

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SFMTA HEARING SECTION

**SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY,**

vs.

STATEMENT OF DECISION

DIRK NEYHART,
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 Dirk Neyhart on or about November 2, 2020.

The SFMTA Complaint alleges that Mr. Neyhart 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. Neyhart on or about September 28, 2020, that his right to remain a medallion holder was being contested by Taxi Services.

On November 20, 2020, Mr. Neyhart submitted to SFMTA a timely request for a hearing.

Following that notice and the subsequent Complaint, a video-conference hearing was scheduled for Mr. Neyhart by this Hearing Section for July 27, 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 July 27, 2021, Mr. Neyhart appeared via video at the time of this hearing, with his attorney, Heidi Machen. SFMTA Taxi and Accessibility manager Philip Cranna and analyst Danny Yeung, appeared by video, along with the undersigned administrative hearing officer, and at that time testimony from each of the parties was received into evidence.

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.

In terms of Mr. Neyhart's current status, the Complaint stated that Mr. Neyhart's A-Card is inactive. Without a current A-Card, the renewal of Mr. Neyhart's medallion #244 cannot be authorized under the relevant provisions of the Code.

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 Article 1100 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(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:

Philip Cranna, an Enforcement and Legal Affairs Manager in the SFMTA's Taxi Services, argues as to the origin and reliability of the exhibits offered. In representing Taxi Services, Mr. Cranna confirms that according to the applicable laws referenced above, SFMTA's effort to revoke medallion #244 for an expired A-Card is appropriate under these circumstances.

SFMTA alleges that Mr. Neyhart is not eligible for accommodation to the full-time driving requirement, under either the stipulated decision in the case of *William Slone and Michael Merrithew v. Taxi Commission*, or the 2009 ADA program. SFMTA contends that the stipulated agreement did not negate the Court's decision in *Sloane* that the full-time driving requirement remains an essential eligibility requirement. SFMTA contends that Resolution 09-138 allows relief of the full-time driving requirement only to a medallion holder who is *temporarily* physically incapable of driving, and that the respondent is ineligible for accommodation under this policy because his physical condition is certainly permanent, and not temporary.

SFMTA alleges the respondent was not denied due process as he has no vested right, or legal entitlement, to surrender his medallion for consideration. SFMTA also alleges that it has not waived the requirement that medallion holders must have an active A-Card.

Danny Yeung, an administrative analyst in the SFMTA's Taxi Services, testified to the origin and reliability of the exhibits offered by Taxi Services at the hearing. Mr. Yeung confirmed that the evidence of record established that Mr. Neyhart's A-Card is currently inactive and has been inactive since 1998.

SFMTA's documents admitted to the record:

- Notice of Nonrenewal, 9/28/2020
- Request for Hearing, 10/27/2020
- Complaint for Nonrenewal, 11/2/2020
- GTMS Search 11/2/2020,
- Response Brief, 7/22/2020

B. Dirk Neyhart, Respondent:

Mr. Neyhart testified that he was the victim of a crime that left him disabled and blind since 1997, and that his condition was reported by his physician to the DMV who revoked his driver's license. Mr. Neyhart testified that since 1998, he was unable to drive a taxicab, to qualify for a driver's license or to hold an A-Card. However, he continued to submit his owner operator form to the City every year declaring his intention to drive as required to maintain his taxi permit (medallion). Mr. Neyhart testified that he applied for relief and was granted accommodations in 2006, 2007 and 2008, waiving his driving requirement for those periods.

Mr. Neyhart testified that after 2008, the City did not notify him of the revocation of the previously adopted ADA policy under which he received driving relief accommodations; and he was not informed of the change in ADA policy pursuant to SFMTA Board of Director's Resolution 09-138.

The attorney for the respondent argues that Mr. Neyhart has renewed his medallion permit every year since 1997 and should be allowed to continue because Mr. Neyhart's disability qualifies him for an accommodation from the A-Card's full-time driving requirement, and because SFMTA never offered its remedies for disabled drivers under the Taxi Medallion Transfer Program.

Mr. Neyhart's attorney argues that the stipulated decision in the case of *William Slone and Michael Merrithew v. Taxi Commission* shows the City's prior intent to help disabled medallion holders by providing accommodations to disabled medallion holders from the "full-time driving requirement," because in *Slone* one litigant was allowed to sell his medallion, and the other was able to receive an accommodation under the 2009 ADA program.

