

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

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

ISSUE

The respondent is a vehicle owner who was issued an “owner” summons by the Taxi and Limousine Commission (“TLC”) for violating Section 19-506(b)(1) of the New York City Administrative Code, which, among other things, prohibits a person whose vehicle is not licensed by the TLC from operating, or permitting another to operate, for hire in such vehicle.

The hearing officer dismissed the summons, and the Appeals Unit affirmed, on the ground that Section 19-506(b)(1) does not authorize the issuance of an “owner” summons to an owner who is operating his unlicensed vehicle for hire. Rather, according to the decisions below, such owner-operator can only be issued a “driver” summons. Because this issue is wholly irrelevant under the plain language of Section 19-506(b)(1), which clearly and simply prohibits a vehicle owner from both operating and permitting another to operate his unlicensed vehicle, the Appeals Unit erred in upholding the decision of the hearing officer.

STATEMENT OF FACTS

Summons #70670564A alleges that the respondent Leon Sanderson violated Section 19-506(b)(1) of the New York City Administrative Code. The summons indicates that it is an “owner” summons (as opposed to a “driver” summons).¹ The narrative of the summons states that “owner/driver Leon Sanderson was working for-hire with a suspended vehicle” and that the “owner/driver dropped passengers off at the corner of 226st and Linden Ave.”

At a hearing on the summons, the TLC inspector who issued the summons testified to the narrative in the summons and stated that she was informed by passengers that they paid for trip. In response to questioning by the respondent, who was represented by counsel, the TLC inspector further stated that the vehicle owner and driver were one and the same.

The respondent then moved to dismiss the summons arguing that Section 19-506(b)(1) does not cover the situation where an individual can be charged as an owner if he is also the driver. TLC opposed the motion on the ground that Section 19-506(b)(1) “appl[ies] to the owner of such vehicle

¹ The respondent was also issued a “driver” summons, Summons #70670563A, for this activity, which the TLC subsequently withdrew.

and, if different, to the operator of such vehicle.” The respondent chose to stand by the motion rather than present any evidence in defense of the charge.

Although the “sworn statements of the officer do establish that this respondent was operating illegally for hire,” the hearing officer granted the motion, and citing *TLC v. Demba Coulibaly*, Lic. No. 5460879 (April 10, 2013), stated:

As this was an owner summons, the Commission was required to establish that the owner permitted ‘another.’ . . . Where the driver and the owner are the same person, a summons may not be issued under this specific regulation to the owner in his capacity as owner. Where the owner is the driver, the owner has not ‘permitted another’ to operate a vehicle for-hire but, in fact, has permitted himself to operate for-hire. 19-506B(1) does not cover this situation (see *Taxi and Limousine Commission v. Khoon-Foke Young*, Lic. No. 5129587 (March 19, 2009)).

The Appeals Unit upheld the decision, again citing *Coulibaly* and *Khoon-Foke Young*. It also stated that, under Section 19-506(b)(1), separate summonses cannot be issued to both the owner and the driver of the vehicle where the owner and driver are the same person.

The TLC now petitions the Chair pursuant to TLC Rule 68-12 to reverse the decision of the Appeals Unit, arguing, among other things, that the *Khoon-Foke Young* decision predates an amendment to Section 19-506(b)(1), which, as interpreted by the Appeals Unit in *TLC v. George B. Forde*, Lic. No. 5460392 (January 31, 2013), provides that where the ‘person’ is both the owner and driver, one Section 19-506(b)(1) summons must be issued to the operator in his vehicle owner capacity, not his driver capacity.

ANALYSIS

Section 19-506 of the Administrative Code sets forth TLC’s enforcement authority with regard to unlicensed for-hire activity. Section 19-506(b)(1) specifically provides:

Except as provided in paragraph 2 of this subdivision, any person who shall permit another to operate or who shall knowingly operate or offer to operate for hire any vehicle as a taxicab, coach, wheelchair accessible van, HAIL vehicle or for-hire vehicle in the city, without first having obtained or knowing that another has obtained a license for such vehicle pursuant to the provisions of section 19-504 of this chapter, shall be guilty of a violation, and upon conviction in the criminal court shall be punished by a fine of not less than one thousand dollars or more than two thousand dollars or imprisonment for not more than sixty days, or both such fine and imprisonment. This paragraph shall apply to the owner of such vehicle and, if different, to the operator of such vehicle (emphasis added).

Section 19-506(b)(1) prohibits any person from permitting another to operate for hire in an unlicensed vehicle. As the hearing officer and Appeals Unit correctly point out, the person that permits another to operate a vehicle in violation of this section is a vehicle owner.

Section 19-506(b)(1) also prohibits any person from knowingly operating an unlicensed for-hire vehicle. The operator here, of course, is a “person,” a term within which a vehicle owner comfortably falls. Thus, a vehicle owner who knowingly operates for hire his unlicensed vehicle is in violation of this section. If this were not clear enough, the final sentence of Section 19-506(b)(1) states that the *entire* section applies to the “owner of such vehicle and, if different, to the operator of such vehicle.” This means, among other things, that the vehicle owner can neither operate for hire nor permit another to operate for hire in his unlicensed vehicle.² Further, Section 19-506(h)(2), which provides for forfeiture of a vehicle whose “owner” was convicted of Section 19-506(b)(1) on two or more occasions in a 36-month period, is agnostic as to whether such owner operated or permitted another to operate the unlicensed vehicle on these occasions.

Section 19-506(b)(1) clearly contemplates the owner-operator scenario, but in no way mandates, let alone speaks to, the issuance of one type of summons or another in such a scenario. In which case, the TLC is not required to show that a vehicle owner permitted “another” simply by employing the “owner” appellation in a summons, particularly where, as here, the TLC clearly alleges that a respondent *operated* his own unlicensed vehicle for hire.

The Appeals Unit erred in upholding the decision of the hearing officer.³ As the respondent chose not to present evidence in defense of the charge and the hearing officer found that the TLC established a prima facie case, the respondent is guilty of violating Section 19-506(b)(1). The penalty for the first violation is a fine of \$1500.

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Leon M. Sanderson, Summons #70670564A, the decision of the Appeals Unit is **reversed and a fine of \$1500 is hereby imposed**. This constitutes the final determination of the TLC in this matter.

So Ordered: November 2, 2015



Christopher C. Wilson, Deputy Commissioner/General Counsel

² This language also means that if the owner is not the one driving the unlicensed vehicle, the owner and the driver can each be subject to penalty. Indeed the owner cannot be twice penalized, once as an owner and once as a driver, for the same unlicensed activity. But that is not at issue here.

³ The Appeals Unit also held that the summons should be dismissed because the TLC failed to allege that the respondent “permitted” the vehicle to be used for illegal for-hire activity. The TLC is alleging that respondent, himself, operated the vehicle, and so this basis for upholding the hearing officer’s decision is likewise off the mark. *See also* Chairperson’s Final Determination and Order, *TLC v. Derrick A. Richards*, Summons No. 71870414A (September 2, 2015).