

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SFMTA HEARING SECTION

**SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY,**

vs.

STATEMENT OF DECISION

**LEUNG TRANSPORTATION
CORP.,**

Respondent

I. INTRODUCTION

This case came on for administrative hearing pursuant to a Complaint by the San Francisco Municipal Transportation Agency (hereafter the “SFMTA” or “Taxi Services”) after the Complaint was sent to respondent Leung Transportation Corporation (“Leung”) on or about September 25, 2020. The SFMTA Complaint alleges that Leung had transferred over 10% of its Corporation ownership of medallion # 433. Under Transportation Code 1109(d)(1)(A), a transfer of over 10% of a Corporation’s stock ownership renders a Corporate-affiliated medallion null and void. On that basis, the SFMTA’s Taxi Services had notified Leung on or about September 25, 2020, that medallion # 433 is ineligible for renewal.

Leung challenged the Complaint, and a video-conference hearing was scheduled by the Hearing Section for June 8, 2021, under the provisions of Article 1100 of the SFMTA’s Transportation Code (“TC”). Article 1100 governs the rights granted to taxi medallion holders in San Francisco, as well as how hearings related to those rights are administered.

On June 8, 2021, Leung (represented by Ken Leung) appeared via telephone for this hearing. SFMTA Taxi and Accessibility Services manager Philip Cranna and analyst Danny Yeung, appeared by video, along with the undersigned administrative hearing officer, and testimony and other evidence from both parties was admitted into the record into evidence.

The terms “permit”, “operating permit”, and “taxi permit” are interchangeable for the purpose of this Decision.

II. APPLICABLE LAW

Under the provisions of Article 1100 of the Transportation Code, the following statutory authority forms the relevant basis for this decision.

Relevant to this case are these Article 1100 provisions:

- TC §1104(d)(1), regarding Annual Filing Required for Renewal
- TC §1105(a)(3), regarding permits as privilege, not property of the driver
- TC §1105(a)(6), involving compliance with laws and regulations
- TC §1105(a)(3), regarding the duration of permits
- TC §1109(c)(1), regarding the full-time driving requirement
- TC §1109(d)(1), regarding Permits Void on transfer or sale

Also relevant to this case are these Proposition K provisions:

- Prop K §1(a), regarding ownership of taxi permit (medallion)
- Prop K §2(d), regarding permits are only issued to a natural person
- Prop K §4(b), declaring the 60-day period to renew Pre-K permits
- Prop K §5(a), regarding Corporation Permit sale or transfer

III. TESTIMONY

A. SFMTA Testimony and Evidence: Philip Cranna and Danny Yeung:

Philip Cranna, an Enforcement and Legal Affairs Manager for SFMTA's Taxi Services, argued the case for the Taxi Services. Mr. Cranna argued that under the facts of the case, and the applicable laws stated above, Taxi Services was entitled to not renew Medallion # 433.

Danny Yeung, an administrative analyst for SFMTA's Taxi Services, laid a foundation for the exhibits offered by Taxi Services at the hearing. The exhibits included a Permit Issuance Record (Exh. A), Leung Corporate Filing (Exh. B), Copies of Stock Register (Exh. C), Annual Sworn Statement (Exh. D), Notice of Nonrenewal (Exh. E), Declaration of Quentin Kopp (Exh. F), Salesforce Medallion Profile (Exh. G), and the Request for Hearing (Exh. H).

Mr. Yeung testified that the SFMTA records accurately reflect that the ownership of Leung had been transferred over 10 percent cumulatively throughout the years between 2007 and 2020. A detailed record of the Corporation's transfers of ownership was presented during the hearing. Leung's annual reports to the SFMTA were also offered at the time and admitted into the record. Based on this documentary evidence, Taxi Services contends that the Leung medallion should be deemed null and void, and ineligible for renewal.

B. Leung Transportation Corporation Response

Leung did not dispute the Corporation's record of ownership transfers presented by the SFMTA. Leung testified that two of the original owners have died over the years since incorporation, and thus no longer held any portion of the Corporation's stock.

Leung maintained that the Corporation's stock transfers were appropriate, given that there were no clear instructions to medallion holders indicating that a transfer of a corporation's ownership of 10% each year is prohibited.

In addition, Leung argued that the medallion should be deemed renewable by its current Corporate stock holders, because all transfers of stock were properly reported to the SFMTA over the years (and never challenged by Taxi Services).

IV. PROP K FRAMEWORK

Proposition K was signed by State Senator Quentin Kopp and adopted by the City and County of San Francisco on June 6, 1978. Among the principal changes to the Taxi industry, Prop K specifies:

- 1) Pre-K medallions are identified as medallion/taxi permits held by individuals who received taxi permits prior to the effective date of Proposition K—June 6, 1978.
- 2) No Permit shall be issued except to a natural person and in no case to any business, firm, partnership or corporation (Prop K, section 2 [D]).
- 3) All persons, businesses, firms, partnerships corporation or other entities who possess outstanding permits to operate a motor vehicle for hire on the effect date of this section must surrender and exchange any such permit for new permits within 60 days of the effective date of this section (Prop K, section 4 [B]).
- 4) If any permittee is a corporation, any sale or other transfer of 10 percent or more of the stock ownership or assets of the permittee, resulting from any transaction or series of transaction and computed on a cumulative basis, will be deemed to be a sale or transfer and the permit therefore shall be null and void, unless approved by the Police Commission in conformity with the requirements of these Ordinance (Prop K, section 5[A]). This last section is codified by under TC § 1109(d)(1)(A), and is Taxi Services' basis for non-renewal.

