

Consent: Item C

Consideration of Hearing Officer's Recommendation in Taxi Commission v. Kalesilassie Gebresilassie, List # 6-602 [ACTION]

- Consideration to deny applicant P16 permit for not establishing, by preponderance of evidence, that he was a full-time driver in 2005 and 2006.

1 TAXI COMMISSION  
2 CITY AND COUNTY OF SAN FRANCISCO  
3 ADMINISTRATIVE HEARING DECISION

4 Hearing Officer: Julie Rosenberg, Esq.  
5 Hearing Date: January 9, 2009  
6 #1 Dr. Carlton B. Goodlett Place, SF, CA 94121, Room 416  
7 Case: Kalesilassie Gebresilassie, Qualification Hearing for a  
8 P-16 Permit (medallion).

9 **I. Application for a Medallion**

10 On September 24, 2008, Mr. Gebresilassie submitted an  
11 application to the Taxi Commission ("Commission") for a taxicab  
12 (P-16) permit also known as a medallion. See Exhibit A,  
13 Gebresilassie Application. Pursuant to Municipal Police Code  
14 ("MPC") §1079(i), a hearing was conducted on January 9, 2009 to  
15 determine Mr. Gebresilassie's eligibility for the permit.

16 **II. Full-Time Driving Requirement**

17 **A. The Law**

18 In order to qualify for a medallion, Mr. Gebresilassie must  
19 establish, *inter alia*, that he has been a full-time driver  
20 during any three calendar years from 2005 to 2008, inclusive.<sup>1</sup>  
21 Mr. Gebresilassie stated that he did not drive in 2007 because  
22 he was out of the country. Consequently, the driving requirement  
23 must be satisfied for 2005, 2006 and 2008.  
24

25  
26 <sup>1</sup> MPC §1121(b)(v) governs applications heard in 2008 and requires that an  
27 applicant be a full-time driver for three calendar years. Applications heard  
28 in 2009 require four years of full-time driving under §1121(b)(vi). Although  
this hearing was held in 2009, it was originally scheduled for October 31,  
2008 and continued because of deficiencies in the Notice. Consequently, the  
three-year driving requirement, under §1121(b)(v), applies to the case at  
hand.

1 "Full-Time Driver" is defined as follows:

2 ...[A]ny driver actually engaged in the  
3 mechanical operation and having physical  
4 charge or custody of a motor vehicle for  
5 hire which is available for hire or actually  
6 hired (i) for at least four hours during any  
7 24-hour period on at least 75 percent of the  
8 business days during the calendar year or  
9 (ii) for at least 800 hours during the  
10 calendar year.<sup>2</sup>

11 The Commission has established, by resolution, that part  
12 (i) can be satisfied by working 156 shifts.

13 Mr. Gebresilassie has the burden of proving that he drove  
14 the requisite hours. MPC § 1121(e) states:

15 Burden of Proof on Applicant; Recordkeeping  
16 by Applicant. The taxicab permit applicant  
17 shall have the burden of showing that he or  
18 she has the driving experience required to  
19 qualify for the taxicab permit. The  
20 applicant shall keep records sufficient to  
21 document his or her driving for the calendar  
22 year or years necessary to satisfy the  
23 driving requirement. (emphasis added).

24 B. Background Information

25 Mr. Gebresilassie testified that he spent a significant  
26 portion of time during the calendar years in question in  
27 Ethiopia handling a family legal matter: From approximately  
28 September 15, 2005 through June 2006 and again from December 31,  
2006 through September 2008. He stated at the hearing that his

---

<sup>2</sup> See MPC §1076(o).

