

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of

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,

Petitioners,

VERIFIED PETITION

For a Judgment under Article 78 of the Civil Practice
Law and Rules,

- against -

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

Respondents.

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Petitioners, New York City Pedicab Owners' Association, Inc., New York
Pedicabs, Inc. d/b/a Manhattan Rickshaw Company, Mr. Rickshaw, LLC, and
Shoshannah Pearlman, by their attorneys, Seham, Seham, Meltz & Petersen, LLP, as and
for their Petition in the above-captioned proceeding, respectfully allege as follows:

NATURE OF PROCEEDING

1. On April 23, 2007, the City of New York passed Local Law 19 to amend
the Administrative Code of the City of New York in relation to regulating and licensing
the existing pedicab industry. Pursuant to the authority of Local Law 19, the New York
City Department of Consumer Affairs ("DCA") promulgated regulations governing the
initial application and issuance of pedicab business licenses and the process and

procedures by which the limited number of available pedicab registration plates would be distributed to qualified pedicab business license holders. However, the regulations promulgated by DCA conflict with and run contrary to the language and legislative intent of Local Law 19. DCA's improper regulations will significantly damage New York City's existing pedicab industry by, *inter alia*, replacing a significant percentage of currently owned and operating pedicabs with new pedicabs that have not yet been purchased or operated in New York City. These new pedicabs will be predominantly controlled by individuals and businesses with no prior history of pedicab ownership.

2. Petitioners, New York City Pedicab Owners' Association, Inc. ("NYCPOA"), New York Pedicabs, Inc. d/b/a Manhattan Rickshaw Company, Mr. Rickshaw, LLC, and Shoshannah Pearlman, bring this proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules to invalidate those portions of the New York City Department of Consumer Affairs' Final Rule Regarding the Licensing and Regulation of Pedicab Businesses and Pedicab Drivers (the "Final Rule") that are inconsistent with the express language and legislative intent of Local Law 19, and to compel DCA to revise the Final Rule to (1) allow pedicab business licenses to be issued only to pedicab owners, (2) allow pedicab registration plates to be issued only to eligible pedicab business license holders; to wit, persons or businesses who owned a pedicab when they applied for a pedicab business license, and (3) limit the number of pedicab registration plates an eligible pedicab business license holder can receive to no more than the number of pedicabs he owned at the time he applied for his pedicab business license.

PARTIES

3. Petitioner NYCPOA is and was, at all times relevant hereto, a New York not-for-profit corporation. NYCPOA's principal place of business is located in the County, City, and State of New York.

4. NYCPOA was formed in early 2006 to represent the interests of the owners of pedicabs in New York City. Among the purposes of the Association are the following: to ensure the safety, sustainability, and integrity of pedicab transportation; to lobby the City of New York to regulate the pedicab industry in a workable manner; to encourage pedicab owners to operate their businesses in accordance with the Association's Code of Practice for Pedicab Owners; to ensure that the Association's members maintain positive reputations with customers, other users of the road, pedestrians, police, sponsors, drivers, and legislators; and to train and monitor pedicab drivers.

5. NYCPOA has fifteen corporate and individual members, who currently own a total of approximately 180 pedicabs and who rent their pedicabs to approximately 400 pedicab drivers annually.

6. Petitioner New York Pedicabs, Inc. d/b/a Manhattan Rickshaw Company is presently New York City's longest operating pedicab company, with a fleet of fifteen pedicabs. New York Pedicabs, Inc. was incorporated in New York in 1995 and its principal place of business is located in the County, City, and State of New York.

7. Petitioner Mr. Rickshaw, LLC, with forty pedicabs, operates the largest fleet of pedicabs in New York City, and its principal place of business is located in the County, City, and State of New York.

8. Petitioner Shoshannah Pearlman is a resident of the State of New York and has been the owner and driver of a single pedicab since 2005.

9. Respondent, New York City Department of Consumer Affairs is and was, at all times relevant hereto, an agency of the City of New York, with offices located at 42 Broadway, New York, New York 10004. DCA was created to ensure that consumers and businesses benefit from a fair and vibrant marketplace.

