

Agenda: Item 7

Consideration of Hearing Officer's Recommendations in Taxi Commission v. Azam Enazzer: [ACTION] - Consideration of Hearing Officer's Decision to Revoke P-16 Permit # 431 for Violation of the Prop. K Full Time Driving Requirement, MPC § 1081(b) for 2001, 2005, and 2006; and Violation of MPC § 1138, accurate and legible waybills.

CITY AND COUNTY OF
SAN FRANCISCO



TAXI COMMISSION
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JORDANNA THIGPEN, EXECUTIVE DIRECTOR

TO: Honorable Commissioners
FROM: Jordanna Thigpen
RE: Items 7, 8, 9, and 10 on the agenda
Date: 9.19.8

Due to the voluminous nature (>300 pages) of the cases that are on for tonight's hearing, the Commission has attached the hearing officer's decision only to the complaint for Items 7, 8, 9, and 10.

Copies of the case are available at the Commission office. Commissioners have been requested to come to the office and review the documents. Copies will be available at the Commission hearing for public viewing.

HEARING OFFICER: Henry Epstein, for the San Francisco Taxicab Commission
DATE of HEARING: 10 AM, April 20, 2007
ROOM 408, City Hall, 1 Dr. Carlton Goodlett Place, San Francisco, California
94102

CASE: Disciplinary action for Prop. K Violation

Permit Holder: Mr. Azzam Ennazer

Color Scheme: Yellow Cab Company

Type of Permit: Medallion: #431

Date Granted:

Investigating Officer: Mr. Jack Brodnax, Commission designee

Complainants: The San Francisco Taxicab Commission

CHARGES: Violation of the Prop. K Full Time Driving Requirement (FTDR) Section 1081(b) SF Municipal Police Code (MPC) for 2001 and 2005; and violation of MPC 1138, accurate and legible waybills.

PRIOR ADMONITIONS under the Rules and Regulations for violation of MPC 1081(b):

April 26, 2002 for 2001: Prop. K audit shows
drove only 128 shifts in 2001

Representation

Mr. Ennazer represented himself at the hearing after declining to be represented by an attorney.

Mr. Jack Brodnax investigated the case for the Commission as its designee.

Ms. Jordanna Thigpen, Deputy Director, further investigated the case, represented the Commission at the hearing, and submitted a post-hearing statement.

Exhibits

A. Complaint, Jack Brodnax, Commission designee, March 23, 2007

B. Attachments to Complaint:

i. Formal Reprimand, April 26, 2002; signed by Mr. Ennazer May 2, 2002.

ii. Audit sheet, Sgt. V. Simpson, S.F.P.D. Taxicab Detail, April 22, 2002

iii. Sample waybill, December 1, 2001.

iv. Audit sheet, Mr. Brodnax, December 29, 2007.

C. Waybill copies, Permit #431: 2006; 2007, submitted by Mr. Ennazer

- D. Yellow Cab Logons/Driver History
- E. Commission Post-hearing Brief, June 20, 2007
- F. Ground Transportation Unit (GTU) records 2005, 2006 and 2007

I. SUMMARY OF THE DECISION

Mr. Ennazer acknowledged that he did not meet the Prop. K full-time driving requirement [FTDR] for 2001 when he signed a formal reprimand to that effect. The reprimand contained a warning that he was subject to revocation for further violation of codes or rules regulating the taxi industry.

According to the March 23, 2007 Complaint, "an examination of Mr. Ennazer's waybills from Yellow Taxicab Company Co-Op showed that Mr. Ennazer had filled out no waybills as required for calendar year 2005." The hearing officer finds that the Commission met its burden of showing that Mr. Ennazer failed to meet the FTDR for 2005.

In addition, the Commission demonstrated striking discrepancies in 2006 and 2007 between Mr. Ennazer's waybills, GTU records, and Mr. Ennazer's Yellow Cab logons for 2006 and early 2007. The hearing officer finds that Mr. Ennazer did not meet the FTDR for 2006.

Three violations of the FTDR in during a year period create an extremely strong presumption for revocation that may be overcome only in extraordinary circumstances. Mr. Ennazer did not offer evidence of mitigating factors sufficient to overcome this extreme presumption.

In addition, although the decision to revoke is warranted by three violations of the FTDR, the hearing officer finds two additional bases for revocation:

i. The hearing officer finds evidence of fraud in Mr. Ennazer's waybills for 2006 and 2007. Serious misconduct (such as waybill fabrication) together with the formal reprimand for 2001 and an additional year of failing to satisfy the FTDR creates an extreme presumption for revocation.

ii. The hearing officer finds that during 2005, Mr. Ennazer was an egregious violator. Two years of failing to meet the FTDR, one of which is an egregious violation, together with a reprimand, also create an extreme presumption for revocation.