1 passport was stolen. Consequently, given the evidence submitted,  
2 the hearing officer cannot verify when he was actually in the  
3 country.  
4

5 C. 2005 and 2006 Waybills and Gate Receipts: Incomplete  
6 Evidence of Driving

7 1. 2005

8 Mr. Gebresilassie testified that he drove for American  
9 Taxi from March 2005 through September 10, 2005 and  
10 complied with the full-time driving requirement. However,  
11 he was unable to produce any waybills for March, April or  
12 May and could not identify particular shifts or cabs driven  
13 during this period. Nevertheless, he did produce 54  
14 waybills for shifts driven between June 9, 2005 and  
15 September 10, 2005. See Exhibit B, 2005 Waybills and Gate  
16 Receipts. He obtained these waybills from American Taxi and  
17 they are substantiated by 54 gate receipts he received for  
18 payment of gate fees.<sup>3</sup> There are three additional gate  
19 receipts, dated June 24, 2005, July 23, 2005, and  
20 September 7, 2005, that do not correspond to any of the  
21 waybills produced.<sup>4</sup> See Exhibit B.  
22  
23  
24  
25

---

26 <sup>3</sup> A gate receipt is issued in return for the driver's payment of the company's  
27 "gate fee" which is the daily charge for use of the vehicle during a  
particular shift. See MPC §1135.1(b).

28 <sup>4</sup> The gate receipts state that they are for "American Airporter" which is a  
sister company of American Taxi. This raised the question at the hearing  
whether Mr. Gebresilassie drove a taxi (which would count towards his driving  
requirement) or a shuttle bus (which would not count). American Taxi

1           The evidence shows that he worked at least 57 shifts  
2 in 2005.

3           2.    2006

4           Mr. Gebreselassie testified that he drove for American  
5 Taxi approximately six nights a week from July through  
6 December 2006.  
7

8           As proof that he was in the country, Mr. Gebresilassie  
9 submitted a receipt for the renewal of his Ca Driver's  
10 license, dated July 24, 2006, and two receipts for the  
11 renewal of his A-Card (Taxi-driver permit), dated July 25,  
12 2006 and December 31, 2006. See Exhibit C. Although he  
13 stated that he turned his waybills into American Taxi after  
14 each shift, neither the company nor Mr. Gebresilasse could  
15 produce any waybills for 2006. He did, however, submit  
16 gate receipts for the following five days: July 24, 2006,  
17 July 26, 2006, September 7, 2006, September 8, 2006 and  
18 September 10, 2006. See Exhibit D, 2006 Gate Receipts. He  
19 alleges that the other gate receipts, which would  
20 substantiate his driving, were stolen. See below.  
21  
22  
23  
24  
25  
26

27  
28 explained, subsequent to the hearing, that American Taxi used the computer  
program written for American Airporter to issue receipts to its taxi drivers.  
Although the receipts indicate the driver is "Gebresilak," they correspond  
with Mr. Gebresilassie's waybills and will therefore be accepted.

1           3.    Missing Waybills & Gate Receipts for 2005/2006

2           Mr. Gebresilassie testified that American Taxi  
3 destroyed many of his waybills and gate receipts for 2005  
4 and 2006, and therefore he could not submit them with his  
5 application. He also stated that gate receipts were stolen  
6 from his apartment.  
7

8           Mr. Gebresilassie alleged that the company destroyed  
9 the waybills because it illegally allowed two vehicles  
10 (presumably one driven by Mr. Gebresilassie) to drive under  
11 one medallion at the same time. Mr. Paul Madgwick, a  
12 manager of American Taxi, flatly denied that the company  
13 engaged in such conduct.<sup>5</sup> He stated that after an exhaustive  
14 search of the company's waybills for 2005 and 2006, only 54  
15 waybills could be located for 2005. Mr. Madgwick testified  
16 that it was his belief that Mr. Gebresilassie did not work  
17 between September 10, 2005 and September 2008.<sup>6</sup> He further  
18 stated that it was in his company's interest for Mr.  
19 Gebresilassie to qualify for a medallion because Mr.  
20 Madgwick presumed it would be driven under American Taxi.  
21  
22  
23

24 <sup>5</sup> Mr. Madgwick was hired in November 2006 and first met Mr. Gebresilassie in September  
25 2008. It is troubling to the hearing officer that the owner of American Taxi, Mr.  
26 Phillip Achilles, did not testify at the hearing. As the owner and manager, Mr.  
27 Achilles would have first hand knowledge about the extent of Mr. Gebresilassie's  
driving experience. Furthermore, Mr. Gebresilassie alleged that Mr. Achilles stole  
the gate receipts, therefore he would be the best person to answer that charge.

