

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
441 Fourth Street, NW
Washington, DC 20001
TEL: 202 442-9094
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DISTRICT OF COLUMBIA
TAXICAB COMMISSION
Petitioner,

v.

ABAY BOGALE
Respondent.

Case No.: 2011-TAXI-V200000

FINAL ORDER

I. INTRODUCTION

On November 21, 2011, Petitioner, the District of Columbia Taxicab Commission (“Taxicab Commission”) issued a Notice of Infraction (“NOI”) charging Respondent Abay Bogale with violating 31 DCMR 819.4 for failure to furnish service on demand to any person (the “Regulation”). The violation allegedly occurred on August 23rd, 2011 at 23rd Street, NW, near Washington Circle. The Government seeks a fine of \$250.

On November 29, 2011, Respondent entered a plea of Deny to the alleged violations. Consequently, a Scheduling Order issued on December 1, 2011, scheduling an evidentiary hearing for December 21, 2011.

On the date of the hearing, Respondent Abay Bogale appeared and represented himself. David Person, Paralegal Specialist, Taxicab Commission, appeared on behalf of Petitioner. Lauren Walsh and Donna Verbena testified as witnesses for Petitioner.

Based upon the testimony of the witnesses, my evaluation of their credibility, the exhibits admitted into evidence, and the entire record, I now make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

On August 23, 2011, between the hours of 7:45 and 8:30 pm, Ms. Walsh and Ms. Verbena were in the area of 23rd Street and Washington Circle, NW. They hailed a taxicab to hire it for a ride to Virginia. Respondent stopped his taxicab and asked Ms. Walsh where she was going. The women did not respond right away. Instead, they walked around the back of the cab to enter the cab on the rear right passenger side. As the two women attempted to enter the taxicab, Respondent again asked the women their destination. With her hand on the door handle of the taxicab, Ms. Walsh responded, "Ballston, Virginia". Respondent replied that he was not going to Virginia and drove away.

As the cab drove away, Ms. Verbena simultaneously wrote down the cab company name and number, Silver Cab 319. Petitioner's Exhibit ("PX") 101 and 102. Respondent owns cab 319, drives for the Silver Cab Company, and was driving in the area of 23rd Street and Washington Circle, NW, on the evening of August 23, 2011.

The women did not see an off duty sign in the windshield nor did they see whether the off duty light on the top of the taxicab was lit. Neither of the women heard Respondent say that he could not take them to Virginia because he was off duty.

Two days later, on August 25, 2011, Ms. Walsh filed a complaint with the Taxicab Commission concurring the incident. (PX) 100.

Credibility Analysis

Respondent testified that he was in the area that evening because he was picking up his wife from the Kennedy Center as he does every evening at around 6:40 pm and that he does not remember the incident as recounted by the two women. He also testified that even if he did speak to the women, he would have told them he was off duty and that there was signage in the windshield indicating that he was off duty and the off duty light was lit on the roof of the taxicab.

The Petitioner's witnesses' were credible. Their recollection of the incident was clear and consistent. Both Ms. Walsh's and Ms. Verbena's testimonies are consistent as to what occurred that evening beginning with how the women attempted to hail the taxicab for hire, to how the taxicab drove off with Ms. Walsh's hand on the door handle.

Moreover, the witnesses provide enough information to establish that Respondent was the individual driving the cab that refused to take them to their destination. Ms. Verbena contemporaneously wrote down the cab number and company, Silver Cab 319, as the taxicab drove away. Respondent admits that he drives cab 319 for the Silver Cab Company and there is no evidence that anyone else was driving Respondent's taxicab on the evening of August 23, 2011.

On the other hand, Respondent's testimony was less than credible. Respondent did not produce evidence to corroborate that he was in the area on August 23rd to pick his wife up from work at the Kennedy Center. As to Respondent's contention that if he did talk to the women he told them he was off duty, neither of the witnesses testified that Respondent said he was off duty. Even if Respondent did have an off duty sign in the window and his off duty light on, I am not persuaded that Respondent did not engage the women in preliminary discussions about a cab ride which abruptly ended when he was told they wanted to go to Virginia.

Finally, I do not find Respondent's manifest indicating that he worked from 7:00 am to 1:40 pm persuasive. Respondent's Exhibit ("RX") 200. The manifest is a document authored and maintained by Respondent. There is nothing that prevents Respondent from picking up other passengers that are not accounted for on the manifest. Finally, there is no evidence that affirms the reliability of the document.

III. CONCLUSIONS OF LAW

The Regulation 31 DCMR 819.4, states:

Taxicab operators shall, at all times when on duty and not engaged, furnish service on demand to any person, except as provided for in § 819.5¹.

