CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Mohamadou Konateh
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings ("OATH") Taxi and Limousine Appeals Unit ("Appeals Unit") regarding summons #PV0003080 is **reversed.**

FINDINGS OF FACT

Respondent held a probationary for-hire vehicle driver's license. On August 6, 2013 Respondent was issued summons #PV0003080 for violating TLC Rule 55-05(B)(1)(viii)[1]. The summons alleged that Respondent accumulated a total of five penalty points on his probationary for-hire vehicle license in a 15-month period. The summons specified that the penalty for Rule 55-05(b)(1)(viii) is revocation.

On October 4, 2013, a hearing was held on the matter before OATH Taxi and Limousine Tribunal Hearing Officer Igor Vaysberg. Respondent failed to appear, and an inquest hearing was conducted in his absence. The TLC presented evidence that Respondent accumulated five points on his probationary TLC for-hire vehicle driver's license: the TLC submitted documentation that Respondent plead guilty to summons EA80002412A, issued June 9, 2013, for violating Rule 55-23(a)(2)(i)[2], which carried a penalty of two points; and on February 11, 2013, Respondent was found guilty of Rule 55-12(d)[3], as alleged in summons EA70410034A, which carried a penalty of three points. The Hearing Officer found that the TLC established a prima facie case of the violation. The Hearing Officer found Respondent guilty of the violation and imposed the prescribed penalty of revocation.

On October 29, 2013, Respondent moved to vacate the inquest decision for summons #PV0003080. The Hearing Officer denied Respondent's motion on the grounds that he presented no defense to the underlying charge. On November 14, 2013, Respondent appealed the denial of his motion to vacate to the OATH Taxi and Limousine Tribunal Appeals Unit. The Appeals Unit affirmed the Hearing Officer's decision to deny the motion to vacate the inquest decision, but vacated the penalty of revocation. The Appeals Unit held: "[]Rule 55-05(b)(1)(viii)

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[1] Accumulating four or more points on a probationary driver's license within the probation period.
[2] A driver must not operate a for-hire vehicle without the driver's for-hire vehicle driver's license in a protective holder attached to the back of the driver's seat.
[3] While performing the duties and responsibilities of a Licensee, a Licensee must not deliberately perform or attempt to perform, alone or with any other, any act that is against the best interests of the public although not specifically mentioned in these Rules.

states, in relevant part that if a driver on probation accumulates four or more persistent violations [sic] points under the persistent violator program in Rule 55-27(b), the Commission 'can revoke'... a probationary license. The Rule does not provide for mandatory revocation. Thus the ALJ is without authority or discretion to revoke the respondent's license."[4]

The TLC now petitions the Chairperson to reverse the Appeals Unit's holding that Rule 55-05(b)(1)(viii) does not provide for the penalty of revocation. The TLC argues that revocation is the prescribed penalty for violation of the rule, and therefore revocation is not "discretionary" as defined by TLC Rules, and furthermore, is the *only* penalty prescribed for the rule.

RULE INTERPRETATION

TLC Rule 55-05(b)(1)(viii) states:

> (b) Automatic Denial or Revocation.

> (1) The Commission will not issue a regular License following the probationary period, and can revoke a Probationary License at any time if any of the following occurs:

> (viii) The Driver accumulated four or more points in accordance with the Commission's Program for Persistent Violators.[5]

TLC rules define "discretionary revocation" as follows:
> Discretionary Revocation is the imposition of the penalty of revocation when a Rule does not specify that revocation must be imposed; Discretionary Revocation can be sought by the Chairperson for any Rule violation, if the Chairperson determines that the continued licensure of the Respondent presents a threat to public health, safety, or welfare.

In cases where discretionary revocation is sought, the Chairperson must make a determination that a licensee's continued licensure would result in a substantial threat to public health and safety. Such cases are brought before the OATH Tribunal (as opposed to the Taxi and Limousine Tribunal at OATH) in accordance with TLC Rule 68-13. Because of this high threshold, discretionary revocation is sought in only the most serious cases of licensee misconduct where a rule does not provide for revocation as a penalty. The Commission does not pursue discretionary revocation in cases where revocation is specified as the penalty for a rule violation. Rather, those cases are brought at the Taxi and Limousine Tribunal at OATH, and upon a finding of guilt, the penalty of revocation is imposed.

The Appeals Unit in the instant case incorrectly interpreted the use of the word "can" in TLC Rule 55-05(b)(1) to create discretionary, rather than mandatory, revocation as the penalty for violation of the rule. This analysis was flawed. As stated in the definition of discretionary revocation, only in cases where a rule does not specify revocation as a penalty is revocation discretionary. The plain language of 55-05(b)(1) rule clearly provides for revocation as the only

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[4] *Taxi & Limousine Commission vs Momadou Konateh,* Lic. No. 5442777 (Nov. 22, 2013)

[5] TLC's "persistent violator" program creates structured penalties for drivers who accumulate threshold amounts of violation points on their TLC license. For non-probationary licensees, the accumulation of six or more points in 15 months will result in license suspension, and the accumulation of 10 or more points results in license revocation.

penalty for a probationary licensee who accumulates four or more points on his or her license. Rule 55-05(b) is titled "Automatic Denial or Revocation," and the operative phrase "can revoke" in subdivision (b)(1) provides the authorization for the Commission to revoke a probationary license for any of the enumerated violations, including a driver's accumulation of four or more penalty points. Furthermore, The Appeals Unit's analysis creates a wholly nonsensical outcome: if revocation is not imposed as the penalty where a driver is found guilty of violating Rule 55-05(b)(1)(viii), the conviction results in no penalty, whatsoever.

By this order, the TLC interprets the penalty of license revocation to be the sole and mandatory penalty for violation of TLC Rule 55-05(b)(1)(viii). Where a summons is issued and a Hearing Officer finds that a probationary licensee has violated TLC Rule 55-05(b)(1)(viii), the penalty of revocation must be imposed.

ANALYSIS

Hearing Officer Vaysberg found Respondent guilty of violating TLC Rule 55-05(b)(1)(viii) by accumulating five points on his probationary license during a 15 month period, and imposed the penalty of license revocation. Upon review of Respondent's motion to vacate Hearing Officer Vaysberg's decision, the Appeals Unit found that Respondent's motion to vacate the decision was properly denied, thereby affirming the decision. However, despite Hearing Officer Vaysberg's sustained finding of guilt, the Appeals Unit vacated the penalty of license revocation.
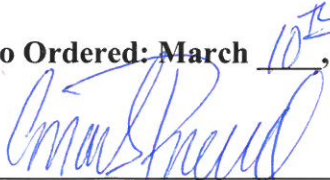
The Appeals Unit's decision to vacate the penalty was incorrect. Respondent was found guilty of violating TLC Rule 55-05(b)(1)(viii) and was therefore subject to the attending, prescribed penalty of revocation. Upon affirming Respondent's conviction, the Appeals Unit was required to likewise affirm the imposed penalty of license revocation.

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Mohamadou Konateh (TLC Lic. No. 5442777), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #PV0003080 is reversed. **The penalty of license revocation is reinstated.**

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

So Ordered: March 10th, 2014

Conan Freud, *Deputy Commissioner*