

PHILADELPHIA COMMISSION ON HUMAN RELATIONS

Mark M. Seaman,

v.

PHL Taxi

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: Docket No. N10011486
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Findings of Fact

Factual and Procedural History:

1. Mark M. Seaman (“Complainant”), filed a Complaint with the Philadelphia Commission on Human Relations (“PCHR”) on January 4, 2010, alleging that he was discriminated against as the result of his sexual orientation.

2. In his Complaint, which named PHL Taxi as the respondent, Complainant averred that, on or about midnight on December 30, 2009, Complainant, a gay male, and his partner entered a taxicab, which bore the PHL Taxi colors and logo, at the Philadelphia International Airport.

3. As the vehicle pulled away from the curb, Complainant put his arm around his partner and kissed him.

4. According to the Complaint, the driver, Abdolghader Tasharoki, told the passengers “you cannot do that in here.” He subsequently pulled over at the next taxi stand and told them to leave his cab. The driver then pulled away with the door open.

5. Complainant also filed a complaint against Mr. Tasharoki with the Philadelphia Parking Authority (“PPA” or “the Authority”). On June 8, 2010, after hearing from both the Complainant and Mr. Tasharoki, the driver was found liable, under the PPA Regulations for Taxicab and Limousine Service, for refusal of service without good cause.¹

6. PCHR subsequently held a public hearing on December 16, 2015, before Commissioners Regina Austin, Sarah Ricks, and Wei Chen.

7. Ronda Goldfein, Esquire, of the AIDS Law Project of Pennsylvania, appeared on behalf of the Complainant.

8. James Walker, of PHL Taxi, appeared on behalf of the Respondent.

9. During the hearing, Mr. Walker asserted that questions of fact still remained, and that PHL Taxi wanted to preserve the right to defend itself against the underlying claims. Counsel for Complainant indicated that he was willing to be questioned by PHL Taxi’s representative at the hearing.

10. Given that this issue was first raised during the hearing, the Commission decided to bifurcate the matter, and to first determine the threshold issue of whether the Respondent could be held liable under the Philadelphia Fair Practices Ordinance (“PFPO”). Philadelphia Code, §9-1101, *et. seq.* (2010).

11. The parties submitted post-hearing briefs 30 days after the hearing.

¹ The transcript from the June 8, 2010 PPA Appeals Hearing was not introduced into evidence, but neither party disputed the fact that the hearing occurred, that testimony was given under oath, and that the driver was cited and fined by the PPA for refusal of service.

12. On September 16, 2016, PCHR issued an Interim Order requesting that the parties provide PCHR with any evidence they would introduce at a factual hearing so that PCHR could determine if such a hearing was necessary.

13. Both parties filed a response to the Interim Order. In its submission, Respondent stated that a hearing was not required, but that if one was held, it would present the testimony of James Walker. There is no evidence that Mr. Walker has any first-hand knowledge of the underlying incident, which occurred on December 30, 2009.

14. Accordingly, PCHR has determined that an additional factual hearing is not necessary.

Conclusions of Law

1. The PFPO recognizes that “[d]iscrimination in places of public accommodation causes embarrassment and inconvenience to citizens and visitors of the City, creates breaches of peace, and is otherwise detrimental to the welfare and economic growth of the City.” *Id.* at §9-1101(d).

2. A public accommodation is an “accommodation...which is open to, accepts or solicits the patronage of the general public” with regard to “public conveyances,” including taxicabs. *Id.* at §9-1102(u).

3. The PFPO protects residents and visitors to Philadelphia against discrimination based, *inter alia*, on sexual orientation in places of public accommodation. §9-1102(y). PCHR is charged with enforcing the PFPO. §9-1106(1).

4. Under the PFPO, discrimination is defined as any “difference in treatment...in rendering service in places of public accommodation...” *Id.* at §9-1102(e).

5. Notably, state law authorizes the PPA to set basic vehicle standards and operating parameters for the protection of passengers, including those of PHL Taxi. 52 Pa. Code §§1017 and 1019.1. These include maintaining standards that ensure the provision of “prompt and adequate service to the public.” *Id.*

6. For example, state law imposes certain obligations on PHL Taxi as a dispatcher with regard to discrimination against passengers by affiliated drivers. *Id.* Specifically, a “dispatcher may not discriminate against nor allow its affiliated drivers to discriminate against any member of the public.” *Id.* at §1019.8(a)(12).

