

**STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION**



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ERRATA

DOCKET NUMBER 0411-AV-09-T

IN THE MATTER OF THE RECONSIDERATION OF THE FINAL DECISION IN THE APPLICATION OF PATRICK E. FOLTZ DBA PORT CITY TAXI FOR AUTHORIZATION TO OPERATE ADDITIONAL TAXICAB SERVICE, WITHIN AND TO AND FROM THE ADDITIONAL TOWN OF WATERFORD, AND FOR TWO (2) ADDITIONAL TAXICABS WITHIN AND TO AND FROM THE COMBINED TERRITORY OF GROTON, MONTVILLE, NEW LONDON AND WATERFORD.

AMENDED FINAL DECISION AFTER APPEAL

April 20, 2009.

I. INTRODUCTION

An administrative hearing was held on July 12, 2005, October 7, 2005, November 14, 2005 and January 6, 2006 in accordance with Connecticut General Statutes Section 13b-97(a) on the application of Patrick E. Foltz d.b.a. Port City Taxi, assigned Docket Number 0411-AV-09-T.

On March 13, 2006, a Final Decision was issued by the Department of Transportation (hereinafter "department") granting the applicant two (2) additional motor vehicles in taxicab service and granting the additional territory of Waterford.

On March 28, 2006, Mary Alice Moore Leonhardt, counsel for the intervenors in the original matter, filed a Petition for Reconsideration of the Final Decision on behalf of the intervenors.

On April 10, 2006, the department granted reconsideration of the Final Decision limited to the following four issues:

1. Did the hearing officer make an error of law by incorrectly interpreting the public convenience and necessity element of Section 13b-97(a) of the Connecticut General Statutes?
2. How does the revocation of the applicant's temporary authority impact the hearing officer's finding of the need for additional motor vehicles?
3. Do the provisions of Section 13b-96-6 of the Regulations of Connecticut State Agencies grant the Commissioner any discretion with respect to a false statement or misrepresentation made on an application?
4. Did the hearing officer erroneously consider work performed under contract for any federal, state or municipal agency in determining whether public demand is being met in an application for other than governmental contract work contrary to the provisions of subsection (b) of Section 13b-96-36 of the Regulations of Connecticut State agencies?

II. APPEARANCES

The applicant, Patrick E. Foltz dba Port City Taxi (hereinafter "Port City") was represented by Edward Moukawsher, Esq. whose law office has a mailing address of 48 West Elderkin Avenue, Groton, CT 06340.

Mary Alice Moore Leonhardt, Esq. represented the petitioners (intervenors in the initial matter) Yellow Cab Company of New London & Groton, Inc. (hereinafter "Yellow Cab") and Union Lyceum Taxi Co., Inc. Ms. Leonhardt's law office has a mailing address of Law Office of Mary Alice Moore Leonhardt, 67 Russ Street, Third Floor, Hartford, CT 06106.

III. ORAL ARGUMENT

On December 18, 2006, oral argument was held at the Department of Transportation and counsel for the applicant and intervenors made their arguments in support of their briefs. Based on a review of the full record and the final decision, the following determinations are made with respect to the limited four issues previously listed above.

1. Did the hearing officer make an error of law by incorrectly interpreting the public convenience and necessity element of Section 13b-97 of the Connecticut General Statutes?

The department has consistently ruled that where the existing providers of taxicab service failed to be on time or were consistently providing unacceptable service to the public, that the public convenience and necessity required new or additional service in the area of concern. See *In Re: The Application of Rosalia Maffei d.b.a. Maffei's Taxi Service*, Final Decision, Department of Transportation, Newington, Connecticut, Docket No. 0405-AV-04-T, (February 18, 2005); *In Re: The Application of Heritage Livery Service, Inc. d.b.a. Heritage Taxi*, Final Decision, Department of Transportation, Docket No. 0403-AV-02-T, (February 1, 2005); *In Re: The Application of Aloha Taxi, LLC*, Final Decision, Department of Transportation, Newington, Connecticut, Docket No. 0309-AV-17-T, (September 17, 2004); *In Re: Application of Segundo Aguayza d.b.a. Ecuamex Taxi*, Final Decision, Department of Transportation, Newington, Connecticut, Docket No. 0308-AV-12-T, (December 23, 2003).

The witnesses who testified indicated that they had problems with the existing services that were unclean or untimely or provided insufficient service and that they preferred to take the applicant's taxicabs. The record contains substantial evidence to support this conclusion by the hearing officer. The hearing officer did not make an error of law or incorrectly interpret the public convenience and necessity element of Connecticut General Statutes Section 13b-97.

Moreover, with regard to the intervenor's argument that all of the taxicab companies in the territory requested must necessarily have all of their vehicles operating at full capacity before additional vehicles can be authorized, Connecticut General Statutes Section 13b-97(a) provides in pertinent part:

"...[W]ith respect to any application filed under the provisions of this subsection, the department shall not consider as a ground for denial of a request for an increase in the number of taxicabs to be operated within the territory specified, any number of taxicabs not currently registered with the Commissioner of Motor Vehicles at the time of filing of such application or at the time of any hearing held thereon."

