

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SFMTA HEARING SECTION

**SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY,**

vs.

RECONSIDERATION OF STATEMENT OF DECISION

JAMES CORTESOS,
Respondent

I. INTRODUCTION

This case came on for administrative hearing pursuant to an action by the San Francisco Municipal Transportation Agency (“SFMTA” or “Taxi Services” herein) after a Complaint for Nonrenewal of Medallion was sent to Respondent James Cortesos on or about September 28, 2020. The SFMTA Complaint alleges that Mr. Cortesos had not taken the necessary permit renewal measures to preserve his status as a qualified taxi medallion holder, and on that basis the SFMTA’s Taxi Services had notified Mr. Cortesos on or about September 28, 2020, that his right to remain a medallion holder was being contested by Taxi Services.

Following that notice and the subsequent Complaint, a video-conference hearing was scheduled for Mr. Cortesos by this Hearing Section for May13, 2021, in accordance with the provisions of Article 1100 of the SFMTA’s Transportation Code (“TC”). That Article governs the rights granted to taxi medallion holders in San Francisco, as well as how hearings related to those rights are administered.

On May13, 2021, Mr. Cortesos appeared via telephone at the time of this hearing, and the SFMTA’s Taxi Services manager, Philip Cranna, and Taxi Services analyst Danny Yeung appeared by video, along with the undersigned administrative Hearing Officer and James Doyle manager of Hearing Section. In addition, Carl McMurtle, Dan Heinze and Dennis Korkus appeared by phone on behalf of the Respondent

II. THE COMPLAINT

In its Complaint the SFMTA’s Taxi Services alleges that based upon “Post-K” provisions adopted by the Transportation Code, taxi medallion holders are subject to a full-time driving requirement and must hold an active A-Card in order to retain their legal status as qualified medallion holders. Additionally, Taxi Services underscores that the Transportation Code also

requires that for an A-Card permit to be granted, a full-time driver must also have a valid California driver's license.

In terms of Mr. Cortesos' current status, the Complaint stated that because he no longer has a current California driver's license, he cannot not qualify for an A-Card, and as a result, without a current A-Card, the renewal of medallion #753 cannot be authorized under the relevant provisions of the Code.

On or about May 12, 2021, my office received a brief on the Cortesos case from Philip Cranna, the Enforcement and Legal Affairs Manager for the SFMTA's Taxi Services section. In his brief Mr. Cranna reiterated the justification for the intended revocation of Respondent Cortesos' medallion on the basis of the provisions of the Transportation Code.

In addition, and in response to a specific request from my office, Mr. Cranna stated in his brief that Mr. Cortesos can cure his A-Card deficiency by acquiring a California Driver's License. The SFMTA Taxi Services brief was responsive to issues common to almost all of the cases that Taxi Services has filed seeking the nonrenewal of certain Post-K medallions.

III. APPLICABLE LAW

Under the provisions of Article 1100 of the Transportation Code, the following statutory authority forms the relevant basis for this decision, including the Transportation Code's definitions of "A-Card," "Medallion Holder," "Notice of Nonrenewal," and "Permit Holder."

Also relevant to this case are these provisions:

- TC §1103(c)(2)(C), regarding driver qualifications
- TC §1103(c)(3), regarding the lapse of active permit status
- TC §1105(a)(1), regarding permits required
- TC §1105(a)(3), regarding permits as privilege, not property of the driver
- TC §1105(a)(5)(A), regarding the duration of permits
- TC §1105(a)(6), involving compliance with laws and regulations
- TC §1109(a)(1), re required affiliation with Color Scheme
- TC §1109(c)(1), regarding the full-time driving requirement
- TC §1109(e)(1)(A), involving various aspects of medallion operation
- TC §1116, covering surrender of medallions for consideration

IV. TESTIMONY

A. SFMTA Testimony and Evidence Presented: Danny Yeung:

Danny Yeung, an administrative analyst in the SFMTA's Taxi Services, testified to the origin and reliability of the exhibits offered at the hearing, which include a driver profile of Mr. Cortesos (Exh. A), Notice of Nonrenewal (Exh. B), and email request for a hearing dated

October 28, 2020 (Exh. C). Mr. Yeung confirmed that the evidence of record establishes that Mr. Cortesos has not had a current California driver's license for at least the previous two years, and that his A-Card had expired and was terminated approximately March of 2018, and that his A-Card has not been renewed since that time. Each of these exhibits are accepted into evidence.

