

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
En Yang
Respondent

ISSUE

The issue in this case is whether the rules of the Taxi and Limousine Commission (“TLC”) provide justifiable grounds for a driver to refuse a trip in which the prospective passenger demands that an infant be allowed to sit on that passenger’s lap for the duration of that trip and where the driver insists that the child be placed in a child restraint system.

TLC rules do not provide grounds for the driver’s refusal; there is a taxi and livery exemption to the New York State Vehicle and Traffic Law (“VTL”) of Section 1229-c that is included in VTL Section 1229-c.

STATEMENT OF FACTS

Summons #10086765C, dated July 23, 2017, alleges that Respondent En Yang violated TLC Rule 80-20(a)(1)(Must Not Refuse to Transport Passengers)¹ when he refused to transport a passenger that requested an Uber ride from JFK Airport on June 2, 2017. On that date, Respondent, an Uber driver, arrived at JFK Airport to pick up the complaining witness. Respondent objected to the size of the party he had been requested to transport: a family of four adults, one six-month old child, four pieces of luggage and a stroller. Both complaining witness and Respondent testified that the Respondent insisted that the child had to be in a child restraint system (a child’s car seat). Respondent also testified that his vehicle, a Toyota Highlander, was not big enough to accommodate the family and their belongings.

After a brief argument between complaining witness and Respondent, the family unloaded their luggage from Respondent’s vehicle and canceled the ride. The complaining witness then filed a 311 complaint that led to a proceeding at the Office of Administrative Trials and Hearings (“OATH”).

On February 15, 2018, the OATH Hearing Officer Azriliant dismissed the summons in a Notice of Decision, stating: “if a driver refuses to take a passenger on the ground that it would go against the traffic laws of New York State, such a refusal would be justified.”² The mention of

¹ Rule 80-20(a)(1) reads “Mandatory Transport. A Driver must not refuse by words, gestures or any other means, to take a Passenger . . . to any destination within the City of New York, the counties of Westchester or Nassau, or Newark Airport.”

² See *Taxi and Limousine Commission v. En Yang*, Notice of Decision, Office of Administrative Trials and Hearings, Hearings Division, Lic. No. 5289265, page 2, Feb. 15, 2018.

“the traffic laws of New York State” was a reference to the New York State VTL section 1229-c, which states: “No person shall operate a motor vehicle in this state unless: (a) all back seat passengers of such vehicle under the age of four are restrained in a specially designed seat” that meets either federal or New York State requirements.³

The TLC appealed that Notice of Decision on March 14, 2018. The OATH Hearing Division Appeals Unit upheld the Hearing Officer’s decision, stating that while

Rule 80-15(e)(1)⁴ requires a driver to allow a passenger under the age of seven to be held on the lap of an adult passenger, the Tribunal finds that, because a driver is required to follow all traffic rules and is not required to violate a traffic rule to transport a passenger, the lap requirement of Rule 80-15(e)(1) must necessarily be limited by VTL §§ 1229-c(1) and (2).⁵

TLC now petitions the Chair pursuant to TLC Rule 68-12 to reverse the decision of the Appeals Unit, arguing that the text of VTL 1229-c itself provides the very exemption that the Appeals Unit and Hearings Division ignored.

ANALYSIS

TLC rules acknowledge that service refusals are justified under certain circumstances. These justifications number fifteen in total, and are located in the text of Rule 80-20(b) (Justifications for Refusing Passenger).⁶ There is no textual justification, in 80-20(b) or elsewhere in TLC Rules, for the refusal of a passenger on the basis of a lack of a child safety seat.

³ N.Y. Veh. & Traf. Law § 1229-c (McKinney).

⁴ The full text of Rule 80-15(e)(Overloading Vehicle) reads as follows:

- (1) A Driver of a Taxicab or a Street Hail Livery must not permit more than four Passengers to ride in a four-Passenger Vehicle, nor more than five Passengers in a five-Passenger Vehicle, *except that an additional Passenger must be accepted if the Passenger is under the age of seven (7) and is held on the lap of an adult Passenger seated in the rear.*
- (2) A Driver must not permit a Vehicle to be overloaded or to carry more Passengers than the Vehicle is equipped to seat based on the NYS DMV registration of the Vehicle. (emphasis added).

⁵ See *NYC TLC v. En Yang*, Office of Administrative Trials and Hearings, Hearings Division – Appeals Unit, Lic. No. 5289265, page 3, May 16, 2018 (footnotes omitted).

