CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Derrick A. Richards
Respondent

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Camille S. Orta
Respondent

ISSUE

The respondents are vehicle owners who were issued summonses by the Taxi and Limousine Commission ("TLC") for violating Section 19-506(b)(1) of the New York City Administrative Code, which, among other things, prohibits a person whose vehicle is not licensed by the TLC from permitting another person to conduct for-hire activity in such vehicle.

The Hearing Officers summarily dismissed the summonses, and the Appeals Unit affirmed, on the ground that the TLC did not allege in the summons or testify at the hearing that the respondents permitted for-hire activity in their vehicles and thereby failed either to satisfy notice requirements in TLC Rule 68-06 or make out a prima facie case.

The TLC petitions the Chair pursuant to TLC Rule 68-12 to reverse the decisions, arguing that the tribunals committed an error of law. For the reasons set forth below, the petitions are granted and the matters remanded for further action consistent with this Order.

STATEMENT OF FACTS

a. Derrick A. Richards

Summons #71870414A states that "THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS." The person described in the summons is the respondent Derrick A. Richards, and the material that follows indicates that it is an "owner" summons, cites Section 19-506(b)(1) as the code provision that the respondent allegedly violated, and notes the date, time, and location of the alleged unlicensed activity. It also describes the conduct giving rise to the charge, namely, that a TLC inspector observed Shurwin Thompson, who was driving the respondent's vehicle,

drop off a passenger at the intersection of Church Avenue and East 37th Street in Brooklyn, and that the passenger informed the inspector that he paid for the trip.

At a hearing on the summons, the TLC inspector who issued the summons testified as to his observations and conversations with the driver and passenger on the date in question. During cross-examination by the respondent, who was represented by counsel, the inspector stated that he did not ask the driver if the respondent had given him permission to do for-hire work and that the respondent was not present during the stop.

The respondent testified that he has known the driver for about 20 years and that he never gave the driver permission to do for-hire work in his vehicle. He also testified that the vehicle had not been seized for unlicensed for-hire activity since he has owned it.

During closing statements, the respondent repeated that he never permitted the driver to do for-hire work in his vehicle. Citing recent decisions of the Appeals Unit that addressed owner summonses for Section 19-506(b)(1) violations, the respondent also argued that the summons should be dismissed because it did not sufficiently apprise him of the charge.

The Hearing Officer credited the testimony of the inspector and found that illegal for-hire activity took place, but ultimately dismissed the summons. The Hearing Officer acknowledged that once the TLC presents evidence of unlicensed for-hire activity, it is presumed that the owner permitted the activity and the burden shifts to the owner to prove that the driver acted without such permission. But the Hearing Officer continued:

> [B]efore the presumption of owner permission for the illegal activity is created, there must be some notice of the prohibited activity to the Owner apprising the Owner of the charge pursuant to Rule 68-06(a)(2). This can be by allegation in the sworn to summons or presented by the Commission at the hearing.

According to the Hearing Officer, because the TLC did not allege in the summons or testify at the hearing that the respondent permitted for-hire activity in his vehicle, it failed to satisfy the requirements of Rule 68-06(a)(2) and thus the summons must be dismissed.

The TLC appealed the decision, arguing, primarily, that as Section 19-506(b)(1) contains a presumption of owner consent, owner consent does not have to be affirmatively alleged.

The Appeals Unit rejected this argument and affirmed the decision of the Hearing Officer. Specifically, it stated that "OATH TLT Rule 5-04(a) requires that the summons must contain all the information required by TLC Rule 68-06(a)(2), which provides that, at a minimum, the summons contain a description of the nature of the violation sufficient to inform the respondent of the prohibited conduct." In line with the reasoning of the Hearing Officer, the Appeals Unit further stated that the presumption of owner consent is not triggered until these minimum notice requirements are met, in this case, either by alleging in the summons or testifying at the hearing that the owner permitted the unlicensed activity. As the TLC failed to make such allegations, the Appeals Unit held that the Hearing Officer properly dismissed the summons.

b. Camille S. Orta

Summons #1468866A states that "THE PERSON DESCRIBED ABOVE IS CHARGED AS FOLLOWS." The person described in the summons is the respondent Camille S. Orta, and the material that follows indicates that it is an "owner" summons, cites Section 19-506(b)(1) as the code provision that the respondent allegedly violated, and notes the date, time, and location of the alleged unlicensed activity. It also describes the conduct giving rise to the charge, namely, that a TLC inspector observed James P. Lewis, who was driving of the respondent's unlicensed van, pick up a passenger on a hail at a bus stop located near the intersection of Utica Avenue and Avenue N in Brooklyn and that she and another passenger informed the TLC officer that they paid $2.00 for a ride to Flatbush Avenue and Avenue U.

