



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



2800 BERLIN TURNPIKE, P.O. BOX 317546
NEWINGTON, CONNECTICUT 06131-7546

Phone:

(860) 594-2875

DOCKET NO. 0805-N-99-T

RE: APPLICATION OF HENRY JEAN-CHARLES D/B/A HENRY'S TAXI TO
OPERATE ONE (1) MOTOR VEHICLE, IN TAXICAB SERVICE, WITHIN
AND TO AND FROM NORWALK TO ALL POINTS IN CONNECTICUT.

FINAL DECISION

November 4, 2009

I. INTRODUCTION

A. Applicant's Proposal

By application filed on May 28, 2008, with the Department of Transportation (hereinafter "department"), pursuant to Section 13b-97 of the Connecticut General Statutes as amended, Henry Jean-Charles d/b/a Henry's Taxi (hereinafter "applicant") of 5 Luffbery Avenue, Norwalk, Connecticut, seeks authorization to operate one (1) motor vehicle, in taxicab service, within and to and from Norwalk, Connecticut.

B. Hearing

Pursuant to Section 13b-97(a) of the General Statutes, as amended, a public hearing on this application was held at the administrative offices of the Department in Newington, Connecticut, on October 14, 2009.

Notice of the application and of the hearing to be held thereon was given to the applicant and to such other parties as required by Section 13b-97(a) of the General Statutes, as amended. Notice to the public was given by publication on the department website at www.ct.gov.

The hearing on this matter was conducted by a hearing officer, designated by the Commissioner of Transportation, pursuant to General Statutes Section 13b-17.

C. Appearances

The applicant appeared through Henry Jean-Charles and was represented by Kevin E. Dehgan, Esq., whose mailing address is 59 Elm Street, Suite 200, New Haven, Connecticut. The applicant's mailing address is 5 Luffbery Avenue, Norwalk, Connecticut.

Eveready Norwalk, Inc. (hereinafter "Eveready") holder of taxicab certificate number 1186, appeared in opposition to the application. Eveready was represented by its owner, Vito Bochicchio, without counsel. Eveready Norwalk has a mailing address of 130 Lenox Avenue, Unit 32, Stamford, Connecticut. Eveready Norwalk Taxi filed for party status which was denied, however, intervenor status and was granted on the issues of suitability and financial wherewithal. Eveready operates taxicabs within and to and from Norwalk.

Norwalk Taxi, Inc. (hereinafter "Norwalk Taxi") holder of taxicab certificate number 1119, appeared through its owner Rock Shtufaj and was represented by Charles S. Harris of the law firm Harris, Harris & Schmid whose mailing address is 11 Belden Avenue, Second Floor, Norwalk, Connecticut. Norwalk Taxi has a mailing address of 163 Connecticut Avenue, Norwalk, Connecticut. Norwalk Taxi filed for intervenor status and was granted intervenor status the issues of suitability and financial wherewithal. Norwalk Taxi operates taxicabs within and to and from Norwalk. Norwalk Taxi's representative left

the hearing prior to the end of the hearing without leave to do so. Based on Regulations of Connecticut State Agencies Section 13b-17-111a, therefore, Norwalk Taxi's participation was limited.

The intervenors were afforded status in the interest of justice. Eveready Norwalk has an application pending for the same territory as the instant matter, therefore, any testimony offered on the behalf of Eveready Norwalk was given little weight.

D. Administrative Notice

Administrative Notice was taken of the classification of licenses as enumerated and provided by Department of Motor Vehicles as follows:

1. As pertains to the applicant's driver's license issued on 8/19/04 (Applicant's Exhibit I), the restrictions listed as "LT" stand for "L" – vehicles without air brakes and "T" – Taxi/Livery.
2. As pertains to the applicant's driver's license issued on 8/14/08 (Applicant's Exhibit R), the restriction "L" stands for vehicles without airbrakes and the endorsement "F" stands for Taxi, Livery, Service Bus and Motor Coach.

II. FINDINGS OF FACT

1. The applicant is currently employed full-time at PerkinElmer Corporation and has been so employed for the past 24 years.
2. The applicant has been driving a taxicab on a part-time basis for Yellow Cab, for the past 10 years as an independent contract, but he stopped working for Yellow Cab in May 2009.
3. The applicant purchased a 2005 Honda Pilot in 2008 to use in his taxicab business.
4. The applicant has a retirement account from which he can draw funds to use in the proposed business.
5. The applicant's business intention is to be available for the public with a vehicle that carries more passengers than a sedan.
6. The applicant has no conviction history for any criminal or driving offense.

7. The applicant is generally unfamiliar with basic aspects of taxicab operation such as what the prevailing rates are in Norwalk, how they are set, the rate structure and mileage guide requirement.

8. The applicant appears to want a taxicab certificate to enable him to drive a taxicab after his retirement from his full time job.

III. DISCUSSION

The Department of Transportation has jurisdiction over common carriers, which includes each person, association, limited liability company or corporation owning or operating a taxicab in the State of Connecticut in accordance with Connecticut General Statutes Section 13b-96, as amended. The department is authorized to prescribe regulations with respect to fares, service, operation and equipment, as it deems necessary for the convenience, protection and safety of the passengers and the public.