The hearing officer recommends revocation of Mr. Ennazer's medallion on all or any of these grounds.

II. PROCEDURAL HISTORY

A. Pre-Complaint

Mr. Ennazer was formally reprimanded on April 26, 2002 for falling short of the Prop. K FTDR (MPC 1181(b)). The letter of reprimand was signed by Mr. Ennazer on May 2, 2002. [EXHBT B.i.] The attached Prop. K audit sheet noted that Mr. Ennazer completed only 128 out of the 156 required shifts for the 2001 calendar year. [EXHBT B.ii.] In addition, the audit sheet noted incomplete way bills, a violation under MPC 1138 and Rule VI.C.8 of the Taxicab Rules and Regulations. According to the reprimand, MPC 1138 requires “an accurate an legible waybill which includes the date of operation, starting & ending times, vehicle license #, cab#, medallion#, starting and ending mileage & units, time of hire and discharge of passenger and the locations of fare pickup and drop off.” In addition, Rule VI.C.8 requires medallion holders “to enter on waybills, in indelible ink, the total number of hours worked and to sign the waybill.”

The letter of reprimand states that “... only completed waybills will be used in determining the total number of days/shifts worked.” [emphasis in original]

Thereafter, the record shows no further action regarding Mr. Ennazer until an October 13, 2006 letter is sent to Mr. Ennazer by Mr. Jack Brodnax, then Commission designee, referring to “a 2005 calendar year audit” of Mr. Ennazer’s driving record indicating “No Waybills” and “Insufficient Hours Prop. K.” The letter demands that Mr. Ennazer produce waybills by October 20, 2006.

On October 31, 2006 the Commission date stamps the return receipt of the October 13, 2006 letter. Mr. Brodnax handwrites a note on it.

Mr. Azzam Ennazer states that he believes Yellow Cab lost some of his waybills. He has received a verbal Admonishment & will have copies of waybills or receipts for his shifts/hours in the future.

Mr. Ennazer signs his name next to the note, and the note is dated, by hand, 10-31-06, apparently by Mr. Brodnax, who also initials it.

B. Commission discrepancies

It is not clear precisely when Mr. Brodnax conducted the audit that purportedly found no waybills for 2005. Mr. Brodnax refers in his October 13, 2006 letter, *supra*, to a 2005 calendar year audit; thus presumably the audit had already been conducted by the date of the letter. Yet on the Prop. K audit sheet attached to the Complaint, Mr. Brodnax enters 12/29/2007 (likely 12/29/2006) as the date on which the audit was conducted.¹ Thus, it is not clear when the audit was conducted.

¹ The 12/29 date is stated in the Complaint as “12/29/06.”

In addition to this discrepancy over when the audit was conducted, the audit sheet itself contains no calendar year date. Thus, although the months of January through December are listed it is not clear to what year the twelve months belong.²

Nevertheless, Mr. Brodnax indicated that he found no way bills for twelve months. He left blank the boxes next to each month, January through December. He entered no shifts and no hours for any month, and entered zero as total shifts and hours for the twelve month period.

In rebuttal, Mr. Ennazer testified that he customarily submitted waybills to the guard at Yellow Cab but did not know what happened to the 2005 waybills after he submitted them. To support his testimony, he produced Yellow Cab logs (“logons”) of his driving during 2005 as proof he drove that year. Subtracting duplicate entries, these logs reflect approximately 76 shifts for the year, less than half the 156 required shifts. One would have to assume Mr. Ennazer worked ten hour shifts each day he logged in to bring him close to the 800 hour per year Prop. K driving requirement.

However, the Commission produced substantial evidence that shed doubt on Mr. Ennazer’s overall driving record for the last few years. It found striking discrepancies in 2006 and 2007 between Mr. Ennazer’s waybills, GTU records, and his Yellow Cab logs. The discrepancies in 2006 between the GTU records, the logs, and Mr. Ennazer’s waybills, are evidence that he did not meet the FTDR for 2006. Similar discrepancies were found for the first quarter of 2007. These discrepancies cast doubt on the 2005 logs as evidence that Mr. Ennazer drove even 76 shifts in 2005.