28 <sup>6</sup> Mr. Madgwick did not provide an explanation for the five gate receipts Mr.  
Gebresilassie produced for 2006. In fact, Mr. Madgwick was not familiar with  
the receipts and was unsure if they were issued to taxi drivers (as opposed  
to shuttle bus drivers).

1 Gate receipts would corroborate Mr. Gebresilassie's  
2 claim that he drove; however, Mr. Gebresilassie stated that  
3 many of the gate receipts for 2005 and 2006 were stolen.  
4 According to Mr. Gebresilassie, they were initially stolen  
5 from his apartment, but he was able to find approximately  
6 100 receipts in storage. See Exhibit E, Gebresilassie  
7 Statement. When he brought these receipts to American Taxi  
8 in September 2008 to retrieve his waybills(it was necessary  
9 to submit a gate receipt in order to get a waybill), he  
10 started to make copies of the receipts but the copy machine  
11 broke down. Thereafter, Mr. Phillip Achilles, the owner of  
12 American Taxi, offered to make copies on a machine  
13 upstairs. However, when he returned several hours later,  
14 Mr. Achilles did not have the receipts. No explanation was  
15 provided as to what transpired that day and what happened  
16 to receipts. Consequently, Mr. Gebresilassie could not  
17 produce the gate receipts to substantiate his driving.

18  
19  
20  
21 D. Tax Returns as Insufficient Evidence that Mr.  
22 Gebresilassie Drove

23  
24 1. 2005

25 Mr. Gebresilassie submitted his 2005 income tax return  
26 to prove that he drove the requisite number of hours for  
27 that year. See Exhibit F, 2005 Income Tax Return. The  
28 return indicates that he worked for "American Cab Co." and

1 shows a gross income of \$28,852 with gas costs of \$3,467  
2 and gate payments of \$17,600. Taking into account a few  
3 other, minor deductions, this would leave him with an  
4 adjusted gross income of \$5,550 (as indicated on the  
5 return). Mr. Gebresilassie states that the amount of the  
6 gate payments paid (as declared on the income tax form)  
7 would establish that he drove about 170 shifts in 2005. See  
8 Exhibit E.  
9

10  
11 2. 2006

12 Mr. Gebresilassie testified at the hearing that he did  
13 not file a 2006 tax return because he left the country in  
14 December 2006. Consequently he did not submit a 2006 return  
15 in conjunction with his application for the medallion.  
16 However, the day after the hearing, he apparently filed an  
17 amended 2006 tax return and mailed it on January 15, 2009,  
18 along with other supporting documents, to the hearing  
19 officer. See Exhibit G, 2006 Income Tax Return. This return  
20 included Form 1040X which is the "Amended U.S. Tax Return."  
21 According to the IRS, the purpose of the form is to correct  
22 previously filed 1040 forms. See Exhibit H, Instruction  
23 Form for 1040X. Although he testified that he did not file  
24 a 2006 return, the submittal of an amended form would  
25 suggest that he had, in fact, originally filed a return in  
26 2006 and was now amending it. Included with the amended  
27  
28



1 form was a 1040 form dated January 10, 2009. It is not  
2 clear to the hearing officer if he filed a 2006 return  
3 prior to January 10, 2009.  
4

5 The return states that he worked for "American Cab  
6 Co." and shows a gross income of \$23,140 with gas costs of  
7 \$2,560 and gate payments of \$12,000. According to Mr.  
8 Gebresilassie, the gate payments reported on the tax  
9 returns show that he drove approximately 120 shifts in  
10 2006.  
11

12 E. Witnesses and Public Support for Mr. Gebresilassie

13 Many letters were submitted which attest to Mr.  
14 Gebresilassie's driving experience, honesty and dedication to  
15 the taxi profession. See Exhibit I, Letters of Support.  
16 Approximately 15 people testified at the hearing in support of  
17 granting him a medallion. These witnesses included cab drivers  
18 for American Taxi, Yellow Cab, Luxor and National as well as the  
19 former mayor of El Cerrito, Mark Friedman. Many of them  
20 testified that Mr. Gebresilassie is honest, hardworking and has  
21 been driving a cab for a number of years.  
22

23  
24 Many of the drivers stated that the burden is on American  
25 Taxi to maintain the waybills and that the system is unfair  
26 because drivers are required to turn in their waybills at the  
27 end of the shift but do not have copies. A number of specific  
28

1 allegations were made that American Taxi is a corrupt  
2 organization.

