



BOARD OF APPEALS

Date Filed: March 14, 2022

REHEARING REQUEST FOR APPEAL NO. 21-091

John Russo, Appellant(s) seeks a rehearing of **Appeal No. 21-091** which was decided on **March 2, 2022**. This request for rehearing will be considered by the Board of Appeals on Wednesday, **March 30, 2022**, at **5:00 p.m. at City Hall, Room 416, 1 Dr. Carlton B. Goodlett Place**. **The parties have the option of attending remotely via Zoom and must notify Board staff at least 48 hours in advance of the hearing.**

Pursuant to Article V, § 9 of the Rules of the Board of Appeals, the **response** to the written request for rehearing must be submitted by the opposing party and/or Department no later than **10 days from the date of filing, on or before March 24, 2022** and must not exceed six (6) double-spaced pages in length, with unlimited exhibits. The brief shall be double-spaced with a minimum 12-point font size. An electronic copy should be e-mailed to: boardofappeals@sfgov.org; julie.rosenberg@sfgov.org; cmac906@gmail.com and tonapah246@gmail.com.

You or your representative **MUST** be present at the hearing. It is the general practice of the Board that only up to three minutes of testimony from each side will be allowed. Except in extraordinary cases, and to prevent manifest injustice, the Board may grant a Rehearing Request only upon a showing that new or different material facts or circumstances have arisen, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing.

Based on the evidence and testimony submitted, the Board will make a decision to either grant or deny your request. Four votes are necessary to grant a rehearing. If your request is denied, a rehearing will not be scheduled and the decision of the Board will become final. If your request is granted, a rehearing will be scheduled, the original decision of the Board will be set aside, and after the rehearing, a second decision will be made. Only one request for rehearing and one rehearing are permitted under the Rules of the Board.

Requestor or Agent (Circle One)

Signature: Via Email

Print Name: Carl Macmurdo, agent for appellant

March 13, 2022

Rehearing request for John Russo

We (John Russo and agent Carl Macmurdo) believe this case meets the criteria described in the “Standard of Review” section posted on your website for filing a rehearing request.

The Board did not follow its own rules at the March 2, 2022 hearing.

Prior to the Russo March 2 hearing, attorney Heidi Machen --- who represents appellant Dirk Neyhart in a similar appeal --- had expressed her preference for a full Board hearing on the appeal, rather than proceeding with Commissioner Lopez absent. In response, executive director Julie Rosenberg read from the text of your Board’s rules in Article 5, section 7 (attached.) In part it reads,

“But when the Board hears a matter with less than five members present and the vote of the missing member could alter the Board’s decision, the Board generally will move to continue with its deliberations so that the missing member can participate in the final vote.”

Given that on February 16, the Board voted 3 to 2 to continue two virtually identical appeals (*Horbal* and *Cortesos*) ”to the call of the chair,” it is obvious that disallowing Commissioner Lopez’s participation **did** result in a different outcome. We ask that a rehearing be granted to reopen deliberations so that Mr. Lopez can participate in deliberations and also vote on the Russo appeal.

In the event the Agency makes a semantical argument that no “*decision*” occurred on March 2, we note the Board “*decided*” to exclude Mr. Lopez’s participation, which thereby effectuated the prior *decision* by the Agency to issue a “Notice of Nonrenewal of

Permit” letter to Mr. Russo as well as the assigned Hearing Officer’s *decision* to uphold the non-renewal recommendation.

Extraordinary circumstances exist. The “manifest injustice” standard applies.

Here are arguments in support of the above statement:

1. For Mr. Russo to lose his permit directly because a Commissioner called in ill constitutes a **manifest injustice**. The Board ignored its own standard procedure by disallowing Commissioner Lopez’s participation in the deliberations and vote.

2. It is an **extraordinary circumstance** and also **manifestly unjust** that **all appellants** to date are senior and / or disabled. The Agency is targeting a specific subset of permit holders.

3. It is **manifestly unjust** that the Agency added new Transportation Code provision section 1118(a)(8) in October 2015 --- thirty-seven years after Prop. K was passed --- to allow for permit revocation in the event an A-Card is not timely renewed. Other Agency regulations require the permit holder to have a valid California Driver’s License (CDL) to re-establish an expired A-Card. This new code language specifically targets severely disabled persons, who cannot obtain a CDL. Also, the Agency is applying the new rule **retroactively**, rather than **prospectively**.

4. Attached is a document showing that the Agency’s own permit compliance manager advised disabled medallion holders there was no need to maintain a current A-Card. The Agency manager personally advised Mr. Russo likewise. His current predicament stems directly from his following that Agency advice. As such, the revocation action involves **manifest injustice** and an **extraordinary circumstance**.

