CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matters of
New York City Taxi & Limousine Commission
Petitioner
Against
TLC v Russel M. Philip, Lic. No. 5458915; TLC v Sharon Hamilton, Lic. No. 5440374; TLC v Pioneer Operating Corp., Lic. No. 5452003; TLC V Jose Manuel Reyes Quirino, Lic. No. 5454962; TLC v Regal Palms Service Corp., Lic. No. 5460407; TLC v Able 1 Transportation Inc., Lic. No. 5439313
Respondents

DETERMINATION

The decisions of the Office of Administrative Trials and Hearings ("OATH") Taxi and Limousine Tribunal Appeals Unit ("Appeals Unit") in *TLC v Russel M. Philip*, Summons 70240045A; *TLC v Sharon Hamilton*, Summons 70510007A; *TLC v Pioneer Operating Corp.*, Summons 1438015A; *TLC v Jose Manuel Reyes Quirino*, Summons 1449156A; *TLC v Regal Palms Service Corp.*, Summons 1450196A; *TLC v Able 1 Transportation Inc.*, Summons 1453932A are **reversed.**

FACTUAL BACKGROUND

In each of the cases addressed by this Order, the Respondent, a vehicle owner, was summonsed for violation of New York City Administrative Code Section 19-506(b)(1):

> []any person who shall permit another to operate or who shall knowingly operate or offer to operate for hire any vehicle as a taxicab ... 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 ... This paragraph shall apply to the owner of such vehicle and, if different, to the operator of such vehicle.

On November 30, 2012, the TLC issued a Chairperson's Final Determination and Order in the matter of *TLC v Samfes Yo Corp.*, Lic. No. 5442130 (the "Samfes Yo Order"), which established the agency's interpretation that Section 19-506(b) of the Administrative Code creates the presumption that where a driver engages in illegal for-hire activity in violation of the Administrative Code, the owner of the vehicle is presumed to have consented to the activity. In a spate of cases following issuance of the *Samfes Yo* Order, the OATH Appeals Unit rejected the TLC's interpretation that Section 19-506 of the Administrative Code creates the presumption of a vehicle owner's consent to the vehicle's use in illegal for-hire activity. One such case was *Taxi*

and Limousine Commission v Allsta, Inc., Lic. No. 5373783 (Dec. 26, 2012), in which the Appeals Unit held: "Section 19-506(b)(1) does not expressly state a rebuttable presumption of owner permission, and a presumption will not be created in the absence of express language creating one."

Shortly after the Appeals Unit issued its decision in *Allsta,* administrative hearings were held before OATH Hearing Officers in each of the cases addressed by this Order. In each case, the presiding Hearing Officer dismissed the summons on the grounds that the TLC failed to prove that the Respondent-owners had permitted their vehicles to be used for illegal activity. In each case, the TLC appealed the decision and argued that the respective Hearing Officers should have applied the presumption that the owner consented to the activity, as set forth in the Samfes Yo Order.

In *TLC v Russel M. Philip,* the TLC Inspector who issued the summons testified that he observed a vehicle with non-TLC license plates appearing to "fish" for passengers. The Inspector issued summonses for violation of the Administrative Code to both the driver and Respondent, the vehicle's owner, when he observed the driver pull over to pick up a passenger. The Hearing Officer dismissed the summons and cited to the Appeals Unit's decision in *Allsta,* and stated that, "the presumption of ... permission ... will not be inferred unless the presumption is expressly stated in the rule." In affirming the decision, the Appeals Unit also cited to its decision in *Allsta* and held that, "the commission failed to meet its burden of proof."

In *TLC v Sharon Hamilton,* the summonsing Inspector testified that he observed Respondent owner's straight-plate vehicle dropping off a passenger, and summonsed both the driver and Respondent for Administrative Code violations. The Hearing Officer dismissed the summons because the Inspector did not provide proof that Respondent permitted the illegal activity. Again, the Appeals Unit cited to its decision in *Allsta* in affirming the decision, and held that Administrative Code Section 19-506(b)(1) sets forth owner permission as an element that the Commission must prove when charging a vehicle owner.

