ILLEGAL HUSTLING- An answer to an email
by Abe Mittleman

Recently an email was sent to Commissioner David Do concerning Illegal hustling at the Manhattan Cruise Terminal. This illegal practice is nothing new. This illegal practice has been going on for many years, not only at the Manhattan Cruise Terminal, but other locations. such as The Javits Center the Airports and more.

Following is the answer to the email received from Ira Goldapper Deputy Commissioner Uniformed Services Bureau New York City Taxi and Limousine Commission: To this writer the answer seems not a solution to this crime but an excuse for why nothing has been done to police this problem. The legal taxi drivers and innocent passengers are the ones that are losing and put in danger by the hustlers.

Illegal hustling at the Manhattan Cruise Terminal is a problem that we are aware of and are currently working with New York City Economic Development Corporation (EDC), which oversees the terminal, as well as Ports America.

The Manhattan Cruise Terminal presents a unique challenge in that the illegal hustlers are not at their vehicles when soliciting passengers for trips as they would be at other locations. Rather, they park across 12th Avenue along the various side streets and wait at the median on 12th Avenue trying to intercept potential passengers to take them to their car. The majority of these illegal hustlers are not licensed by the TLC and, therefore, TLC rules regarding illegal street hails and solicitations do not apply. They have to be summonsed for unlicensed for-hire operation pursuant to NYC Administrative Code §19-506. Under the interpretation of the NYC Office of Administrative Trials and Hearings, mere solicitation of the trip is not enough to successfully prosecute a summons under §19-506. We require confirmation of an unlicensed vehicle to go along with the solicitation. As mentioned earlier, the illegal hustlers are not usually near their vehicles when soliciting passengers, and we are currently working on adjusting the operations we use at the airports and the Brooklyn Cruise Terminal to target unlicensed for-hire activity at the Manhattan Cruise Terminal.

In the meantime, we try to have a uniformed presence as often as we can based on

the schedule of ships coming in to serve as a deterrence. Unfortunately, we cannot be there as often as I would like due to staffing shortages and the need to be at other locations across the City. Just as an example, in July of 2016, we had 1,042 shifts for the month versus 446 in July of 2025. We are currently recruiting for 100 new officers to help get us closer to the staffing levels we had then. We will step up presence at the Manhattan Cruise Terminal while identifying a more holistic approach towards combating illegal hustling, which will likely consist of increased enforcement, public education, and a review of taxi stands in the area, among other things.

I am copying Assistant Commissioner of Enforcement Gabrielle Sbano, who has been working with EDC and Ports America on this issue, to provide you with future updates on the matter.

Following page is Administrative Code §19-506.

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
Against
TLC v Tony O. Alston, Lic. No. 5527739
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings ("OATH") Taxi and Limousine Tribunal Appeals Unit ("Appeals Unit") in *TLC v Tony O. Alston,* Lic. No. 5527739 (April 8, 2014) is **reversed.**

FACTUAL BACKGROUND

New York City Administrative Code Section 19-506(b)(1) states:
[]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.

TLC Rule 68-12[1] (35 RCNY §68-12) states in pertinent part:
a. The Chairperson, or if he or she designates, the General Counsel for the TLC, may review any determination of the Appeals Unit that interprets any of the following:
(1) A rule set forth in Title 35 of the Rules of the City of New York;
(2) A provision of law set forth in Chapter 5 of Title 19 of the Administrative Code;
(3) A provision of law set forth in Chapter 65 of the City Charter.
b. Upon review of a determination of the Appeals Unit, the Chairperson or the General Counsel may issue a decision adopting, rejecting or modifying the Appeals Unit decision. The Chairperson will be bound by the findings of fact in the record and will set forth his or her decision in a written order. The Chairperson's interpretation of the Commission's rules and the statutes it administers shall be considered agency policy **and must be applied in future adjudications involving the same rules or statutes** (emphasis added).