10. Respondent, City of New York, is and was, at all times relevant hereto, a municipal corporation organized and existing pursuant to the laws of the State of New York.

STATUTORY BACKGROUND

11. As defined by Local Law 19, Pedicabs are bicycles (as defined in the Vehicle and Traffic Law) or other devices that are designed and constructed to transport or carry passengers, that are solely propelled by human power, and that are operated to transport passengers for hire. Pedicabs have been operating in the City of New York for hire since approximately 1995.

12. On April 23, 2007, the New York City Council enacted Local Law 19 (hereinafter, the “Pedicab Law”) over a Mayoral veto. The Pedicab Law, a copy of which is attached hereto as Exhibit A, amended Chapter 2 of Title 20 of the Administrative Code of the City of New York by adding Subchapter 9. The Pedicab Law was enacted to regulate and license pedicabs in the City of New York.

13. The Pedicab Law provides that it has three purposes: (i) to regulate and control pedicab businesses to protect consumers and to ensure the safety of the public,

including passengers and drivers operating pedicabs; (ii) to minimize the effect of pedicabs on traffic and congestion by establishing a maximum number of pedicabs that can be authorized to operate in the city; and (iii) to require the inspection of pedicabs to ensure that pedicabs are safely operated in the streets of the city, and to provide a process for their removal if they have not been inspected as required. See Administrative Code § 20-248.

14. Pursuant to the Pedicab Law, the commissioner of DCA shall not issue registration plates or replaceable registration tags or decals to more than 325 pedicabs at any one time. See Administrative Code § 20-251(a).

15. To protect existing “Pedicab businesses” from economically damaging reductions in their numbers beyond those caused by the institution of the 325 pedicab cap, the Pedicab Law strictly limits those who can apply for a pedicab license to persons or entities who own one or more pedicabs, and who can prove ownership of such pedicab(s).

16. The Pedicab Law defines “Pedicab owner” or “owner” as “any person who owns one or more pedicabs in the city of New York.” Administrative Code § 20-249(d).

17. The Pedicab Law defines “Pedicab business” or “business” as a “pedicab owner who operates or authorizes the operation of one or more pedicabs in the city of New York.” Administrative Code § 20-249(e) (emphasis added).

18. In order to obtain, amend or renew a pedicab business license, the Pedicab Law provides that “a pedicab owner must provide the commissioner with the following:
(1) A list of all pedicabs owned, leased or controlled by such pedicab owner for which

such owner seeks registration pursuant to section 20-255. Each such pedicab shall be uniquely identified on such list; (2) Proof that there is in force for the full license term a policy of public liability and property damage insurance that meets the requirements of section 20-253 of this subchapter for each pedicab listed pursuant to paragraph one of this subdivision; and (3) Such other information as the commissioner may require to establish the pedicab owner's eligibility for a pedicab business license under this subchapter.”

Administrative Code § 20-250(b) (emphasis added).

REGULATORY BACKGROUND

19. The Pedicab Law authorizes the commissioner of DCA to “prescribe by rule the process by which the number of pedicabs that each pedicab business can register is determined, consistent with the caps specified in subdivisions a and b of this section, including but not limited to, the procedures for the initial application and issuance of pedicab business licenses.” Administrative Code § 20-251(c).

20. On July 3, 2007, DCA published its Proposed Rule Regarding the Licensing and Regulation of Pedicab Businesses and Pedicab Drivers.

21. By letter dated July 19, 2007, NYCPOA submitted comments on DCA’s Proposed Rule. In its letter, NYCPOA objected to portions of the Proposed Rule that were inconsistent with the specific language and/or legislative intent of the Pedicab Law. NYCPOA objected to the Proposed Rule’s authorization of “Pedicab operators” who did not own a pedicab to apply for pedicab business licenses as part of the “established business applicant pool.”

22. NYCPOA also objected to the failure of the Proposed Rule to limit the number of pedicab registration plates issued to each pedicab owner to the number of pedicabs owned by a particular owner. DCA ignored NYCPOA's comments with respect to the two issues described in paragraphs 21-22 herein.