At the hearing, the TLC inspector who issued the summons testified to the narrative in the summons, and in response to questions by the respondent's attorney, stated that the respondent was not present during the stop.

The respondent testified that the driver was a family friend whom she had known for about three years. She asked him to pick up the van from a service station because she was unable to do so, but she did not permit him to use it for any other purpose. She said that she uses the van, which is not her primary vehicle, to transport kids for a youth organization and that she wanted the van to be serviced in anticipation of an upcoming trip. In support of her testimony, the respondent submitted into evidence a receipt from the service station. The respondent also testified that the van has never before been seized for unlicensed activity.

During closing statements, the respondent, by way of her attorney, argued that the case should be dismissed for the following reasons: (1) the respondent was charged with the wrong rule violation; (2) the respondent credibly testified that she did not allow the driver to conduct for-hire activity in her vehicle; and (3) the respondent did not have notice of the charges against her because the TLC did not allege that she permitted for-hire activity.

The Hearing Officer held that "the TLC failed to properly, credibly and persuasively established [sic] a prima facie case against the owner allowing or permitting her vehicle to be used for and engaging in for hire activity while the car was unlicensed based on the sworn to narrative on the summons and the testimony of the inspector." According to the Hearing Officer, as the vehicle owner's permission of unlicensed activity is an element of a 19-506(b) violation, the failure of the TLC to allege owner permission warrants dismissal of the summons.

The TLC appealed the decision, again arguing, primarily, that as Section 19-506(b)(1) contains a presumption of owner consent, owner consent does not have to be affirmatively alleged. The Appeals Unit rejected this argument and affirmed the decision on the same ground that it upheld the decision of the Hearing Officer on Summons #71870414A, *supra*.

The TLC now petitions the Chair pursuant to Rule 68-12 to overturn the decisions on Summons #71870414A and Summons #1468866A, arguing that the tribunals committed errors of law.

ANALYSIS

Section 19-506 of the Administrative Code sets forth TLC's enforcement authority with regard to the unlicensed operation of a for-hire vehicle. Section 19-506(b)(1) specifically provides:

> Except as provided in paragraph 2 of this subdivision, any person who shall permit another to operate or who shall knowingly operate or offer to operate for hire any vehicle as a taxicab, coach, wheelchair accessible van, HAIL vehicle 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, and upon conviction in the criminal court shall be punished by a fine of not less than one thousand dollars or more than two thousand dollars or imprisonment for not more than sixty days, or both such fine and imprisonment. This paragraph shall apply to the owner of such vehicle and, if different, to the operator of such vehicle.

As stated on previous occasions, evidence of a person conducting for-hire activity in an owner's unlicensed vehicle establishes a presumption that the owner permitted such activity. *See* Chairperson's Final Determination and Order, *TLC v. Tony O. Alston*, Lic. No. 5527739 (July 22, 2014); Chairperson's Final Determination and Order, *TLC v. Allsta Inc.*, Lic. No. 5373783 (March 4, 2013); Chairperson's Final Determination and Order, *TLC v. Samfes Yo Corporation*, Lic. No. 5442130 (November 30, 2012).

a. Notice

According to the Hearing Officers and Appeals Unit, the presumption does not arise until the TLC satisfies the requirements of OATH TLT Rule 5-04, and by extension, Rule 68-06(a)(2), either by alleging in the summons or by testifying at the hearing that the vehicle owner permitted for-hire activity in his or her vehicle.