7. In addition to the requirements under the act, or an order of PPA, “a dispatcher may institute rules of conduct for drivers and certificate holders associated with the dispatcher.” *Id.* at §1019.8(a)(14). Moreover, a “dispatcher shall report violations of the act, this part or an order of the Authority committed by a driver or certificate holder associated with the dispatcher to the Authority immediately.” *Id.* at §1019.8(a)(15).

8. Under the PPA regulations, medallion taxicabs are to utilize the services of an approved dispatcher. 52 Pa. Code §1017.11. They must have a two-way radio connected to the dispatcher, and the vehicle must bear the distinctive name, color, and marking scheme associated with that dispatcher. *Id.* at §1017.11(a). Passengers identify taxicabs by the physical characteristics of the vehicle, which carry an association with the dispatcher. Those characteristics are useful if a passenger who is injured or experiences discrimination seeks redress.

9. It is reasonable to assume that the dispatcher and its affiliated owners and drivers are impacted by bad experiences that passengers encounter across the fleet, and that it is in their collective interest to prevent such experiences if the law gives them the power and authority to do so.

10. As a dispatcher, PHL Taxi assumed certain obligations and privileges under state law so that it could conduct business in the City of Philadelphia. Similarly, while doing business in the City, PHL Taxi is subject to the provisions of the PFPO, and PCHR may impose liability when PHL Taxi violates its duties under the local ordinance. PHL maintained that, as a dispatcher, it did not have the authority or wherewithal to control or regulate the discriminatory conduct of affiliated drivers. We reject that contention. The duties the PFPO imposes on PHL fall within the general scope of its obligations and privileges as a dispatcher under state law.

11. PHL maintained that, as a dispatcher, it did not have the authority or wherewithal to control or regulate the discriminatory conduct of affiliated drivers. We reject that contention. The duties the PFPO imposes on PHL fall within the general scope of its obligations and privileges as a dispatcher under state law.

12. Complainant contends that he and his partner were asked to leave the PHL Taxi driven by Mr. Tasharoki based on their sexual orientation. N.T. 12/16/2015 at 4 and 6.

13. It unlawful, under the PFPO, for any person, including the owner, lessee, proprietor, manager, agent, or employee of any place of public accommodation to “[r]efuse, withhold from, or deny to any person...any of the accommodations, advantages, facilities or privileges of such place of public accommodation...” based on his sexual orientation. *Id.* at §9-1105(A).

14. To maintain compliance with PPA regulations, PHL Taxi regulates the conduct of its affiliated and lessee drivers through membership agreements. However, the company cannot avoid liability under the PFPO by creating affiliated entities, and/or crafting contracts and lease agreements, to circumvent the PFPO's authority. Moreover, the company has a duty to educate and direct the behavior of these drivers.

15. As a business operating in the City of Philadelphia, whose consumers are residents and visitors to Philadelphia, PHL Taxi must be held to the standards set forth in the PFPO. Accordingly, we find PHL Taxi liable under the PFPO for the discriminatory actions of a lessee or affiliated cab driver who operates a vehicle emblazoned with the PHL Taxi logo.

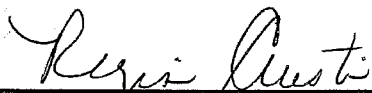
ORDER

AND NOW, this 17th day of November 2017, the Commission finds that Respondent violated the Philadelphia Fair Practices Ordinance as it applies to public accommodations.

Accordingly, it is hereby ORDERED PHL Taxi must:

- 1) instruct its affiliated drivers to cease and desist from the unlawful practice of discrimination on the basis of sexual orientation; and
- 2) educate its employees and affiliated drivers on the applicable portions of the Philadelphia Fair Practices Ordinance by distributing the attached poster; and
- 3) reimburse Complainant's counsel for reasonable attorney fees and costs to be determined by PCHR upon submission of these fees and costs by Complainant's attorney to PCHR; and
- 4) pay a penalty in the amount of five hundred dollars (500.00) to Complainant.

FOR THE COMMISSION:



Regina Austin, Esquire
Commissioner