23. On August 16, 2007, DCA adopted its Final Rule Regarding the Licensing and Regulation of Pedicab Businesses and Pedicab Drivers. The Final Rule, a copy of which is attached hereto as Exhibit B, was promulgated as Subchapter GG of Chapter 2 of Title 6 of the Rules of the City of New York.

24. Section 2-416 of the Final Rule created two pools of applicants for registration plates: An "established pedicab business" applicant pool, which was to be comprised of businesses and individuals that had been engaged in a bona fide pedicab business before April 23, 2007, and a "new business" applicant pool.

25. Section 2-416(b)(2) of the Final Rule provides that applicants in the established business applicant pool may apply for up to thirty pedicab registration plates, even if such applicants owned only one pedicab as of April 23, 2007.

26. Section 2-416(b)(3) of the Final Rule lists the types of qualifying documentation an established business pool applicant must submit in order for DCA to verify that the applicant was engaged in the pedicab business in New York City before April 23, 2007. The section provides that qualifying documentation includes certificates of incorporation, other government-issued documentation, and certificates of insurance.

27. Section 2-416(b)(3)(iv) of the Final Rule provides that an established business pool applicant may also submit "an accurate and sworn statement affirming that the applicant has been engaged in the pedicab business as a sole-proprietor pedicab

business or as a pedicab operator [i.e. pedicab driver] for at least one year prior to April 23, 2007....”

28. On September 7, 2007, DCA posted on its website a list of the applicants who had been accepted in the established business pool. See Exhibit C attached hereto. Included in the list were applicants who did not own any pedicabs at the time they applied for a pedicab business license and registration plates.

29. Upon information and belief, DCA has distributed, or is in the process of distributing pedicab business licenses to businesses and individuals who do not own any pedicabs.

30. Upon information and belief, DCA has distributed, or is in the process of distributing pedicab registration plates to businesses and individuals in excess of the number of pedicabs owned by such businesses and individuals.

INJUNCTION CRITERIA

31. Petitioners are entitled to an injunction staying the implementation of DCA’s Final Rule pending determination of the issues in this Article 78 proceeding.

32. Petitioners, and the members of NYCPOA, will suffer irreparable injury absent a granting of an injunction because the number of pedicab registration plates issued by DCA will not be sufficient to permit the Petitioners’ existing pedicab businesses to survive. In addition, the major investment made by the Petitioners in pedicab equipment over a multi-year period will suddenly become virtually worthless due to the Petitioners’ inability to use the equipment in the custom and trade that they have laboriously developed over the years, and because the Pedicab Law and the Final Rule

will have produced an over-supply of available used pedicabs in the New York City market.

33. The equities favor the Petitioners since they seek only to preserve the status quo pending determination of the issues in this Article 78 proceeding.

34. If an injunction is issued, no harm will result to DCA and the City of New York by reason of a delay of a few weeks or months in implementing the regulation, assuming its validity is upheld. On the other hand, the immediate injuries that will occur to the Petitioners and the pedicab industry if the regulation takes effect will be significant and irreparable.

35. Petitioners have no adequate remedy at law for the injuries caused by the implementation of DCA's Final Rule.

36. No prior application has been made to this or any other court for the relief requested herein.

FIRST CAUSE OF ACTION

37. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 36 as if fully set forth herein.

38. As set forth above, the Pedicab Law strictly and expressly limits those who can apply for a pedicab business license to persons or entities who own at least one pedicab and can prove ownership of such pedicab(s). However, DCA's Final Rule unlawfully expanded the established business pool to include non-pedicab owners (i.e. "pedicab operators"), contrary to the express language and intent of the Pedicab Law.

39. Further, DCA has unlawfully distributed, or is in the process of unlawfully distributing, pedicab business licenses to non-pedicab owners.

40. As a result, DCA exceeded, and is continuing to exceed, its jurisdiction and authority under the Pedicab Law.

41. DCA's unlawful conduct will cause significant harm to the Petitioners, the members of NYCPOA, pedicab drivers, pedicab mechanics, and the public, including but not limited to, the loss of business, loss of pedicab rental and advertising income, and the near total loss in value of the pedicab owners' investment in pedicab equipment.

