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TRANSCRIPT OF THE
CITY OF NEW YORK
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
PUBLIC HEARING
ON PROPOSED RULE REGARDING PENALTIES
FOR OFFENSES ADJUDICATED BY
ENVIRONMENTAL CONTROL BOARD

MONDAY, MAY 16, 2016

66 JOHN STREET

10TH FLOOR, CONFERENCE ROOM

BOROUGH OF MANHATTAN

10:33 a.m.

Reported By:

Jennifer Cassella

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HEARING CONVENED AT 10:33 a.m.

PRESENT:

Simone Salloum, OATH

Mark H. Leeds, ECB, OATH

Elizabeth Nolan, OATH

Denis Brogan, OATH

Diana Haines, OATH

Amy Slifka, OATH

Helaine Balsam, OATH

Tynia Richard, OATH

Peter Schulman, OATH

Peter M. Mazer, Metropolitan Taxicab Board of Trade

Elana Soleimani, Jack Jaffa & Associates

Dawn Falco, Jack Jaffa & Associates

Gabrielle Klein, Jack Jaffa & Associates

Carol Sigmond, NYCLA

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TESTIMONY GIVEN BY THE FOLLOWING INDIVIDUALS:

Peter M. Mazer, Metropolitan Taxicab Board of Trade

Carol Sigmond, NYCLA

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MS. SALLOUM: Good morning. I'm Simone Salloum, Assistant General Counsel of the New York City Office of Administrative Trials and Hearings, OATH. Thank you for attending OATH's hearing this morning.

OATH is conducting this hearing in accordance with the requirements of the City Administrative Procedure Act. It's purpose is to receive comments from you on OATH's two proposed rules that would, one, modify various adjudication procedures at OATH and allow the OATH Hearings Division to adjudicate summonses formerly heard at the Environmental Control Board and the Taxi and Limousine Tribunal; and two, repeal the OATH Environmental Control Board Air Penalty Schedule.

The proposed rules were published in the City Record on April 15, 2016. OATH e-mailed the rules to the Speaker of the Council, each Member of the Council, all Community Board Managers, news media and civic organizations. OATH posted the

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proposed rules on its website and also e-mailed the rules to New York City Rules for posting on its website.

You may present an oral statement or submit written comments concerning the proposed rules. Please sign in at the entrance of the room if you wish to present an oral statement this morning. We have been accepting written comments on the proposed rules since its publication in the City Record and will continue do so through the end of this hearing.

When you speak, please state your name and affiliation, and speak slowly and clearly so that your statement can be accurately recorded. We also ask that you limit your statement to three minutes, and if you could also just let us know which rule you're commenting on, that would also be appreciated.

OATH will make available a copy of all written comments received, together with the hearing transcript, during normal business hours at the 10th Floor Conference

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2 Room, located at 66 John Street, New York,
3 New York on May 26, 2016. OATH will
4 carefully consider all of the comments that
5 it receives today and all written comments
6 received through May 16, 2016. OATH will
7 issue final rules following that
8 consideration. Thank you.

9 I think first we have Peter Mazer.
10 Feel free to come up.

11 MR. MAZER: Good morning. My name
12 is Peter Mazer and I am General Counsel to
13 the Metropolitan Taxicab Board of Trade. I
14 represent taxicab drivers and owners before
15 the OATH Hearings Division, both the Taxi
16 Tribunal and ECB, and I also represent
17 respondents at the OATH Trials Division.

18 I commend OATH for the proposed
19 rules that are the subject of today's
20 hearings and urge their immediate passage.
21 These proposed changes will professionalize
22 the Tribunal and will help to ensure that
23 respondents receive fair hearings.

24 This morning I would like to address
25 two issues that may be unique to the Taxi

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1 Tribunal and which I believe require some
2 attention. Certain Taxi and Limousine
3 Commission rule violations carry penalties
4 which include discretionary license
5 suspension or revocation. Such penalties
6 are immediately imposed upon a default.
7 Two that come to mind are suspensions for
8 failure to inspect a taxicab or failure to
9 answer a notice to correct a defect, but
10 there are others that affect both taxicab
11 owners and drivers.
12

13 Because the TLC has the ability to
14 immediately prevent a medallion taxicab or
15 street hail livery vehicle but not a black
16 car or a car service vehicle from operating
17 when a suspension is imposed, a suspension
18 upon a default results in the taxicab
19 medallion owner or driver immediately being
20 prevented from working, even if the
21 suspension or revocation is imposed in
22 error. Not a day goes by where a driver or
23 owner is not suspended in error. As for an
24 example, where the TLC and respondent enter
25 into a settlement and yet the OATH Hearing

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2 Officer defaults the summons. Since OATH
3 Hearing Officers are instructed to impose
4 the maximum permitted penalty, a suspension
5 or revocation is imposed even in cases
6 where the vehicle was inspected, the notice
7 was answered, or the underlying violation
8 has been cured. I do not believe this
9 occurs in context of health or ECB cases.
10 Restaurants are not shut down upon an ECB
11 default, however, taxicabs are put out of
12 service every day.

