

# Disposition of the Independent Review Panel



Complainant: New Vision Taxi Drivers' Association

IRP Case: A 2007.339

Aggrieved: Duchemin Tiday

Date: May 22, 2008

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The Independent Review Panel met on May 22, 2008 for the purpose of publicly reviewing the complaint made by the New Vision Taxi Drivers' Association against the Consumer Services Department (CSD) and the department's response to that complaint. The following represents the findings of the Panel:

## **A. Recommendations**

### Recommendations to the New Vision Taxi Drivers' Association

1. That Mr. Tiday contact the lawyer for the taxi company to determine if they are going to get the default vacated and if he has no success, he should hire a lawyer, or use the association's lawyer, to ask R&S Taxi Corporation's lawyer, in writing, if the insurance company is going to defend Mr. Tiday as it did R&S Taxi.
2. That the Association establish a procedure that can be used when one of its members is involved in an accident. There should be a form letter filled out by the driver and sent to the insurance company which requests that the insurance company provide representation since the driver paid the premium to be covered by the policy.
3. That the Association contract an attorney who is knowledgeable about contracts to represent the members in negotiations with the companies regarding leases and deposits.

### Recommendations to the Consumer Services Department (CSD)

That CSD submit to the Board of County Commissioners an amendment to the Miami-Dade County Code which would give CSD the authority to impose more severe sanctions than are currently in existence for violations of the code.

## **B. Allegations and Dispositions**

1. Yellow Cab required Mr. Tiday to pay \$2000 in deposits without providing a written explanation of the conditions of the deposits, including conditions under which the deposits would be, or would not be, refunded. The Consumer Services Department (CSD) found that Yellow Cab violated the County Code by not including the deposits in its written agreement; however, CSD did not address the fact that Yellow Cab kept the \$2000.

**EXONERATED** The Miami-Dade County Code does not specifically address the issue of driving deposits, therefore CSD has no authority to regulate the conditions of the driving deposits. The Code does, however, give CSD the power to cite the company for a violation. Yellow Cab collected two deposits from Mr. Tiday, a \$500 “lease deposit” and a \$1500 “driving deposit.” Neither deposit was specified in the chauffeur’s agreement as required by Code. CSD fined Yellow Cab \$510 for one violation of not including the deposit in the agreement. CSD will determine if there should have been a second fine for the second deposit and advise the IRP.

2. Yellow Cab required Mr. Tiday to surrender his hack license to the company on two occasions, which deprived him of his right to work for any company until he was able to obtain a new license from CSD. CSD stated that Yellow Cab denied this practice, but CSD did not state if it received Mr. Tiday’s hack license and, if so, how.

**SUSTAINED** CSD did not specifically address how it received Mr. Tiday’s hack license. In a letter dated May 18, 2007, Ms. Peel addressed the New Vision Taxi Drivers Association allegation that Yellow Cab seized the chauffeur registrations of drivers by stating: “Representatives from Yellow Cab have denied this practice.” On that same date, Joe Mora, Director of the Passenger Transportation Regulatory Division (PTRD), sent a letter to Yellow Cab in which he stated that only law enforcement or code enforcement personnel are authorized to seize a driver’s chauffeur’s registration. In her response to the IRP dated February 8, 2008, Ms. Peel acknowledged that “Yellow Cab has on occasion returned chauffeur’s registration to CSD, which have been voluntarily surrendered by the drivers who lost the company’s sponsorship.”

The committee found no evidence to support the finding that the chauffeur’s registrations were “voluntarily surrendered.” The drivers testified on several occasions that Yellow Cab “took, seized and confiscated” the driver’s chauffeur registration when a driver was involved in an accident.

While CSD was preparing its response to the complaint for the IRP, Mr. Mora sent a “Cease and Desist Notice” to Yellow Cab regarding its “continued...practice of returning to PTRD active chauffeur’s registrations.”

3. Even though Yellow Cab had a valid Certificate of Insurance for third party damages with Mr. Tiday’s name on it at the time of the 10/24/2006 collision, Mr. Tiday is being held liable for the third party damages in the amount of \$17,000.

**NO FINDING** Mr. Tiday was an additional insured at the time of the accident. It appears that the lawyer for R&S Taxi got the judgment against the company vacated but did nothing for Mr. Tiday. This is a civil matter that does not fall under the purview of CSD.