The intervenors assert that not enough trip sheets were produced by the applicant to support a grant of authority. They cited several cases in support of their claim. *In Re: The Application of Patrick E. Foltz d.b.a. Port City Taxi*, Final Decision, Department of Transportation, Newington, Connecticut, Docket Number 0110-AS-37-T (August 30, 2002); *In Re: The Application of Fairfield County Transportation, LLC.*, Final Decision, Department of Transportation, Newington, Connecticut, Docket Number 9906-N-20-T (August 8, 2000); *In Re: The Application of Town Taxi Company*, Final Decision, Department of Transportation, Newington, Connecticut, Docket Number 010-AV-31-T (June 21, 2001); *In Re: Yellow Cab Company of New London & Groton*, Final Decision, Department of Transportation, Newington, Connecticut, Docket Number 0105-AS-14-T (May 17, 2002) and *In Re: The Application of Lagos Taxi*, Final Decision, Department of Transportation, Newington, Connecticut, Docket Number 0204-N-13-T, (December 3, 2002). Further, the petitioners argue that the applicant's practice of referring requests for service to other operators does not show the need for the applicant to receive additional authority.

With regard to the assertion that not enough trip sheets were provided as to enable the hearing officer to grant the application, there is no specific statutory requirement that the applicant produce a certain quantity or a certain number of trip sheets. The applicant has the burden to produce sufficient evidence so as to allow the hearing officer to make a determination of public convenience and necessity. Whether there are enough trip sheets provided to prove public convenience and necessity to support a grant is within the hearing officer's province. The cases cited by the intervenors do not speak to a specific volume of trip sheets that must be produced in order to have an application granted. In this matter, the hearing officer made the decision on the basis of the evidence of record and decided that there was substantial evidence to grant the application. A review of the record supports the hearing officer's decision. See *In Re: The Application of Rosalia Maffei d.b.a. Maffei's Taxi Service*, supra; *In Re: The Application of Heritage Livery Service, Inc. d.b.a. Heritage Taxi*, supra; *In Re: The Application of Aloha Taxi, LLC*, supra; *In Re: Application of Segundo Aguayza d.b.a. Ecuamex Taxi*, supra.

The intervenors also argue that the adjudicator made his final decision in reliance on his determination that referred calls show need. However, the record is clear that the hearing officer relied on other evidence in addition to referred calls. The hearing officer had the testimony of two witnesses and trip sheets submitted by the applicant. The witness testimony in conjunction with the documentary evidence supports the adjudicator's determination on public convenience and necessity.

Accordingly, the hearing officer did not make an error of law in his interpretation of the public convenience and necessity element of Connecticut General Statutes Section 13b-97.

2. How does the revocation of the applicant's temporary authority impact the hearing officer's finding of the need for additional motor vehicles?

The revocation of the applicant's temporary authority is not relevant to the decision made by the hearing officer in this case. The hearing officer rendered his decision based on the evidence of public convenience and necessity without taking into consideration the work provided by the applicant under contract with any federal, state or municipal agency. Final Decision page 6.

The temporary authority is separate and distinct from the application for two additional vehicles and the additional territory applied for in this particular docket. Connecticut General Statutes Section 13b-97 does not contemplate the contract work in the determination of the need for additional vehicles.

Accordingly, the revocation of the applicant's temporary authority has no impact on the hearing officer's finding of the need for additional motor vehicles.

3. Do the provisions of Section 13b-96-6 of the Regulations of Connecticut State Agencies grant the Commissioner any discretion with respect to a false statement or misrepresentation made on an application?

Regulations of Connecticut State Agencies Section 13b-17-144a delineates the powers and duties of the presiding officer, which includes "make all necessary or appropriate rulings with regard to evidentiary matters". This necessarily includes making determinations of credibility. In this matter, the hearing officer had the opportunity to observe the witness assess his demeanor. The adjudicator was had the opportunity to make a determination as to whether Foltz was truthful in his testimony regarding his completing the application. In this matter, the adjudicator found that the misrepresentation was not knowingly or intentionally made. The adjudicator believed the witness and relied on the witness's testimony.

Section 13b-96-6(a) of the Regulations of Connecticut State Agencies states that "No certificate shall be granted to any applicant who makes a false statement or representation to the commissioner in its application."

Section 13b-96-6 of the Regulations of Connecticut State Agencies has been interpreted by the department to require intent to mislead or defraud with regard to information omitted from an application. In this case, Mr. Foltz testified that he thought that the application he submitted required him to only list motor vehicle accidents in which he was the cause. Therefore, he did not list the two accidents that he did not cause. In assessing Mr. Foltz's credibility the hearing officer did not find any intent to defraud the department by the omission of the motor vehicle accidents.

The hearing officer wrote in the final decision that he would not have denied the applicant additional taxicab authority for being involved in the two minor motor vehicle accidents which were not the applicant's fault. Mr. Foltz's failure to disclose this information should not bar the applicant from receiving taxicab authority.