1. Medallion #433 Is a Post-K Medallion

According to the Complaint, Taxi Services alleges that medallion # 433 is a "Pre-K" medallion, even though it was issued on August 28, 1978. (See Exhibit A.) In addition, Taxi Services provided evidence to demonstrate that Leung was established as a corporation on or about March 30, 1978. (See Exhibit B.).

Accordingly, although Taxi Services has alleged that the Leung Corporation was formed to divert the foreseeable impact of Prop K, Taxi Services' documentation regarding Leung's Pre-K status is problematic. On its face TC § 1109(d)(1), applies only to pre-K medallions, but according to Prop K, the adoption date for Leung's medallion makes it a Post-K medallion and not Pre-K. If Leung Corporation is actually the holder of a Post-K medallion, it is not subject to the provisions of TC § 1109 (c)(3) which only applied to Pre-K medallions. The following timeline is crucial to the gravamen of this case:

03-30-1978

06-06-1978

08-28-1978

Leung Corp. Established

Prop K Adopted

Medallion #433 Issued

The August 28, 1978, date of issuance was more than 60 days after the adoption of Prop K on July 6, 1978. Sixty days was the time limit set forth by Prop K for the Pre-K medallion holders to renew their existing permits. In issuing the Leung medallion over the time limit, the SFPD was not in compliance with Prop K, section 4(B), and arguably enabled Leung to operate into the future without the transfer restrictions prescribed for Pre-K corporations under TC 1109(d)(1)(A).

Taxi Services' subsequent lack of enforcement likely reinforced Leung's belief that it was operating a post-K medallion that was not subject to the transfer restriction under TC 1109(d)(1)(A).

2. SFMTA Hearing Section Policy

It is the policy of this Hearing Section to tread conservatively when considering the loss of revenue to medallion holders since the rise of Lyft/Uber and the ongoing Covid crisis. In this instance, Leung was under the reasonable expectation that SFMTA accepted it as a post-K registered Corporation and that as such, it was free to transfer/sell shares of stock and still retain its medallion. Moreover, Leung was led to believe that the transfer process it engaged in was legal as its annual renewals, submitted in good faith, were never rejected by the Taxi Services. Thus, nothing in Taxi Services' enforcement history was available to disabuse Leung of its belief that it could transfer its shares in the manner it did without losing its medallion.

The SFPD issued a medallion to Leung on August 28, 1978, past the deadline for pre-K issuance. There is nothing in the record indicating that SFPD attempted to correct this issuance, if it was indeed incorrect. Furthermore, Taxi Services received and filed the Leung's annual renewal report annually after 2003 without objection, despite candid information from Leung since 2008 that it had begun exceeding, cumulatively ten percent a year restriction on transfers of corporate shares. As the main enforcement agency and the only reporting agency known by Leung, Taxi Services failed to notify Leung that its Corporation ownership transfer action was illegal.

3. Findings

The San Francisco Police Department (SFPD) issued a valid operating permit to Leung, an established corporation on August 28, 1978, past the deadline to include Leung under TC 1109(d)(1)(A).

On the basis of these considerations, I find that the SFMTA has not established, by a preponderance of the evidence, that Leung is a pre-K medallion subject to the transfer restrictions of TC 1109(d)(1)(A).

V. DATE OF DECISION

As noted above this case was heard on June 8, 2021, and ordinarily under TC §1120(e)(1) a decision would be due 30 days after the date of the hearing. However, a two week extension was requested and approved due to the expansive research of evidence. On that basis this decision is due to be filed and published on or before July 22, 2021.

VI. ORDER

By reason of the Findings stated above, the Taxi Service's Notice of Nonrenewal in this matter is denied. Medallion #433 is deemed renewable under the condition that Leung complies with all other renewal requirements, including affiliating with a Color Scheme within a reasonable time from the date of this Decision.

Dated this 22th day of July, 2021

Elaine Hou

Elaine Hou
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 rules provided by the San Francisco Board of Appeals.

ATTACHMENT:

- 1) San Francisco Administrative Code Appendix 6 - ORDINANCE PROVIDING FOR THE REGULATION OF TAXICABS AND OTHER MOTOR VEHICLES FOR HIRE (Source: <http://www.taxi-library.org/prop-k.htm>)
- 2) Overview of the San Francisco Taxi Industry and Proposition K – A SHORT REPORT PREPARED FOR THE CHARTER REFORM WORKING GROUP – A POLICY BODY OF THE SAN FRANCISCO TAXI COMMISSION (Source: <http://www.medallionholders.com/docs/overview-of-prop-k.pdf>)