5. It is both an **extraordinary circumstance** and **manifestly unjust** that elderly and disabled medallion holders are being treated as pawns, or road kill --- caught in the cross-fire between the credit union and the City in their ongoing litigation. Credit union CEO Jonathan Oliver in his trial Court deposition mentions that he implored then-Agency Director Ed Reiskin to remove from the equation “the low-hanging fruit,” --- an obvious reference to the type of medallion holders who now are being paraded before your Board. This appears to be the primary reason for the sudden wave of revocations --- a perception held by both the credit union and the Agency that the purchased medallion holders will have increased income once the revocations of elderly and disabled Prop K medallion holders are processed, resulting in fewer loan forfeitures on purchased medallions.

6. During the Marc Paulsen case at your March 2 hearing --- after the permits for Mr. Russo and Mr. Neyhart had already been revoked --- the Agency finally revealed its position as to why it keeps relying on Judge White’s ruling in the Slone ADA lawsuit, rather than the subsequent Ninth Circuit mediated Slone Agreement which resulted from an appeal of Judge White’s having granted the Agency’s Motion for Summary Judgment. Your assigned deputy city attorney conveyed the Dennis Herrera / David Chiu opinion that the Ninth Circuit Slone Agreement does not apply to the hundreds of elderly or disabled Prop. K medallion holders who are, or will eventually become, virtually identically situated as Mr. Slone. The City Attorney’s position is dubious at best and deserves further discussion by your Board. It may even constitute **new evidence**, and we consider it as being **manifestly unjust**.

Other observations / Summary / Conclusion / Request

Your Board clearly has a schism on these taxi appeal cases. Three Commissioners advocate for the appellants' rights, whereas the other two interpret the law and code as favoring the Agency's arguments. We ask the two Commissioners who agree with SFMTA policy to understand our request to approve a rehearing is an **entirely different issue** from how you will choose to vote on actual appeals.

There may be twenty-plus additional CDL cases in the pipeline. We urge you to have a consistent policy. There is no real gain in revoking exactly two permits due to a Commissioner's having missed a hearing due to illness, whereas future appeals likely will be continued. Mr. Russo's case should have been postponed on March 2 until a full Board was present. Failure to grant a rehearing may result in other negative consequences, which topic we may address at the hearing on our current request.

Although "kicking-the-can-down-the-road" is not generally an optimal solution, there is a chance these cases will resolve themselves once the credit union litigation is finally concluded. Reportedly, the credit union plans to appeal the verdict to the State Court of Appeal. However, some **new information** has now come forth. At a very recent taxi outreach meeting, an SFMTA official stated that the credit union and Agency had entered into mediation in hopes of settling the case, so a final resolution may be in the offing.

Thank you very much for your diligence and for considering our rehearing request. Mr. Russo drove taxi in San Francisco for twenty-seven years prior to becoming disabled. He deserves having all five Commissioners participate in the deliberations and voting.

Carl Macmurdo (agent for John Russo --- taxi medallion holder # 334.)

Subject: RE: requested info re: historical medallion issuance

From: "Standfield, Paige" <Paige.Standfield@sfmta.com>

Date: 03/27/2017 11:36 AM

To: Charles Rathbone <charles.rathbone@sonic.net>

X-Account-Key: account19

X-UIDL: 1490640127.2650_0.a.spam,S=11698

X-Mozilla-Status: 0013

X-Mozilla-Status2: 00000000

X-Mozilla-Keys: sfmta medallions

Return-Path: <Paige.Standfield@sfmta.com>

Received: from l.mx.sonic.net (a.spam-proxy.sonic.net [69.12.221.245]) by (8.14.4/8.14.4) with ESMTP id v2RIg6UR002644 (version=TLSv1/SSLv3 cipher=GCM-SHA256 bits=128 verify=NOT) for <charles.rathbone@lds.sonic.net>; -0700

Received: from 5pmail.ess.barracuda.com (5pmail.ess.barracuda.com [64.l.mx.sonic.net (8.14.9/8.14.9) with ESMTP id v2RIftdB012009 (version=TLS RSA-AES128-GCM-SHA256 bits=128 verify=NOT) for <charles.rathbone@11:42:04 -0700

Received: from mail.sfmta.com (mail.sfmta.com [75.10.230.1]) by mx1403. (version=TLSv1 cipher=AES128-SHA bits=128 verify=NO); Mon, 27 Mar 2017

Received: from SV6EX10MBX1.muni.sfgov.org ([fe80::79a1:35c7:bc:df7]) by SV6EX10CASHUB1.muni.sfgov.org (:::1) with mapi id 14.03.0195.001; Mon, 27 Mar 2017

Thread-Topic: requested info re: historical medallion issuance

Thread-Index: AQHS0a8J5yxbJULJEOi3tis16lfvaGjAqmwgAHtdYD//5PZ//pFsg

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References: <E3AA1FD17871461B98EA4D1453D2E5AF@DESKTOP0PC1403.muni.sfgov.org>
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<e1d41532-4754-5120-40c4-cbd901418562@sonic.net>

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<a3ff-e88e-ead3-2fd1af33b177@sonic.net>