The other issue is whether Mr. Foltz is precluded from receiving a certificate to operate additional taxicabs because of his failure to disclose a recent conviction for breach of peace on his application. Mr. Foltz testified that he thought he did not receive a conviction and that he did not understand that a "conditional discharge" was a conviction.

Therefore, he did not have the intent to deceive the department when he omitted this information from his application.

The hearing officer found Mr. Foltz to be credible and stated in the decision that even if Mr. Foltz had disclosed the fact that he was convicted of breach of peace, he would not have denied the application on the grounds of suitability. The omission of the accidents and the breach of peace conviction therefore did not materially affect the outcome of the case.

Accordingly, the provisions of Section 13b-96-6 and Section 13b-17-144a of the Regulations of Connecticut State Agencies grant the Commissioner discretion with respect to a false statement or misrepresentation made on an application.

4. Did the hearing officer erroneously consider work performed under contract for any federal, state or municipal agency in determining whether public demand is being met in an application for other than governmental contract work contrary to the provisions of subsection (b) of Section 13b-96-36 of the Regulations of Connecticut State Agencies?

The hearing officer specifically stated in the Final Decision that he did not consider work performed under contract in granting the application for two (2) additional vehicles. Final Decision page 6. A review of the record shows that there is substantial evidence supporting the adjudicator's statement in the Final Decision that he did not consider evidence of work performed under contract in his determination of public convenience and necessity.

As stated in Paragraph One of this Reconsideration, the evidence presented included trip sheets of the volume of taxicab work being performed by the applicant, work being referred and witness testimony. Although the hearing officer allowed evidence of contract work into the record, he addressed the fact that he did not rely on said contract work to reach his conclusion.

Accordingly, the hearing officer did not erroneously consider work performed under contract for any federal, state or municipal agency in determining whether public demand is being met in an application for other than governmental contract work, in accordance to the provisions of subsection (b) of Section 13b-96-36 of the Regulations of Connecticut State Agencies.

IV. APPEAL TO THE SUPERIOR COURT

The instant matter was appealed to the superior court in *Yellow Cab Co. of New London & Groton, Inc. and Union Lyceum Taxi Company v. Connecticut Department of Transportation et al.* in Docket No. CV 07-401358S on April 20, 2007. Honorable Henry S. Cohn heard the matter rendered a decision February 5, 2009. Judge Cohn sustained the appeal based on an error of law. Pursuant to court order, the department issues this amended final decision.

V. CORRECTED PERMIT

It has been brought to the attention of the Department that the Amended Final Decision After Appeal dated April 2, 2009 contained an incorrect listing of the certificate for Port City Taxi. This decision corrects that error and reissues taxicab Certificate Number 1151 to reflect that Port City Taxi has a total of four (4) vehicles.

VI. ORDER

It is hereby ordered that the grant of authority issued in *The Final Decision In The Application Of Patrick E. Foltz d.b.a. Port City Taxi For Authorization To Operate Additional Taxicab Service, Within And To And From The Additional Town Of Waterford, And For Two (2) Additional Taxicabs Within And To And From The Combined Territory Of Groton, Montville, New London And Waterford Final Decision in the Application of Patrick E. Foltz d.b.a. Port City Taxi*, Department of Transportation Final Decision, Docket No. 0411-AV-09-T (March 16, 2006), and affirmed herein, *to wit.*: the additional two taxicabs and the expansion into the town of Waterford, is hereby revoked and Certificate No. 1151, standing in the name of Patrick E. Foltz d.b.a. Port City Taxi is hereby amended and reissued as follows:

TAXICAB CERTIFICATE NO. 1151
FOR THE OPERATION OF MOTOR VEHICLES IN TAXICAB SERVICE

Patrick E. Foltz d.b.a. Port City Taxi is hereby permitted and authorized to operate the following:

1. **TWO (2)** motor vehicles in Taxicab Service, within and to and from **Groton, Montville, and New London** to all points in Connecticut.
2. **TWO (2)** motor vehicles in Taxicab Service, within and to and from **Groton, New London and Waterford**.

RESTRICTIONS:

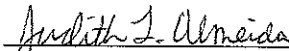
This Certificate may not be sold or transferred until it has been operational, *i.e.*, a vehicle registered with taxicab plates thereunder, for not less than twenty-four (24) consecutive months.

This Certificate shall remain in effect until it is amended, suspended, or revoked by the Department. Failure of the Certificate holder to maintain proper insurance and/or comply with all pertinent motor vehicle laws and other State statutes and/or rules, regulations, and orders of the Department shall be considered sufficient cause to amend, suspend, or revoke this Certificate.

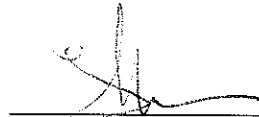
This Certificate is transferable only with the approval of the Department and is issued subject to compliance by the holder hereof with all motor vehicle laws of the State of Connecticut, and with such rules, regulations, and orders as this Department may from time to time prescribe.

Dated in Newington, Connecticut this 20th day of April, 2009.

CONNECTICUT DEPARTMENT OF TRANSPORTATION



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