In light of the evidence the Commission was able to produce that Mr. Ennazer drove well short of the FTDR for 2006, the hearing officer found that the errors it made in dating the 2005 audit were not fatal to the Complaint, and allowed the Commission’s case to go forward.

III. THE COMPLAINT

The Complaint cites a history of “multiple violations” and calls for revocation of Mr. Ennazer’s medallion, terming him an “Egregious Violator.” The “multiple violations” presumably include 2005 and 2001, both within seven calendar years.³ However, Mr. Brodnax does not identify precisely what constitutes an “egregious violation.”

² Mr. Brodnax was not available at the hearing or made available post-hearing to resolve these discrepancies.

³ This rule is keyed to the number of times the permitholder violated the driving requirement during the seven calendar years preceding the calendar year in which the Commission hears the case....The seven-year period comes into play only when the permit of a long-term permitholder is subject to possible revocation. Appendix A.

A. The Enforcement Standards for Permit Revocation⁴

Two violations within the seven year period by themselves do not create a presumption favoring revocation. In fact, without more, two violations create no presumption either favoring or disfavoring revocation. [Appendix A, III.A]. However, when combined with another violation, such as serious or illegal misconduct or “egregious non-compliance with the [FTDR]” two violations give rise to a strong presumption favoring revocation. Driving no more than one fourth of the shifts required by the FTDR, or driving no more than one half the required shifts but with a willful disregard of the FTDR, are two instances of egregious noncompliance. [Appendix A, III.B]

The 2002 audit shows 128 shifts driven in 2001 (over three fourths the required 156 shifts). Thus, 2001 is not a year in which Mr. Ennazer was in egregious non-compliance. In order to raise an extremely strong presumption for revocation, the Commission must establish that Mr. Ennazer drove either less than one fourth the required shifts for 2005 or less than one half the required shifts that year “with a willful disregard of the FTDR,” and that he received a prior warning, as is uncontested here, that he might face revocation if he failed to comply with Commission rules.

An extremely strong presumption in favor of revocation is raised when the medallion holder has violated the FTDR for two or more years if a) he or she has received a written notice of a prior violation and a warning that another violation may be cause for revocation [Appendix III.B.1] and b) was an egregious violator in any of those years. Mr. Ennazer received a prior notice and warning of revocation on April 26, 2002 regarding the calendar year 2001. [EXBT. B.i]. The Commission alleges he egregiously violated the FTDR for 2005, driving no shifts at all. If the Commission proves an egregious failure to drive in 2005, Mr. Ennazer is confronted with an extremely strong presumption in favor of revocation.

An extremely strong presumption in favor of revocation is also raised when the medallion holder has violated the FTDR for two or more years if a) he or she has received a written notice of a prior violation and a warning that another violation may be cause for revocation [Appendix III.B.1] and b) has committed another serious violation of the law or serious misconduct. Evidence of fraud regarding Mr. Ennazer’s waybills for 2006 and 2007 would constitute a serious violation and/or misconduct. .

Finally, the Commission may revoke if it proves three violations of the FTDR within seven years, together with a written notice of a prior violation and a warning regarding revocation. If the Commission shows that the driver has not fulfilled the FTDR for three years and received a prior warning, it need not show serious misconduct or an egregious violation to establish an extremely strong presumption in favor of revocation.

⁴ Enforcement of the Full-time Driving Requirement Standards for Permit Revocation, Revised 2/26/02. Appendix A to this Decision.

An extremely strong presumption “falls just short of a conclusive presumption.” It may only be overridden “in the rarest of circumstances,” when there is “an absolutely compelling justification.” [Appendix I.B.2, Emphasis added,].

B. Expanded Charges: 2006

The Complaint states that no waybills were found for 2005 during the December 29, 2006 audit. Ms. Thigpen reiterated this claim at the hearing. Mr. Ennazer was notified in the April 26, 2002 letter of reprimand, *supra*, that improperly filled out waybills do not count as evidence of Prop. K compliance. *A fortiori*, the complete absence of waybills is evidence of egregious failure to fulfill the FTDR.

Mr. Ennazer testified that he drove full-time in 2005, and regularly submitted waybills to the guard at Yellow Cab for deposit with the company. He testified that he did not know what became of the waybills after he submitted them, i.e., why none were found in the file during Mr. Brodnax’s audit. However, Mr. Ennazer offered into evidence Yellow Cab Coop logs (“Logons/Driver Histories) to support his assertion that he drove during 2005.

The Logons reveal 79 entry dates for 2005, with several duplicate dates, for a total of approximately 76 entries. These entries fall well short of the FTDR. Mr. Ennazer also submitted Yellow Cab logons for 2006.