3 F. Hearing Officer Review of the Evidence for 2005 & 2006  
4

5 The burden of keeping sufficient records to document his  
6 driving is on Mr. Gebresilassie. He provided very little  
7 evidence that he drove in 2005 and 2006: (1) 54 waybills and 57  
8 gate receipts for 2005 and, (2) five gate receipts for 2006. The  
9 hearing officer cannot accept income tax returns as a substitute  
10 for waybills to establish compliance with the full-time driving  
11 requirement. Regardless of the income reported, the returns do  
12 not show days, hours or shifts worked. Furthermore, the gate  
13 fees, which are deducted on both the 2005 and 2006 returns are  
14 not corroborated by specific gate receipts.  
15

16  
17 The 2006 amended return, filed the day after the hearing,  
18 suggests that he originally did not report all of his income.

19 Mr. Gebresilassie was out of the country for a significant  
20 amount of time between September 2005 and September 2008. He  
21 avers that evidence supporting his driving record was destroyed  
22 stolen or taken from him on at least three different occasions:  
23 (1) destruction of the waybills by American Taxi, (2) theft of  
24 the gate receipts from his apartment, and (3) Mr. Achille's  
25 failure to return gate receipts. Additionally, his entry and  
26 exit times into the U.S. could not be verified because his  
27 passport was stolen.  
28

1           Despite the strong public support in favor of Mr.  
2 Gebresilassie, the hearing officer must have documentary  
3 evidence, such as waybills, that he drove during calendar years  
4 2005 and 2006.  
5

- 6
- 7       • Finding: Mr. Gebresilassie's Income Tax Returns do not  
8       establish compliance with the full-time driving requirement  
9       in 2005 and 2006.
- 10
- 11       • Finding: The approximate number of hours driven in 2005 as  
12       calculated by considering all available waybills and gate  
13       receipts is 207.75.
- 14
- 15       • Finding: The approximate number of hours driven in 2006 as  
16       calculated by considering the five gate receipts is 50.<sup>7</sup>
- 17
- 18       • Finding: Mr. Gebresilassie has not established, by a  
19       preponderance of the evidence, that he complied with the  
20       full-time driving requirement for 2005 and 2006.

21       G.    2008

22       On August 22, 2008, the Commission mailed Mr. Gebresilassie  
23 a letter indicating that he was eligible to complete an  
24 application for a medallion. On September 15, 2008, he went to  
25 the Commission office to fill out the necessary paperwork. From  
26 September 16, 2008 through December 31, 2008, Mr. Gebresilassie  
27

28  

---

<sup>7</sup> The hearing officer is giving Mr. Gebresilassie the benefit of a ten-hour shift.

1 drove 84 shifts as evidenced by the 84 waybills submitted. See  
2 Exhibit J, 2008 Waybills. The hearing officer calculates that  
3 Mr. Gebresilassie drove approximately 797 hours. This deficiency  
4 is de minimis and therefore the hearing officer will credit Mr.  
5 Gebresilassie.  
6

- 7 • Finding: Mr. Gebresilassie has established, by a  
8 preponderance of the evidence, that he complied with the  
9 full-time driving requirement for 2008.  
10

### 11 III. Summary Finding

- 12 • Mr. Gebresilassie did not establish, by a preponderance of  
13 the evidence, that he was a full-time driver for three  
14 calendar years as required by MPC §1121(b)(v).  
15

### 16 IV. Recommendation

17 Mr. Gebresilassie has not established, by a preponderance  
18 of the evidence, that he was a full-time driver in 2005 and  
19 2006. Given the foregoing, the hearing officer recommends that  
20 his application for a medallion be denied.  
21  
22  
23  
24

25 Julie Rosenberg

26 Julie Rosenberg, Esq.

27 Hearing Officer  
28

2/2/09

Date

February 2, 2009

Exhibits are provided separately from this packet for public viewing.