CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Muhammad Mallhi
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings Taxi and Limousine Tribunal Appeals Unit ("Appeals Unit") regarding summons #US0000941 is **reversed.**

STATEMENT OF FACTS

Respondent purchased a Street Hail Livery ("SHL") license on September 9, 2013. On January 9, 2014, Respondent and CSA Sales entered into a "Bill of Sale," which provides that Respondent "does hereby sell, assign, and transfer" his SHL license to CSA Sales in exchange for $4500. It further provides that "in the event of TLC disapproval, [Respondent] hereby promises to take all necessary steps to return and refund the $4500 to [CSA Sales]. . . . ." The agreement is effective as of January 9, 2014.

On March 4, 2014, Respondent showed up at the Taxi and Limousine Commission ("TLC") office in Long Island City with Vladimir Podrabinok, a representative of CSA Sales, and submitted a request to extend the deadline for placing his SHL license into service.[1]

On March 5, 2014, TLC issued summons #US0000941 charging Respondent with violating Rule 82-44(c) for executing the Bill of Sale. The rule prohibits a person or business entity from attempting to transfer or participating in a transfer of an interest in an SHL license without fulfilling the transfer requirements provided for under the TLC rules.

On March 25, 2014, Respondent and CSA Sales entered into a lease agreement, which provides for the leasing of Respondent's SHL license for three years beginning on April 1, 2014.

At a May 13, 2014 hearing on the summons, Robert Casal, who testified for the TLC, stated that an application has to be processed and approved by the TLC before a license transfer can take place, and that, in this case, Respondent made no attempt comply with TLC transfer rules before completing the Bill of Sale.

Respondent testified that he did not transfer the license and that he wanted to do what was necessary under TLC rules to transfer the license, as the Bill of Sale obligates him to refund the buyer if the transfer is not approved by the TLC. Mr. Podrabinok testified for Respondent,

[1] Rule 82-06(b)(3) requires that an SHL License be placed into service within 90 days of issuance, or in the case of an accessible license, within 180 days of issuance. The Chairperson can extend these dates for good cause.

stating that his company wanted to obtain Respondent's license and that his company entered into a lease agreement after the March 4, 2014 visit to the TLC office. He also stated that he was assisting Respondent with the transfer application.

The Hearing Officer ("H.O.") found that Respondent's action did not amount to a "transfer" or "attempt to transfer" within the meaning of Rule 82-44(c) and thus dismissed the summons. Although Respondent did not obtain TLC approval to transfer his permit, the agreement was ultimately subject to the TLC's approval and so no attempt was made. The H.O. noted that various documents entered into evidence show Respondent's continued ownership of the SHL license, including the service requirement extension request form, which Respondent signed as owner, the lease agreement, and a letter from a company that converted the vehicle affiliated with the license into an accessible vehicle. The H.O. also noted that, while Mr. Podrabinok was "more savvy," Respondent was "plainly unfamiliar with the transfer process" and somewhat "ineptly, attempted to do what he thought was necessary."

On appeal, the TLC argued that the findings are not supported by substantial evidence because documentary evidence, including the Bill of Sale, and testimony indicate that Respondent transferred his SHL license on January 9, 2014. The TLC also argued that the H.O. ignored the entirety of Rule 82-44, which requires, among other things, that a transferor submit an application to the TLC and personally appear before the TLC in order to effectuate a transfer, and that ignorance of these requirements is not a valid defense.

The Appeals Unit affirmed the H.O.'s decision, finding that it was "based on a determination of credibility and is supported by substantial evidence in the form of the respondent's testimony, found credible by the Hearing Officer, that the respondent did not attempt to transfer or participate in the transfer of an interest in any SHL license without fulfilling the requirements of Rule 82-44B." The Appeals Unit dismissed the remaining arguments as non-meritorious.

The TLC now petitions the Chair pursuant to Rule 68-12 to reverse the decision of the Appeals Unit and raises the same arguments that it raised on appeal.

ANALYSIS

TLC Rules 82-44 and 82-45 establish the rules for all private party transfers of an SHL license, including by purchase. The transfer rules apply when a person or business entity "seeks to acquire an interest directly or indirectly, and . . . full ownership, or only partial ownership," in an SHL license. Generally, to effectuate a transfer, the person or business entity must submit an application to the TLC, personally appear before the TLC at its direction, and otherwise meet the necessary requirements for holding an SHL license.[2] A transfer is not effective unless and until the TLC provides written approval of the application.

Rule 82-44(c) provides that "[n]o person or entity is permitted to attempt to transfer or participate in the transfer of an interest in any Street Hail Livery License without fulfilling the

[2] The licensing provisions, set out in Rules 82-04, 82-05, and 82-06, require, among other things, that an applicant for an SHL license have liability insurance coverage, be of "good moral character," not owe fines or fees for TLC violations or other traffic and parking violations, and not own or have an interest in more than one SHL license.

[transfer] requirements," i.e., completing an application, making personal appearances, and meeting the licensing requirements.

Here, there is little ambiguity in the Bill of Sale. There is no language to the effect that the sale of Respondent's license is conditioned on and subject to TLC approval of a transfer application or that the sale is effective as of the date of TLC approval. It simply states that Respondent "does hereby sell, assign, and transfer" his SHL license to CSA Sales in exchange for $4500. The slight ambiguity arises when Respondent promises to return the $4500 "in the event of TLC disapproval," regardless, this language, read in isolation and in context, cannot reasonably mean that the sale is consummated only when the TLC approves a transfer application. Consequently, by signing the Bill of Sale, Respondent participated in a transfer, or at the very least, made an attempt to transfer, within the meaning of Rule 82-44(c).

Even if the transfer were conditioned on TLC approval, there is no indication that approval would have been sought within a reasonable time. The parties executed the Bill of Sale on January 9, 2014, and nearly two months later, appeared at a TLC office only to extend the service requirement. Four months after execution, at the hearing on the summons, Mr. Podrabinok only stated that he was assisting Respondent with the transfer application.

The H.O. indicated that Respondent maintained ownership after executing the Bill of Sale by the fact that he, and not CSA Sales, was referenced in a letter from the company converting the affiliated vehicle into an accessible vehicle and that he entered into the lease agreement with CSA Sales as the lessor. The letter, however, is not addressed to Respondent and only states that he "has" the license. It also states that Respondent purchased the affiliated vehicle, but the certificate of sale, which was entered into evidence, indicates that CSA Sales purchased the vehicle over two months before the letter was sent. In addition, it is noteworthy that the lease agreement was executed only after the summons was issued, thus suggesting that the agreement was more of a corrective than anything else.

Finally, the H.O. believed that the buyer was clearly "more savvy" with respect to TLC processes than Respondent. On this point, it should be noted that the penalty for violating Rule 82-44(c) applies to "any person or persons (transferor, transferee or both) whose actions constituted a violation." Thus the TLC aims to prevent a savvy party, transferor or transferee, from circumventing TLC licensing requirements, regarding insurance coverage or ownership limitations and the like.

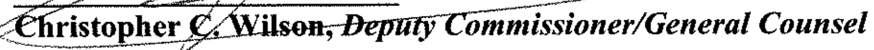
The penalty for a Rule 82-44(c) violation is $10,000 per entity, per License, and the rule allows for license revocation. Respondent has surrendered and given up all rights to his SHL license. Under these circumstances, no penalty will be assessed on Respondent for the violation.

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Muhammad Mallhi (Lic. No. AC381), the decision of the Taxi and Limousine Tribunal Appeals Unit regarding summons #US0000941 is **reversed. No penalty is assessed on Respondent.**

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

So Ordered: November 28, 2014



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