<D7D44E971C6E12468BF084AC6488B620E3C85C66@SV6EX10MBX1.muni.sfgov.org>
<b34a-8cbf-502f-fa61958fb41b@sonic.net>

In-Reply-To: <f2378d6c-b34a-8cbf-502f-fa61958fb41b@sonic.net>

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Content-Language: en-US

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X-BESS-VER: 2017.3-r1703091851
X-BESS-Apparent-Source-IP: 75.10.230.1
X-BESS-Outbound-Spam-Score: 0.00
X-BESS-Outbound-Spam-Report: Code version 3.2, rules version 3.2.2.1
 pts rule name description ----- 0.00
 HTML included in message 0.00 BSF_BESS_OUTBOUND META: BESS O
X-BESS-Outbound-Spam-Status: SCORE=0.00 using account:ESS31785
 tests=HTML_MESSAGE, BSF_BESS_OUTBOUND
X-BESS-BRTS-Status: 1
X-Orthrus: tar=1 grey=no co=US os=//6 spf=none dkim=none

Hi Charles,

No, if you're not driving you don't have to renew. Would you like me to put a new form in the mail to you?

From: Charles Rathbone [mailto:charles.rathbone@sonic.net]
Sent: Monday, March 27, 2017 10:04 AM
To: Standfield, Paige <Paige.Standfield@sfmta.com>
Subject: Re: requested info re: historical medallion issuance

Yes, the info is very helpful.

An unrelated question: I anticipate that my doctor will again recommend that I not drive when my current medical modification expires this summer. In the meantime, do I need to maintain an active A-card as a condition of holding a taxicab permit?

Best wishes,

--
 Charles Rathbone
charles.rathbone@sonic.net

On 03/27/2017 08:51 AM, Standfield, Paige wrote:

No problem. Hope it helps!

-----Original Message-----

From: Charles Rathbone [mailto:charles.rathbone@sonic.net]
Sent: Friday, March 24, 2017 4:51 PM
To: Standfield, Paige <Paige.Standfield@sfmta.com>

Subject: Re: requested info re: historical medallion issuance

Hi again Paige,

Many thanks for the thorough response in such short order.

Best wishes,

--

Charles Rathbone charles.rathbone@sonic.net

Text of statement by Julie Rosenberg at the March 2, 2022, BOA hearing

“As a preliminary matter, we did have a question in the (Zoom app) chat from Heidi Machen. She is the attorney for the appellant for item number eight, and she said that since Commissioner Lopez is absent, she believes appellants are entitled to a full panel, and she wants to know what her options are.

“I would just like to quote from Article 5, section 7 of the Board’s rules that the Board generally will not reschedule a matter based solely on the fact that fewer than five members are present at the hearing. But when the Board hears a matter with less than five members present and the vote of the missing member could alter the Board’s decision, the Board generally will move to continue with its deliberations so that the missing member can participate in the final vote.

“So, that is my response to that question.”

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

SAN FRANCISCO BOARD OF APPEALS

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JOHN RUSSO,
Appellant,
vs.
SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY,
Respondent

Appeal No. 21-091
Medallion Permit No. 334
**SFMTA TAXI DIVISION’S RESPONSE
TO REQUEST FOR REHEARING**
Hearing Date: Wednesday, March 30,
2022
Time: 5:00 p.m.
Place: City Hall, Room 416

[Exemption from File Fees per Cal. Gov.
Code §§ 6103(a)-(b)]

INTRODUCTION

San Francisco Municipal Transportation Agency (SFMTA) hereby files this Response to Appellant’s Request for Rehearing filed on March 13, 2022.

ARGUMENT

Section 9 of the Rules of the Board of Appeals (hereinafter Rules) governs Rehearing Requests. Section 9(b) states that “[e]xcept in extraordinary cases, and to prevent manifest injustice, the Board may grant a Rehearing Request *only upon a showing that new or different material facts or circumstances have arisen*, where such facts or circumstances, if known at the time, could have affected the outcome of the original hearing.” [Emphasis added]. Thus, Section 9(b) only grants a narrow exception for rehearing where *new or different material facts* have arisen **and** the new or different material facts could have affected the outcome. Parties seeking a rehearing are required to submit a written request that ¹ states the following:

- (i) The nature and character of the new facts or circumstances;
- (ii) The names of the witnesses and/or description of the documents to be produced; and
- (iii) Why the evidence was not produced at the original hearing.

¹ Section 9(b) states that “[t]he written request shall state:” The use of the word “shall” indicates that it is mandatory that the requesting party plead all three items.

1 Appellant's request for rehearing should be denied for failure to meet the standard set
2 forth in Section 9(b) of the Rules. Here, Appellant did not show that there are any new or
3 different material facts that have arisen. He also failed to state the nature of any new
4 facts or circumstances, and he did not provide any names of witnesses or even a
5 description of any documents to be produced. Because no new facts or circumstances
6 have arisen, it logically follows that he also did not state why any new evidence was not
produced at the original hearing.

