

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Ashiq Paroya, :
Petitioner :
 :
v. : No. 1497 C.D. 2009
 : Submitted: May 7, 2010
Philadelphia Parking Authority, :
Respondent :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE PELLEGRINI

FILED: June 4, 2010

Ashiq Paroya (Paroya) appeals from an order of the Philadelphia Parking Authority (Authority) sustaining the determination of the hearing officer that he was an Unauthorized Service Provider, imposing a fine of \$1,000, and banning him from working in the taxi and limousine industry. Because the Authority failed to properly promulgate the regulations that it charged Paroya with violating, we reverse.

Paroya is the President of Sam's Limo Service, which is a limousine company that is regulated by the Public Utility Commission (Commission) and was issued a certificate of public convenience in 2007 authorizing Sam's Limo Service to provide the following service:

To transport, as a common carrier, by motor vehicle, persons in limousine service, from all points lying on and south of State Route 532, Bucks County, to points in Pennsylvania, and return, excluding service that is under the jurisdiction of the Philadelphia Parking Authority.

(Reproduced Record at 85a.) Pursuant to Act 94 of 2004 (Act 94), 53 Pa. C.S. §§5701-5745,¹ a limousine company with a certificate of public convenience issued by the Commission but without a certificate of public convenience issued by the Authority may transport persons and their baggage:

(1) to Philadelphia upon advance reservation and in accordance with the service authorized under the certificate of public convenience issued by the Commission; and

(2) from any point in Philadelphia to any point in this Commonwealth beyond Philadelphia upon advance reservation in accordance with the service authorized under its certificate of public convenience issued by the Commission, *excluding service from any airport, railroad station and hotel located in whole or in part in Philadelphia.* (Emphasis added.) 53 Pa. C.S. §5741(a.3).

Paroya is the registered owner of a black 2002 Lexus LS430 with Pennsylvania license plate GMW-8012. Paroya does not have a certificate of public convenience from the Authority for this vehicle.

¹ Act 94 of 2004 repealed 66 Pa. C.S. §§2401-2416, whereby the General Assembly reenacted and amended the Parking Authorities Law which transferred to the Authority jurisdiction and regulatory oversight over taxicab and limousine services and operations in Philadelphia.

Based on an advertisement that Sam's Limo Service had placed indicating that it covered the Philadelphia Airport, the Authority began an investigation of Paroya and Sam's Limo Service. A sting took place where the Secretary of the Authority's Enforcement Department placed a call to Sam's Limo Service from the Philadelphia Airport Marriott Hotel requesting limousine service for her boss to downtown Philadelphia at 16th and Market Streets. A black Lexus came to the Philadelphia Airport Marriot Hotel at which time Paroya informed her that the rate would be a flat \$65. She reported the rate to her boss and he got into Paroya's Lexus. He also told Paroya his destination was downtown Philadelphia at which time Paroya requested payment. As a result, the Authority issued a single citation to Paroya for operating his personal Lexus as a limousine service in Philadelphia without certification of the Authority and for being an "Illegal Service Provider" in violation of Regulation Section 29(i).² Paroya was penalized \$1,000 under a "3rd offense" and prohibited from working in the industry.

² Section 29(i) of the Authority Regulations provides the following:

Unauthorized operators shall include anyone who offers or appears to offer Taxicab or Limousine Service in Philadelphia without all of the following: a current Medallion, in the case of a Medallion Cab; proof that the vehicle has passed a current inspection conducted by the Authority; possession of and compliance with the Vehicle Certification Card; Certified Driver; and current insurance.

i. Any vehicle that is found to be offering or providing, or that appears to offer or provide, Taxicab or Limousine Service without adhering to the paragraph above shall be considered an unauthorized service provider and shall be subject to being disabled and/or impounded by Authority Staff or Agents. This shall be in addition to any fine that may be imposed.

(Footnote continued on next page...)