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[1] The TLC Chairperson's Review of Appeals Unit decisions is also codified, verbatim, in OATH Rules at 48 RCNY §5-13.

On November 30, 2012, the TLC issued the 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)(1) of the Administrative Code creates the presumption that a vehicle owner permitted the use of his vehicle for illegal for-hire activity. In a spate of cases following issuance of the *Samfes Yo* Order, the OATH Appeals Unit rejected the TLC's interpretation of Section 19-506(b)(1). 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."

On March 4, 2013, the TLC Chairperson reversed the Appeals Unit's decision in *Allsta* and issued another Chairperson's Final Determination and Order (the "Allsta Order"). The Allsta Order 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.

Notwithstanding the interpretation of Administrative Code 19-506(b)(1) set forth in the Samfes Yo Order and reiterated in the Allsta Order, the Appeals Unit persisted in its refusal to apply the presumption that a vehicle owner consents to the use of his vehicle for illegal for-hire activity. Notably, in *Taxi & Limousine Commission v Angels Limo LLC,* Lic. No. 5462156 (April 2, 2013), the Appeals Unit held:

> "[the] Commission's interpretation that Administrative Code §19-506(b)(1) creates a rebuttable presumption ... is not entitled to deference and is entitled to little weight. The ordinary rules of statutory construction apply, and the greater weight supports a finding that §19-506(b)(1) does not create a rebuttable presumption."

Accordingly, on April 22, 2013, the TLC issued a third Chairperson's Order which once again reiterated the agency's interpretation that section 19-506(b)(1) creates a rebuttable presumption that a vehicle owner permits the use of his vehicle for illegal for-hire activity. *see* Chairperson's Final Determination and Order in *Taxi & Limousine Commission v Russel M. Philip,* Lic. No. 5458915 *et. al.* (April 22, 2013)

In the instant case, on February 9, 2014, Respondent was summonsed for violation of Administrative Code Section 19-506(b)(1). Summons 71110088A states that the TLC officer observed an unlicensed driver pick up a passenger in Respondent's unlicensed vehicle. The officer confirmed with the passenger that she was paying the driver $7.00 to take her to her destination. The summons concludes by stating that the driver told the officer that he rents the car from his brother to "make a little money."

At a hearing held on February 19, 2014, Hearing Officer Martin Kramer dismissed summons 71110088a on the grounds that "The presumption of dispatch, *(sic)* will not be inferred unless the presumption is EXPRESSLY stated in the rule. And, where dispatch is an element of the violation and is not established by the TLC at the hearing [,] the summons must be dismissed." Upon the officer's testimony that she did not have evidence of the owner's knowledge, Hearing Officer Kramer found that the TLC did not establish that the owner of the vehicle permitted the driver to use his vehicle for illegal for-hire activity.

Based on Hearing Officer Kramer's failure to apply the presumption of Respondent's consent to the illegal activity, and on the Hearing Officer's failure to follow OATH and TLC rules mandating that the Chairperson's Orders be given deference, the TLC appealed the dismissal of summons 71110088A. The Appeals Unit affirmed the Hearing Officer's decision on the grounds that Administrative Code Section 19-506(b)(1) does not contain a rebuttable presumption and therefore none would be applied. The Appeals Unit's holding further states:

> The Commission's argument that the [Hearing Officer] and ... Appeals Unit must follow the Chairperson's decision in *Allsta* is without merit. No Chairperson's decision regarding *Allsta* subsequent to the January 15, 2014 enactment of [OATH Rule 5-13] has been adjudicated and nothing in Rule 5-13 states that the Chairperson's decision be applied retroactively. Rule 5-13 only states that the Chairperson's or General Counsel's interpretation of the TLC's rules and the statutes it administers be... applied to future adjudications.