7 Appellant attempts to raise the fact that SFMTA has entered in mediation, but this
8 does not have any impact on Appellant's case whatsoever. The appeal before the Board
9 of Appeals relates to the requirement that Post-K Medallion Holders maintain an active
10 A-Card permit. Although the SFMTA entering into mediation is a new fact, it is neither
11 material to Appellant's situation nor could it impact the outcome of the vote of the Board
of Appeals, as mediation is not related to Post-K Medallions.

12 CONCLUSION

13 Pursuant to its own rules, the Board of Appeals may grant a Rehearing Request
14 only upon a showing that new or different material facts have arisen, and that the new
15 material facts could have affected the outcome. Appellant has not presented any new or
16 different material facts that would make this matter eligible for rehearing. Because
17 nothing new or changed has been presented, Appellant has also failed to show how the
18 outcome of the original hearing would have been affected. By failing to show that new
19 or different material facts or circumstances have arisen, this matter is not eligible for
20 Rehearing and the Request for Rehearing should be denied.

21 For the foregoing reasons, the Board of Appeals should deny the request for
22 rehearing.

23 Respectfully Submitted,

24 
25 _____

Date: 3.24.2022

26 Philip Cranna
27 Enforcement & Legal Affairs Manager
SFMTA Taxi Services

DOCUMENTS SUBMITTED FOR THE HEARING ON MARCH 2, 2022

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
JOHN RUSSO,)
Appellant(s))
vs.)
MUNICIPAL TRANSPORTATION AGENCY,)
Respondent)

Appeal No. **21-091**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on September 13, 2021, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the REVOCATION on September 9, 2021, of a Taxi Medallion (Mr. Russo does not have a California Driver's license or an A-Card; the Notice of Nonrenewal is upheld and Medallion No. 334 is revoked) at (Russo).

APPLICATION NO. 334

FOR HEARING ON March 2, 2022

Address of Appellant(s):

Address of Other Parties:

John Russo, Appellant(s) 203 Sandstone Drive South Windsor, CT 06074	N/A
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Date Filed: September 13, 2021

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 21-091

I / We, John Russo, hereby appeal the following departmental action: **Statement of Decision: SFMTA v. John Russo (Taxi Medallion No. 334)** which was issued by the **SFMTA Hearing Section** on **September 9, 2021**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **November 10, 2021, (no later than three Wednesdays prior to the hearing date due to the Veterans Day Holiday)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, Philip.cranna@sfmta.com and jim.emery@sfcityattys.org.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **Tuesday, November 23, 2021, (Note: the brief is due earlier than the regular Board's briefing schedule due to the Thanksgiving Holiday)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org and tonapah246@gmail.com.

The Board's physical office is closed to the public and hard copies of the brief do NOT need to be submitted.

Only photographs and drawings may be submitted by the parties at the hearing.

Hearing Date: **Wednesday, December 1, 2021, 5:00 p.m.**, via Zoom. Information for access to the hearing will be provided before the hearing date. (Note: If the City Health Orders permit, the hearing may be held in-person at SF City Hall. Advance notice will be provided to the parties).

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

I have a cyst in my spine that causes me considerable nerve pain. I am unable to sit or stand or walk for the period that would allow me to work doing anything. I am permanently disabled and I'm unable to fly from Connecticut.

Filed electronically by John Russo, appellant.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SFMTA HEARING SECTION

**SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY,**

vs.

JOHN RUSSO,
Respondent

STATEMENT OF DECISION

I. INTRODUCTION

This case came on for administrative hearing pursuant to a Complaint by the San Francisco Municipal Transportation Agency (“SFMTA”) after the Complaint was sent to respondent John Russo on or about October 15, 2020. The SFMTA Complaint alleges that Mr. Russo had not taken the necessary measures to renew his status as a qualified taxi medallion holder, and on that basis the SFMTA’s Taxi Services had notified Mr. Russo on or about September 28, 2020, that his right to remain a medallion holder was being contested by the SFMTA.

Following that notice and the subsequent Complaint, a video-conference hearing was scheduled for Mr. Russo by this Hearing Section for July 13, 2021, under the provisions of Article 1100 of the SFMTA’s Transportation Code. 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 13, 2021, Mr. Russo appeared via telephone at the time of this hearing, and the Taxi Services manager, Philip Cranna, and its witness, 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 (“TC”), 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 medallion holders. Additionally, 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. Russo, the Complaint stated that because his A-Card had expired in approximately 2015, and had not been renewed, the medallion # 334 held by Mr. Russo was not eligible to be renewed on the basis relevant provisions of the Transportation Code, Article 1100.

The Taxi Services Complaint also noted that under the provisions of Article 1103(c)(2)(C) of the Transportation Code, a person applying for a permit must have a valid California driver's license as a condition for entitlement to have an A-Card.