⁶ Rule 80-20(b) reads “Justifications for Refusing Passenger. The following are permitted reasons for refusing to transport a Passenger:

- (1) Another Passenger is already seated in the Vehicle.
- (2) The Driver has already acknowledged a Hail from another person, and that other person is being picked up or is about to be picked up.
- (3) The Passenger is carrying or is in possession of any article, package, case or container which the Driver reasonably believes will cause damage to the Vehicle.
- (4) The Taxicab or Street Hail Livery Driver is discharging his or her last Passenger or Passengers prior to going off duty, and has already entered the appropriate off duty code in the Technology System.
- (5) The Taxicab or Street Hail Livery Driver is ending his or her work shift, and has already entered the appropriate off duty code in the Technology System and locked both rear doors.
- (6) The Taxicab or Street Hail Livery Driver must take the Vehicle out of service for required repairs and has already entered the appropriate off duty code in the Technology System and locked both rear doors.
- (7) The Passenger is accompanied by an animal that is not properly secured in a suitable container.
- (8) The Passenger’s destination is Newark Airport or someplace in Nassau or Westchester County, and the Driver has been operating the Vehicle for more than eight hours of any continuous 24-hour period.

There is, however, a TLC-rule and text-based case for requiring the Respondent to provide the complaining witness the ride that he requested on June 2, 2017. Rule 80-15(e)(1) states that “an additional Passenger must be accepted if the Passenger is under the age of seven (7) and is held on the lap of an adult Passenger seated in the rear” of the vehicle.⁷ The complaining witness, a former TLC licensee himself, made this very case to both Respondent on the violation date and again before the OATH Hearing Officer, informing each party, on each date, of the existence of this rule and its meaning.⁸ The complaining witness was ignored in each instance.

Finally, the text of the New York State Traffic Law cited by the OATH Hearing Officer and Appeals Unit states that “the provisions of subdivisions one, two, three and three-a of this section [1229-c] shall not apply to taxis and liveries.”⁹

In this case the OATH Hearing Officer analyzed testimony, including testimony from the Respondent, that clearly demonstrated that the Respondent committed a service refusal violation under TLC Rule 80-20(a). The Hearing Officer ignored the text of the TLC Rules and the refusal justifications offered there in declaring that a driver may choose to refuse a passenger where the text of the TLC rule “go[es] against the traffic law of New York State.” That analysis also failed to account for the text of the New York State traffic law in question, which expressly exempts for-hire rides from the child restraint system requirements contained within that traffic law. The Appeals Unit committed the same errors in affirming the Hearing Officer.

(9) The Passenger is disorderly or intoxicated.

(10) The Passenger is smoking and has refused the Driver’s request to stop. If the Driver has already begun the trip the Driver can discharge the Passenger in a safe location.

(11) The Vehicle is a Street Hail Livery and the Passenger is in the Hail Exclusionary Zone.

(12) The Vehicle is a For-Hire Vehicle and the Passengers is attempting to Hail the Driver.

(13) The Vehicle is a Street Hail Livery and the Driver has accepted a dispatch call for a Pre-Arranged Trip and has entered the appropriate on-duty unavailable code into the Technology System.

(14) The Vehicle is a For-Hire Vehicle and the Driver has accepted a dispatch call for a Pre-Arranged Trip.

(15) The Vehicle is a Taxicab or Street Hail Livery and the Driver has accepted a trip from the accessible dispatch program pursuant to section 53-08 of these Rules or an approved E-Hail App and has entered the appropriate on-duty unavailable code into the Technology System.” (internal parentheticals omitted).

⁷ See *supra* note 4.

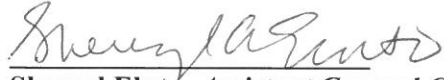
⁸ See minute 13:50 mark and 32:00 mark of audio recording *Taxi and Limousine Commission v. En Yang*, Office of Administrative Trials and Hearings, Hearings Division, Lic. No. 5289265, Feb. 15, 2018.

⁹ N.Y. Veh. & Traf. Law § 1229-c (McKinney).

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against En Yang (TLC License No. 5289265), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #10086765C is reversed and a first-time refusal penalty of \$500 is imposed.

So Ordered: August 27, 2018

A handwritten signature in cursive script, appearing to read "Sherryl Eluto".

Sherryl Eluto, Assistant General Counsel/Managing Attorney