

Agenda: Item 8

Consideration of Hearing Officer's Recommendation in Taxi Commission v. Kingsley Njemanze, Temporary Permit [ACTION]

- Consideration of Decision to Uphold Summary Suspension for Violations of Rules 6.A.1, 6.A.4, 6.D.2, 6.D.3, Vehicle Code §§ 20001(a), 21950(a), and Penal Code § 243(d), Pending Disciplinary Complaint on Underlying Matters

1 TAXI COMMISSION

2 CITY AND COUNTY OF SAN FRANCISCO

3 ADMINSTRATIVE HEARING DECISION

4 Hearing Officer: Julie Rosenberg, Esq.

5 Hearing Date: October 3, 2008

6 #1 Dr. Carlton B. Goodlett Place, SF, CA 94121, Room 408

7 Case: Kingsley Njemanze

8 Type of Permit: Temporary A-Card Permit

9 I. Facts

10 On September 5, 2008, Mr. Njemanze was driving Cab #352 for
11 American Taxi. Mr. Njemanze is the holder of a Temporary A-Card
12 permit.¹ At approximately 11 am, while driving southbound on Polk
13 St., Mr. Njemanze made a left turn onto California St. going
14 eastbound. The Commission alleges that Mr. Njemanze hit a
15 pedestrian, David Gesek, who was lawfully in the crosswalk. A
16 witness, Alvin Xex, yelled for the cab to stop. Mr. Njemanze
17 pulled over and parked. Apparently, Mr. Njemanze and Mr. Xex
18 exchanged heated words that escalated into a major fist fight.
19 Thereafter, Mr. Njemanze left the scene, apparently called 911,
20 and then picked up a fare which he took to Hayward.

21 The police responded to a call from someone in the vicinity
22 of the accident who reported the hit at run.² While at the scene
23 the police contacted cab dispatch and requested that the driver
24

25 ¹ Mr. Njemanze was granted a Temporary A-Card permit in December 2007. The
26 permit has been continuously renewed pending approval of his application for
27 a permanent A-Card. According to the Commission, they have not yet received
28 necessary information from law enforcement which would enable the Commission
to process the application.

² Mr. Gesek indicated that someone from the bank on the corner may have made
the call.

1 of Cab #352 return to the location. The police waited one hour
2 and the cab did not return.

3 Later in the afternoon Mr. Njemanze went to SFPD Northern
4 Station to report that he was accused of being in a traffic
5 collision at California and Polk St. The hearing officer assumes
6 American Cab Company told Mr. Njemanze the police were looking
7 for him.

8 Two police reports were filed for the incidents: (1) the
9 hit and run report, (#080939883) and (2) a battery report filed
10 by Mr. Njemanze against the witness, Mr. Xex. (#080939946)

11 a. Mr. Gesek's Version of the Incident

12 At the hearing, Mr. Gesek stated that as he was walking
13 southbound in the crosswalk on California St., Mr.
14 Njemanze's cab made a left turn in front of him. The cab
15 door hit Mr. Gesek's right knee very hard. The witness, Mr.
16 Xex told Mr. Njemanze to pull over otherwise he would be
17 liable for a hit and run. Mr. Njemanze pulled over and
18 very harsh words were spoken between Mr. Njemanze and Mr.
19 Xex. Mr. Njemanze then walked around his cab and proceeded
20 to punch Mr. Xex very hard in the chest. A major brawl
21 ensued with the parties punching and wrestling each other
22 on the ground. At one point, Mr. Njemanze extricated
23 himself, got into his cab and drove off. When the police
24 arrived in response to a call about the hit and run, Mr.
25 Gesek declined the offer of an ambulance because he stated
26 he did not have the funds to pay for it.

27 b. Mr. Njemanze's Version of the Incident

28 At the hearing, Mr. Njemanze stated that he did not know if
he hit Mr. Gesek. He stated that Mr. Gesek spat on his cab.

1 When Mr. Njemanze pulled over, the witness, Mr. Xex,
2 aggressively attacked him. He thought he was being robbed
3 so he got back into the cab and left. He then called 911
4 from his cell phone. Police Report #080939883 verifies
5 that the SFPD checked Mr. Njemanze's phone and a call was
6 made to 911 at approximately 11:07 am. Mr. Njemanze stated
7 that the operator asked him about his condition. After he
8 made the call he picked up a fare and took it to Hayward.
9 He then returned to San Francisco, dropped off the cab and
10 went to Northern Station to make his report.

11
12 On 9/9/08 the Commission summarily suspended Mr.
13 Njemanze's temporary permit pursuant to Municipal Police
14 Code §1090(c).

15
16 **II. Summary Suspension**

17 MPC §1090(c) states:

18 The Chief of Police may suspend summarily any permit issued
19 under this Article pending a disciplinary hearing before
20 the Police Commission when in the opinion of said Chief of
21 Police the public health or safety requires such summary
22 suspension. Any affected permittee shall be given notice
of such suspension in writing delivered to said permittee
in person or by registered letter.

23 There are two issues in this case: (1) the hit and run
24 incident, and (2) the battery incident. Mr. Gesek credibly
25 testified that he was hit in the knee while walking in the
26 crosswalk. This testimony is supported by a statement made
27 by Mr. XEX to the SFPD. See Report #080939883.

28 Unfortunately, Mr. XEX was confused about the time of the

1 hearing (12 pm) and mistakenly arrived at 10 am.³

2 Consequently, he was unable to testify.

3 With respect to the altercation between Mr. Njemanze
4 and Mr. Xex, Mr. Gesek credibly testified that Mr. Njemanze
5 was the aggressor.

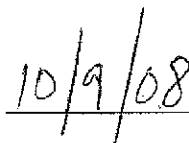
6 Mr. Njemanze's asserted belief that he was being set
7 up for a robbery is not credible. Furthermore, the fact
8 that he left the scene and drove a fare to Hayward,
9 suggests that he is culpable. Mr. Njemanze should have
10 immediately gone to the police. Mr. Njemanze stated that
11 he reported the incidents to 911, however, the transcripts
12 were not available at the hearing.

13 Given the evidence before her, the hearing officer
14 believes that Mr. Njemanze hit Mr. Gesek and that he
15 committed battery on Mr. Xex. Consequently, he poses a
16 threat to public health and safety.

17
18
19 **Recommendation:** The hearing officer recommends that the
20 summary suspension remain in effect and Mr. Njemanze not
21 receive a permanent A-Card.

22
23
24 
25 Julie Rosenberg, Esq.

26 Hearing Officer

27
28
29 
30 Date

31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

³ Mr. Xex left a hand written note in the hearing room (slipped under the door) indicating that he had waited until 10:14 am. Before leaving.