OATH TLT Rule 5-04(a) states that a "summons must contain, at a minimum, all information required by Chapter 68 of Title 35 of the Rules of the City of New York." OATH TLT Rule 5-04(b), titled Failure of Summons to Provide Information, establishes the procedure that a Hearing Officer must follow if a respondent claims at a hearing that the summons lacks the required information. Specifically, it provides:

> (1) If, at a hearing, a respondent claims that the summons did not provide the required information, the hearing officer will determine whether there is a lack of required information and, if so, the TLC will be given the opportunity to provide the respondent with the required information. The hearing officer will then determine whether the lack of information has unfairly prejudiced the respondent.

> (2) The hearing officer may determine whether to: (i) Proceed with the hearing, (ii) Correct the citation to the Rule or Code Section; if there is a conflict between the rule or Code section cited and the description in the violation, the description controls the final resolution of the issue, (iii) Grant an adjournment, or (iv) Dismiss the violation.
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> (3) If a summons is dismissed solely because the information specified in subdivision (a) has not been provided, such dismissal will be without prejudice, and the TLC may issue an amended summons.

Rule 68-06 details the information that is required to be in a summons, including the date, time, and location of the alleged violation, and the rule alleged to have been violated. Rule 68-06(a)(2), specifically, requires that a summons contain a "description of the nature of the violation sufficient to inform the Respondent of the prohibited conduct[.]"

Here, the respondents claimed that the summonses failed to sufficiently apprise them of the charges, albeit after cross-examining TLC inspectors about evidence, or the lack thereof, that they permitted the unlicensed for-hire activity and then later testifying that they never gave such permission. Under these circumstances, assuming that the summonses did indeed lack required information, it is doubtful that the respondents were unfairly prejudiced.[1] But as dismissal was based solely on the failure to provide information as required by OATH TLT Rule 5-04(a), the Hearing Officers, at the very least, should have dismissed the summonses without prejudice.

Regardless, Summons #71870414A and Summons #1468866A are sufficient to inform the respondents of the prohibited conduct. On this point, as Rule 68-06(a)(2) is grounded in due process, *see Alvarado v. State, Dep't of State, Div. of State Athletic Comm'n*, 110 A.D.2d 583, 584 (1st Dept. 1985) (noting that the that the State Administrative Procedure Act, which resembles TLC hearing rules, including Rule 68-06, was enacted to fulfill due process requirements); *Joseph Paul Winery Inc. v. State*, 47 Misc. 3d 439, 451-52 (N.Y. Sup. Ct. 2014), due process law is informative.

Due process requires that notice "apprise the party whose rights are being determined of the charges against him and … allow for the preparation of an adequate defense." *Block v. Ambach*, 73 N.Y.2d 323, 332-33 (1989). In an administrative hearing, notice must be "reasonably specific, in light of all the relevant circumstances." *Id.* By contrast, due process requires greater specificity in a criminal proceeding because the consequences are "palpably more grave." *Id.* Thus, for example, a criminal accusatory instrument must provide non-hearsay factual allegations which, if true, establish "every element of the offense charged and the defendant's commission thereof." C.P.L. § 100.40(1)(c).

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1 As discussed more below, Rule 68-06 is grounded in due process. Thus, where, as here, the party whose rights are being decided does not request an adjournment and mounts a spirited defense, no prejudice is found and due process satisfied. *See, e.g., Singla v. New York State Dep't of Health*, 229 A.D.2d 798, 800 (3d Dep't 1996).

Rule 68-06 (a)(2)'s requirement for a "sufficient" description of the nature of the charges is met by a description that is reasonably specific, in light of all the relevant circumstances. It does not require that a TLC summons be more specific than what due process requires for any other administrative hearing, and certainly not as specific as a criminal indictment. To require such specificity, as the tribunals have done here, is to ignore the plain language of Rule 68-06(a)(2) and the logic that underpins the due process considerations described above.

