

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Jose H. Peralta
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings (“OATH”) Taxi and Limousine Appeals Unit (“Appeals Unit”) regarding summons #1397993A is **reversed**. The matter must be remanded for a new hearing.

FINDINGS OF FACT

Respondent is licensed by the TLC as a for-hire vehicle (“FHV”) driver. Respondent was issued summons 1397993A for violating TLC Rule 55-14(g)(1)¹.

On May 30, 2012, a hearing was held on the matter before Hearing Officer Lewis. In the issuing inspector’s absence, Hearing Officer Lewis read the narrative of the sworn summons into the record. The narrative stated that Respondent was observed using an electronic communication device while double parked. Respondent testified that he double parked his FHV to permit his passenger to exit the vehicle. While double parked, Respondent used an application on his cell phone to confirm that the passenger’s credit card payment was successfully transmitted. Hearing Officer Lewis dismissed Summons 1397993A. The Hearing Officer’s decision states, in relevant part: “I find the testimony of the Respondent to be credible. I find that the Respondent was legally standing while using his cell phone to check the credit card payment.”

The TLC appealed the Hearing Officer’s decision on the grounds that Respondent was not lawfully standing; that the decision was not supported by substantial evidence or a preponderance of the evidence; and that TLC rules nonetheless prohibit use of an electronic communication device while double parked. On July 25, 2012, the Appeals Unit affirmed the decision. The Appeals Unit held that Respondent’s use of an electronic communication device was permissible because he was lawfully parked.

The TLC now petitions the Chairperson to intervene in this matter.

ANALYSIS

TLC Rule 55-14(g)(1) prohibits the use of an electronic communication device unless the vehicle is *lawfully parked or standing*. Respondent argues that his use of his cell phone was permissible

¹ A Driver must not Use an Electronic Communication Device while operating a Vehicle. A Driver can Use an Electronic Communication Device only while the Vehicle is lawfully standing or parked.

because he was lawfully parked. Both Hearing Officer Lewis and the Appeals Unit held that Respondent, while double parked to discharge his passenger, was lawfully parked.

Double parking in New York City is generally prohibited.² New York City Traffic Rules Section 4-11(c) permits double parking by taxis, commuter vans, and for-hire vehicles in limited circumstances. Per §4-11(c), operators may lawfully double park to “pick up or discharge passengers” only if “there is no unoccupied curb space available within one hundred (100) feet of the pickup or discharge location.” This exception does not apply in the following circumstances: when the vehicle is parked within a pedestrian crosswalk or intersection; when the vehicle obstructs traffic by allowing “fewer than ten (10) feet available for the free movement of vehicular traffic”; in areas “where stopping is prohibited”; when the vehicle is stopped “within a bicycle lane”; and when the vehicle is stopped “within horse-drawn carriage boarding areas.”

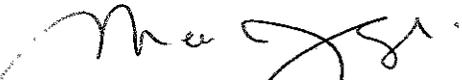
Hearing Officer Lewis failed to make findings of fact necessary to determine that Respondent was lawfully double parked per §4-11(c). In order to find that Respondent was lawfully double parked, it was necessary to find that no unoccupied curb space was available within one hundred (100) feet of Respondent’s location; Respondent was not parked within a crosswalk, intersection, bicycle lane or horse-drawn carriage boarding zone; Respondent was not parked in a location where stopping was prohibited; and Respondent was not obstructing traffic. Hearing Officer Lewis’ decision was not supported by substantial evidence. Accordingly, the Appeals Unit should have recognized this error and remanded the matter for further findings.

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Jose H. Peralta (TLC Lic. No. 656743), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #1397993A is reversed. The matter is remanded for a new hearing.

This constitutes the final determination of the TLC in this matter.

So Ordered: October 4, 2012



Meera Joshi, General Counsel/ Deputy Commissioner of Legal Affairs

² See New York City Traffic Rule Section 4-08(f)(1).