B. James Cortesos:

Mr. Cortesos testified that he is retired and living in Thailand. He is recovering from recent hip surgery and financially unable to return to California.

While living in Thailand, Mr. Cortesos testified that he understood that his medallion (#753) had been used by Regents Cab Company as a basis for other taxi drivers to drive legally within the city, pursuant to the provisions of the Transportation Code that have allowed a taxi company (aka "Color Scheme") to lease a medallion from a medallion holder, which allows non-medallion holders to drive the Color Scheme's taxis.

Mr. Cortesos confirmed that he currently does not have a California driver's license and that his A-Card has not been renewed for a number of years. He had, however, received lease payments for a period of time until taxi driving conditions and income were reduced due to Covid restrictions.

In this respect Mr. Cortesos did not seriously dispute the Taxi Service's testimony and evidence, or the provisions of the Transportation Code that appear to require medallion revocation (i.e. "nonrenewal") under some circumstances. Mr. Cortesos stated that he received a disability waiver in 2013 for osteo-arthritis, and believed that it was still in effect. However, he maintains that there should be some residual monetary value to medallion #753, which could have been paid to him in exchange for the surrender of this permit, and that there should be ongoing medallion transfer processes in San Francisco which would allow him to sell or transfer his medallion to a third party for the current market value of his medallion, just as other medallion holders have done in the past.

C. Supporting Witnesses

Three witnesses attended and testified on behalf of the Respondent: Carl McMurtle, President of the Medallion Holder's Association; Dan Heinz, President of the National Cab Company and Dennis Korkus, longtime taxi medallion holder and taxi advocate. Most of this testimony was focused on the discriminatory aspects of non-renewal program with respect to elderly and disabled drivers. While Mr. Cortesos is both elderly and disabled, the focus of this action is his inability to comply in qualifying for renewal of his A-Card. Mr. Korkus pointed out the prospective income value of a medallion and pointed to the fact that current medallion holders, who could verify income, were allowed to apply for PPP loans from the Federal Government.

V. FINDINGS

1. Respondent Without California Driver's License and A-Card

Based upon the testimony adduced at the hearing and upon the evidence of record, I find that the respondent James Cortesos does not have a current California driver's license, and as a result no longer is eligible to possess a current A-Card as defined by the SFMTA's Taxi Division.

I also find that prior to this hearing, the respondent's A-Card could have been renewed if Mr. Cortesos was able to return to the San Francisco area, and by returning could have obtained a valid California driver's license. Mr. Cortesos is unable to return to California, and because he is no longer licensed driver in this State, his A-Card cannot be renewed pursuant to the provisions of TC §§1103 and 1105, as noted above. Without a current California driver's license, an A-Card cannot be maintained, and without a current A-Card, a taxi driver's entitlement to holding a taxi medallion can be revoked.

2. Brief History Related to Current and Prospective Litigation

The present circumstances involving the interest associated with medallions in San Francisco are not normal. Currently, and at least since 2016, there has been no market for medallions in San Francisco, largely due to the influx of TNC operations and the litigation between the San Francisco Federal Credit Union and SFMTA. That litigation has resulted in a moratorium in the sale and transfer of taxi medallions due to an established fixed price of medallion surrender as set forth in TC §1116(b)—which greatly exceeds the anticipated current market price of a local taxi medallion. As long as the litigation continues, the medallion surrender price remains at \$200,000, based upon the price of a medallion to a new transferee of \$250,000. At this fixed price, medallion transfers are not expected to occur here until such time as conditions dramatically change following the conclusion of the current litigation.

