

**CHAIRPERSON'S FINAL DETERMINATION AND ORDER**

---

*In the Matter of*  
New York City Taxi & Limousine Commission  
*Petitioner*  
*against*  
Kamel Cherchem  
*Respondent*

---

**ISSUE**

The issue in this case is whether the Respondent was properly charged with violating rules of the Taxi and Limousine Commission (“TLC”) that were in effect when his allegedly unlawful conduct occurred. As the rules charged were still in effect on the violation date, the charges were proper and the summons was not defective on its face.

**STATEMENT OF FACTS**

Summons #004945P, dated October 22, 2016, alleges that Respondent Kamel Cherchem violated TLC Rule 55-13(a)(1)(comply with traffic laws). The Hearing Officer dismissed the summons as follows: “Summons is dismissed because the Rule Number 55-13(a)(1) was no longer a valid Rule number on the date the summons was issued. The summons was issued on 10/22/2016, however, the cited rule was no longer effective on 10/22/2016. Indeed, the last day the Rule 55-13(a)(1) may be charged is 10/21/2016. The officer did not amended [*sic*] and the Respondent can not [*sic*] plead guilty. Thus, the summons must be dismissed.”

The Appeals Unit upheld the Hearing Officer’s decision, and cited Section 1043(f)(1)(c) of the New York City Administrative Procedure Act (“CAPA”) as support for the conclusion that the repeal of Chapter 55 became effective on October 22, 2016 and that, therefore, citing Chapter 55-13(a)(1) on October 22, 2016 was thus improper.

TLC now petitions the Chair pursuant to TLC Rule 68-12 to reverse the decision of the Appeals Unit, arguing that the Chapter 55 rules remained in effect until October 26, 2016.

**ANALYSIS**

**a. Background on Chapter 80 of TLC Rules**

In the past the TLC licensed drivers of taxis and drivers of FHV’s separately. Taxi drivers were subject to the requirements of Chapter 54 of the TLC rules, and FHV drivers were subject to the requirements of Chapter 55 of the TLC rules.

Local Law 51 of 2016, enacted on April 21, 2017, ordered the TLC to create a single license for both taxi and FHV drivers (the TLC Driver License). To implement this law, TLC undertook rulemaking and merged Chapters 54 and 55 into a new Chapter 80 and repealed the now outdated

Chapters 54 and 55. Chapter 80, titled “Medallion Taxicab, SHL and For-Hire Drivers,” regulates both taxi and FHV drivers.

Chapter 80 also includes an entire section devoted to the transition between the repealed Chapters 54 and 55 and the newly implemented Chapter 80 (TLC Rule 80-28, entitled “Transition”). TLC Rule 80-28(a) states the distinction between the effective date of the rules (which is October 22, 2016, as mandated by the New York City Administrative Procedure Act) and the Activation Date of the rules. The Activation Date is the date upon which licensees “will be responsible for [their] conduct as a Licensee under the Chapter 80 Rules.”<sup>1</sup> TLC Rule 80-28(a)(1) clarifies that the Activation Date of Chapter 80 will be decided by the TLC, but will be no earlier than the date that the rules take effect. The TLC chose October 26, 2016 as the Activation Date and formalized that choice by noting on the Rules section of the TLC website that Chapters 54 and 55 were “Effective through 10/25/16” and that Chapter 80 “takes effect 10/26/16.”

#### **b. The Transition Language applied to Petition 934**

The OATH Appeals Unit (“A.U.”) held that Respondent Cherchem could not be in violation of TLC rules that had already been repealed. In support, the A.U. cites a separate A.U. decision, *Taxi & Limousine Commission v. Babacar Ndiaye*, Summons No. 10073582C (January 27, 2017) for the proposition that “these new rules became effective 30 days after publication, on October 22, 2016” and that Chapter 55 was thus repealed on Respondent Cherchem’s violation date of October 22, 2016.

First, *Babacar Ndiaye* can be distinguished from the present Petition. In *Ndiaye*, Chapter 80 was cited in a summons issued on October 27, 2016 and based on behavior that occurred before the October 26, 2016 Activation Date. In the instant case, Chapter 55 was cited in a summons issued on October 22, 2016 for behavior that occurred before the Activation Date.

Second, CAPA does not compel the dismissal of the summons. CAPA § 1043(f)(1)(c) reads “no rule shall be effective until . . . the rule . . . ha[s] been published in the City Record and thirty days have elapsed after such publication.” That language does not mandate that agency rules become effective exactly 30 days after publication. It sets forth that such rules cannot become effective any *earlier* than 30 days after publication.

Finally, TLC Rule 80-28 compels a different result than the conclusion reached by the A.U. Specifically, TLC Rule 80-28(a)(1) states, “The Activation Date (the ‘Activation Date’) will be decided by the Taxi and Limousine Commission but will be no earlier than the date these rules take effect.” The TLC activated the Chapter 80 Rules on October 26, 2016. The Hearing Officer and the A.U. justified the dismissal of Summons #004945P by holding that the Activation Date had to mirror the effective date under CAPA. That justification, and the reading that led to it, were in error.

The underlying behavior that led to Summons #004945P occurred on October 22, 2016, and the Chapter 55 Rule alleged against the Respondent in that Summons was still valid at that time. Since the rule cited was valid at the time of the underlying behavior, the rule remained valid until the

---

<sup>1</sup> TLC Rule 80-28(a)(2).

Activation Date and the summons should have been adjudicated under the Chapter 55 Rules in accordance with TLC Rule 80-28(c)(1)(i).

**DIRECTIVE**

In the matter of New York City Taxi & Limousine Commission against Kamel Cherchem (TLC License No. 5674135), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #004945P is reversed and remanded for further proceedings consistent with this Order.

**So Ordered: May 8, 2017**



**Sherryl Eluto, Assistant General Counsel/Managing Attorney**