Ms. Jordanna Thigpen, Deputy Director of the Commission presented new evidence post-hearing resulting from her investigation of Mr. Ennazer’s driving record for 2006 and early 2007. According to Ms. Thigpen, Mr. Ennazer failed to satisfy the FTDR for 2006 and fabricated records for 2006 and early 2007.

Although the Complaint charged only 2001 and 2005 as counts, Mr. Ennazer opened the door to an investigation of 2006 with his submission of logons for that year.

Moreover, the hearing officer holds that although Mr. Ennazer was not formally charged with FTDR violations for 2006 and 2007, those years may be considered in his proposed decision.⁵ The hearing officer has authority to evaluate evidence of driving during 2006 and 2007 under the Enforcement Standards:

Relevant facts and circumstances that the Commission may weigh in determining whether or not to revoke the permit, include, but are not limited to... the extensiveness of the permit holders driving in any calendar year subsequent to the last calendar year during which it is charged that

⁵ In the event the Commission does not adopt the hearing officer’s recommendation to revoke, the Commission is not estopped from bringing a new or amended Complaint that includes 2006 and 2007, and/or new charges alleging fraud or an attempt to mislead the Commission during its investigation.

the permitholder violated the driving requirement. [Appendix A: V.3. "Weighing Facts and Circumstances"]⁶

The Commission may also weigh "[t]he magnitude of the violation of the driving requirement" in any calendar year. [Appendix V.1.]

IV. MR. ENNAZER'S DRIVING RECORD: 2006 and early 2007

Ms. Thigpen alleged "egregious fraud" on the part of Mr. Ennazer in her post-hearing brief of June 20, 2007. She went on to assert:

Mr. Ennazer was brought up on charges for failing to drive at all in Calendar Year 2005. Subsequently the Taxi Commission has determined that he has not only failed to complete his Proposition K driving requirement for Calendar Year 2006, but has committed serious fraud in Calendar Years 2006 and 2007 and likely in 2005 as well, were the waybills to be located.

Ms. Thigpen spot-checked Mr. Ennazer's waybills from 2006 and 2007 comparing them with automatically registered in and out entries at SFO for Taxi 0431 on Ground Transportation Unit ("GTU") logs. Ms. Thigpen found substantial discrepancies between the times, dates, locations on the waybills and the times and dates on the GTU printouts. Ms. Thigpen concluded that "[e]very single day that was spot-checked demonstrates egregious fraud." [EXBT H]

The hearing officer independently confirmed that each of the comparisons made by Ms. Thigpen are essentially correct as to the lack of basic correspondence between Mr. Ennazer's waybills and the GTU logs, and has arrived at the same conclusion as Ms. Thigpen with respect to the flawed credibility of Mr. Ennazer's representations regarding driving during 2006 and early 2007.

In addition, the hearing officer conducted additional checks to determine whether correspondences exist between the waybills for 2007 and the GTU logs of that year. In each case where there is an obvious lack of correspondence between Mr. Ennazer's waybills and these GTU logs, it may be assumed that the GTU logs are accurate and that any significant mismatch in the waybills substantiates waybill inaccuracy. This further supports an inference that Mr. Ennazer, or another party on his behalf, fabricated 2006 and 2007 waybills.

These additional spot check include one for January 22, 2007. The lack of correspondence for this date includes a documented trip to the San Francisco Airport (7:48p to 8:08p) that is not included on Mr. Ennazer's waybill for that date. Mr. Ennazer's waybill for 1/22/07 lists his cab at 23d and Bryant at 7:45p – an obvious conflict.

⁶ See also, Appendix, VI. Note on Scope of Rule, 5: Evidence of the permitholder's driving record prior to the seven years immediately preceding the Commission's hearing is admissible if relevant, to give the Commission the fullest possible factual perspective on the violation(s) in question. See subsection V.

Another spot check for January 26, 2007, indicates that there were five SFO entries and exits by Mr. Ennazer's taxi during his afternoon shift, only two of which are listed on his waybill for that date. This evidence also confirms probable waybill fabrication inasmuch as the GTU logs are presumed accurate to the minute.

The hearing officer has documented additional probable fabrications in selected checks between these waybills and the GTU logs for the dates of January 30, 2007, January 31, 2007, February 3, 2007, February 6, 2007, February 7, 2007, February 14, 2007, February 19, 2007, February 22, 2007, and April 2, 2007. Each of these dates reveals significant mismatches between GTU logs and Mr. Ennazer's waybills such that the fabrication of his waybills, by him or another party may be reasonably inferred.

