

INDEPENDENT REVIEW PANEL MINUTES

May 22, 2008

LOCATION: 140 West Flagler Street, Conference Room 908
Miami, Florida 33130

PANEL MEMBERS PRESENT

Julia Dawson, Esq., Chairperson
Michael R. Band, Esq., 1st Vice Chairperson
Jean-Robert Lafortune, 2nd Vice-Chairperson
Doris Shellow
Josie Perez Velis, Esq.
Glenn P. Falk, Esq.

EXCUSED ABSENCES

Julie Ferguson, Esq.

ABSENT

Moiez A. Tapia, Ph. D
Jorge E. Reynardus, Esq.

PANEL STAFF PRESENT

Carol Boersma, Executive Assistant to the Director
Kristin Anderson, Conflict Resolution Specialist
Anna Sidan, Conflict Resolution Specialist

AUDIENCE:

Consumer Services Department (CSD): Cathy Peel, Director; Joe Mora, Director of Passenger Transportation Regulatory Division (PTRD); David Igelsias, Legal Advisor; Steven Bobes, Administrative Officer

Complainant: Raymond Francois, Administrator New Vision Taxi Drivers' Association

Civilian Investigative Panel (CIP): Don March

Agenda Item #1) Call to Order. Ms. Dawson called the meeting to order at 2:05 p.m. and asked staff to call roll.

Agenda Item #2) Approval and adoption of the minutes held on April 24, 2008. Ms. Shellow moved to adopt minutes. Mr. Lafortune seconded. The motion passed unanimously.

Agenda Item #3) IRP Complaint A 2007.339 New Vision Taxi Drivers Association v. Consumer Services Department (CSD). Mr. Falk gave a brief summary of the complaint involving a taxi driver and the Yellow Cab Company. The complaint addressed driving deposits, confiscation of his hack license and being held liable even though insured.

Chauffeur Agreements

Mr. Francois reported that there is still some confusion on his behalf. He stated that in the IRP committee meeting held on April 18, 2008, Mrs. Peel said that the department does not "approve" lease agreements between the driver and the company. He read Sec. 31-81(e) of the code which states that "Chauffeur agreements means the CSD approved form agreements..." Copies of the code were provided by the department. Mr. Iglesias referred to Sec. 31-100 (j),

Requirements for chauffeur's agreement, and stated that CSD approves the agreements only to ensure that they comply with the requirements listed in this section. The department does not approve the actual language in the contract. CSD has no authority regarding the dollar amounts in the agreement. Florida Statute states what CSD can and cannot do with respect to price controls.

Driving Deposits

Ms. Dawson stated that as she understands it, Mr. Tiday (the aggrieved party in the complaint filed by the taxi association) made two payments that were characterized as "deposits," totaling \$2,000. In her opinion, the common understanding of the term "deposit" is an amount of money that someone puts down to guarantee a certain performance. She stated that it appears to her that neither of the amounts labeled as deposits meet the common understanding of the term "deposit." In this case they seem to be more of a penalty, tax, or surcharge. It appears that characterizing this as a "deposit" is not an accurate representation of what the payments represent. Ms. Dawson inquired as to why the department would not require that the agreement include an explanation of what the deposit is for.

Mr. Falk stated that the driving deposits were not in the chauffeur agreement between the driver and Yellow Cab, and CSD cited the company for that violation of the code. Mr. Mora stated that the company was fined \$510. Mr. Band commented that a \$510 penalty for improperly charging a driver \$2000 doesn't seem to be an incentive to comply with the code. Even after paying the penalty, the company made almost \$1500. Mr. Band asked if CSD could require a company to return a deposit obtained in violation of the code. Mr. Iglesias referred the Panel to a document entitled "Assurance of Voluntary Compliance," an agreement between CSD and Yellow Cab, in which Yellow Cab agreed to comply with the section of the code regarding driving deposits and pay \$510 to settle the citations. Mr. Mora added that the amount of the fine is set by code. Ms. Dawson asked why CSD had to get Yellow Cab to sign an agreement to comply with the law.

Mr. Mora stated that CSD does not have verification that Mr. Tiday, the driver, paid the \$1,500. Mr. Francois provided receipts showing that Mr. Tiday paid \$700 (not \$500) for the lease and \$1,500.00 for the driving deposit. The receipts were dated 4/19/06 and 4/6/06. Mr. Iglesias reported that CSD had not received copies of the receipts. Mr. François disagreed with Mr. Iglesias. He reported that prior to coming to the IRP; the Taxi Association went to the CSD and spoke with Grisela Lopez, CSD Complaint Officer, who told Mr. Tiday to negotiate with the company. Mr. Francois stated that the company told Mr. Tiday that in order to reinstate him; he would have to pay \$3,000. He reported that they went back to the CSD to see if the department could help them as a consumer but nothing happened so the Association sent a letter to Mayor Alvarez.

