

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Mbaye Faye
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings (“OATH”) Taxi and Limousine Appeals Unit (“Appeals Unit”) regarding summons #1389880A is **modified**.

FINDINGS OF FACT

Respondent was cited for violating TLC Rule 55-12(j) (failure to cooperate with law enforcement) as alleged in summons #1389880A. TLC records show that the summons was issued on June 7, 2011.

On October 19, 2011, a hearing was held at the Office of Administrative Trials and Hearings (“OATH”) Taxi & Limousine Tribunal regarding summons #1389880A. The issuing TLC inspector testified that Respondent stopped to accept a street-hail in his for-hire vehicle, which is a violation of TLC Rules. The inspector further testified that Respondent fled in the vehicle when he and his partner identified themselves as TLC inspectors. Respondent, through stipulation, pled guilty to the street-hail violation but testified that the TLC inspectors did not identify themselves to him, which is why he drove away. The ALJ held that Respondent’s testimony was self-serving and illogical and found in favor of the TLC. The ALJ imposed a fine of \$400 and two demerit points to Respondent’s TLC license; the mandatory penalty for violation of TLC Rule 55-12(j).

Respondent timely appealed the ALJ’s decision on the grounds that, among other things, the ALJ erred by imposing an incorrect fine.

The Appeals Unit affirmed the ALJ’s decision. The Appeals Unit cited to TLC’s rules and held: “The fine [for violation of Rule 55-12(j)] is ‘\$400 if found guilty following a hearing.’ Here, the ALJ found the respondent guilty of violating Rule 55-12J [*sic*] and imposed a fine of \$400. Therefore the respondent’s assertion that the ALJ imposed the incorrect fine is wrong.”

ANALYSIS

This Order does not disturb the ALJ’s or Appeals Unit’s findings of guilt. The only issue addressed is the Appeals Unit’s error in affirming the amount of fine imposed.

On July 1, 2011, new penalties for violations of TLC Rules took effect.¹ At that time, the penalty for violation of Rule 55-12(j) increased from a range fine of \$15-\$150 to a set amount of \$400. Respondent was cited for violation of Rule 55-12(j) on June 7, 2011, at which time the range fine was still in effect. However, at a hearing held after the new penalties took effect, the ALJ imposed the new, larger fine.

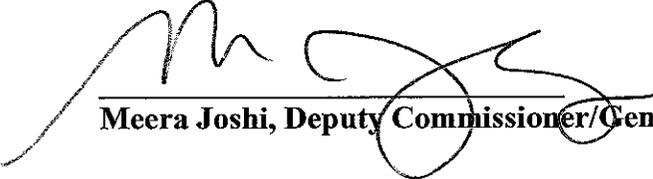
Case law has long established that, as a general rule, all statutes are prospective in their operation and have no retroactive effect.² What this means is that laws are not applied to events happening before their effective dates. Therefore, the increased fine for Rule 55-12(j) must not be applied to violations that occurred before July 1, 2011. Respondent's violation occurred on June 7, 2011, and therefore the ALJ should have imposed the lesser range fine. Accordingly, the Appeals Unit erred in affirming imposition of the \$400 fine.

DIRECTIVE AND ORDER

In the matter of New York City Taxi & Limousine Commission against Mbaye Faye (TLC Lic. No. 882260), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #1389880A is modified. **The imposed \$400 fine is hereby vacated. The Appeals Unit shall impose a fine within the prescribed \$15-\$150 range that is consistent with the findings in the record.**

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

So Ordered: March 26, 2012



Meera Joshi, Deputy Commissioner/General Counsel

¹ 104 City Record 1253(May 31, 2011)

² See *Jacobus v Colgate*, 217 NY 235; *Landgraf v USI Film Prods.*, 511 U.S. 244, 265, 114 S.Ct. 1483