

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SFMTA HEARING SECTION

**SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY,**

vs.

STATEMENT OF DECISION

MARC PAULSEN,
Respondent

I. INTRODUCTION

This case came on for administrative hearing, July 29, 2021, 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 Marc Paulsen on or about 9/28/20. The SFMTA Complaint alleges that Mr. Paulsen 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. Paulson on or about 11/3/20, 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. Paulson by this Hearing Section for July 29, 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 29, 2021, Mr. Paulsen appeared via video-conference along with the SFMTA’s Taxi Services Manager, Philip Cranna, Taxi Services Analyst, Danny Yeung , and the undersigned Administrative Hearing Officer.

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 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 and complete a drug test.

Mr. Paulsen has current California driver's license that expires in 2026. He has not completed a drug test and cannot not qualify for an A-Card. As a result, without a current A-Card, the renewal of medallion #365 has not be authorized under the relevant provisions of the Code.

On or about May 12, 2021, my office received a brief on the Paulsen 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's medallion on the basis of the provisions of the Transportation Code.

III. APPLICABLE LAW

Under the provisions of Article 1100 *et seq.* 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)(1)(E), regarding drug testing

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(e)(1)(A), involving various aspects of medallion operation

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 GTMS driver profile of Mr. Paulsen (Exhibit A), the Division's Notice of Nonrenewal, 9/28/20 (Exhibit B), and the email request for a hearing of Marc Paulsen dated 10/27/20 (Exhibit C). 60 day extension by Mr. Cranna (Exhibit D) 2/19/2020 to Hansu Kim of Flywheel. Mr. Yeung confirmed that Mr. Paulsen's A-Card expired 2/29/2020, and that his A-Card has not been renewed since that time. Each of these exhibits were accepted into evidence without objection.

B. Philip Cranna:

Mr. Cranna stated that the basis for revocation is that Mr. Paulsen has not completed a drug test. A drug test is required for an A-Card. An A-Card is required to maintain a Medallion. He further stated that drug testing is required by Federal, State and San Francisco (Transportation Code) statutes and is not discretionary. A 60 day extension was allowed for Mr. Paulson to return to California for a drug test (Exhibit D, 2/19/2020). This was based upon a request by Mr. Paulsen. Drug testing is administered by a third-party contractor. Mr. Cranna further stated that SFMTA has explored the possibility of other testing. Mr. Cranna claimed SFMTA does not have a contractor in Thailand and there may be a chain of custody issue if a test is administered in Thailand. Mr. Cranna also stated he was unwilling to give an extension until the current pandemic concerns have subsided because that time is unknown.

C. Marc Paulsen:

Mr. Paulsen testified that he is living in Thailand. He is 79 years old with pre-existing health conditions. His medallion has been leased to Flywheel, 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. He also stated that he was aware of the 60 day extension. He stated that he was unable to travel due to the Coronavirus pandemic outbreak in the US at that time. The Coronavirus was at its height and he could not safely travel. The delta variant of the virus is currently ravaging Thailand. If he were to travel to the California for the drug test, he would have to quarantine for two weeks upon returning to Thailand. This would prove to be a great financial burden. Mr. Paulsen stated that he has received his first vaccine and he is scheduled, 9/20/21, for his second shot. He testified is willing to travel at some time after the vaccination period. He also offered to take a drug test in Thailand. Mr. Paulsen went on to state that the purpose of a drug test is to protect the public. It is clear that at almost 80 years old he is not now driving and this drug test is simply an excuse to get his medallion. Mr. Paulsen has a California driver’s license that expires in 2026. This was confirmed at the hearing.

V. ANALYSIS

It is clear that an A-Card is required to maintain a medallion. A drug test is required for an A-Card. The Taxi Services policy for drug testing as follows:

“The purpose of this Policy is to assure Driver fitness for duty, and to protect the public from the risks posed by the use of Alcohol and Prohibited Drugs (as defined below) by: 1) taking appropriate action to assure that the City’s Taxi Drivers are not impaired in their ability to perform in a safe, productive, and healthy manner; 2) encouraging Taxi Drivers to voluntarily

seek professional assistance whenever personal problems, including alcohol or drug use, may adversely affect their ability to perform.”

Mr. Paulsen’s medallion is leased to Flywheel. Taxi Services contacted Flywheel regarding a 60 day extension. The record is unclear whether Mr. Paulsen was contacted by Taxi Services for this extension. The only email from Mr. Paulsen in the record (Exhibit C, 10/27/20) indicates that he learned of the extension through Hansu Kim of Flywheel (see exhibit D, 2/19/20). It is reasonable to believe Mr. Paulsen thought he had an exemption (exhibit C) from the drug test or that it was for more time, 90 days as in Mr. Paulsen’s testimony. Flywheel is not an agent of Mr. Paulsen and service to Flywheel is not service to Mr. Paulsen. In any case, the service of the extension seems to be defective. Mr. Cranna stated that the extension was granted due to a request by Mr. Paulsen because he could not safely travel during the Covid pandemic. The situation hasn’t changed. If anything, the current situation in Thailand has gotten worse. In addition, the latest State Department advisory is Level 4, Do Not Travel to Thailand because of Covid. The pandemic can be considered a *force majeure* that should trigger a reasonable accommodation. The stated purpose of a drug test is to protect the public from taxi drivers who may be under the influence of prohibited substances. This is not the case in this instance. Mr. Paulsen is not driving a taxi and does not pose a threat to the public.

VI. FINDINGS

Mr. Paulsen is elderly, with atrial fibrillation and other pre-existing health issues who is not driving and possess no threat to the public. He is willing and able to return to California to take a drug test but for the current Covid pandemic. He is unwilling to risk his life and unable to take on the financial cost of a fourteen day quarantine in a Thai hotel upon his return. One alternative is for Mr. Paulsen, after being fully vaccinated, submit to a drug test within 60 days, from one of two clinics accredited to the US Embassy Visa Section in Bangkok. This would substantially meet the requirements of CA Govt Code section 53075.5, and 49 CFR 40 and 382. The results are transmitted directly to the US Embassy. The only two DHHS approved labs (required by the Transportation Code) outside the US are in Canada. The policy for a drug test is to protect the public. There is no need in this case. It would be dangerous for Mr. Paulsen to travel. Another reasonable solution would be to issue an extension that would require Mr. Paulsen to return, within 60 days after he is fully vaccinated and the Thai quarantine has been lifted; to cure this administrative violation.

On the basis of existing Transportation Code provisions as affected by the circumstances of this case, I find that the SFMTA has not established, by a preponderance of the evidence, that Mr. Paulsen’s medallion (#365) is eligible *at the present time* to be revoked under the drug testing provision of the Transportation Code.

I hold that SFMTA’s Complaint for Non-renewal has not met its burden of showing good cause to not renew medallion #365 and this case is dismissed without prejudice.

VII. ORDER

By reason of the Findings stated above, the Taxi Services Notice of Nonrenewal is denied, and medallion #365 is not now eligible for revocation.

Dated this 31st day of August, 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.