V. MR. ENNAZER'S DRIVING RECORD: 2005

Given the discrepancies between the Logons with GTU records and waybills for 2006 and early 2007, Mr. Ennazer's testimony that he drove during 2005 is suspect. The salient fact in this case is that Mr. Brodnax, the Commission designee, reported finding no 2005 waybills at all for Mr. Ennazer at Yellow Cab. On the totality of the evidence, Mr. Ennazer cannot be credited with having met the FTDR for 2005, even counting the 76 shifts on his logs.

VI. FINDINGS

A. Failure to meet the FTDR

2006: By a preponderance of the evidence, Mr. Ennazer failed to satisfy the FTDR for 2006.

2005: By a preponderance of the evidence, Mr. Ennazer failed to satisfy the FTDR for 2005.

2001: Mr. Ennazer admitted to not satisfying the FTDR for 2001.

B. Egregious violations

2005: Given the absence of waybills and the unreliability of the logs for 2005, insufficient evidence exists to credit Mr. Ennazer with even one fourth (1/4th) the shifts for the FTDR.

2006: Given the unreliability of the waybills for 2006, insufficient evidence exists to credit Mr. Ennazer with even one fourth (1/4th) the shifts for the FTDR.

C. Serious misconduct

Given discrepancies between the waybills, the GTU records, and the logons for 2006 and early 2007, an inference is warranted, by a preponderance of the evidence, that Mr. Ennazer committed serious misconduct or and/or a violation of the law, viz. fabrication of waybills in an attempt to mislead the Commission at to his driving record.

VII. AGGRAVATION AND MITIGATION

In his defense, Mr. Ennazer testified that he drove 4-6 shifts per week in 2006 and continued that schedule into 2007 and was properly filling out waybills. The findings in this case belie that claim.

Mr. Ennazer is found to have committed three violations of the FTDR in seven years (2001-2006), establishing an extremely strong presumption for revocation.

Thus, even without the findings of egregious non-compliance in 2005 and 2006, there is an extremely strong presumption for revocation. Egregious non-compliance in any one year of two years of violating the FTDR is an independent ground for revocation. Here Mr. Ennazer is found to have violated the FTDR for three years.

In addition, the commission of serious misconduct or a serious violation of the law during any year between 2001 and 2007 provides additional grounds for revocation under the Enforcement Standards. Mr. Ennazer's attempt to mislead the Commission constitutes serious misconduct, especially as it relates to the driving requirement.⁷

Mr. Ennazer did not come close to providing "an absolutely compelling justification" for his driving record that would override the extremely strong presumption for revocation.

VIII. ADDITIONAL CHARGES: FRAUD

Although Ms. Thigpen alleged fraud in her post-hearing Brief, neither MPC 1090(a)(iv) nor MPC 1110 or 1138, nor Commission Rule 4.A.12 were formally charged in the Complaint. However, the Commission may, without violation of procedural due process, bring such charges in a new Complaint based on the evidence and findings here, or any additional evidence that the Commission discovers.

Finding

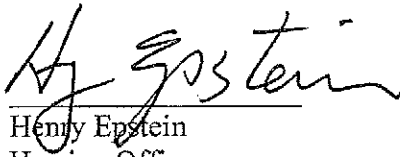
The Commission may, without prejudice, bring a new complaint that contains additional charges related to the evidence and findings in this case, including but not limited to MPC 1090(a)(iv), 1110 and 1138, and Taxicab Commission Rule 6.A.4.

IX. RECOMMENDED DECISION

⁷ Serious misconduct is relevant to i) establishing an extreme presumption for revocation (*supra*) and ii) evaluating mitigating and aggravating factors. It is not a separate formal charge. See Section VIII.

Under Section 1090 of the S.F. Municipal Police Code, the Taxicab Commission may penalize any taxicab permit issued under Article 16 for good cause, after a noticed hearing. "Good cause" includes, but is not limited to cases in which 'the permittee violated any applicable statute, ordinance, rule or regulation pertaining to the operation of licensing of the vehicles and services regulated by [Article 16], including any rules and regulations enacted by the Chief of Police pursuant to this Article."

Mr. Azzam Ennazer having been provided a noticed hearing and an opportunity to fully contest the charges against him, good cause exists to revoke his medallion under the evidence and findings contained in this decision.



Henry Epstein
Hearing Officer
San Francisco
Taxicab Commission

March 25, 2008