13 The solution is simple. A default
14 suspension or revocation can be stayed for
15 a few days so that if it is imposed in
16 error, the matter can be rectified. Most
17 errors are corrected in a day or two, but
18 the driver or owner is typically deprived
19 of his or her livelihood until the error is
20 corrected. This is not acceptable. These
21 are not isolated instances, but daily
22 occurrences, costing the industry millions
23 of dollars annually. I urge OATH to adopt
24 this relatively easy fix of simply staying
25 suspension or revocation default penalties

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for a few days in order that errors can be fixed.

A second point I would like raise concerns consumer complaints. OATH rules, indeed the Administrative Code, permit a complainant at the Taxi Tribunal to appear by telephone or even by affidavit. However, at a recent public TLC Commission meeting, the TLC Chair acknowledged that due process mandates that a complainant be present at the hearing upon the request of the respondent. I strongly recommend that OATH enact changes which reflect the intention of the agency head, that a respondent be permitted to request the complainant be present at the hearing and that a Hearing Officer be permitted to direct such attendance, where the facts and circumstance warrant. While the Administrative Code permits a hearing to go forward by telephone conference or affidavit, the TLC and OATH can agree to follow the direction of the TLC Chair and mandate the appearance of a witness at a

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hearing where the facts and circumstances warrant.

Well, I thank you. If have you any questions, I'd be happy to answer them.

MS. SALLOUM: Thank you.

I think next up we have Dawn Falco. Do you wish to testify?

MS. FALCO: Actually, at this time I would like to withdraw my request. Do I still have an opportunity to submit anything via writing?

MS. SALLOUM: I think by the end of close of business today.

MS. FALCO: The end of today. Okay. Thank you so much.

MS. SALLOUM: Elana Soleimeni.

MS. SOLEIMENI: I'm going to also waive it and submit something by writing by the end of the day.

MS. SALLOUM: And then Gabrielle Klein.

MS. KLEIN: The same.

MS. SALLOUM: Does anyone else wish to testify?

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(No response.)

(Whereupon, a recess is taken.)

MS. SALLOUM: Ms. Sigmond, are you ready to testify?

MS. SIGMOND: Yes.

MS. SALLOUM: If you could, just state your name and affiliation.

MS. SIGMOND: Good morning. I'm Carol Sigmond. I'm the President of New York County Lawyers Association and I'm here to testify on behalf of the Association. I am also a partner at Cohen, Seglias, Pallas, Greenhall & Furman, 45 Broadway, New York, New York. I'm here today to address OATH on behalf of the Association and our task force on administrative law reform.

NYCLA has been studying these issues since 2006 and we have issued approximately six reports, the most comprehensive being dated December 22, 2009 and available at our website, nycla.org. Our task force Chaired by the Honorable Margaret J. Finerty and Susan B. Lindenauer

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2 has focused on preparing reports and making
3 recommendations to improve the
4 administration of justice in what is often
5 called the fourth branch of government, and
6 I thank you for giving me a few minutes of
7 your time.

8 We support unequivocally, OATH's
9 adoption of the proposed modifications to
10 the various adjudication procedures and to
11 allow the OATH Hearings Division to
12 adjudicate summonses formerly heard at the
13 Environmental Control Board and the Taxi
14 and Limousine Tribunal. These changes
15 reflect the New York County Lawyers
16 Association policies to facilitate and
17 further create meaningful due process and
18 reforms in the law which we believe are in
19 the public interest, and we applaud and
20 support OATH's efforts.

21 The OATH proposed changes, which
22 include clarifying the powers and duties of
23 hearing officers, a single summons process,
24 homogenized panels and generally uniformed
25 rules to govern hearings at the

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Environmental Control Board, is a big step in the right direction. We note that future improvements, some of which are outside the scope of OATH's rule-making authority, should include the creation of uniformed appeals process, among other things.

In the meantime, our task force will continue to study this area of the law and explore new solutions. We look forward to a continued dialogue with OATH on these issues and welcome engagement with other government agencies and stakeholders essential to this process. Thank you.

MS. SALLOUM: Thank you,
Ms. Sigmond.

MS. SIGMOND: Do you have any questions?

MS. SALLOUM: No.

MS. SIGMOND: Thank you.

(Whereupon, a recess is taken.)

MS. SALLOUM: It's 12:00 p.m., and this concludes the public hearing.

(Time noted: 12:00 p.m.)

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