CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Hafiz M. Akram
Respondent

ISSUE

Rule 59A-25(a)(1) of the Taxi and Limousine Commission (TLC) provides that an owner of a for-hire vehicle (FHV) cannot "allow" such vehicle to transport for hire passengers who did not prearrange service through a TLC-licensed base. This rule seeks to deter street hail service in the FHV sector. The issue in this case is whether the TLC establishes, *prima facie*, the element of owner permission by evidence that the person providing street hail service in an FHV is both the owner and driver of the vehicle. Unquestionably, it does.

STATEMENT OF FACTS

Summons #70480664A alleges that Respondent Hafiz M. Akram violated TLC Rule 59A-25(a)(1), which prohibits a for-hire vehicle owner from allowing the vehicle to provide street hail service. At a hearing on the summons, the TLC rested on the sworn-to narrative in the summons, which stated as follows: "At the above TPO I saw driver/owner Mr. Akram, TLC license 5058261, being hailed by a female as he drove along 149st. The passenger told me that she did not call a base to arrange for the ride and was willing to pay $5 to $10 for the ride to Exterior St. the Costco. The car had a 2-way radio, base markings. The driver/owner performed this pick up without pre-arrangement."

The Respondent testified that he was responding to a call from his base to pick up a passenger at 149th Street and Park Avenue. He observed a woman waving near that location and stopped to ask if she had called for a car. Before he could speak to her any further, a TLC inspector appeared and issued a summons. He said the woman never got into his car and they never discussed any fare.

The Respondent submitted into evidence a letter from the dispatching base, Eager Limo Service, Inc. The letter stated that the president of the base dispatched the Respondent to make a pick up at the location, but the Respondent "could not reach on time and picked a wrong passenger."

The Hearing Officer found the summons narrative credible, but not the Respondent's testimony that he was dispatched to the location at issue. The Hearing Officer further stated "that he failed to establish this fact with his proffered evidence." The Hearing Officer noted that the "unnotarized letter of the base president, standing alone, does not rebut the presumption that the Respondent was soliciting a street hail." The Hearing Officer also noted that the base that allegedly dispatched the call is located in another borough at a considerable distance from the location at issue, and that the Respondent did not produce any call sheets or other records to corroborate the letter, and did not

identify the gender or phone number of the prospective passenger. Consequently, the Hearing Officer held that the Respondent violated Rule 59A-25(a)(1).

The Respondent appealed the decision, arguing, among other things, that the summons failed to establish a *prima facie* case. The Appeals Unit agreed and reversed the decision, stating:

> Rule 59A-25(a)(1) is not a strict liability rule, and there is no presumption that the owner of the vehicle violated the rule whenever the driver picks up a passenger on a street hail. Instead, the vehicle owner's permission is an element of the violation, and the rule provides for owner liability only where the TLC has established by a preponderance of the evidence that the owner allowed the vehicle to be used for illegal street-hail activity (*see Taxi and Limousine Commission v. QLR Eight Inc.*, Lic. No. 5328270 [June 21, 2012].
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> Absent the presumption, the TLC is required to allege and prove each element of a violation in order to sustain a finding, which, in the instant case, includes the element of owner permission.

According to the Appeals Unit, as the TLC did not introduce any evidence to establish owner permission, the TLC failed to establish a *prima facie* case and the summons must be dismissed.

The TLC now petitions the Chair pursuant to TLC Rule 68-12 to reverse the decision of the Appeals Unit, arguing that where the Respondent is both the owner and driver, there is a presumption of permission, and that the Hearing Officer's findings are supported by substantial evidence. The Respondent, who was notified of the petition on December 11, 2015, did not submit a response.

ANALYSIS

TLC Rule 59A-25(a)(1) provides: No For-Hire Vehicle Owner will allow Owner's Vehicle(s) to transport Passengers for hire other than through pre-arrangement with a [For-Hire Vehicle] Base[.]

The Appeals Unit correctly states that the TLC must establish by a preponderance of the evidence that the owner allowed his for-hire vehicle to be used for illegal street hail activity, but demands too much at the *prima facie* stage. Here, according to the factual findings, the Respondent is a for-hire vehicle owner who was driving his vehicle when he saw a passenger requesting street hail service. He stopped to pick her up and discussed fare. Since a person permits an act when he does not prevent it, even though it is within his power and duty to do so, *see Inter-Am. Dev. Bank v. Nextg Telecom Ltd.*, 503 F. Supp. 2d 687, 694 (S.D.N.Y. 2007), the Respondent's actions in this case make it more likely than not that he allowed his vehicle to provide the illegal service. While there may be situations in which the Respondent cannot prevent his vehicle from providing street hail service, even when he, himself, is operating the vehicle at the time the service is provided, the TLC is not required to hypothesize and rule out those situations in order to establish a *prima facie* case.

Thus, evidence that a person is both owner and driver of the for-hire vehicle that transported a passenger who arranged service by street hail, without more, is clearly sufficient to establish that such person *allowed* the vehicle to provide illegal street hail service. *Taxi and Limousine Commission v. QLR Eight Inc.,* Lic. No. 5328270 [June 21, 2012] is inapt because it addresses the scenario where the vehicle owner and driver are not one in the same.

Accordingly, the decision of the Appeals Unit is reversed and that of the Hearing Officer, which is supported by substantial evidence, is reinstated.

So Ordered: February 9, 2016

Christopher C. Wilson, *Deputy Commissioner/General Counsel*