

# ***Taxi & Limousine Comm'n v. Oyebamiji***

OATH Index No. 352/24 (Aug. 18, 2023), *adopted*, Comm'r Dec. (Aug. 24, 2023), **appended**

Petitioner suspended respondent's TLC license after his arrest for leaving the scene of an accident. At a post-suspension hearing, petitioner failed to prove that respondent's continued licensure poses a direct and substantial threat to the public health and safety. Lifting of suspension recommended.

---

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

*In the Matter of*  
**TAXI AND LIMOUSINE COMMISSION**  
*Petitioner*  
*- against -*  
**IBUKUN OYEBAMIJI**  
*Respondent*

---

### **REPORT AND RECOMMENDATION**

**CHRISTINE STECURA**, *Administrative Law Judge*

Petitioner, the Taxi and Limousine Commission ("TLC"), brought this summary suspension proceeding against respondent Ibukun Oyebamiji, a licensed TLC driver, pursuant to the New York City Administrative Code and the TLC's rules, title 35 of the Rules of the City of New York ("RCNY"). Admin. Code § 19-512.1(a) (Lexis 2023); 35 RCNY § 68-15(d) (Lexis 2023). On July 31, 2023, petitioner suspended respondent's TLC license after it received notice that he was arrested on July 29, 2023, for the offense of leaving the scene of an accident (Pet. Exs. 3, 5). Petitioner seeks to continue the suspension of respondent's license until a final disposition in his criminal case, maintaining that respondent poses a direct and substantial threat to the public.

On August 11, 2023, a post-suspension hearing was held, with petitioner appearing via videoconference. Petitioner relied on documentary evidence. Respondent testified and presented the testimony of a witness and documentary evidence. Respondent asserted that he is not a threat to public health and safety and the suspension of his license should be lifted.

For the reasons below, I find that petitioner failed to prove that respondent poses a continuing direct and substantial threat to public health or safety and recommend that respondent's

license suspension be lifted.

### ANALYSIS

Under New York City's Administrative Code, 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. If a license is suspended based solely on an arrest, the licensee may challenge that suspension at a post-suspension hearing, where the issue is whether "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). Evidence relevant to this issue includes the circumstances underlying the charges, such as 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.*

To maintain a license suspension, petitioner must establish that the driver poses a continuing threat to the public that is both "direct" and "substantial." *Nnebe v. Daus*, 931 F.3d 66, 82 (2d Cir. 2019). As the Second Circuit has noted, "in the majority of cases, the further removed the crime is from the driver's job, the less 'direct' the threat," and "[d]epending on the surrounding circumstances and the driver's history, the threat may also be more or less 'substantial.'" *Id.* Other considerations include, whether the charged crime is the "sole infraction in an otherwise spotless record," 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," the respondent's driving record, the respondent's criminal record, and the respondent's character and standing in the community. *Id.*; 35 RCNY § 68-15(d)(5).

This tribunal has applied the *Nnebe* factors in analyzing whether petitioner proved that a driver's continued licensure during the pendency of the criminal case would pose the type of risk to the public that necessitates continuing the suspension. *Compare Taxi & Limousine Comm'n v. Rahman*, OATH Index No. 596/22 at 11-12 (Oct. 15, 2021), *adopted*, Comm'r Dec. (Oct. 29, 2021) (suspension of driver charged with menacing in the second degree and other charges continued where respondent's evidence fully weighed, but found insufficient to overcome risk to public safety, citing credibility gaps in his testimony), and *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, harassment, 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. Roach*, OATH Index No. 1864/23 at 9-10 (Feb. 3, 2023), *adopted*, Comm'r Dec. (Feb. 8, 2023) (suspension of driver charged with leaving the scene of an incident, robbery in the second degree, and other charges, lifted where driver offered significant mitigation, as well as compelling evidence of her overall record and character), *Taxi & Limousine Comm'n v. Bah*, OATH Index No. 1927/20 at 6-7 (June 1, 2020), *adopted*, Comm'r Dec. (June 9, 2020) (suspension of driver arrested for criminal possession of a weapon and menacing lifted where driver presented "compelling evidence" of his "admirable" work history, good character, favorable driving record, and absence of criminal history, so that allegations in the arrest documents did not constitute "persuasive proof of an assaultive nature" but rather showed "an isolated circumstance"), and *Taxi & Limousine Comm'n v. Francois*, OATH Index No. 651/20 at 8 (Nov. 25, 2019), *adopted*, Comm'r Dec. (Dec. 24, 2019) (suspension lifted where driver arrested for leaving the scene credibly testified that he got out of his car after coming in contact with a person filming skateboarders, he spoke to the person, and was unaware of any injuries).

