

EX PARTE MOTION TERM
At ~~LAS Part~~ _____ of the Supreme Court of
the State of New York, held in and for the
County of New York, at the Courthouse,
located at 60 Centre Street, New York, New
York on the 19th day of September, 2007.

PRESENT:

Hon. JOHN E. H. STACKHOUSE
Justice

-----X Index No.:

NEW YORK CITY PEDICAB OWNERS'
ASSOCIATION, INC., NEW YORK PEDICABS, INC.,
d/b/a MANHATTAN RICKSHAW COMPANY,
MR. RICKSHAW, LLC, and
SHOSHANNAH PEARLMAN,

ORDER TO SHOW CAUSE

Petitioners,

- against -

NEW YORK CITY DEPARTMENT OF
CONSUMER AFFAIRS, and
CITY OF NEW YORK

Respondents.

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Upon the annexed Petition of the New York City Pedicab Owners' Association, Inc. ("NYCPOA"), New York Pedicabs, Inc. d/b/a Manhattan Rickshaw Company, Mr. Rickshaw, LLC, and Shoshannah Pearlman, the Petitioners herein, duly verified on the 18th day of September, 2007, the affidavit of Peter Meitzler annexed hereto, duly sworn to on the 18th day of September, 2007, the affidavit of Robert Tipton annexed hereto, duly sworn to on the 18th day of

September 2007, and the affidavit of Shoshannah Pearlman annexed hereto, duly sworn to on the 18th day of September, 2007,

LET the Respondents, New York City Department of Consumer Affairs ("DCA") and the City of New York, show cause at IAS Part 19 of this Court, to be held on the 21st day of September, 2007, at 9:30 o'clock in the fore noon of that day or as soon thereafter as counsel can be heard, at the New York County Courthouse, 60 Centre Street, New York, New York, why an order pursuant to CPLR Article 78 should not be granted to review DCA's Final Rule Regarding the Licensing and Regulation of Pedicab Businesses and Pedicab Drivers, Subchapter GG of Chapter 2 of Title 6 of the Rules of the City of New York (the "Final Rule"), and to:

- (a) Invalidate Section 2-416(b)(3)(iv) of the Final Rule to the extent that it allows pedicab business licenses to be issued to non-owner pedicab operators;
- (b) Direct DCA to revise the Final Rule by removing the phrase "or as a pedicab operator" in Section 2-416(b)(3)(iv), and to revise Section 2-416(b) to read "To qualify for inclusion in the established business applicant pool for registration plates, an applicant requesting a pedicab registration plate must own at least one pedicab at the time the application is submitted, and shall be able to satisfy the following additional requirements:"
- (c) Invalidate Section 2-416(b)(2) of DCA's Final Rule to the extent that it allows a pedicab owner to apply for more registration plates than the number of pedicabs that such pedicab owner owns;

(d) Direct DCA to replace the phrase "up to 30, which is the maximum number" in Section 2-416(b)(2) with "which shall neither exceed the total number of pedicabs owned by the applicant nor a total of 30, the maximum.";

(e) Invalidate DCA's policy of allowing individuals to use proof of a violation of the law to qualify for a pedicab business license and preferred access to registration plates;

(f) Direct DCA to revise the list of applicants who are eligible to be in the "established business pool" and to re-distribute the pedicab business licenses ^{and} pedicab registration plates accordingly;

(g) and why such other and further relief should not be granted to the Petitioners as to the Court may seem just and proper, together with costs and disbursements.

Oral argument shall be required on the return date of this proceeding, and

J.S.C.
Sufficient cause ^{being alleged} ~~appearing~~ therefor, let service of a copy of this Order and a copy of the Verified Petition and affidavits annexed hereto, on DCA and the City of New York by serving the Commissioner of the Department of Consumer Affairs, 42 Broadway, New York, New York 10004, and Corporation Counsel, 100 Church Street, New York, New York 10007, on ~~or before~~ the 19th day of September, 2007, be deemed sufficient, and it is further

ORDERED, that pursuant to CPLR § 6313, pending the hearing ~~and determination~~ of this application, the implementation of the Department of Consumer Affairs' Final Rule ^{Local Law 19 of 2007 and} Regarding the Licensing and Regulation of Pedicab Businesses and Pedicab Drivers, Subchapter GG of Chapter 2 of Title 6 of the Rules of the City of New York, shall be stayed and shall not be in effect, and it is further

~~**ORDERED**, that pursuant to CPLR § 6313, pending the hearing and determination of this application, DCA and the City of New York are enjoined from preventing those pedicabs that were operating as of September 19, 2007, from continuing to operate, notwithstanding the requirements of DCA's Final Rule.~~

~~Dated: New York, New York~~

~~9/19/2007~~

ENTER:

J.S.C.
JOHN E.H. STACKHOUSE
J.S.C.