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(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 preservation and reliability of the exhibits offered by Taxi Services at the hearing. The exhibits included a driver profile of Mr. Russo (Exh. A), the Division's Notice of Nonrenewal (Exh. B), and an email from Mr. Russo, dated October 7, 2020, contesting the SFMTA's basis for its Notice of Nonrenewal (Exh. C). Mr. Yeung stated that the evidence of record established that Mr. Russo's A-Card had expired in approximately 2015, and had not been renewed since that time.

B. JOHN RUSSO:

Mr. Russo testified that he continues to be a resident, living in Connecticut since 2015, and that he continues to be disabled due to neurological conditions in his back, and that currently he is not physically capable of driving a taxi cab on a full-time basis.

Mr. Russo testified that as recently as early 2020, his medallion (# 334) had been used by Flywheel Cab, as a basis for other taxi drivers to drive legally within the city, pursuant to the provisions of the Transportation Code that allow the leasing of a medallion holder's permit to a cab company's non-medallion drivers. Generally, Mr. Russo testified that he wants to retain his

medallion as source of retirement income, noting that before the onset of the 2020 pandemic, he had received some modest monthly lease payments of approximately \$300 for the use of his medallion by drivers at Flywheel.

Mr. Russo confirmed that he currently has a Connecticut driver's license, and that he would not be able to obtain a California driver's license unless he was able to come to California, which he is financially unable to do, and particularly during the current pandemic.

Mr. Russo further testified that some years ago he was advised by Paige Stanfield, the Taxi Services manager at that time, that because he was disabled at that time, he did not need to renew his A-Card on an annual basis.¹ Up until that time, he testified that he had kept all of his taxi-related permits current. He also testified that Ms. Stanfield advised him that he could not have a California driver's license while retaining a Connecticut driver's license, because each person is allowed to have only one driver's license at a time.

In addition to the exhibits offered in this case by the SFMTA, the following documents offered by Mr. Russo were reviewed and admitted in the record:

- *Slone v. Taxi Commission*, U.S.C.A., 9th Cir., Motion to Dismiss Appeal, Case No. 08-16726, 8/10/2010
- *Slone v. Taxi Commission*, U.S.C.A., 9th Cir., Stipulation in Support of Motion to Dismiss Appeal, Case No. 08-16726, 8/6/2010
- Email from Paige Stanfield to Chas. Rathbone, 3/27/2017
- Medallion Holders Assn. (MHA), Template of Arguments for Prop. K Medallion Holders, 6/7/2021 (9 pp.)
- Email from John Russo, July 12, 2021

V. FINDINGS

A. RESPONDENT RUSSO WITHOUT CALIFORNIA DRIVER'S LICENSE AND CURRENT A-CARD

Based upon the testimony adduced at the hearing and upon the evidence of record, I find that the respondent John Russo has not lived in California for at least the past five years and, accordingly, has not been in a position to renew his cab driver's A Card over that length of time. In addition, Mr. Russo does not have a California driver's license, and has no means of moving back to California nor the intention to move here. As a result he is not eligible to obtain a current A-Card as that driver's permit is defined by the SFMTA's Taxi Services.

By his own admission, Mr. Russo can no longer drive a taxi on any sustained basis. Because Mr. Russo cannot drive, 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 cannot hold on to a taxi medallion in

¹ I note that the email from Paige Stanfield to Charles Rathbone, dated March 27, 2017, does mention that his medical disability exempts him from the requirement to renew his A-Card. That email is part of this record and is accepted into evidence.

San Francisco. On that basis the nonrenewal of this medallion is appropriate here under the circumstances.

VI. EQUITABLE CIRCUMSTANCES RELATING TO DECISION

While current conditions nullify any monetary transfer value of any held medallions in San Francisco, that situation may change in 2021 or 2022, and it remains possible for medallion transfers to someday resume, and for some medallion holders to enjoy a surrender value of their medallions when the moratorium on transfers no longer obtains.

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 current market price of a local taxi medallion. As long as the litigation continues, the medallion surrender price apparently will remain at \$200,000, based upon the TC §1116 price of a medallion to a new transferee of \$250,000. At this legislatively fixed price, medallion transfers are not expected to occur here until such time as conditions dramatically change, perhaps following the conclusion of the current litigation.

As noted here, 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 provisions of TC §1116(a)(5), but no such changes to Article 1100 of the Transportation Code will be considered until later this year, or until sometime in 2022.

Until the medallion surrender program is ended by the Board of Directors, TC §1116(a)(1)(A) provides a certain ongoing “eligibility” for the surrender of their medallions to any drivers with disabilities that prevents the full-time driving requirement for both “Pre-K” and “Post-K” medallion holders, as mandated by TC §1116(c)(1). Mr. Russo has testified that he has held a prominent location high on the ‘surrender list.’

