

Court Directs Taxi and Limousine Commission To Provide Public Access to Hearings

PETITIONER JOURNALIST brought an Article 78 proceeding seeking a judgment annulling the informal policy of the Taxi and Limousine Commission that restricts access to its administrative tribunals and adjacent waiting areas. He wanted to report on taxi driver license violations but was denied access to disciplinary proceedings and adjudications. He challenged closure on First Amendment grounds and the absence of any statute or other written rule or policy prohibiting access. Respondents contended that closure of the hearings was necessary for orderly administration of its adjudication process, due to a high volume of cases in limited space, and that there was an exemption from public access under the "Open Meetings" law. The court ruled that petitioner must be given access to TLC hearings, provided his conduct was not disruptive.

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DECISION OF INTEREST

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IA PART 24

Justice Parness

DECISION OF INTEREST

MATTER OF ACKMAN v. GIULIANI
QDS:22253880 — Petitioner, Daniel Ackman, brings this Article 78 proceeding seeking a judgment annulling the policy of Respondent, New York City Taxi and Limousine Commission ("TLC"), which restricts access to its administrative tribunals and adjacent waiting areas.

In early January, Petitioner, an attorney and journalist, became interested in reporting on taxi driver license violations, and requested permission to observe and

report on TLC administrative disciplinary proceedings/adjudications and interview TLC employees and judges. Petitioner was informed by the TLC's Deputy Commissioner for Public Affairs that these hearings are closed to the public and only the parties to the proceeding are permitted entry in the courtroom. After several additional unsuccessful attempts to gain access and interview employees and judges at a variety of TLC locations, Petitioner commenced the instant proceeding challenging closure of the proceedings on First Amendment grounds and the absence of any statute or other written rule or policy which prohibits access. (It does not appear that any other member of the public has sought hearing access.)

In response, Respondents contend that closure of the hearings is necessary for "orderly administration of its adjudication process" due to a high volume of cases in very limited space and an exemption from public access under Public Officers Law sect. 108, commonly referred to as the "Open Meetings" law.

It has been repeatedly recognized that New York State possesses a "strong public policy ... of public access to judicial and administrative proceedings. This policy has found expression through legislative language in a variety of contexts. (see e.g. Judiciary Law sect. 4, Public Officers Law sect. 84; 95). Where the Legislature has chosen to temper or abrogate the presumption of openness, it has done so in specific language, and these exceptions have been strictly construed by the courts." *Matter of Herald Co, Inc. v. Weisenberg*, 59 NY2d 378; 381-382. The issue therefore is whether the TLC hearings meets such exceptions.

The New York City Charter section 2303 authorizes the TLC to establish an administrative tribunal to adjudicate taxi owner and driver disciplinary charges including license and medallion revocation. Specifically, the TLC is required to take testimony and hold hearings concerning all mandatory and certain discretionary revocations, as well as of lesser violations. 35 Rules of the City of New York (RCNY) section 8-01. Disciplinary charges against taxi drivers are also adjudicated by the Office of Administrative Trials and Hearings (OATH) which is given sole authority to conduct "all hearings involving violations for which TLC seeks the discretionary penalty of license revocation". 35 RCNY section 8-02. TLC hearings are held before hearing officers appointed by the TLC. OATH hearings are held before OATH Administrative Law Judges. While there is no written rule, regulation or policy concerning public access to TLC proceedings, OATH has a specific provision regarding public access to proceedings. Specifically, Title 48 RCNY section 1-49 provides, "Other than settlement conferences, all proceedings shall be open to the public, unless the administrative law judge finds that a legally recognized ground exists for closure of all or a portion of the proceeding, or unless closure is required by law." The Court perceives no intrinsic difference between the taxi hearings held by the TLC and those held by OATH warranting closure of the former

and public access to the latter.

Further, Respondent's closure is based upon an informal policy, which admittedly has never been reduced to writing, nor set forth in TLC rules. This is distinguishable from *Johnson Newspaper Corp. v. Melino*, 77 NY2d 1; 9 (cited by Respondent) in which, the Court noted the Legislature's intent for specific statutory protections for the confidentiality of disciplinary hearings embodied in "the legal profession (see, Judiciary Law sect. 90[10], the medical profession (see, Public Health Law 230[10], [11][a]; Education Law sect. 6510-a) and to disciplinary proceedings conducted by the State Commission on Judicial Conduct (see, Judiciary Law sect. 44[4])".