Petitioner presented documents in connection with respondent's arrest, including a police arrest notification, a criminal complaint, a police arrest report, a police complaint report, and a New York State Unified Court System WebCrimis printout (Pet. Exs. 3, 4, 5, 6). According to the police reports, the incident took place on June 17, 2023, at 11:45 a.m., and was reported 45 minutes later (Pet. Ex. 5). Respondent was arrested on July 29, 2023, at 10:00 a.m. (*Id.*). The WebCrimis printout states that the incident and arrest both occurred on June 17, 2023 (Pet. Ex. 6). The police complaint report states in pertinent part that:

[Complainant] states she was riding her E-bike in the bike lane when a vehicle entered the bike lane while parking and struck her head on. Driver of 2nd vehicle parked his vehicle and then entered [a] nearby building, and did not return.

(Pet. Ex. 5). The police complaint report states that the level of injury was "Physically Injured," the type of injury was "Other Major Injury," and the complainant was "Hospitalized" (*Id.*). The police complaint report coded the incident as "Leaving Scene – Accident – [Property Damage]" (*Id.*). It further stated: "Action of Victim Prior to Incident: Riding E-bike" (*Id.*). The police arrest report states that "[respondent] [was] being arrested with regard to [an] open complaint . . . [and]

[respondent] did strike the [complainant] with his vehicle causing the [complainant] pain to her elbow” (*Id.*). The same report identified the vehicle as a black Toyota with license plate number PXW1355 (*Id.*).

The criminal complaint was signed by a police officer and states, in pertinent part:

[Complainant] was riding a motorized scooter in the bike lane when [respondent] who was driving a black Toyota bearing Texas registration PXW1355, crossed into the bike lane and struck the complainant’s arm . . . [Respondent] pulled his vehicle to the side of the road, parked, and exited the vehicle . . . [Complainant] stated to the [respondent]. . . that he had hit her, she was in pain, and he had to stay with her . . . [Respondent] left the above-mentioned location on foot without providing the complainant with his name, address, or insurance information . . . As a result of defendant striking her with his vehicle, she sustained a fracture and substantial pain to her arm.

(Pet. Ex. 4). There was no further evidence regarding the complainant’s injuries or treatment.

Petitioner did not introduce any evidence of respondent’s licensing or driving history, other than the driver display information, which appears to show that respondent was approved for a TLC license in November 2021 (Pet. Ex. 2).

Respondent impressed me as a sincere and credible witness, who made a good-faith effort to answer each question he was asked. He offered testimony and documentary evidence regarding his employment history and driving record. Respondent emigrated from Nigeria to the United States and obtained his TLC license in 2021 (Tr. 23-25). He has driven for Uber for 1.5 years, completing over 4,500 trips, and has a 4.98 gold rating (Tr. 27-28; Resp. Ex. A). On Lyft, he has a 5.0 rating and has completed 1623 rides in 1.6 years (Tr. 29; Resp. Ex. B). Prior to working as a TLC driver, he worked at a car wash and as a security guard (Tr. 25). He became a TLC driver to have more flexibility to attend to his familial responsibilities, including taking his children to school (Tr. 26). He underwent two criminal background checks in 2019 to apply for his green card and obtain work authorization, as well as to apply to be a security guard (Tr. 24-26). He testified that no passenger has ever claimed he has harmed or threatened them, and his TLC license been suspended prior to this incident (Tr. 28-30). He further testified he has no prior arrests and has never been convicted of any crime (Tr. 30).