Respondent Russo may now be unable to drive a taxi on a full-time basis, and on that basis may someday be a potentially eligible candidate under the current provisions of TC §1116 to surrender his medallion for some monetary consideration. That there is no current market for medallion transfer in San Francisco is a condition artificially influenced by the aforementioned litigation, and under most scenarios the resulting transfer moratorium cannot continue indefinitely.

On the basis of this apparent uncertainty in expectations on the part of medallion holders for some eventual surrender value in their medallions, our Hearing Section officers would have preferred to defer the revocation of this and other medallions—if provisions within section 1120 of the Transportation Code would have permitted these hearings to be postponed until such time as the MTA Board of Directors has an opportunity to make a definitive decision on the issues of surrender, or until the current litigation between the Federal Credit Union and the SFMTA was resolved to then allow medallion surrender and transfer.

But inasmuch as our Hearing Section does not have the inherent authority to ignore the explicit permit renewal provisions of Article 1100 the Transportation Code, and because there is no current transfer value in any taxi medallion in this jurisdiction, and none on the near horizon, our Hearing Section has determine that in nonrenewal cases of this nature, we have no other recourse than to follow the existing Transportation Code provisions, regardless of the equitable considerations that have been outlined here.

VII. ORDER

By reason of the Findings stated above, the Taxi Services' Notice of Nonrenewal is upheld, and medallion #334 is hereby revoked by the explicit operation of the provisions of the Transportation Code.

Dated this 9th day of September, 2021



James Doyle
Neutral Hearing Officer
Manager (Acting)
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.

APPELLANT DID NOT SUBMIT A BRIEF

BRIEF(S) SUBMITTED BY RESPONDENT DEPARTMENT(S)

SAN FRANCISCO BOARD OF APPEALS

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JOHN RUSSO,
Appellant,
vs.
SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY,
Respondent

Appeal No. 21-091
Medallion Permit No. 334
SFMTA TAXI DIVISION'S BRIEF
Hearing Date: Wednesday, March 2,
2022
Time: 5:00 p.m.
Place: City Hall, Room 416
[Zoom Remote Platform]

[Exemption from File Fees per Cal. Gov.
Code §§ 6103(a)-(b)]

INTRODUCTION

Mr. John Russo (hereinafter Russo), holder of Medallion #334, a Post-K Medallion, challenges the decision of the Hearing Officer upholding the SFMTA Tax Division's decision not to renew Russo's Medallion.¹ SFMTA issued the notice of nonrenewal based upon the fact that Russo did not have a valid A-Card, as required by the Transportation Code.² The Hearing Officer's decision upheld the nonrenewal based upon the requirement that Russo hold a valid A-Card and California driver's license.

BACKGROUND

Russo received Medallion #334 after the effective date of Proposition K (1978) (hereinafter Prop K) and prior to the Taxi Medallion Sales Pilot Program. Medallions are a permit issued by the SFMTA to an individual, joint tenants, or a Business Entity to operate a particular Taxi or Ramp Taxi vehicle in the City. Prop K was a voter passed initiative that changed the way Medallions were issued and held. Prior to the enactment of Prop K, Medallion Holders could hold more than one Medallion and they need not be an active taxi driver. Prop K was designed to put Medallions in the hands of working

¹ Any capitalized terms that are not otherwise defined herein shall have the meaning ascribed in Article 1100 of the San Francisco Transportation Code.

² "A-Card" or "Driver Permit" is a permit issued by the SFMTA to operate a Taxi or Ramp Taxi in the City.

1 drivers. As a condition of renewing their Medallion, Post-K Medallion Holders are
2 subject to a Full-Time Driving requirement³ and they must hold an active A-Card.

3 Russo's A-Card expired approximately five years ago. [EXHIBIT A]. After
4 reviewing the renewal documents submitted for Medallion #334, SFMTA issued a Notice
5 of Nonrenewal to Russo.

6 **SFMTA ENFORCEMENT EFFORT**

7 This appeal is the result of a Notice of Nonrenewal that was sent to Russo based
8 upon his lack of a valid A-Card. This enforcement effort began in 2019 when
9 enforcement staff was made aware of Medallions that were not in compliance with the
10 Transportation Code. In total, notices were sent to 257 Medallion Holders involving 316
11 Medallions.⁴ The 316 Medallions included 57 Corporate Pre-K Medallions, 86 Pre-K
12 Medallions and 173 Post-K Medallions. Of the 316 Medallions impacted, 146 cured any
13 outstanding issues and were renewed. 121 Medallion Holders did not respond, and the
14 decision not to renew their Medallions became final. A total of 49 appeals, including this
15 pending appeal, were filed.