Rule 68-06 seeks to ensure that a summons apprise a respondent of the charges against him and allow him to prepare an adequate defense. Summons #71870414A and Summons #1468866A do just that. They are expressly noted as "owner" summonses, cite Section 19-506(b)(1) as the code provision that the respondents allegedly violated, and describe the alleged for-hire activity in the respondents' unlicensed vehicles, as well as note the date, time, and location of such activities. The summonses do not force the respondents to resort to "guesswork" because they are susceptible of more than one interpretation, *see Zedek v. Kelly*, 37 Misc. 3d 1208(A) (Sup. Ct. 2012), or because they make no reference to facts from which a violation of the cited rule can be inferred, *see Joseph Paul Winery Inc.*, 47 Misc. 3d at 466, or because they "smack[] of a conscious avoidance of any specific fact which [respondents] could refute," *Wolfe v. Kelly*, 79 A.D.3d 406, 411 (2010). Clearly, Rule 68-06 has been satisfied.[2]

b. Prima facie case

According to the Hearing Officer in *Orta*, in order to make out a prima facie case and thereby establish the presumption, the TLC must allege in the summons or testify at the hearing that the respondent permitted the for-hire activity in her unlicensed vehicle.[3] But this is not so.

Based on the factual allegations in Summons #1468866A, as well as in Summons #71870414A, that a driver conducted for-hire activity in the respondent's unlicensed vehicle, it is presumed that the respondent permitted the for-hire activity. *See, e.g.*, Chairperson's Final Determination and Order, *TLC v. Tony O. Alston*, Lic. No. 5527739 (July 22, 2014). This presumed fact is sufficient to establish the TLC's prima facie case. *See, e.g.*, *St. Andrassy v. Mooney*, 262 N.Y. 368, 370-71 (1933) (under a presumption that a vehicle owner is liable for damages from the negligent operation of his vehicle by "any person…operating the same with the permission, express or implied of such owner," proof of ownership is "sufficient to establish prima facie that a custodian operating the car is engaged in the owner's service"); *People v. Galindo*, 23 N.Y.3d 719, 723 (2014) (noting that once the predicate facts are established, the government can rely on

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[2] The Appeals Unit noted that TLC's reliance on *TLC v. Michael Uvaydov*, Lic. No. (August 12, 2014) is misplaced because the summons apparently contained an allegation that the owner allowed the unlicensed vehicle to operate for hire and thus apprised the owner of a description of the nature of the violation charged. For the reasons herein stated, such an allegation is not necessary to satisfy the requirements of Rule 68-06.

[3] The Hearing Officer cites Chairperson's Final Determination and Order, *Tony O. Alston*, Lic. No. 5527739 (July 22, 2014), for the proposition that "upon submission of evidence in the form of a sworn to summons alleging that an owner allowed his vehicle to be used for illegal for hire activity (e.g., street hail), the vehicle owner is presumed to have consented to the illegal for hire activity." In fact, the *Alston* Order says no such thing. What it does say is 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." Additionally, the *Alston* Order clearly rejects the decision of the Hearing Officer in that case to dismiss the summons on the ground that the TLC cannot rely on the presumption to establish the prima facie case.

a presumption, which "form[s] part of the support for [its] prima facie case"); *People v. Sanchez*, 110 A.D.2d 665, 665-66 (2d Dep't 1985) (finding that a "presumption serves to establish a prima facie case"). *See also Murdza v. Zimmerman*, 99 N.Y.2d 375, 380 (2003) (Citing *St. Andrassy v Mooney, supra*, the Court of Appeals stated that "[o]nce the plaintiff meets its initial burden of establishing ownership, "a logical inference of lawful operation with the owner's consent may be drawn from the possession of the operator" – an inference that may be rebutted "by substantial evidence sufficient to show that the vehicle was not operated with the owner's consent.").

Accordingly, because the TLC satisfied the notice requirements of Rule 68-06 and established a prima facie case that the respondents violated Section 19-506(b)(1) of the Administrative Code, Summons #71870414A and Summons #1468866A were dismissed in error. As the findings are insufficient to determine whether the respondents rebutted the presumption that they permitted the unlicensed activity, the cases are remanded.

As explained in the *Allsta* Order, *supra*, the presumption shifts the burden to the vehicle owner to show that the driver operated for hire without the owner's permission. To overcome the presumption, the owner must present detailed evidence that he or she did not permit the illegal for-hire activity. A mere denial from the owner that the driver operated for hire without his or her permission, by itself, is not enough to rebut the presumption.

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Derrick A. Richards, Summons #71870414A, and New York City Taxi & Limousine Commission against Camille S. Orta, Summons #1468866A, the decisions of the Appeals Unit are **reversed and the cases remanded for further proceedings consistent with this Order**.

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

So Ordered: September 2, 2015

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