The TLC now petitions the Chairperson pursuant to TLC Rule 68-12 to reverse the Appeals Unit's determination. The TLC argues that TLC Rule 68-12 and OATH Rule 5-13 (48 RCNY §5-13) require the Appeals Unit to apply the TLC's interpretation of Administrative Code Section 19-506(b)(1). The TLC further argues that the Appeals Unit should have corrected the Hearing Officers' failure to apply the presumption that Respondent consented to the use of his vehicle for illegal activity, and that the failure to do so was reversible error.

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 their progeny, 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 vehicle is engaged 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.

The presumption of a vehicle owner's consent arises upon the TLC's presentation of evidence of illegal for-hire activity. This presumption shifts the burden to the owner to prove that the driver of the vehicle 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, and the Hearing Officer must render findings of fact based on the weight of the evidence and determinations of credibility. Acceptance of 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 the instant case, the TLC presented evidence in the form of a sworn-to summons and the issuing officer's testimony that Respondent's vehicle was used for illegal activity. This evidence was sufficient to create a rebuttable presumption that the Respondent consented to the use of his vehicle for such illegal activity. In order to present a defense, Respondent was required to provide evidence that he did not know of or consent to the vehicle's illegal use. However, the Hearing Officer dismissed the summons on the grounds that the TLC failed to present a prima facie case, without shifting the burden to Respondent to present a defense or taking any testimony from Respondent, whatsoever.

The Hearing Officer's failure to apply the presumption that Respondent knew of or consented to the unlawful operation of his vehicle was legal error. The Appeals Unit further erred in failing to apply the TLC's interpretation of Section 19-506(b)(1) to the facts of the case. Accordingly, the decision of the Appeals Unit regarding summons 71110088A is reversed, and the matter is remanded for further action consistent with the TLC Chairperson's Orders in Samfes Yo and Allsta.

II. The Chairperson's Interpretation of Administrative Code Section 19-506(b)(1) must be applied in adjudications involving the rule.

TLC Rule 68-12 and OATH Rule 5-13 are unequivocally clear that the Chairperson's interpretations of TLC Rules, Chapter 5 of Title 19 of the Administrative Code, and Chapter 65 of the City Charter must be applied in future adjudications involving the same rules or statutes. Accordingly, in the adjudication of alleged violations of Administrative Code Section 19-506(b)(1), where proof of for-hire activity is shown, OATH must apply the presumption that the owner of the vehicle permitted the illegal activity. A Hearing Officer's failure to apply this presumption is an erroneous interpretation of Administrative Code 19-506(b)(1), and a violation of TLC and OATH rules, which must be corrected by the Appeals Unit.

In the instant case, the Appeals Unit did not correct the Hearing Officer's failure to apply the Chairperson's interpretation of Section 19-506(b)(1). The Appeals Unit stated in its decision that it would not apply the presumption of owner-consent because the Chairperson had not issued an Order repeating this interpretation since OATH Rule 5-13 became effective on January 15, 2014. The Appeals Unit reasoned that it would not "retroactively" apply the Chairperson's Allsta and Samfes Yo Orders to the instant case. This holding is nonsensical and a violation of OATH and TLC Rules. Retroactivity would extend the Chairperson's Orders to matters that occurred before their publication. That is obviously not the case in the instant matter, in which all activity (from the issuance of the summons through the Appeals Unit's decision) occurred after TLC Rule 68-12 and OATH Rule 5-13 were in effect, and multiple Orders reiterating the Chairperson's interpretation of 19-506(b)(1) had been published and acknowledged by the Appeals Unit for over a year. Application of the Chairperson's interpretation of Section 19-

506(b)(1) to the instant case and all future adjudications is specifically mandated by OATH and TLC rules. Accordingly, the Appeals Unit was statutorily obligated to apply the Chairperson's interpretation that the Respondent consented to the illegal use of his vehicle, and its failure to do so was reversible error.

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Tony O. Alston (Lic. No. 5527739), Summons 71110088A, the decision of the OATH Taxi and Limousine Appeals Unit is **reversed and remanded for further proceedings consistent with this Order**.

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

So Ordered: July 2, 2014

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