

Taxi & Limousine Comm'n v. Das

OATH Index No. 0253/24 (Aug. 17, 2023), *adopted*, Comm'r Dec. (Aug. 24, 2023), **appended**

Petitioner suspended respondent's TLC Driver License following his arrest. At a post-suspension hearing, petitioner failed to prove that respondent poses a continuing "direct and substantial threat" to the public's 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 -
JOY DAS
Respondent

REPORT AND RECOMMENDATION

ORLANDO RODRIGUEZ, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("TLC"), brought a summary suspension proceeding against respondent, Joy Das, holder of a TLC Driver License. Admin. Code § 19-512.1(a) (Lexis 2023); 35 RCNY §§ 68-15(a)(1), 68-15(d) (Lexis 2023). On July 10, 2023, respondent was arrested for assault in the second degree and leaving the scene of an accident. Petitioner suspended respondent's TLC Driver License on July 11, 2023 (Pet. Ex. 3). TLC now seeks a finding that continued suspension of respondent's license is necessary, pending the outcome of the criminal case, because respondent poses a "direct and substantial" threat to the public (Pet. Ex. 1). Respondent opposes continued suspension of his license and contends that, based on the underlying facts of 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 a post-suspension hearing held on August 3, 2023, petitioner relied on documentary evidence. Respondent testified, presented witness testimony, and offered documentary evidence. For the reasons below, I find that, even if the charges underlying respondent's arrest are true, petitioner failed to prove that respondent poses a continuing "direct and substantial threat" to the public's health or safety.

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). Suspension may be based on pending criminal charges, including felonies, certain misdemeanors, and the violation of driving while ability impaired. 35 RCNY § 68-15(d)(1). If a license is suspended based solely on an arrest, the licensee may challenge the suspension at a post-suspension hearing. 35 RCNY § 68-15(a)(2). At the hearing, 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). Relevant considerations include “the conduct underlying the arrest and the overall record and character of the driver.” *See Nnebe v. Daus*, 931 F.3d 66, 82 (2d Cir. 2019).

Due process demands that the hearing be “meaningful,” affording the driver “an opportunity to show that his or her particular licensure does not cause a threat to public safety.” *Id.* at 83. As the Second Circuit explained, the inquiry “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). Therefore, the criminal charge alone should not be “the only consideration relevant to the inquiry.” *Id.* at 83. The court further explained, “[d]epending on the surrounding circumstances and the driver’s history, the threat may also be more or less ‘substantial.’” *Id.* at 82. Another consideration is whether the charged crime is the “sole infraction in an otherwise spotless record.” *Id.*

At a hearing to determine whether the licensee’s suspension should continue due to a “direct and substantial threat” to the public, the parties may present relevant evidence, including, but not limited to:

- a) The particular facts and circumstances underlying the criminal charges, including the connection between the alleged offense and the Respondent’s duties and responsibilities as a driver licensed by the Commission;
- b) The Respondent’s driving record, including any history of serious violations or license suspension under these Rules or applicable provisions of law relating to traffic or [v]ehicles licensed by the Commission;

- c) The Respondent's previous criminal record, or lack thereof;
- d) The Respondent's character and standing in the community; and
- e) Any other evidence relevant to whether continued licensure of the Respondent during the pendency of criminal charges would pose a direct and substantial threat to public health or safety.

35 RCNY § 68-15(d)(5).

Consistent with due process and petitioner's rules, this tribunal has determined, on a case-by-case basis, that a licensee's suspension should either be lifted or extended depending on whether continued licensure would constitute a "direct and substantial threat" to public health or safety. Admin. Code § 19-512.1(a); 35 RCNY § 68-15(d)(1). *Compare Taxi & Limousine Comm'n v. Roach*, OATH Index No. 1864/23 (Feb. 3, 2023), *adopted*, Comm'r Dec. (Feb. 8, 2023) (suspension of driver charged with leaving the scene of an incident and robbery in the second degree lifted, where respondent's credible testimony undercut the "exaggerated nature of the allegations contained in the arrest report and the criminal court complaint," and credible testimony from three character witnesses significantly mitigated the severity of the charge); *Taxi & Limousine Comm'n v. Neupane*, OATH Index No. 478/21 (Oct. 21, 2020), *adopted*, Comm'r Dec. (Oct. 26, 2020) (suspension lifted where respondent offered a more plausible account of the incident, had a spotless driving record, no arrests and a reputation for being a law-abiding member of his community); *Taxi & Limousine Comm'n v. Francois*, OATH Index No. 651/20 (Nov. 25, 2019), *adopted*, Comm'r Dec. (Dec. 24, 2019) (suspension lifted where driver, arrested for leaving the scene of an accident, provided a detailed account of the facts underlying his arrest, as well as mitigating evidence regarding his character and overall driving record); *with Taxi & Limousine Comm'n v. Rahaman*, OATH Index No. 2455/23 (Apr. 4, 2023) (suspension continued where respondent charged with leaving the scene of an accident, "did not testify about the circumstances leading to his arrest, and the record lacked sufficient mitigating evidence to offset the seriousness of the charge.").