Respondent waived his Fifth Amendment right not to testify about the underlying facts of his arrest and subjected himself to cross-examination. On June 17, 2023, respondent was parking his vehicle on Seagirt Boulevard in front of his apartment (Tr. 30; 34). This is where he routinely

parks his vehicle (Tr. 30). He saw that a woman on an electric motorcycle, driving against traffic bumped his car (Tr. 30). He thought she must have touched his mirror (Tr. 30). The woman swerved and stopped (Tr. 30). He got out of his vehicle, saw that there was no damage to his mirror, and asked the woman if she was ok (Tr. 31). She told him she was ok, and then he asked her “are you sure?” (Tr. 31). She then replied, “will you leave me alone,” adding a swear word (Tr. 31, 34). She did not appear injured or in pain (Tr. 31, 33). Having observed no injuries or property damage, he left his parked car, took his groceries, walked to his apartment building, and went inside because he had “nothing to hide” (Tr. 31). He testified that throughout their interaction, the woman never got off her bike, and as he left, she appeared to have her phone (Tr. 31, 36).

Respondent testified that he was never contacted by the police until July 29, 2023, when he received a call asking him to go to One Police Plaza, which he did voluntarily that day (Tr. 32). The police officer told him that he may have to arrest him, but never told the woman had been injured (*Id.*).

On cross-examination, respondent denied that the woman asked him for his information or that she fell off her bike (Tr. 33-34, 36). He clarified that the bike lane was painted green, separate from the road, and was located on the “extreme right” side of the road (Tr. 35). Respondent maintained that he was not in the bike lane while he was parking his vehicle (Tr. 35-36).

Respondent called a character witnesses, Morakinyo Awoniyi. Awoniyi is also a TLC driver and he met respondent in 2015 in Nigeria at a church function (Tr. 18-19). Awoniyi stated that he was a lawyer in Nigeria and that he understood the importance of court proceedings (Tr. 20). After coming to the United States, they worked together at a car wash, where Awoniyi supervised respondent, and as security guards (Tr. 19, 21). He described respondent as a good friend (Tr. 19). He stated that respondent is a cool, collected, and careful person and that respondent helped him become a driver for hire (Tr. 20). He does not believe that respondent poses a danger to anybody, and he has never seen him act violently towards anyone (Tr. 20-21).

The issue to be determined is whether, assuming the pending criminal charges against respondent are true, petitioner has established that respondent’s continued licensure would pose a direct and substantial threat to public health or safety. The analysis focuses on “whether the conduct underlying the arrest and overall record and character of the driver confirms or disproves the arrest’s relation to public health or safety.” *Nnebe*, 931 F.3d at 82. 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.* (emphasis in original). Compelling evidence about the circumstances leading up to the arrest may weigh heavily in the driver's favor. *Compare Taxi & Limousine Comm'n v. Haleah*, OATH Index No. 2857/22 at 4 (July 12, 2022), *adopted*, Comm'r Dec. (July 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"), *with Taxi & Limousine Comm'n v. Rahaman*, OATH Index No. 2455/23 (April 4, 2023) (license suspension continued where driver arrested for leaving the scene of an accident, declined to testify about the circumstances leading to his arrest and did not provide sufficient mitigating evidence to offset the seriousness of the charge or any evidence regarding his driving record or standing within the community).

