

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James Atalah, :  
 :  
 Petitioner :  
 :  
 v. : No. 428 C.D. 2011  
 : Submitted: August 19, 2011  
 Philadelphia Parking Authority, :  
 Respondent :

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY SENIOR JUDGE KELLEY

FILED: November 14, 2011

James Atalah (Petitioner) petitions for review of the February 3, 2011, order of the Philadelphia Parking Authority (PPA), which determined that Atalah was ineligible for a driver certification pursuant to the PPA's Taxicab and Limousine Regulations<sup>1</sup> (Taxicab Regulations). We reverse and remand.

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<sup>1</sup> For many years, the Public Utility Commission regulated all taxicab operation in Pennsylvania. In 2004, the General Assembly passed the Act of July 16, 2004, P.L. 758, No. 94 (Act 2004-94). Act 2004-94 added Chapter 57 of the Parking Authorities Law, 53 Pa.C.S. §§ 5701-5745, giving the PPA the responsibility to regulate taxicab and limousine service in and around Philadelphia. In June 2005, the PPA promulgated the Taxicab Regulations, which were subsequently amended on July 29, 2008. The amended Taxicab Regulations are available on the PPA's website, <http://philapark.org/taxis-limousines/taxis-limousines-regulations>; the relevant sections are included in the Reproduced Record (R.R.) at pages 114-117.

Atalah, a taxicab driver, filed an application with the PPA for a driver's certificate in March, 2010. Section 5706(a) of the Parking Authorities Law, 53 Pa. C.S. §5706(a),<sup>2</sup> requires that individuals providing taxicab service in Philadelphia obtain a driver's certificate issued by the PPA pursuant to standards for fitness prescribed in the Taxicab Regulations. By letter dated June 28, 2010, the PPA denied Atalah's application pursuant to Section 5.h of the Taxicab Regulations<sup>3</sup> due to a prior felony conviction, which resulted in a sentence of 23 months with a parole date of November 2, 2009. The letter advised that Atalah will become eligible to reapply in November 2014.

Atalah timely requested a *de novo* hearing, after which the PPA again denied his application. The PPA found that Atalah had maintained a PUC driver

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<sup>2</sup> Specifically, Section 5706(a) provides:

The authority shall provide for the establishment of a driver certification program for drivers of taxicabs and limousines within cities of the first class. Standards for fitness of all drivers shall be established under such rules and regulations as the authority may prescribe. The authority may revoke or suspend a driver's certificate upon a finding that the individual is not fit to operate a taxicab or limousine, as applicable. Each applicant for a driver's certificate shall pay a fee in an amount to be determined pursuant to the requirements of section 5707 (relating to budget and fees). Upon approval, a picture driver's certificate will be issued to an applicant. No individual shall operate a taxicab or limousine at any time unless the individual is certified as a driver by the authority. Each certified driver shall carry and display in full view a driver's certificate at all times of operation of a taxicab or limousine. The authority may establish orders or regulations which designate additional requirements governing the certification of drivers and the operation of taxicabs or limousines by drivers, including, but not limited to, dress codes for drivers.

<sup>3</sup> Section 5.h of the Taxicab Regulations provides that any person who has been convicted of a felony is disqualified from obtaining a PPA driver's certificate from the date of the conviction until five years from the date his or her sentence is fully served. R.R. at 117.

certificate, which expired following an extension on November 3, 2005. In October 1999, Atalah pled guilty to arson and received a sentence of five-years of probation, plus an order to pay restitution of \$18,000. On November 4, 2004, Atalah pled guilty to credit card fraud, specifically, identity theft, forgery, theft by receiving stolen property and theft by deception and was sentenced to 11 ½ - 23 months of confinement to be served by house arrest and ordered to pay restitution of \$20,000 plus court costs. In 2007, Atalah pled guilty to simple assault following a street fight with other taxicab drivers and was placed on twelve-months of probation and ordered to pay \$1,850 in restitution.