The underlying incident leading to respondent's arrest is another episode in the ongoing conflict taking place on city streets between motorists and cyclists. According to the New York Police Department ("NYPD") complaint report, at approximately 12:45 p.m. on July 10, 2023, a witness observed complainant and respondent get into a dispute on Greenpoint Avenue and 47th Street in Queens (Pet. Ex. 4). Respondent drove away and returned to the location soon after.

When respondent returned, complainant was walking his bicycle in the street. Respondent then drove his vehicle into complainant, causing injuries to complainant's head, shoulder, and left foot. EMS arrived and complainant was taken to "EGH" (Elmhurst Hospital) (Pet. Ex. 4 at 7). The arrest report repeats much of what is noted in the complaint report (*Id.*). According to the criminal complaint filed in Queens County Criminal Court, complainant sustained lacerations and bleeding to his head and ankle. He received multiple stitches for his injuries. Respondent submitted relevant and credible evidence regarding his overall record, his character, and the events surrounding his arrest. *See Nnebe*, 931 F.3d at 82. Respondent is 60 years old, and this is his first contact with the criminal justice system (Pet. Ex. 4 at 3; Tr. 27). He has held a TLC license since 1991 (Tr. 26). For most of his career, he drove limousines. About two years ago, respondent began driving a yellow taxi. He is a medallion owner for which he has a mortgage and pays \$914 per month (Tr. 26).

Although criminal charges are pending against him, respondent elected to testify and explain the series of events resulting in his arrest. I found his testimony regarding the underlying circumstances credible. He impressed me as sincere, becoming emotionally distressed while discussing the incident. He denies the allegations. At the time of the alleged incident, respondent was waiting for a parking space to open at 45th Street and Greenpoint Avenue in Queens. Four cyclists rode by and one of them struck his car, complaining that he was double parked in a bike lane. Respondent testified that one cyclist (complainant) broke his side mirror. Respondent's window was open, permitting complainant to reach in and hit respondent's neck (Tr. 28). Complainant then threw his bike at respondent's vehicle causing damage. Respondent attempted to leave. Complainant gave chase and caught up to respondent. Respondent was stuck at the intersection; the traffic light was red and there was a vehicle in front of him. The light turned green, and respondent attempted to make a left turn at the intersection. Complainant struck another one of respondent's side mirrors, causing it to break. Again, respondent fled. While he was stopped at Greenpoint Avenue, he observed complainant chasing after him. Complainant attempted to stop respondent's vehicle when complainant's bicycle was struck. In fear for his safety, respondent then drove to the nearest police station (Tr. 32, 35).

While at the precinct, respondent informed an officer that he had been assaulted by complainant. As a result, complainant was arrested. Respondent was taken to Mount Sinai Hospital for treatment (Resp. Ex. C). According to the criminal court complaint filed in Queens

County, complainant was charged with criminal mischief in the fourth degree, an A misdemeanor, attempted assault in the third degree, a B misdemeanor, and harassment in the second degree, a violation (Resp. Ex. A). The complaint alleges that complainant struck respondent in the head and broke the side mirrors of respondent's vehicle. In support of the allegations against complainant, respondent submitted two photos depicting his vehicle while parked at the police precinct. The images show the driver-side mirror had been completely removed (Resp. Ex. B).

Topas Gupta testified in support of respondent's character. Mr. Gupta has known respondent for 30 years (Tr. 23). When the two men were younger, respondent would pick up Mr. Gupta's roommate and take him to his place of employment, a restaurant. Mr. Gupta is also a taxi driver. He has held a TLC license for eight years. According to Mr. Gupta, respondent is "good with people" (Tr. 24). Mr. Gupta went so far as to say that he would trust respondent to drive his loved ones (Tr. 25).