Pursuant to Section 13b-97(a), as amended, any person who applies for authority to operate a taxicab shall obtain from the department a certificate of public convenience and necessity certifying that the public's convenience and necessity requires the operation of a taxicab or taxicabs for the transportation of passengers. No certificate shall be issued unless the department finds that the person is suitable to operate a taxicab service. In so doing the department must take into consideration, at a minimum, any convictions of the applicant under federal, state or local laws relative to safety, motor vehicle or criminal violations, the number of taxicabs to be operated under the certificate, the adequacy of the applicant's financial resources to operate the service, the adequacy of insurance coverage and safety equipment and the availability of qualified operators.

The applicant has no convictions under federal, state or local laws relative to safety, motor vehicle and criminal violations and he seeks to operate one taxicab. The applicant seeks to operate one taxicab. The applicant has no plans to utilize a dispatch system, but will use a cell phone. The applicant has spoken to a potential driver for the company. The applicant provided an insurance quote and proposed tariff – thereby providing the minimum of the requirements to meet the suitability criteria.

Notwithstanding the above, and because the applicant has driven a taxicab for at least 10 years by his own testimony, the applicant was not knowledgeable about the actual day to day workings of a taxicab company. The applicant was not aware, or had minimal knowledge, of how taxicab rates are established. Such information is basic for anyone who seeks to go into business for himself. Moreover, the applicant was not aware of the requirements of a tariff or rate structure for trips over 15 miles. In his testimony, the applicant was complacent, his answers were vague and this hearing officer was not convinced that the applicant actually had knowledge of basic requirements needed to operate a taxicab which would service the needs of the public.

Regulations of Connecticut State Agencies Section 13b-96-4 requires that each certificate holder and driver shall be fully knowledgeable regarding the regulations concerning taxicabs and motor vehicles. It is disconcerting that the applicant, having been in the industry as a driver for 10 years, would not have the basic knowledge of operating a taxicab.

Regulations of Connecticut State Agencies Section 13b-96-3(5) requires that the applicant provide a business plan for implementation of the proposed service. This requirement is, as a matter of course, met by an applicant's testimony regarding rudimentary knowledge of the business and how the applicant will work with that knowledge to establish its company. Yet this applicant's testimony, in its totality, leads to the conclusion that the applicant is preparing to retire from his current full time job and seeks to rely on another business post retirement. This plan is commendable, but the applicant must meet the requirements to enable him to actually operate the proposed service and his testimony and demeanor do not so indicate. The applicant does not possess the business acumen to operate the proposed service.

With regard to financial wherewithal, the applicant submitted the requisite balance sheet. The applicant is invested in a retirement system which has a balance of \$58,051. The applicant has access to these funds at his pleasure. The insurance premium for the proposed taxicab is \$4000. The applicant's vehicle expenses are estimated to be between \$105 and \$135 per week for repairs and maintenance, \$200 per week for fuel and property taxes of \$330 per year. The arrangement with the second driver of the vehicle will be a 50/50 split. The applicant possesses the financial resources to operate a taxicab.

On the issue of public convenience and necessity, the applicant has failed to meet his burden. The applicant must provide substantial, relevant and credible evidence that the public convenience and necessity requires the grant of authority. The applicant provided his testimony, which alone, because of his bias and interest in the case, does not meet his burden.

The applicant provided a petition which carries little weight on the issue of public convenience and necessity because none of the witnesses were present to testify and be cross-examined on the issues in question. Although the petition constitutes hearsay, General Statutes Section 4-178 provides that "In contested cases: (1) Any oral or documentary evidence may be received..." However, it is of little weight unless the document is probative and reliable. *Norwalk Yellow Cab, Inc. v. Department of Transportation et al*, CV 93 070 46 76, Superior Court, Judicial District of Hartford/New Britain at Hartford (July 6, 1994). *Cassella v. Civil Service Commission*, 4 Conn App. 359, 362(1982). The people who signed the petition were not present to testify or to be cross-examined -- anyone could have written his or her name on the document, short of understanding what it represents. Other than the applicant's testimony, which is biased, no direct and explicit testimony was provided on the issue of public convenience and necessity; nor was there any corroboration of the applicant's testimony. Therefore, the application must be denied.

IV. CONCLUSIONS OF LAW

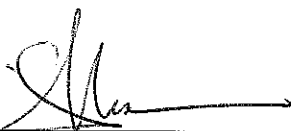
The applicant possesses the financial wherewithal to operate the proposed service but failed to meet its burden on the issues of suitability to operate the proposed service and public convenience and necessity as required by Connecticut General Statutes Section 13b-97(a).

V. ORDER

Based on the foregoing, the application of Henry Jean-Charles d/b/a Henry's Taxi is hereby denied.

Dated at Newington, Connecticut, on this 4th day of November 2009.

CONNECTICUT DEPARTMENT OF TRANSPORTATION



Laila A. Mandour
Staff Attorney III
Administrative Law Unit
Bureau of Finance and Administration