16 Medallions that were determined to be out of compliance with the Transportation
17 Code were deemed ineligible for renewal and thus were issued a Notice of Non-Renewal.
18 As noted above, the majority of Medallion Holders resolved their issues and successfully
19 renewed their Medallions. Those that were unable to resolve their compliance issues
20 were either not renewed or filed an appeal. In this case, Russo does not have an A-Card
21 or a California driver's license. His Post-K Medallion was originally issued without cost
22 based upon seniority.⁵ Because they were issued free of charge, Post-K Medallions were

23 _____
24 ³ Full-Time Driving is defined as "any Driver actually engaged in, or the activity comprised of
25 (respectively) the mechanical operation and physical charge and custody of a Taxi or Ramp Taxi which is
26 available for hire or actually hired for at least 156 four-hour shifts or 800 hours during a calendar year."
27 The Full-Time Driving requirement was suspended at the time that this appeal was filed. In a notice sent
28 out October 28, 2021, SFMTA announced that enforcement would resume on December 1, 2021.
<https://www.sfmta.com/notices/enforcement-full-time-driving-requirement-resuming-12121> However, the
suspension of the Full-Time Driving requirement does not relieve Post-K Medallion Holders of the
requirement to maintain an active A-Card.

⁴ Holders of Pre-K and Corporate Pre-K Medallions may hold multiple Medallions.

⁵ Post-K Medallions were issued based upon years of service using a waiting list.

1 only issued to active drivers. In exchange, Post-K Medallion Holders are required to
2 drive.

3 If a Post-K Medallion Holder never drives, they are in clear violation of the
4 Transportation Code and the rules under which they earned their Medallion.

5 As regulator, SFMTA made the decision to ensure compliance with the
6 Transportation Code through this enforcement effort. As mentioned above, a good
7 portion of Medallion Holders cured any deficiencies and were thus renewed. Only those
8 that were still out of compliance, such as the Medallion at issue here, are still subject to
9 non-renewal.

10 ARGUMENT

11 Pursuant to §1105(a)(5), “Unless earlier revoked or suspended, all permits shall
12 expire one year following their issuance or renewal, or on another date as specified by the
13 SFMTA.” Medallions are issued on an annual basis based upon the fiscal year, and they
14 expire on June 30 of each calendar year. Due to Order C19-07 issued by the San
15 Francisco Health Officer in response to the Covid-19 pandemic, the Medallion expiration
16 date was extended beyond June 30, 2020, and Medallions were allowed to continue
operating.

17 As a condition of renewal, “a Permit Holder must pay the applicable Renewal Fee,
18 meet the eligibility requirements required for new applicants listed in Section 1104, and
19 may be required to sign a statement under penalty of perjury affirming eligibility for the
20 permit.”⁶

21 Under Article 1100, permits are a privilege and are not the property of the Permit
22 Holder [§1105(a)(3)]. Additionally, §1105(a)(6) requires that: “Every Permit Holder
23 shall comply with... the provisions of this Article.”

24 **A. In order to renew his Medallion, Russo must have an active A-Card**

25 As noted above, Prop K was a voter approved initiative that reformed the way that
26 Taxi Medallions were issued. Pursuant to the initiative, to qualify for a Medallion, “[t]he
27 applicant will be a full-time driver.” [Proposition K (1978)]. Pursuant to §1105(a)(1), no

28 ⁶ The “statement [signed] under penalty of perjury affirming eligibility for the permit” is known colloquially as “annual sworn statement” in the San Francisco Taxi industry.

1 person shall operate a Taxi “without a permit issued by the SFMTA authorizing such
2 driving or operation.” The permit to drive a Taxi is an A-Card. Prop K also required that
3 “[n]o permit shall be issued unless the person applying for the permit shall declare under
4 penalty of perjury *his or her intention actively and personally to engage as permittee-*
5 *driver* under any permit issued to him or her.” [Emphasis added]. This provision is
6 codified in §1109(c)(3).

7 Here, Russo’s A-Card is expired. [EXHIBIT A].⁷ When SFMTA reviewed Russo’s
8 renewal documents, staff determined that his A-Card had expired. Without an A-Card,
9 Russo cannot operate a Taxi and it establishes good cause for a non-renewal. As a result,
10 SFMTA issued a Notice of Nonrenewal. Russo had the opportunity to cure this
11 deficiency by renewing his A-Card.

12 **B. In order to renew his A-Card, Russo must have a valid California driver’s**
13 **license**

14 As noted above, pursuant to §1105(a)(5)(B), as a condition of renewal, “a Permit
15 Holder must...meet the eligibility requirements required for new applicants listed in
16 Section 1104.” Pursuant to §1104, “SFMTA, in determining whether the permit should
17 be granted, may consider such facts as it deems pertinent,” but shall at a minimum
18 consider factors including (1) applicant’s compliance with applicable statutes, regulations
19 and ordinances, (2) the applicant’s record involving motor vehicles for hire within the last
20 five years and (3) any prior criminal convictions that may impact public safety.

21 Pursuant to §1103(c)(3)(C), an A-Card Holder who fails to renew their Driver Permit
22 within the deadline for renewal set by the SFMTA may renew their Driver Permit upon
23 submission of a new Driver Permit application. New drivers must “have a current
24 California driver's license.” (§1103(c)(2)(C).). To be eligible for renewal of his A-Card,
25 Russo must have a current California driver’s license. By his own admission, he lives in
26 Connecticut and relinquished his California license years ago.