The issue to be determined is, assuming the charges underlying the arrest to be true, whether petitioner has established that respondent's continued licensure would pose a direct and substantial danger to public health or safety. *Nnebe* makes clear that in evaluating whether a driver's suspension should be continued, the analysis is "focused not on the threat posed by the charges, but rather on the threat posed to the public by *the driver's licensure*." 931 F.3d at 82 (emphasis in the original). To that end, it is essential to assess all the evidence concerning the alleged crime as well as respondent's character. See *Taxi & Limousine Comm'n v. Bah*, OATH Index No. 1927/20 at 5 (Jun. 1, 2020), *adopted*, Comm'r Dec. (Jun. 9, 2020).

Under TLC rules, the arrest charge is to be accepted as "true." See *Nnebe*, 931 F.3d at 90 ("[W]e see no constitutional infirmity in a process that allows for context-specific findings but does not open the question of a driver's factual guilt of the criminal charges."). However, compelling evidence about the circumstances leading up to the arrest may weigh heavily in the driver's favor. See *Taxi & Limousine Comm'n v. Haleah*, OATH Index No. 2857/22 at 5 (Jul. 13, 2022), *adopted*, Comm'r Dec. (Jul. 13, 2022) (suspension lifted where respondent provided "clear, credible, and uncontroverted testimony regarding the events that led to his arrest," and the pending charges appeared to be an "isolated landlord and tenant incident supported by petitioner's testimony that he subsequently filed a harassment claim against the landlord in Housing Court"); *Taxi & Limousine Comm'n v. Zulfiqar*, OATH Index No. 1575/20 at 6 (Mar. 16, 2020), *adopted*,

Comm'r Dec. (Apr. 13, 2020) (lifting suspension in light of respondent's credible testimony and two witnesses that corroborated respondent's testimony).

For example, charges have been found mitigated where the credible evidence shows respondent's conduct was the result of "extraordinary provocation." See *Taxi & Limousine Comm'n v. Savadogo*, OATH Index No. 169/24 (Aug. 8, 2023) (suspension of driver charged with leaving the scene of an accident lifted where respondent credibly testified that he feared for his safety when he was angrily confronted by three men).

Here, the credible evidence suggests respondent's conduct was unintentional and the result of extraordinary provocation. I found respondent's testimony more credible than the charging document and police reports, which rely solely on hearsay statements. He appeared in person, swore under oath, and exposed himself to cross examination. Furthermore, while the charges filed against complainant are not accepted as true, like the charges against respondent, the photographs of respondent's vehicle, coupled with his treatment at the hospital, corroborate respondent's testimony and the allegations against complainant. Thus, the credible evidence suggests that when respondent's vehicle came into contact with complainant's bicycle, respondent was fleeing for safety.

Almost equally as important as respondent's testimony and photographs, is his lack of contact with the criminal justice system, his flawless driving history, and the absence of passenger complaints over three decades as a licensee. In all respects, respondent's record is spotless, suggesting that his arrest is an aberration rather than evidence of a violent nature.

Therefore, under these circumstances, petitioner failed to prove that respondent poses a continuing direct and substantial threat to public health or safety. Instead, respondent's credible testimony established that the pending criminal charges, the sole alleged infraction in an otherwise spotless record, appear to stem from an extraordinary incident with complainant. By every other account, respondent is a hard-working driver, with a history of law-abiding behavior, who demonstrates proper regard for public safety. Accordingly, respondent's license suspension should be lifted.

FINDINGS AND CONCLUSIONS

1. Respondent was arrested for attempted assault in the first degree and leaving the scene of an accident without reporting.
2. Petitioner did not establish that respondent's continued 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 pending the disposition of his criminal court case.

Orlando Rodriguez
Administrative Law Judge

August 17, 2023

SUBMITTED TO:

DAVID DO
Commissioner/Chair

APPEARANCES:

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August 24, 2023

Joy Das


Re: **TLC License No. 844828**

Licensee Das:

Pursuant to TLC Rule 68-15, a summary suspension hearing was concluded on August 3, 2023 as a result of your July 10, 2023 arrest for assault in the second 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,


Sherryl A. Eluto
General Counsel

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