# Independent Review Panel

## Committee Recommendation to the Panel

**May 22, 2008**

**Complaint:** A 2007.339

**Complainant:** New Vision Taxi Driver's Association

**Aggrieved:** Duchemin Tiday

**Accused Party:** Consumer Services Department, Passenger Transportation Regulatory Division

**Date Complaint Received:** December 4, 2007

**Committee:** Glenn Falk, Panel Member; Dr. Eduardo Diaz, Executive Director; Kristin Anderson, Conflict Resolution Specialist

Meeting Date: April 18, 2008

Consumer Services Department (CSD): Cathy Peel, Director; Joe Mora, Division Director, Passenger Transportation Regulatory Division; David Iglesias, Legal Advisor

New Vision Taxi Driver's Association: Raymond Francois; Josuel Ceremy; Salonion Cenord; Jean Lamour; Leon Morin; Remberto Nader; Jorge Cortez

Cabbies Association: Angela Cruz; Carlos Garcia

**Complaint:** Mr. Tiday was driving for Yellow Cab when he had a single car accident on 11/13/2005. He called Yellow Cab and Yellow Cab instructed him to turn in his license to the company the next day and pick up a new one from CSD, which he did. When he picked up the new license from CSD, Yellow Cab had been deleted from the list of companies he was authorized to drive for.

Mr. Tiday was reinstated by Yellow Cab in May 2006, after he paid a \$500 Deposit for Lease and \$ 1500 Driving Deposit. On 10/24/2006, while driving a Yellow Cab vehicle, Mr. Tiday was involved in a two-car collision. Mr. Tiday was cited. He called Yellow Cab from the site of the accident. A Yellow Cab representative came to the scene, took his hack license, and told him to pick up a new one from CSD. When he picked up the new license from CSD, Yellow Cab had been deleted from the list of companies he was authorized to drive for.

Mr. Tiday provided a "Certificate of Insurance" identifying R&S Taxi Corp. and Duchemin Tiday as insured by Yel Co Insurance at the time of the accident. Mr. Tiday stated that Yel Co refused to pay for the damage to the other vehicle and, as a result he is being sued for \$17,000. The court document identifies the defendants as "Duchemin Tiday and R&S Taxi Corp."

Mr. Tiday asked Yellow Cab to refund his deposit. The company refused. The New Vision Taxi Drivers Association filed a complaint with CSD. In a letter dated 5/18/2007, CSD stated that the County Code does not prohibit driving deposits; however, the deposits must be disclosed in the chauffeur agreements. In this case, the deposits were not contained in the agreement between the

driver and the company. The company was issued a \$500 civil violation notice on 5/16/2007. CSD also stated in its response that Yellow Cab denied taking hack licenses from drivers.

The New Vision Taxi Drivers Association alleges that:

1. Yellow Cab required Mr. Tiday to pay \$2000 in deposits without providing a written explanation of the conditions of the deposits, including conditions under which the deposits would be, or would not be, refunded. CSD found that Yellow Cab violated the County Code by not including the deposits in its written agreement; however, CSD did not address the fact that Yellow Cab kept the \$2000.
2. Yellow Cab required Mr. Tiday to surrender his hack license to the company on two occasions, which deprived him of his rights to work for any company until he was able to obtain a new license from CSD. CSD stated that Yellow Cab denied this practice, but CSD did not state if it received Mr. Tiday's hack license and, if so, how.
3. Even though Yellow Cab had a valid Certificate of Insurance for third party damages with Mr. Tiday's name on it at the time of the 10/24/2006 collision, Mr. Tiday is being held liable for the third party damages in the amount of \$17,000.

**Department Response:** The Consumer Services Department (CSD) responded as follows:

1. Can Yellow Cab keep the deposits even though it was cited for violating the County Code by not including the deposits in its written agreement?

*Chapter 31-100(j) of the Miami Dade County Code states in relevant part that "each passenger service company shall enter into a written chauffeur's agreement with each chauffeur it allows to operate any for-hire vehicle for which the passenger service company provides passenger service." In addition, Section 31-100(j)(4) requires that the chauffeur agreement shall state and itemize the compensation to be paid by the chauffeur ... and provides that it shall be unlawful for the passenger service company to receive any compensation from the chauffeur which is not specified in the existing chauffeur's agreement.*

*Citations were issued to Yellow Cab for violating [the code]. Furthermore, Yellow Cab was instructed to amend its chauffeur agreements to include all compensation, including safe driving deposits.*

2. Must the cab company provide a written explanation of the conditions of the deposit, including conditions under which the deposits would, or would not, be refunded?