Respondent is accused of leaving the scene of an accident (VTL 600 (2)). The charge of leaving the scene of an accident requires proof that a motorist was involved in an incident causing personal injury, knew or had reason to know of such injury, and left the scene rather than stopping, identifying themselves and reporting the incident to the police. VTL § 600(2)(a) (Lexis 2023). Even though there was no evidence that respondent was on duty or driving a TLC plated vehicle at the time of the incident, the charge of leaving the scene of an accident has a nexus with respondent's TLC Driver License because it is driving-related. *See Taxi & Limousine Comm'n v. Pugati*, OATH Index No. 1245/14 at 4 (Dec. 27, 2013) (citing cases), *rejected*, Comm'r Dec. (Feb. 18, 2014) (recommending lifting of suspension where driver of car was removed from the scene handcuffed to a stretcher and transported to a hospital by an ambulance); *Taxi & Limousine Comm'n v. Basar*, OATH Index No. 874/12 at 7 (Jan. 20, 2012), *adopted*, Comm'r Dec. (Feb. 8, 2012). Thus, this is not the case, noted in *Nnebe*, where a driver's alleged crime is so far removed from his job that the potential threat from his continuing licensure is not "direct." 931 F. 3d at 81.

The criminal complaint and police reports are sparsely detailed, nevertheless respondent's testimony is consistent with both on some points. All accounts state that respondent's vehicle and the complainant made contact and that respondent parked his vehicle and later walked into a nearby building. Neither the criminal complaint nor the police reports state that the complainant fell from her E-bike, which is consistent with respondent's testimony. There were also differences between the accounts. In respondent's account, the E-bike hit his vehicle while he was parking on the road,

the complainant did not appear to be injured and told him she was okay, and she never asked him for his personal and insurance information. In the complainant's account, according to the criminal complaint, respondent's vehicle hit her arm when his vehicle crossed into the bike lane, she told him she was in pain and asked him to stay with her until the police came but he left without providing her with his personal or insurance information.

Regarding the inconsistencies, I credited respondent's sworn testimony, which was consistent, clear, and subject to cross-examination, over the criminal court complaint, which is based on multiple levels of hearsay. *See Taxi and Limousine Comm'n v. Roach*, OATH Index No. 1864/23 at 7 (Feb. 3, 2023), *adopted*, Comm'r Dec. (Feb. 8, 2023) (crediting driver's sworn testimony, which was subject to cross-examination, as more credible than criminal court complaint); *Taxi and Limousine Comm'n v. Singh*, OATH Index No. 984/07 at 6, n.1 (Jan. 26, 2007), *adopted*, Comm'r Dec. (Jan. 30, 2007) (double hearsay statement on critical issues found to be "conclusory and unreliable"). According to the police report, complainant reported the incident 45 minutes after it occurred, which tends to corroborate respondent's testimony that he was unaware of any injuries when he walked home.

The crime of leaving the scene of an accident is serious and has a nexus with a driver's duties. For purposes of this inquiry, the pending criminal charges must be considered "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, even taking the criminal charges as true, respondent offered significant mitigation. *Nnebe*, 931 F.3d at 82. Respondent credibly testified that he asked the complainant if she was okay. Only after she told him to leave her alone, he left the scene. His testimony that he left his parked vehicle where the incident occurred and walked to his nearby apartment was corroborated by the police reports, criminal complaint, and the TAMIS printout.

Respondent's credible testimony that he left his vehicle, which was parked in front of his apartment building, and then walked home with his groceries only after the complainant told him she was okay, and that he should leave her alone, distinguishes this case from those where a driver is aware that they hit someone, but nevertheless they leave the scene of the accident. *Rahaman*, OATH 2455/23 (April 4, 2023) (recommending continued suspension where driver hit a pedestrian and then left the scene without exchanging information); *Basar*, OATH 874/12 (recommending continuing suspension where driver hit pedestrian, who fell to the ground, driver stopped and then

fled scene, and criminal court information stated that pedestrian suffered a fractured skull and shoulder and spent a month in the hospital); *Taxi & Limousine Comm'n v. Stanicic*, OATH Index No. 1223/08 (Dec. 18, 2007), *adopted*, Comm'r Dec (Jan. 8, 2008) (recommending continued suspension where driver hit pedestrian, stopped briefly, but then kept on going, without getting out of car; ALJ rejected as implausible driver's assertion that he did not know that he hit anyone after driver testified that a figure had emerged from the dark and that something had hit his windshield).