In *TLC v Pioneer Operating Corp.*, the summonsing Inspector testified that he observed Respondent's vehicle, with expired TLC vehicle registration, pick up four passengers from a train station and that the passengers told him they were traveling to Manhattan for two dollars each. The presiding Hearing Officer took no testimony from Respondent and instead dismissed the summons because the Inspector had no evidence that Respondent allowed the vehicle to be operated illegally. On appeal by the TLC, the Appeals Unit affirmed the decision and cited to its decision in *Allsta* for the holding that no presumption of a vehicle owner's consent exists.

In *TLC V Jose Manuel Reyes Quirino,* Respondent did not appear at the scheduled hearing and an inquest hearing was held in his absence. The Hearing Officer dismissed the summons because it did not allege or provide any evidence that the owner permitted the use of the vehicle for the illegal for-hire activity. On appeal by the TLC, the Appeals Unit affirmed the Hearing Officer's decision and held that where the Administrative Code intends to create a presumption it expressly states it, and that no presumption will be inferred.

In *TLC v Regal Palms Service Corp.* The Hearing Officer took no evidence or testimony from Respondent and instead dismissed the summons on the grounds that the narrative did not show that Respondent permitted the vehicle to be used for illegal for-hire activity. The Hearing Officer elaborated that such "permission is an element of the rule." On appeal, the Appeals Unit affirmed the Hearing Officer's decision and held, "proof that the owner allowed [for-hire activity] is an element of the rule and a summons that fails to allege that the owner allowed the street hail fails to constitute a prima facie violation."

Lastly, In *TLC v Able 1 Transportation Inc.*, the summonsing Inspector testified that she observed Respondent's unlicensed vehicle drop off passengers in Manhattan. The Inspector interviewed the passengers and learned that they were picked up in Staten Island and made a stop in Brooklyn before being dropped off. Respondent did not dispute the Inspector's testimony. In his defense, Respondent stated that he is not licensed by the TLC, but rather operates a security company, which provides transportation to clients. Respondent stated that the passenger was a client who had simply asked for a driver. Respondent did not inquire as to the pick-up location, but assumed it would be in Suffolk County. Respondent stated that he dispatched a driver but did not know that the trip would originate in Staten Island. The Hearing Officer dismissed the summons and held that "there is no presumption that the owner knew of the misdeeds of the driver." On appeal, the Appeals Unit cited its decision in *Allsta* for the proposition that "there is no presumption of an owner's permission under 19-506(b)(1)." The Appeals Unit held that the TLC did not allege that the owner permitted the illegal use and affirmed the Hearing Officer's dismissal of the summons.

On March 4, 2013, the TLC issued the Chairperson's Final Determination and Order in *Allsta* (the "Allsta Order"), which reversed the Appeals Unit's decision and reiterated the holding in the Samfes Yo Order that, under Section 19-506(b)(1) of the Administrative Code, where illegal for-hire activity is shown, a vehicle owner is presumed to have consented to the activity.

The TLC now petitions the Chairperson pursuant to TLC Rule 68-16(a) to reverse the Appeals Unit's determination in each of the instant cases. The TLC argues that the Appeals Unit should have corrected the Hearing Officers' failure to apply the presumption that the respective respondents consented to their vehicles being used in illegal activity. The TLC argues that the Appeals Unit's failure was reversible error and cites both the Samfes Yo and Allsta Orders as precedent in support of its petition.

LEGAL ANALYSIS

I. The Rebuttable Presumption of Consent in 19-506(b)(1)

The correct interpretation of Section 19-506(b)(1) has already been extensively given in the Samfes Yo and Allsta Orders and need not be fully repeated here. In summary, Section 19-506(b)(1) states:

> [a]ny person who shall permit another to operate or who shall knowingly operate or offer to operate for hire any vehicle as a taxicab ... or for-hire vehicle in the city, without first having obtained or knowing that another has obtained a license for such vehicle ... shall be guilty of a violation.