The Government proved by a preponderance of evidence that Respondent violated the Regulation as charged in the Notice of Infraction for the reasons discussed above. I credit entirely Ms. Walsh and Ms. Verbena's testimony that on August 23, 2011, Respondent refused to take them to Virginia. A fine of \$250 is prescribed for a violation of 31 DCMR 819.4 31 which is the fine requested by Petitioner. 31 DCMR 825. Having held Respondent liable, I will impose the authorized fine of \$250.

IV. ORDER

¹ 31 DCMR 819.5 states in pertinent part:

No taxicab operator shall refuse to transport a person while holding his or her taxicab for hire, unless:

- (a) Previously engaged;
- (b) Unable or forbidden by the provisions of this title to do so;
- (c) The operator has reason to believe the person is engaged in a violation of law; or
- (d) The operator has cause to fear injury to his or her person, property or taxicab.

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this _____ day of January, 2012:

ORDERED, that Respondent is **LIABLE** for violating the Regulation as charged in the Notice of Infraction; and it is further

ORDERED, that Respondent shall pay a fine in the amount of **TWO HUNDRED FIFTY DOLLARS (\$250)** in accordance with the attached instructions within 35 days of the mailing date of this Order (30 days plus 5 days service time pursuant to 31 DCMR 702.5 and 1 DCMR 2811.5), unless the time period is extended; and it is further

ORDERED, any party served with a final order may file a motion for reconsideration within ten (10) calendar days of service of the final order in accordance with 1 DCMR 2828. When the final order is served by mail, five (5) calendar days are added to the 10 day period in accordance with 1 DCMR 2812.5; and it is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this Order are stated below.

Claudia A. Crichlow
Administrative Law Judge

MOTIONS FOR RECONSIDERATION

Any party served with a final order may file a motion for reconsideration within ten (10) calendar days of service of the final order in accordance with 1 DCMR 2828. When the final order is served by mail, five (5) calendar days are added to the 10 day period in accordance with 1 DCMR 2812.5. www.oah.dc.gov.

The Administrative Law Judge has forty-five (45) days to decide a motion for reconsideration. If a timely motion for reconsideration of a final order is filed, the time to appeal shall not begin to run until the motion for reconsideration is decided or denied by operation of law. If the Judge has not ruled on the motion for reconsideration and 45 days have passed, the motion is automatically denied and the 30 day period for filing an appeal to the [District of Columbia Court of Appeals](#) begins to run.

PAYMENTS

If a payment is required by this Order, to be properly credited to your case(s) the payment must be sent to the attention of the Clerk of the Office of Administrative Hearings. Payments are only accepted by check or money order and must be made payable to “D.C. TREASURER.” Enclose full payment and mail the check in an envelope with required postage to:

Clerk
Office of Administrative Hearings
One Judiciary Square
441 Fourth Street, NW
Washington, DC 20001-2714

IMPORTANT: Please do not call the D.C. Court of Appeals with questions about how to make any payments required under this Order. The D.C. Court of Appeals does not accept any payments in cases decided by the Office of Administrative Hearings. **If you have questions, please call the Clerk’s Office at the Office of Administrative Hearings on 202-442-9094.**

APPEAL RIGHTS

Pursuant to D.C. Official Code § 2-1831.16(c)-(e), any party suffering a legal wrong or adversely affected or aggrieved by this Order may seek judicial review by filing a petition for review and six copies with the District of Columbia Court of Appeals at the following address:

Clerk
District of Columbia Court of Appeals
430 E Street, NW, Rm. 115
Washington, DC 20001
202-879-2700

The petition for review (and required copies) may be mailed or delivered in person to the Clerk of the Court of Appeals, and must be received by the Clerk of the Court of Appeals within 30 calendar days of the mailing date of this Order. Information on petitions for review to the Court of Appeals can be found in Title III of the Rules of the District of Columbia Court of Appeals.

IMPORTANT NOTICES:

- 1. By law, the amount of a lawfully imposed fine cannot be modified or reduced on appeal. D.C. Official Code § 2-1831.16(g).**
- 2. Filing of a petition for review does not stay (stop) the requirement to comply with a Final Order, including any requirement to pay a fine, penalty or other monetary sanction imposed by a Final Order. If you wish to request a stay, you must first file a written motion for a stay with the Office of Administrative Hearings. If the**

presiding Administrative Law Judge denies a stay, you then may seek a stay from the D.C. Court of Appeals.

Certificate of Service:

By First Class Mail (Postage Paid):

Abay Bogale
630 Sheridan Street, #311
Hyattsville, MD 20783

I hereby certify that on _____,
2012 this document was served upon the
parties named on this page at the address(es)
and by the means stated.

Clerk/Deputy Clerk

By First Class Mail (Postage Paid):

Shawn Laster, Office Manager
DC Taxicab Commission
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