Nor does Respondent contend that the TLC hearings are confidential and the testimony therein exempt from disclosure, either in part or whole. In fact, Respondent offered copies of transcripts to Petitioner, through a Freedom of Information Law request. Even if the Court were to consider the closure for "the purpose of safeguarding information that a potential complainant may regard as private or confidential and thereby remov[ing] a possible disincentive to the filing of complaints of professional misconduct" (*Matter of Johnson supra* at 10-11), the same statutory safeguards for the OATH taxi proceedings which permit closure on application could provide ample protection for complainants at TLC held proceedings. (see *Matter of Herald v. Weisenberg, supra* at 383). Nor has Respondent cited any statute, regulation or policy with respect to closure of the Department of Motor Vehicle hearings which are otherwise held with respect to driving violations by the general public.

Moreover, the current controversy sets forth facts far less compelling than those found in *Matter of Herald v. Board of Parole*, 125 AD2d 985, where the Court granted access to parole hearings even in the face of a statute requiring confidentiality of records (which does not exist herein). The Court noted, "[a]lthough the statute provides for confidentiality of case records, there is no specific mention of closure of hearings, and it would, therefore, be inappropriate to read into these sections a blanket order of closure."

Respondent's reference to the Open Meetings Law as permitting closure is unpersuasive. Although the statute provides an exemption from public access for "judicial and quasi-judicial proceedings" (Public Officers Law section 108), a review of the case law provides no support for general closure of administrative hearings. That statutory exemption has relevance to actions by governing bodies or boards during their subjudice deliberations as a body and usually after public hearing or submission. It is not intended to permit closure at the evidence or fact gathering stage. (*Orange County Publications v. Council of Newburgh*, 60 AD2d 409, aff'd 45 NY2d 947). Accordingly, the Court finds that Petitioner be permitted access to TLC hearings, provided that he does not engage in conduct which would disrupt the proceedings in any way. In view of the Court's finding that Plaintiff is entitled access to the TLC hearings pursuant to statute and relevant case law, it is unnecessary to address Petitioner's First Amendment claims. (See *Matter of Herald Co., Inc. v. Board of Parole, supra*)

The Court must next determine whether the TLC may nevertheless limit Petition-

EXHIBIT 1

er's access to the waiting area outside the hearing rooms. Although the Rules of the City of New York, set forth some restrictions on conduct at TLC proceedings (see i.e. 35 RCNY section 7-03; 7-04; 7-05), the TLC has implemented an informal policy denying access to the waiting areas of its tribunals to persons other than respondents, their attorneys, representatives or witnesses. Although this policy has not been codified and is again based on space limitations on TLC premises, it is far more compelling upon consideration of the relevant case law and facility limitations.

The TLC has seventeen hearing rooms, located in three sites in New York City which handle over 100,000 adjudications each year. In each of the sites, the public is not permitted entry to the small waiting areas (referred to as the "bridge areas") immediately outside the courtrooms, where the cases are processed and assigned to TLC judges. These waiting areas are either located behind locked doors or guarded by security personnel. It has been held that such restrictions or regulations on waiting areas are permissible where such regulations "are intended to protect a valid governmental interest" i.e. to "ensur[e] the orderly functioning of [hearings]", particularly where the regulations are "directly related" to "space limitations" and where the regulation "is no more limiting than is needed to ensure that the actual working areas of.. staff remain free of disruption." *New York City Unemployed and Welfare Council v. Brezenoff*, 677 F.2d 232 at 238. In view of TLC's legitimate interests in preventing disruption in these small but heavily congested waiting areas, to ensure the orderly functioning of the adjudications, and to promote the exchange of confidences between attorneys/authorized representatives and their clients in preparation for the hearings in these areas, the Court finds the restrictions to be appropriate and permissible.

Finally, since Petitioner seeks relief in the nature of a declaration with respect to Respondent's policy regarding closure, the Court exercises its discretion and converts the matter to a declaratory judgment action. (see *Matter of Herald Co., Inc. v. Board of Parole*, supra.) Settle Judgment to include a provision for a reasonable and orderly admission to the TLC hearings.