At the present time, there is no indication that the surrender and transferring of medallions will dramatically change as long as the current litigation continues to lock in the established medallion transfer price. In the meantime, the SFMTA Board of Directors may change the surrender price of medallions, and may even decide to end the surrender program under the provisions of TC §1116(a)(5), but no such decisions will be considered until later this year.

Until the medallion surrender program is ended by the Board of Directors, TC §1116(a)(1)(A) provides ongoing "eligibility" for the surrender of their medallions to any drivers with disabilities that prevents the full-time driving requirement for Post-K medallion holders, as mandated by TC §1116(c)(1). This TC section also extends this ongoing eligibility to drivers who have turned 60.

Respondent James Cortesos, who is 74, is in poor health, and by his own admission unable to drive a taxi. Until now, he continues to be an eligible candidate under the current provisions of TC §1116 to surrender his medallion for monetary consideration. That there is no current market for medallion transfer in San Francisco is a condition artificially influenced by the aforementioned litigation and market conditions.

Once the underlying reason for the moratorium is resolved by the parties to the litigation, it is my opinion that a market for the transfer of taxi medallions will be restored at some scale. In light of the affect upon the taxi industry by the operation of the TNC operations, it is nearly certain that the market value of medallions will never approach the transferee price of \$250,000 established in 2010, but it will not likely be zero. Some medallion transfer value will be established based upon a then-current market-based valuation, and those medallion holders who still have their medallions at that time will or should be in line to receive some consideration for their surrendered medallions—at least based upon existing provisions in the Transportation Code.

As against this future expectation interest in the surrender of this medallion and other at-risk medallions, the SFMTA has an interest in reclaiming medallions that are no longer being actively used by their holders. Some normalization of the medallion transfer program could occur by the end of this year. On that basis medallion transfers would resume, and when that happens, Post-K medallion surrenders for some monetary consideration may continue in accordance with current Transportation Code provisions.

The virtual moratorium on medallion transfers arose with the SFMTA's decision to charge a quarter of a million dollars for each medallion transfer, followed by the appearance and rapid growth of local TNC (transportation network companies) operations, which devastated the taxi industry in general, and significantly reduced income levels enjoyed by local taxi drivers. The resulting dearth of business for our taxi drivers led to numerous defaults on loans made through the San Francisco Federal Credit Union, and those defaults caused the present action by the Credit Union against the SFMTA as a claimed guarantor of the loans.

Under the provisions set forth decades ago for Post-K medallion holders, almost every one of these drivers were wait-listed for many years before being entitled to receive medallions, and it was widely and presumed by drivers that having a medallion would legally guarantee some financial consideration at the time of their retirements.

An equitable solution would be to offer the respondent an opportunity to surrender his medallion, however, this is not a court of equity. The San Francisco Office of the District Attorney has made it clear that the San Francisco Transportation Code must be followed. Any appeals of this order based on ADA, quasi-property rights or any other claims will have to be made to the Board of Appeals and/or the respective State and Federal Courts.

4. SFMTA Hearing Section Reconsideration

Reconsideration of this case is based solely on the statutes. This decision is not a deviation but a clarification of the original finding. Any consideration of prospective or future actions have no place in the present decision. On the basis of existing Transportation Code provisions, I find that the SFMTA has established, by a preponderance of the evidence, that Mr. Cortesos' medallion (#753) is eligible *at the present time* to be revoked under any of the various permit renewal provisions of the Transportation Code.

VI. ORDER

By reason of the Findings stated above, the Taxi Services Notice of Nonrenewal is upheld, and Medallion #753 is now eligible for revocation.

Dated this 22nd day of July, 2021

Michael Hawkins

Michael Hawkins
Neutral Hearing Officer
SFMTA Hearing Section

RIGHT OF REVIEW

Under the provisions of the San Francisco Transportation Code, a decision of a hearing officer is a final administrative decision. Any party or entity adversely affected by this decision may seek review of the decision by filing an Appeal in accordance with the provisions and the 15-day timeline set forth in the rules provided by the San Francisco Board of Appeals.