

CHAIRPERSON'S FINAL DETERMINATION AND ORDER

In the Matter of
New York City Taxi & Limousine Commission
Petitioner
against
Mohamed-Saeed, A, B
Respondent

DETERMINATION

The decision of the Office of Administrative Trials and Hearings ("OATH") Taxi and Limousine Appeals Unit ("Appeals Unit") regarding summons #1414014A is **reversed**.

FINDINGS OF FACT

Respondent is licensed by the TLC as a taxicab driver. Respondent was issued summons #1414014A for violating TLC Rule 54-14(e)(1)¹ (the "Double Parking Summons") and summons #1414015A for violating TLC Rule 54-13(a)(1)² (the "Cellphone Summons"). The summonses alleged that Respondent was using an electronic communication device while double parked.

On July 6, 2012, a hearing was held on the matter before Hearing Officer Stevens. The TLC Inspector testified that he observed Respondent double parked in his taxicab for approximately one (1) minute while holding his cellphone. Respondent testified that he responded to the hail of a hotel doorman. Additionally, Respondent testified that the hotel doorman was wheeling the passenger's luggage over to the taxicab as the Inspector approached. Hearing Officer Stevens dismissed the Double Parking Summons but found Respondent guilty on the Cellphone Summons. The Hearing Officer's decision states, in relevant part:

I find that the Respondent merely stopped to accept luggage into his trunk which took less than a minute and would not interfere with traffic. I also find that the [Inspector] had a clear recollection that the cellphone was being handled by the Respondent. The Respondent is not guilty for the double parking charge [but is] guilty of using his cellphone.

Respondent appealed the Hearing Officer's decision on the grounds that Respondent did not violate Rule 54-14(e)(1) because he was lawfully parked. On August 28, 2012, the Appeals Unit affirmed the decision. The Appeals Unit held that Respondent's use of an electronic communication device was not permissible because, although he was lawfully double parked, he was not lawfully standing or parked.

¹ A Driver must not Use an Electronic Communication Device while operating a Vehicle. A Driver can Use an Electronic Communication Device only while the Vehicle is lawfully standing or parked.

² Taxicab Drivers (and any authorized Driver of a Street Hail Livery, while driving a Street Hail Livery) must comply with all applicable traffic laws, rules, and regulations governing stationary vehicles.

Respondent now petitions the Chairperson to intervene in this matter.

RULE INTERPRETATION

TLC Rule 54-14(e)(1) states:

A Driver must not Use an Electronic Communication Device while operating a Vehicle. A Driver can Use an Electronic Communication Device only while the Vehicle is lawfully standing or parked.

Double parking in New York City is generally prohibited.³ However, New York City Traffic Rules Section 4-11(c) permits double parking by taxi, commuter van, and for-hire drivers in limited circumstances. Per §4-11(c), drivers may lawfully double park to “pick up or discharge passengers” only if “there is no unoccupied curb space available within one hundred (100) feet of the pickup or discharge location.” This exception does not apply in the following circumstances: when the vehicle is parked within a pedestrian crosswalk or intersection; when the vehicle obstructs traffic by allowing “fewer than ten (10) feet available for the free movement of vehicular traffic”; in areas “where stopping is prohibited”; when the vehicle is stopped “within a bicycle lane”; and when the vehicle is stopped “within horse-drawn carriage boarding areas.” Thus, *in limited circumstances*, taxi, commuter van, and for-hire drivers may *lawfully* double park.

By this order, the TLC interprets a driver to be lawfully parked for the purposes of Rule 54-14(e)(1) when such driver is lawfully double parked. Accordingly, a driver may use an electronic communication device when the driver is lawfully double parked to pick up or discharge a passenger. This interpretation does not apply if the double parking is not lawful for any reason under New York City Traffic Rules §4-11(c). For example, if the driver is not actively picking up or dropping off a passenger or if the driver is obstructing the flow of traffic, the driver cannot lawfully double park and, accordingly, is prohibited from using an electronic communication device.

ANALYSIS

Hearing Officer Stevens held that Respondent was lawfully double parked. The Hearing Officer found that Respondent was double parked for less than a minute, Respondent was picking up a passenger, and Respondent did not obstruct traffic. The Hearing Officer’s findings are sufficient to support the determination that Respondent was lawfully double parked under New York City Traffic Rules §4-11(c). Accordingly, the Hearing Officer’s dismissal of the Double Parking Summons was proper.

Respondent argues that his use of a cell phone was permissible because he was lawfully parked. As discussed above, a driver is lawfully parked and may use an electronic communication device when the driver is lawfully double parked under New York City Traffic Rules §4-11(c). Accordingly, the Appeals Unit should have reversed the Hearing Officer’s decision as to the Cellphone Summons and found Respondent not guilty of violating Rule 54-14(e)(1).

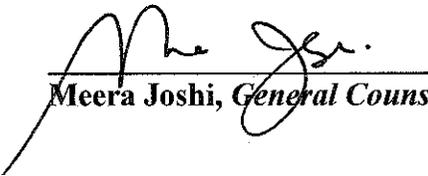
³ See New York City Traffic Rule Section 4-08(f)(1).

DIRECTIVE

In the matter of New York City Taxi & Limousine Commission against Mohamed-Saeed, A, B (TLC Lic. No. 5415860), the decision of the OATH Taxi and Limousine Appeals Unit regarding summons #1414014A is reversed. **The imposed \$350 fine and three (3) TLC penalty points are hereby vacated.**

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

So Ordered: November 13, 2012



Meera Joshi, General Counsel/ Deputy Commissioner of Legal Affairs