SUBMITTED TO:

**DAVID DO**  
*Commissioner/Chair*

APPEARANCES:

**TODD MORDOS, ESQ.**

*Attorney for Petitioner*

**DANIEL L. ACKMAN, ESQ.**

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January 4, 2024

Mohammed Mia Salim



Re: **TLC License No. 5826521**

Licensee Mia Salim:

Pursuant to TLC Rule 68-15, a summary suspension hearing was concluded on December 22, 2023 as a result of your December 7, 2023 arrest for robbery in the third degree.

After hearing the evidence presented, the presiding Administrative Law Judge (“ALJ”), Michael Turilli, 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  
*General Counsel*

cc: Michael Turilli, *Administrative Law Judge*  
Daniel Williamson, *Supervising Attorney, OATH Trials (TLC)*  
Daniel Ackman, *Attorney for Respondent*