Penalties

Ms. Dawson inquired if the company could be penalized for each deposit it failed to include in the agreement, to which Mr. Mora responded, "Yes." Ms. Dawson questioned why CSD did not fine the company \$1,020, \$510 for each deposit it did not stipulate in the agreement. Mr. Iglesias stated that two citations were issued, one for the violation of the agreement with Mr. Tiday and the other for violation of the agreement with another driver. The other driver could not be found, therefore there was no witness for the hearing and CSD could not enforce that citation.

Mr. Mora stated that CSD can revoke a company's license, if the company has five violations of the same section of the code. Ms. Peel advised that revoking a company's license puts a lot of people out of work. For example, revoking Yellow Cab's license would take about 500 taxicabs off the roads and impact about 1000 drivers. Mr. Falk commented that escalating fines or losing medallions might be more appropriate penalties.

Ms. Dawson mentioned that repeated violations were found. Mr. Tiday has receipts documenting that he was required to pay two deposits, one for \$700.00 and the other for \$1,500.00. Ms. Dawson stated that these were two violations because neither was in the agreement as required by code. She asked if the company could be fined for both violations. Mr. Mora replied that the department would have to research the issue.

Mr. Band stated that the system seems to be designed so that the company has the advantage over the driver.

Mr. Francois stated that he does not understand why CSD can cite a taxi driver and make him refund the money, if the driver overcharges, but cannot make the company refund an illegal charge collected from a driver.

Ms. Peel stated that CSD shares the concerns of the drivers. CSD participated in a workshop addressing leases, sponsored by Commissioner Edmonson, in April 2008. At present, CSD does not have the authority to regulate lease prices. CSD is also working with Commissioner Jordan on taxi issues.

Hack License

Mr. Francois stated that CSD did not respond to the allegation that Yellow Cab took Mr. Tiday's hack license and turned it in to CSD. Both Mr. Mora and Mr. Iglesias stated that CSD has received hacks licenses in the mail with the request that Yellow Cab be removed from that license. However, they cannot confirm that CSD received Mr. Tiday's license. Mr. Mora stated that if CSD did receive the license, it was probably destroyed and a new one issued.

Mr. Mora stated that the code does not provide for a penalty when a company takes a driver's hack license. Ms. Peel added that CSD policy is that CSD issued the license and only CSD can take the license from the driver. Yellow Cab was advised of this policy and agreed to adhere to it.

Mr. Francois asked why drivers need the signature of a taxi company in order to get a license. Mr. Mora replied that it is a matter of sponsorship. It also documents that the company has included the drivers in its insurance.

Discussion of 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.

Ms. Dawson suggested that the narrative be changed so it reads as follows:

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 \$700 “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.

Mr. Lafortune made a motion to adopt the narrative as revised. Ms. Shellow seconded the motion which passed unanimously.

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.

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.”

Ms. Dawson suggested that the finding be “Sustained.” Ms. Shellow made a motion to change “No finding” to “**SUSTAINED**” and adopt the narrative as written. Ms. Perez Velis seconded the motion, which passed by a vote of 3 to 2.

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.

Ms. Shellow made a motion to adopt the finding as written. Ms. Perez Velis seconded the motion and it passed unanimously.

Discussion of Committee Recommendations

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.

Ms. Shellow made a motion to adopt the recommendation as written. Ms. Perez Velis seconded the motion and it passed unanimously.

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.

Ms. Shellow made a motion to adopt the recommendation as written. Ms. Perez Velis seconded the motion and it passed unanimously.

3. That the Association contact an attorney who is knowledgeable about contracts to represent the members in negotiations with the companies regarding leases and deposits.

Ms. Shellow made a motion to adopt the recommendation as written. Ms. Perez Velis seconded the motion and it passed unanimously.

Recommendations to the Consumer Services Department (CSD)

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.

Mr. Falk suggested changing the recommendation so it reads: That CSD submit to the Board of County Commissioners an amendment to the Code which would give the CSD the authority to impose *more severe sanctions than are currently in existence for violations of the code*. Mr. Falk moved to adopt the recommendation as amended. Ms. Perez Velis seconded the motion and it passed unanimously.

Agenda Item #4) Executive Director's Report Ms. Boersma reported that Panel Members' financial disclosure statements will be arriving in the mail. She advised Panel Members that the statements must be submitted by July 1, 2008.

Agenda Item # 7). Adjourn Ms. Dawson made a motion to adjourn. Doris Shellow seconded. It was passed unanimously.