The PPA concluded that Atalah is not eligible to be a PPA certified driver pursuant to Section 5.h of the Taxicab Regulations because his application was less than five years from the date his criminal sentence was fully served. PPA Op., 2/24/11, at 3. While not part of the initial denial letter, the PPA additionally sustained the refusal to issue a certificate on the basis of Section 19.e.ii of the Taxicab Regulations<sup>4</sup> explaining that Atalah’s “criminal history, i.e., arson, a crime of violence; credit card fraud, a crime of moral turpitude; and assault, all relate adversely to [Atalah’s] suitability to be a cab driver.” *Id.* at 4. The PPA ordered as follows: (1) Taxicab Regulations apply to this case; (2) Atalah’s motion to apply the 2005 Rules and Regulations is denied; (3) Atalah’s motion to waive any of the requirements of the Taxicab Regulations is denied; (4) Atalah has not complied with

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<sup>4</sup> Section 19.e.ii.11 of the Taxicab Regulations provides:

The Authority shall retain the right to deny, suspend or revoke a Driver’s Certificate from anyone whose record indicates that the individual may not be able to provide safe and reliable service, with notice and an opportunity to be heard as appropriate.

R.R. at 115.

the terms and conditions of Section 5.h of the Taxicab Regulations, therefore, the PPA's refusal to issue a driver certificate is sustained and Atalah's appeal is denied; and (5) the PPA's refusal to issue a driver certificate based upon his criminal history is sustained and Atalah's appeal is denied. From this decision, Atalah petitioned for review with this Court. Atalah raises the following issues for our review:

1. Are the PPA's 2005 and 2008 Taxicab Regulations properly promulgated?
2. Are the Taxicab Regulations, which punitively increase the period of time under which an applicant is ineligible to apply for a taxi driver's certificate, ex post facto laws prohibited by the Pennsylvania and U.S. Constitutions?
3. Does the passage of a regulation, which retroactively increases the period of time under which an applicant is ineligible to apply for a taxi driver's certificate, violate the Pennsylvania and U.S. Constitutions?
4. Does the hearing officer's conduct at the hearing and refusal to permissibly waive the Taxicab Regulations as to Atalah despite the substantial weight of character evidence, constitute an abuse of discretion or error of law?

Atalah asserts that the PPA's 2005 and 2008 Taxicab Regulations have been ruled invalid by this Court as they were improperly promulgated and, therefore, are invalid and unenforceable. We agree.

In Germantown Cab Company v. Philadelphia Parking Authority, 993 A.2d 933 (Pa. Cmwlth. 2010) (en banc), petition for allowance of appeal granted, \_\_\_ Pa. \_\_\_, 14 A.3d 821 (2011) (Germantown Cab I), this Court considered this same issue. Therein, the PPA cited, fined, and suspended Germantown Cab Company (GCC) from operating one of its taxicabs for thirty days because the PPA found that GCC violated a Taxicab Regulation. GCC challenged the adjudication on the ground

that the PPA failed to properly promulgate the regulation in accordance with what is commonly referred to as the Commonwealth Documents Law<sup>5</sup> (CDL). Germantown Cab I, 993 A.2d at 934. We concluded that the PPA was required to follow the requirements of the CDL when it adopted the regulation. Because it failed to do so, the regulation did not have the force and effect of law. Thus, we held that the regulation was void and unenforceable and reversed the PPA’s order imposing sanctions on GCC. Id. at 943.

Although a different section of the Taxicab Regulations is at issue in this case, we agree with Atalah that we are bound by Germantown Cab I.<sup>6</sup> The PPA has petitioned the Pennsylvania Supreme Court for allowance of appeal of Germantown Cab I, which gave the PPA an automatic supersedeas under Rule 1736(b) of the Pennsylvania Rules of Appellate Procedure.<sup>7</sup> On February 23, 2011, our Supreme Court granted the PPA’s petition for allowance of appeal. Germantown Cab Company v. Philadelphia Parking Authority, \_\_\_ Pa. \_\_\_, 14 A.3d 821 (2011).

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<sup>5</sup> Act of July 31, 1968, P.L. 769, as amended, 45 P.S. §§ 1102–1602, and 45 Pa. C.S. §§ 501–907, which, collectively, are known as the “Commonwealth Documents Law.” This was the official short title of the 1968 enactment, which was repealed. See Section 101 of the Act of July 31, 1968, P.L. 769, 45 P.S. §1101.