Mr. Neyhart's attorney also argues that SFMTA has previously waived the requirement that medallion holders must have an A-Card in order to renew a taxi permit. In support of this argument, a notarized declaration by Mr. Charles Rathbone was presented showing that in 2017, SFMTA's Manager and agent, Paige Stanfield, responded to Mr. Rathbone's inquiry as to whether maintaining an active A-Card was a condition of holding a taxicab permit. Mr. Rathbone's notarized declaration contains an email from Paige Stanfield to Mr. Rathbone stating "No, if you are not driving, you do not have to renew." The respondent argues that Mr. Rathbone, the recipient of that advice, relied on Ms. Stanfield's advice for several years and that this departmental policy would be assumed to equally apply to Mr. Neyhart, who should be given equal opportunity to participate in the ADA exception to the driving requirement for permit holders without having to renew his A-Card.

The respondent argues that SFMTA failed to apprise him of his rights under programs designed to aid disabled medallion holders, thus depriving Mr. Neyhart of significant due process. As such, SFMTA's effort to revoke Mr. Neyhart's medallion should be rejected.:

The following documents offered by Dirk Neyhart were reviewed and admitted to the record:

- Respondent's Brief, 7/16/2021
- Email response from Dirk Neyhart to SFMTA, 11/23/2020
- Declaration of Dirk Neyhart, 7/6/2021
- SFMTA Board Resolution No. 09-138
- *Slone v Taxi Commission*, U.S.C.A. 9th Cir., Motion to Dismiss Appeal, Case No. 08-16726, 8/10/2010
- Declaration of Charles Rathbone
Email from Paige Stanfield to Charles Rathbone, 3/27/2017

V. FINDINGS

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

The SFMTA Board Resolution 09-138 provides that a medallion holder should be relieved of the full-time driving requirement for limited periods during which the medallion holder is temporarily rendered physically incapable of driving. The limited period under this policy may not cumulatively exceed three calendar years for the same condition. Under this policy, a medallion holder who is permanently physically incapable of meeting the full-time driving requirement is not entitled to such relief, and may properly be required to relinquish his or her medallion to the SFMTA. Mr. Neyhart, by his own testimony, is permanently disabled, and thus is ineligible for an accommodation under this policy.

The stipulated agreement in the *Slone v. Taxi Commission* permitted one of the medallion holders to participate in a pilot program which would allow him to sell his medallion to an authorized purchaser, an option that was previously not available. The other litigant in the case

did not elect to participate in the pilot program, but instead subjected himself to SFMTA's 2009 ADA policy. However, the stipulation did not negate the Court's finding that the Taxi Commission's interpretation and application of the full-time driving requirement was consistent and not in violation of the ADA, making the full-time driving requirement an essential condition of eligibility.

SFMTA's Medallion Transfer Program, under the San Francisco Transportation Code section 1116(a)(1), provides medallion holders that are permanently disabled, whether or not subject to the full-time driving requirement, eligibility to surrender their medallion to the SFMTA for consideration. However, Section 1116(a)(4) states that "this Section does not confer on a Medallion Holder a vested right, or other legal entitlement, to surrender a Medallion for consideration." As such, Mr. Neyhart did not, and does not now, have a vested right to surrender his medallion. Therefore, he was not denied due process.

The requirement that medallion holders subject to the full-time driving requirement must hold an active A-Card is established by the SFMTA Board in its Transportation Code legislation. Individual staff within the Agency do not have the authority to change the policies set in the Transportation Code. The email that Mr. Rathbone relied on as an ADA exception to the full-time driving requirement for permit holders without having to renew the A-Card, applied to Mr. Rathbone's individual case, and cannot be applied as a general program wide policy. Therefore, SFMTA has not waived the requirement in the TC that medallion holders must have an active A-Card.

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 a holding a taxi medallion may be revoked. On that basis the revocation of this medallion is appropriate here under the circumstances.

VI. ORDER

By reason of the Findings stated above, the Taxi Service's Notice of Nonrenewal in this matter is upheld, and medallion #244 is now eligible for revocation.

Dated this 9th day of September, 2021

Ivan Morales

Ivan Morales

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.