For reasons given in detail in the Samfes Yo Order, and reiterated in the Allsta Order, "the TLC interprets Section 19-506(b) of the Administrative Code to create the presumption that where a driver engages in illegal for-hire activity in violation of Section 19-506(b) of the Administrative Code, the owner of the vehicle is presumed to have consented to the activity."

Once the TLC presents evidence of illegal for-hire activity, the presumption of the vehicle owner's consent arises and the burden shifts to the owner to prove that the driver acted without permission. To overcome the presumption of consent in Section 19-506(b)(1), a vehicle owner must present documentation or testimony of such specificity as to provide the finder of fact with information regarding the circumstances under which the driver used the vehicle, or any documentation to support an owner's claims that the driver used the vehicle without permission. As set forth in the Allsta Order, the TLC is entitled to challenge the credibility of the vehicle owner's evidence. The Hearing Officer then must render findings of fact based on the weight of the evidence and determinations of credibility. To accept a respondent-owner's blanket denial of an allegation, or uncorroborated or self-serving statements without further supporting evidence, would abdicate the Hearing Officer's responsibilities.

In each of the instant cases the TLC presented evidence that the respondent-owner's vehicle was used for illegal activity. In order to present a defense, the respondent was required to provide evidence that it did not know of or consent to the illegal activity. With the exception of *TLC v Able 1 Transportation Inc.*, in each case, the Hearing Officer dismissed the summons without shifting the burden to the respondent to present a defense. In *Able 1 Transportation, Inc.*, Respondent admitted that his car was used for for-hire activity, but alleged that he did not know it would occur illegally within New York City. The Hearing Officer in that case failed to assess the credibility of the evidence presented, and instead dismissed the summons on the grounds that the TLC failed to present a prima facie case.

In *TLC v Russel M. Philip*, *TLC v Sharon Hamilton*, *TLC v Pioneer Operating Corp.*, *TLC v Jose Manuel Reyes Quirino*, and *TLC v Regal Palms Service Corp.*, the Hearing Officers failed to apply the presumption that respondents consented to the illegal activity. Furthermore, the Hearing Officers failed to take testimony from respondents to rebut the presumption. The Appeals Unit should have corrected the Hearing Officers failures to apply the presumption that the respondents consented to the illegal activity. Accordingly, the Appeals Unit's decision in each of these cases is reversed and the matters are remanded for proceedings consistent with this Order.

In *Able 1 Transportation,* it is uncontested that Respondent's vehicle was used for unlicensed activity. Respondent admitted that he dispatched a driver to pick up a passenger without setting any limit on the pickup point, i.e. authorizing him to pick up the passenger in New York City. So, by Respondent's own admission, he dispatched a driver to transport a passenger in an unlicensed vehicle for a trip that in fact originated and terminated in New York City. These facts constitute a violation of Administrative Code Section 19-506(b)(1), and it was therefore legal error for the Hearing Officer to dismiss the summons. Accordingly, the decision of the Appeals Unit regarding summons 1453932A is reversed, and the attending mandatory penalty is hereby imposed.

DIRECTIVE

In the matters of New York City Taxi & Limousine Commission against Russel M. Philip (Lic. No. 5458915), Summons 70240045A; New York City Taxi & Limousine Commission against Sharon Hamilton (Lic. No. 5440374), Summons 70510007A; New York City Taxi & Limousine Commission against Pioneer Operating Corp. (Lic. No. 5452003), Summons 1438015A; New York City Taxi & Limousine Commission against Jose Manuel Reyes Quirino (Lic. No. 5454962), Summons 1449156A; and New York City Taxi & Limousine Commission against Regal Palms Service Corp. (Lic. No. 5460407), Summons 1450196A, the decisions of the OATH Taxi and Limousine Appeals Unit are **reversed and remanded for further proceedings consistent with this Order**.

In the matter of New York City Taxi & Limousine Commission against Able 1 Transportation (Lic. No. 5439313), **the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #1453932A is reversed and a fine of $1,500 is hereby imposed**.

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

So Ordered: April 22, 2013

Meera Joshi, *Deputy Commissioner/General Counsel*