*The Code does not specifically address the issue of driving deposits. Therefore, CSD has no authority to regulate the conditions of the driving deposits. Additionally, under State Law, CSD is preempted from imposing price controls.*

3. Has CSD investigated the allegation that Yellow Cab required taxi drivers to surrender their hack licenses (chauffeur's registrations) to the company? Has CSD received hack licenses from Yellow Cab?

*Our records indicate that a representative of Yellow Cab has on occasion returned chauffeur's registration to CSD, which have been voluntarily surrendered by the drivers who lost the company's sponsorship.*

*Upon receiving complaints from drivers regarding the confiscation of their chauffeur's registrations by Yellow Cab, CSD sent a letter to the company which stated that the chauffeur's registration is the property of Miami-Dade County and that Yellow Cab was not authorized to seize it. Following said letter, a second Cease and Desist Notice was sent to Yellow Cab advising it to immediately stop the practice of seizing or voluntarily accepting chauffeur's registrations. Yellow Cab has agreed to adhere to said policy. ...Lastly, we sent a follow-up letter to all passenger service companies which dealt with various taxicab issues, including the confiscation of chauffeur's registrations.*

4. How does it happen that the insurer of a taxicab, driven by the authorized driver identified on the Certificate of Insurance, is able to avoid payment of third party damages?

*As a result of this grievance CSD became aware of the October 2006 accident for which Mr. Tiday is being held liable. We reviewed the court file... There is no mention or notice upon CSD within the court file.*

*CSD is only permitted to regulate what is provided for in the Miami-Dade County Code Section 31-88 with respect to insurance requirements. If the insurance company avoided paying for damages, CSD was never notified of this matter. In this case, the Certificate of Insurance provides valid coverage for Mr. Tiday and R&S Taxi Corporation on the date of the accident. However, it appears Mr. Tiday and R&S Taxi Corporation failed to notify their insurance company. Therefore, it seems that the Plaintiff proceeded against Mr. Tiday and R&S Taxi Corporation.*

*Upon learning of the outstanding judgment, CSD sent a notice to R&S Taxi Corporation advising that the judgment must be satisfied prior to the renewal of the licenses held by the corporation... Following the judgment, an order was entered vacating the final default judgment against R&S Taxi Corporation. However, this does not appear to alter the current judgment against Mr. Tiday...*

## **Committee Remarks:**

### Judgment Against Mr. Tiday

There was a \$17,000 judgment rendered against Mr. Tiday and the R&S Taxi Corporation. The judgment against the taxi corporation was vacated but the judgment against Mr. Tiday was not. Mr. Falk commented that Mr. Tiday is an additional insured under the Yel Co Insurance policy, both by statute and contract. Mr. Francois stated that Mr. Tiday provided a copy of the complaint to the insurance company and he does not know why Mr. Tiday was not defended by Yel Co Insurance. Mr. Francois reported that in practice a driver is required to pay for the damages when he has an accident.

Mr. Falk stated that he believes that the lawyer for R&S Taxi had the judgment against the company vacated but did nothing for Mr. Tiday. Mr. Falk recommended that Mr. Tiday contact the lawyer for R&S Taxi Corporation to find out if the insurance company is going to defend him. He further should ask him why he didn't get the default vacated when he got it vacated against the Taxi Corporation. If the lawyer for the insurance company and R&S Taxi Corporation refuses to assist Mr. Tiday, Mr. Tiday should get a lawyer and sue the insurance company. If Mr. Tiday wins the suit, the legal fees can be assessed against the insurance company.

Mr. Falk also recommended that the New Vision Taxi Drivers Association establish procedures that can be used when one of its members is sued. There should be a form letter filled out by the driver and sent to the insurance company with a copy to the Taxi Cab Company immediately upon service of the Complaint. This should be sent via certified mail, return receipt requested and regular mail. Further, the taxi driver should contact the cab company and advise them of the lawsuit orally and make sure he is going to be defended.