<sup>6</sup> Recently, in Flowers v. Philadelphia Parking Authority (Pa. Cmwlth., Docket No. 789 CD 2010, filed March 3, 2011), relying upon Germantown Cab I, we reached the same conclusion regarding Section 5.h of the Taxicab Regulations. Pursuant to Section 414 of this Court’s Internal Operating Procedures, an unreported panel decision of this Court issued after January 15, 2008 may be cited for its persuasive value, but not as binding precedent.

<sup>7</sup> The rule provides:

(b) Supersedeas automatic. Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule [which includes the Commonwealth] shall operate as a supersedeas in favor of such party.

Pa. R.A.P. 1736(b).

Notwithstanding the grant of allocatur and the automatic supersedeas,<sup>8</sup> this Court remains bound by Germantown Cab I. It is axiomatic that a decision of an appellate court remains binding precedent, even if it has been appealed, unless and until it is overturned by the Pennsylvania Supreme Court. Germantown Cab Co. v. Philadelphia Parking Authority, 27 A.3d 285 (Pa. Cmwlth. 2011) (Germantown Cab II); Sorber v. American Motorists Insurance Company, 680 A.2d 881, 882 (Pa. Super. 1996). Our holding in Germantown Cab I is dispositive of this appeal. Therefore, we hold that the Taxicab Regulations are invalid and unenforceable because they were not promulgated in accordance with the CDL. As a result, the PPA's determination that Atalah is ineligible for a driver certification pursuant to the Taxicab Regulations must be reversed.

This determination does not mean that Atalah is now able to operate a taxicab. Pursuant to Section 5706(a) of the Parking Authorities Law, 53 Pa. C.S. §5706(a), “[n]o individual shall operate a taxicab or limousine at any time unless the individual is certified as a driver by the authority.” The invalidation of the Taxicab Regulations does not eviscerate all of the PPA's enforcement powers, including the certification of drivers. See Germantown Cab II, 27 A.3d at 287; Germantown Cab I, 993 A.2d at 943. The PPA may determine the fitness of an applicant under the Parking Authorities Law and the regulations of the Pennsylvania Public Utility Commission (PUC), 52 Pa. Code Chapter 29, that were to remain in effect until replaced by the PPA's regulations. Id.

Accordingly, the order of the PPA is reversed and this matter is remanded to the PPA to consider Atalah's application for certification as a taxicab

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<sup>8</sup> The automatic supersedeas only stayed the enforcement of this Court's order between the parties in that particular litigation.

driver under the standards set forth in the Parking Authorities Law and the PUC's regulations.<sup>9</sup>

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JAMES R. KELLEY, Senior Judge

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<sup>9</sup> In light of this disposition, we need not address the remaining issues asserted by Atalah. Although the issue was not raised by Atalah, we note that the PPA's letter denying Atalah's application only asserted Section 5.h, not Section 19.e.ii.11, of the Taxicab Regulations as the basis for the denial of eligibility. R.R. at 1. Fundamental due process guarantees require the PPA to provide notice of the basis of the governmental action and an opportunity to be heard. Germantown Cab Co. v. Philadelphia Parking Authority, 27 A.3d 280, 284 (Pa. Cmwlth. 2011) (Germantown Cab III). Should the PPA again deny Atalah's application on remand, the PPA must provide notice to Atalah setting forth the specific basis for the denial and an opportunity to be heard. Id.; Goslin v. State Board of Medicine, 949 A.2d 372, 376 (Pa. Cmwlth. 2008).

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Petitioner	:	
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v.	:	No. 428 C.D. 2011
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Philadelphia Parking Authority,	:	
Respondent	:	

**ORDER**

AND NOW, this 14th day of November, 2011, the order of the Philadelphia Parking Authority, dated February 24, 2011, at Docket No. 10-10-01, is REVERSED and the case is REMANDED to the Philadelphia Parking Authority to determine whether Atalah is eligible for driver certification under the Parking Authorities Law and the regulatory scheme that existed prior to the adoption of the Taxicab and Limousine Regulations.

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JAMES R. KELLEY, Senior Judge