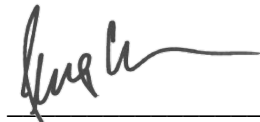
27 ⁷ Exhibit A is a screen capture of Appellant’s ground transportation management system (GTMS) driver
28 profile page. GTMS is the database in which SFMTA maintains driver records electronically. For privacy
purposes, a redacted version is being produced.

CONCLUSION

1
2 As part of an enforcement initiative, SFMTA made the regulatory decision to
3 enforce compliance with the Transportation Code during the 2020 permit renewal
4 process. As mentioned above, many Medallions Holders that were subject to non-
5 renewal cured their deficiencies and successfully renewed their Medallions. Russo had
6 the opportunity to cure any deficiencies, but he cannot due to his choice to leave
7 California. Holding a California driver’s license is a requirement to hold an A-Card, and
8 Post-K Medallion Holders are required to have an active A-Card. Because he does not
9 hold an active A-Card, Russo’s Medallion is not eligible for renewal. If the Board of
10 Appeals votes to overturn the Hearing Officer’s decision, it will have the effect of
11 renewing a permit that is not eligible for renewal. The impact of such a decision will
12 undermine and potentially impede SFMTA’s ability to exercise its authority under the
13 Charter to regulate the operation of taxis in San Francisco and enforce the requirements
14 of the Transportation Code.

15 For the foregoing reasons, the Board of Appeals should affirm the Hearing
16 Officer’s decision approving the Taxi Division’s nonrenewal of Russo’s Taxi Medallion.

17 Respectfully Submitted,

18 

19 _____
20 Philip Cranna
21 Enforcement & Legal Affairs Manager
22 SFMTA Taxi Services
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Date: 2.24.2022

EXHIBIT LIST

EXHIBIT A GTMS Driver Profile 10/15/20

SFMTA Status: **Suspended**
 SFO Status: **Suspended**
 Current DMV Status: **Expired**
 First Name: John
 Middle Initial:
 Last Name: Russo
 Date of Birth: Friday, September
 Language: English

Driver License Number: U:
 Driver License Expiration: Wednesday, September
 A-Card Serial Number:
 Registered for Autoload: No
 A-Card Balance: Unpaid Fees: \$0.00
 Creation Date: N/A Expiration Date: N/A



Contact Information
 Phone: Ext:
 Cell: E Mail:
 Fax:

Drug Test Information
 Status:
 Expiration Date:
 Review Date:

Address Information

Address 1	Address 2	City	State	Zip Code	PO Box	Main Address
<input type="text"/>	<input type="text"/>	South Windsor		06074		<input checked="" type="checkbox"/>

1 Records

Registered Web e-Mail:

Comments

	Comment	Date/Time	User Name	Web Available
1	Contact (Ref#: 13578) is changed: - phone from "(860) 644- <input type="text"/> " to "(860) 682- <input type="text"/>	02/28/2020 02:25 PM	sfmta	No
2	Contact (Ref#: 13578) is changed: - phone from "" to "(860) 644- <input type="text"/>			

2 Records

Actions | Documents | Citations | A-Card History | Trip History | Terminate | DMV Record |

	Driver's License Number	Driver Name	Last DMV Update	DMV Status	Error C
▶	U 3803	Russo, John	10/14/2020	Expired	
	U 3803	Russo, John	10/14/2020	Expired	
	U 3803	Russo, John	10/12/2020	Expired	
	U 3803	Russo, John	10/09/2020	Expired	
	U 3803	Russo, John	10/08/2020	Expired	
	U 3803	Russo, John	10/07/2020	Expired	
	U 3803	Russo, John	10/06/2020	Expired	
	U 3803	Russo, John	10/05/2020	Expired	
	U 3803	Russo, John	10/02/2020	Expired	
	U 3803	Russo, John	10/02/2020	Expired	
	U 3803	Russo, John	09/30/2020	Expired	

Search >>

Drivers' License Number:

DMV Response Date:
 Thursday, October 15, 2020

DMV Status:

Search

Reset Search Criteria

Collapse Search Panel

131 Records | Print Grid | Report

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A U 3803 SNF LIS 2 101310 4#GTMS/TMSREQKEY@# AQ247 101420 08045 RUSSO, JOHN
? CL 874 10/14 BLK 001 FOLSOM 317
? M 508 159 BROWN BROWN VOL REQ SAN FRANCISCO CALIF 94107 10/13/10
? C OTHER: SAN BRUNO AVE APT A
N-COM 101310 090915 RBS 5 1819 SAN FRANCISCO CALIF 06/08/10
B NONE TO REPORT
C CALIF LIC RETURNED BY CT SAN FRAN CY/CNTY/AIRPORT COMSN
DEREK PHIPPS/PAUL N FOSTER
SFO/PO BOX 8097
    
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OK