### Deposits

Mr. Iglesias, attorney for CSD, stated that by state law and county ordinance, CSD cannot regulate driving deposits; it can only require that the agreement between the company and the driver state the amount and itemize the deposit. Yellow Cab advised that Mr. Tiday's deposit was a "Safe Driving Deposit." Dr. Diaz said he interpreted that to mean that the deposit was required because Mr. Tiday had a prior accident. Mr. Mora compared the deposit to insurance companies, which determine rates for individual drivers, depending on their driving history.

Mr. Falk responded that insurance rates are regulated by the insurance commissioner; however, the dollar figure of the taxi company is arbitrary and is negotiable. Mr. Falk asked whether the taxi company indicated what it did with the \$2000 deposit made by Mr. Tiday.

Mr. Iglesias stated that CSD cited Yellow Cab for violating the county code by charging the driver an amount that was not stipulated in the agreement and the company paid the citation. However, CSD cannot ask the company what it did with the money or if it will return the money to Mr. Tiday. Mr. Falk summed up the situation by saying that Yellow Cab violated the county code by not putting the amount of the deposit in the lease agreement and no one knows what happened with that money.

Mr. Francois asked whether state law prevents CSD from asking the company to refund the deposit. Mr. Iglesias responded that CSD only has the power to regulate rates; state law does not give it the authority to require the company to reimburse the deposit. Mr. Falk stated that the Board of County Commissioners gave the department the power to cite the company for a violation; however the department does not currently have the authority to impose sanctions. Mr. Falk believes the department should have the power to impose the appropriate sanctions, such as the return of the money.

Mr. Francois stated that Yellow Cab was cited for a violation; however, Mr. Tiday did not get his money back because CSD said state law does not give it the power to get a refund for Mr. Tiday. However, when a customer complains that a driver overcharged him, CSD has the power to make the driver refund the money to the customer. Mr. Francois inquired why the law gives CSD the power to make the driver refund money but does not give CSD the power to make the company refund money.

Ms. Peel responded that Florida law preempts CSD from price controls, except when it comes to rates. The Board of County Commissioners adopted the public rate. If a driver violates that public rate CSD can require the driver to reimburse the overcharge. CSD does not have the authority to control the amount of deposits. Mr. Francois responded that he was not talking about the amount of the deposit but rather the refund of the deposit.

Mr. Francois stated that CSD says it does not have the authority to tell the company what to do but it does have the authority to approve the lease agreement.

Ms. Peel responded that CSD does not “approve” the leases; it reviews leases to ensure compliance with the code. Mr. Falk added that CSD can ensure that the leases meets code requirements, however CSD cannot control the financial part of the contract. The amount paid to the company is negotiable. As it stands now, the taxi companies have the power and they are dictating the financial terms. Mr. Falk recommended that the drivers hire an attorney who knows contracts, so that the drivers have legal representation in dealing with insurance issues and negotiation for leasing. That’s the purpose of the union. There are currently 4200 active taxi drivers. The New Vision Taxi Driver’s Association and the Cabbies Association together have about 1000 members.

#### Other Driver concerns

Jorge Cortez referred to the October 18, 2007 disposition report for the Cabbies Association complaint, in which the Panel recommended that CSD develop a standard set of Chauffeur Form Agreements with passenger service companies and license holders, and an itemized receipt form. He asked if CSD complied with that recommendation.

Mr. Iglesias stated that CSD does not have the authority to require a standard set of Chauffeur Form Agreements. The agreements are a matter between the company and the driver.

Mr. Cortez asked about the Panel recommendation that CSD develop a Chauffeur Bill of Rights. Mr. Mora replied that every company has a 2 by 3 sign, posted at the location where the drivers make their payments, that lists the drivers’ rights.

Mr. Cortez asked why taxi drivers are required to buy the Sunpass. Mr. Mora replied that the Sunpass requirement was part of a county ordinance which authorized a rate increase; therefore it is mandated by code.

Mr. Lamour stated that the company is supposed to pay for the required three-month inspections, but the company makes the driver pay. Mr. Mora replied that license holders (companies) are required to pay all associated costs, including the \$35 inspection fees and they have to demonstrate how they reimburse the \$35 to the driver. Ms. Peel added that CSD cannot intervene if the company increases the lease to cover inspection fees.