Based on that evidence, the hearing officer found that the Authority met its burden of proof that Paroya was liable as charged on the citation as an illegal service provider, and no aggravating circumstances were presented. He then concluded that because there were no mitigating facts or circumstances, it was in the public interest to impose the recommended penalty of \$1,000 and to prohibit Paroya and Sam's Limo Service from the industry. The hearing officer issued an order stating the same, and this appeal by Paroya followed.³

Paroya contends that the Authority issued regulations in 2005 without complying with the Commonwealth Documents Law⁴ and because it did so, the penalty it imposed prohibiting him from the industry is unlawful. We agree.

(continued...)

iv. Advertising to provide taxicab or limousine service in the City shall be considered equivalent to offering these services and may be penalized accordingly. No one offering limousine service may indicate in any way that it is a taxi and no one offering taxicab service may indicate in any way that it is providing limousine service.

³ Our scope of review is limited to determining whether the Authority has flagrantly abused its discretion. *E-Z Parks, Inc. v. Philadelphia Parking Authority*, 514 A.2d 318 (Pa. Cmwlth. 1986.) “An abuse of discretion has been defined as a clear overriding of the law, or a manifestly unreasonable exercise of judgment, or evidence of partiality, ill will or bias in reaching a conclusion.” *Id.*, 514 A.2d at 306.

⁴ Act of July 31, 1968, P.L. 769, *as amended*, 45 P.S. §§1102-1602, and 45 Pa. C.S. §501-907.

Most recently, in *Germantown Cab Company v. Philadelphia Parking Authority*, ___ A.2d ___ 2010 WL 1688532 (Pa. Cmwlth. filed April 28, 2010), we were presented with the identical issue under a fact pattern involving taxicabs that were cited, fined and suspended for 30 days. In that case, Germantown Cab Company objected to the citations on the basis that the Authority did not properly promulgate the regulation with which it had been charged for violating. Germantown Cab Company stated that the Authority was required by Section 207 of the Commonwealth Documents Law, 45 P.S. §1207, to file its taxicab regulation with the Legislative Reference Bureau. The Authority disagreed, stating that it was an independent administrative commission for the regulation of taxicabs, and because it was a unique hybrid agency with a local focus, it was exempt from the Commonwealth Documents Law.

We agreed with Germantown Cab Company that the Authority was required to comply with the Commonwealth Documents Law when it promulgated a regulation because Section 5722 of the Parking Authorities Law, 53 Pa. C.S. §5722, did not expressly exempt the Authority. That section gave the Authority the power to adopt taxicab regulations notwithstanding any other provision or law. It provided that regardless of what other statutes might state about the powers of any authority, including other parking authorities, the Philadelphia Parking Authority had the power to adopt regulations. Under 45 Pa. C.S. §508, all agencies were subject to the terms of the Commonwealth Documents Law unless the legislature had provided an express exemption, which it did not for the Authority. We concluded that the Authority was required to follow the requirements of the Commonwealth Documents Law when it adopted the taxicab regulation and

because it did not do so, the Authority's taxicab regulation did not have the force and effect of law. Therefore, it was not valid for any purpose. Consequently, we held that the regulation was void and unenforceable because it was not promulgated in accordance with the Commonwealth Documents Law and reversed the Authority's adjudication imposing the sanctions upon Germantown Cab Company.

Similarly, in this case, because the identical regulations are being used by the Authority to cite, fine and remove Paroya from the industry that were used in *Germantown Cab Company* which were found to be void and unenforceable, we, too, hold that they are void and unenforceable in this case.⁵

Accordingly, the order of the Authority is reversed and the Authority is to refund Paroya the \$1,000 fine he paid.

DAN PELLEGRINI, JUDGE

⁵ Paroya argues that there was no substantial evidence to sustain a finding that he was an illegal service provider in Philadelphia. Based on how we have decided the outcome of this case, we need not address this issue.

