

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Aboubacar Kaba
Respondent

ISSUE

Under the Critical Driver's (CD) Program, the Taxi and Limousine Commission (TLC) revokes the TLC license of a driver who has ten or more points assessed against his or her state-issued driver's license by the state Department of Motor Vehicles (DMV) within any 15-month period. A driver can receive a two-point deduction and thus seek to avoid suspension or revocation by timely and voluntarily completing a DMV-approved accident prevention course.¹

The issue in this case is whether drivers can avoid penalty under the CD Program by claiming that points assessed by the DMV were the result of fraud. They cannot.

STATEMENT OF FACTS

Summons #CD0017519, dated April 29, 2014, alleges that the respondent violated TLC Rule 54-27(a)(2) for accumulating at least 10 points against his state-issued driver's license. The points were assessed for the following violations:

Date of Violation	Description of Violation	Points
8/24/12	Improper Signal	2
1/30/12	Speeding	4
10/29/11	Improper Turn	2
10/6/11	Improper Signal	2
5/22/11	Disobeyed Traffic Device	2

At a hearing on the summons, the respondent argued that he is not responsible for any of the points on his license because the violations were the result of fraud. He claims that his license was stolen and that the person who stole his license committed the violations.

He testified that he was advised to discontinue his efforts to challenge the DMV violations on the belief that such efforts would be futile and that points would simply disappear with the passage

¹ In October 2014, TLC amended the CD Program to increase the number of points reduced for taking a course from two to three. See http://www.nyc.gov/html/tlc/downloads/pdf/newly_passed_rules_vision_zero.pdf.

of time. He also testified that, on advice of counsel, he settled a previous CD summons that included some of the DMV violations at issue in this case in order to avoid license suspension.²

According to the respondent, the fraudulent activity stopped shortly after he changed his name from Yao Yao to Aboubacar Kaba. The fraudulent activity did not cease immediately because “it takes time for the name change to take effect.”

To support his claim, the respondent submitted into evidence a complaint that he made to the police on October 26, 2010 about a license that he lost. He also submitted the petition to change his name to Aboubacar Kaba that he completed for U.S. Citizenship and Immigration Services as part of the naturalization process. The petition was granted on September 23, 2011.

The Hearing Officer found credible the respondent’s claims that he lost his license in October 2010 and that identity theft “compelled” him to change his name in September 2011. According to the Hearing Officer, these claims cast doubt on the reliability of the DMV abstract, particularly the violations that occurred on May 22, 2011 and October 6, 2011. The Hearing Officer set aside the four points assessed for these two violations, thereby reducing the point total to eight. Consequently, the Hearing Officer dismissed the summons.

On appeal, the TLC argued, among other things, that the evidence presented by the respondent was insufficient to establish that the DMV abstract was unreliable and that the findings were not supported by substantial evidence.

The Appeals Unit upheld the decision to render invalid the two violations and thereby dismiss the summons, stating that it was based on substantial evidence in the form of the respondent’s testimony and the documentary evidence submitted by the respondent.

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 Hearing Officer does not have the authority to contest the accuracy of the underlying charges that DMV assessed against the respondent. The TLC also argues that the decision is not based on substantial evidence.

ANALYSIS

Rule 54-27(a)(2) provides: If, within a 15-month period, a Driver accumulates 10 or more points on his or her driver’s license (whether issued by New York or another state), the Commission will revoke the Driver’s Taxicab Driver’s License.³ Rule 54-27(a) states that “points” means “points assessed by the Department of Motor Vehicles.”

DMV assesses points against a driving record upon conviction of certain traffic violations. 15 NYCRR § 131.2. A conviction is entered on DMV records after a guilty plea, guilty with explanation plea, finding of guilt after hearing, or the mailing of a fine. 15 NYCRR § 121.5(d).

² Under TLC Rule 54-27(a)(1), the TLC will suspend the license of a driver who accumulates at least six but fewer than ten points on state driver’s license in any 15-month period. Points that serve as the basis for license suspension can later serve as the basis for license revocation.

³ Section 19-507.2 of the New York City Administrative Code establishes the CD Program.

Under the CD Program, the means with which to reduce points that appear on a DMV abstract and thus avoid penalty is by timely and voluntarily completing an accident prevention course. The rules do not permit a driver to raise a defense that the points were improperly assessed by the DMV because, as was argued here, someone else allegedly committed underlying traffic violations. *See, e.g., Taxi and Limousine Commission v. Nasser A. Shalek*, Lic. No. 504638 (November 8, 2013) (upholding a decision which held that it is not a valid defense to a CD summons for a driver to argue that he is not guilty of an underlying DMV violation). For that matter, the rules do not even empower to Taxi and Limousine Tribunal to adjudicate violations that underlie a CD summons. Finally, even if TLT were empowered to hear such cases, as the underlying violations were adjudicated in separate actions, the doctrine of collateral estoppel weighs against re-litigation. *See Alamo v. McDaniel*, 44 A.D.3d 149, 153-4 (1st Dep't 2007) (noting that collateral estoppel is equally applicable to confer conclusive effect to the quasi-judicial determination of an administrative agency).

Accordingly, the Appeals Unit erred in upholding the decision of the Hearing Officer. The record indicates that the respondent accrued 12 points on his DMV license within a 15-month period. It further indicates that he is not eligible for point reduction for voluntary completion of a defensive driving course. Under these facts, the respondent has run afoul of Rule 54-27(a)(2).

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Aboubacar Kaba (Summons #CD0017519), the decision of the Appeals Unit regarding is **reversed**. The penalty of license revocation is imposed.

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

So Ordered: September 2, 2015



Christopher C. Wilson, Deputy Commissioner/General Counsel