Carlos Garcia expressed concern about the limited number of taxi medallions available for drivers. Ms. Peel replied that there is currently a proposal before the Board of County Commissioners to hold a lottery each year for the next three years, and provide 38 medallions for each lottery.

Several drivers expressed their belief that CSD regulation favors the companies and harms the drivers.

Dr. Diaz responded that it is clear to him that the drivers would like that the government and CSD to do more to protect the drivers, and CSD is saying it can only do what state law and county ordinance allows it to do. The drivers see that as favoritism. Dr. Diaz added that CSD is not an advocate for the drivers or the companies. Taxi drivers need their own advocate.

### **Committee Findings:**

1. Yellow Cab required Mr. Tiday to pay \$2000 in deposits without providing a written explanation of the conditions of the deposits, including conditions under which the deposits would be, or would not be, refunded. The Consumer Services Department (CSD) found that Yellow Cab violated the County Code by not including the deposits in its written agreement; however, CSD did not address the fact that Yellow Cab kept the \$2000.

**EXONERATED** The Miami-Dade County Code gives CSD the power to cite the company for a violation; however, it does not give the department the authority to impose sanctions, such as requiring Yellow Cab to refund a deposit. The Code does not specifically address the issue of driving deposits. Therefore, CSD has no authority to regulate the conditions of the driving deposits.

2. Yellow Cab required Mr. Tiday to surrender his hack license to the company on two occasions, which deprived him of his rights to work for any company until he was able to obtain a new license from CSD. CSD stated that Yellow Cab denied this practice, but CSD did not state if it received Mr. Tiday's hack license and, if so, how.

**The Committee made no finding.** CSD did not specifically address how it received Mr. Tiday's hack license. In a letter dated May 18, 2007, Ms. Peel addressed the New Vision Taxi Drivers Association allegation that Yellow Cab seized the chauffeur registrations of drivers by stating: "Representatives from Yellow Cab have denied this practice." On that same date, Joe Mora, Director of the Passenger Transportation Regulatory Division (PTRD), sent a letter to Yellow Cab in which he stated that only law enforcement or code enforcement personnel are authorized to seize a driver's chauffeur's registration. In her response to the IRP dated February 8, 2008, Ms. Peel acknowledged that "Yellow Cab has on occasion returned chauffeur's registration to CSD, which have been voluntarily surrendered by the drivers who lost the company's sponsorship."

The committee found no evidence to support the finding that the chauffeur's registrations were "voluntarily surrendered." The drivers testified on several occasions that Yellow Cab "took, seized and confiscated" the driver's chauffeur registration when a driver was involved in an accident.

While CSD was preparing its response to the complaint for the IRP, Mr. Mora sent a "Cease and Desist Notice" to Yellow Cab regarding its "continued...practice of returning to PTRD active chauffeur's registrations."

3. Even though Yellow Cab had a valid Certificate of Insurance for third party damages with Mr. Tiday's name on it at the time of the 10/24/2006 collision, Mr. Tiday is being held liable for the third party damages in the amount of \$17,000.

**The Committee made no finding.** Mr. Tiday was an additional insured at the time of the accident. It appears that the lawyer for R&S Taxi got the judgment against the company vacated but did nothing for Mr. Tiday. This is a civil matter that does not fall under the purview of CSD.

## **Recommendations:**

### Recommendations to the New Vision Taxi Drivers' Association

1. That Mr. Tiday contact the lawyer for the taxi company to determine if they are going to get the default vacated and if he has no success, he should hire a lawyer, or use the association's lawyer, to ask R&S Taxi Corporation's lawyer, in writing, if the insurance company is going to defend Mr. Tiday as it did R&S Taxi.
2. That the Association establish a procedure that can be used when one of its members is involved in an accident. There should be a form letter filled out by the driver and sent to the insurance company which requests that the insurance company provide representation since the driver paid the premium to be covered by the policy.
3. That the Association contract an attorney who is knowledgeable about contracts to represent the members in negotiations with the companies regarding leases and deposits.

### Recommendations to the Consumer Services Department (CSD)

1. That CSD submit to the Board of County Commissioners an amendment to the Code which would give the CSD the authority to sanction or impose punitive action in cases where a company is fined for lease violations.

### Recommendation to the Panel

That the Panel conclude the complaint.