Under similar circumstances, petitioner has adopted this tribunal's recommendation to lift a suspension following a driver's arrest for leaving the scene of an accident where a driver has credibly testified that they spoke with the other party and were unaware of any injuries. *See Taxi & Limousine Comm'n v. Savadogo*, OATH Index No. 139/24 at 11 (Aug. 8, 2023), *adopted*, Comm'r Dec. (Aug. 10, 2023) (suspension lifted where driver credibly testified that he moved his car after he thought he may have hit another car because he feared for his life, though the police report states that the collision caused complainant to suffer a fracture); *Taxi & Limousine Comm'n v. Neupane*, OATH Index No. 478/21 at 5-6 (Oct. 21, 2020), *adopted*, Comm'r Dec. (Oct. 26, 2020) (suspension lifted where driver credibly testified that he got out of his car after coming into contact with a person riding an electric scooter, he spoke to the rider, and was unaware of any injuries, though the police report states that complainant was taken to a hospital for a bruised leg and there were no further details regarding prognosis or treatment); *Francois*, OATH 651/20 at 8 (suspension lifted where driver credibly testified that he got out his car after coming in contact with a skateboarding pedestrian, he spoke to the pedestrian, and was unaware of any injuries).

Respondent has only driven for a short amount of time, but he has a pristine driving record, as well as high ratings on Uber and Lyft, without any prior incidents. There was no evidence that respondent ever assaulted or endangered a passenger or member of the public. There was also no evidence that respondent had any traffic violations or prior arrests. Respondent also presented credible testimony from a fellow TLC driver who attested to his character. In sum, the evidence showed this incident was completely out of character and an aberration in an otherwise law-abiding life, which does not bear upon respondent's ability to act professionally with passengers or the public and is unlikely to recur. *See, e.g., Roach*, OATH. 1864/23 at 9-10 (Feb. 3, 2023), *adopted*, Comm'r Dec. (Feb. 8, 2023) (suspension lifted where driver, facing multiple charges including leaving the scene of an accident, provided compelling character evidence, including passenger testimony); *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, 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). Considering all the factors in *Nnebe*, I find that petitioner failed to establish that respondent's continued licensure would pose a direct and substantial threat to public health or safety.

### **FINDINGS AND CONCLUSIONS**

1. Respondent was arrested for leaving the scene of accident.
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 safety.

### **RECOMMENDATION**

Respondent's license suspension should be lifted.

Christine Stecura  
Administrative Law Judge

August 18, 2023

SUBMITTED TO:

**DAVID DO**  
*Commissioner/Chair*

APPEARANCES:

**TODD MORDOS, ESQ.**  
*Attorney for Petitioner*

**DANIEL ACKMAN, ESQ.**  
*Attorney for Respondent*



David Do  
Commissioner/Chair

Ryan Wanttaja  
First Deputy Commissioner

Sherryl A. Eluto  
General Counsel/  
Deputy Commissioner  
for Legal Affairs  
sherryl.eluto@tlc.nyc.gov

33 Beaver Street  
22nd Floor  
New York, NY 10004

+1 212 676 1135 tel  
+1 212 676 1102 fax

August 24, 2023

Ibukun Oyebamijioyebamiji



Re: **TLC License No. 5984801**

Licensee Oyebamijioyebamiji:

Pursuant to TLC Rule 68-15, a summary suspension hearing was concluded on August 11, 2023 as a result of your July 29, 2023 arrest for leaving the scene of an accident.

After hearing the evidence presented, the presiding Administrative Law Judge (“ALJ”), Christine Stecura, 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: Christine Stecura, *Administrative Law Judge*  
Daniel Williamson, *Supervising Attorney, OATH Trials (TLC)*  
Daniel Ackman, *Attorney for Respondent*