42. Accordingly, Section 2-416(b)(3)(iv) of DCA's Final Rule should be invalidated to the extent that it allows pedicab business licenses to be issued to non-pedicab owners, and DCA should be ordered 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:."

43. Further, upon revising the Final Rule as required in paragraph 42 above, DCA should be ordered to revise the list of applicants who are eligible to be in the "established business pool" and to re-distribute the pedicab business licenses accordingly.

SECOND CAUSE OF ACTION

44. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 43 as if fully set forth herein.

45. The legislative intent of the Pedicab Law, as reflected in Section 20-250, was to give licensing preference to existing pedicabs over new pedicabs to prevent economic harm in excess of that caused by the pedicab caps found in Section 20-251(a) and (b) of the Pedicab Law. Section 2-416(b)(2) of DCA's Final Rule is contrary to the language and legislative intent of the Pedicab Law by allowing an owner of one pedicab to apply for up to thirty pedicab registration plates.

46. As a result, DCA exceeded, and is continuing to exceed, its jurisdiction and authority under the Pedicab Law.

47. Under Section 2-416(b)(2) of the Final Rule, new pedicabs will displace numerous existing, presently owned pedicabs with ones that are presently neither owned nor operated by registration plate applicants, causing significant economic harm to the Petitioners and to the members of NYCPOA.

48. Accordingly, Section 2-416(b)(2) of DCA's Final Rule should be invalidated to the extent that it allows a pedicab owner in the established business pool to apply for more registration plates than the number of pedicabs owned by such pedicab owner.

49. In order to bring the Final Rule into accord with the Pedicab Law, DCA should be ordered 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...."

50. Further, upon revising the Final Rule as required in paragraph 49 above, DCA should be ordered to revise the list of applicants who are eligible to receive pedicab business licenses in the established business pool, and to re-distribute the pedicab business licenses accordingly.

THIRD CAUSE OF ACTION

51. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 50 as if fully set forth herein.

52. Section 2-416(4)(b)(3)(ii) of the Final Rule provides that an “established business pool” applicant may submit documentation issued by a governmental agency that authenticates that the person applying for a pedicab business license had, in fact, been engaged in such business.

53. DCA has advised NYCPOA that pedicab operators will be permitted to use tickets issued by the New York Police Department and other law enforcement agencies (“Tickets”) to qualify for admission into the established business pool for pedicab business licenses and for up to thirty pedicab registration plates under Section 2-416(4)(b)(3)(ii).

54. Allowing persons to use proof of a violation of the law to qualify for a pedicab business license and preferred access to registration plates is contrary to the purpose of the Pedicab Law; to wit, “to ensure the safety of the public, including passengers and drivers operating pedicabs.” Administrative Code § 20-248.

55. As a result, by allowing applicants for pedicab business licenses to use Tickets to qualify for admission into the established business pool, DCA exceeded, and is

continuing to exceed, its jurisdiction and authority, and licenses granted on the basis of tickets should be invalidated.

WHEREFORE, Petitioners, New York City Pedicab Owners' Association, New York Pedicabs, Inc. d/b/a Manhattan Rickshaw Company, Mr. Rickshaw, LLC, and Shoshannah Pearlman, request that the Court issue an an injunction staying the implementation of DCA's Final Rule pending determination of the issues in this Article 78 proceeding, and enter judgment as follows:

(a) Invalidating Section 2-416(b)(3)(iv) of DCA's Final Rule to the extent that it allows pedicab business licenses to be issued to non-pedicab owners (i.e. "pedicab operators");

(b) Ordering 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) Invalidating 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) Ordering 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....";

VERIFICATION

I, Peter Meitzler, being duly sworn, depose and say:

I am the President of the New York City Pedicab Owners' Association ("NYCPOA"), a Petitioner in the within proceeding. I have read the foregoing Petition and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

/S/

Peter Meitzler

Sworn to before me
this 18th day of September, 2007

Notary Public