

Petitioners are independent taxicab drivers who lease taxicabs from Germantown Cab Company (GCC). Section 5706(a) of the Parking Authorities Law, 53 Pa. C.S. §5706(a), requires that individuals providing taxicab service in Philadelphia obtain a driver's certificate issued by the PPA. Each of the Petitioners applied for a PPA driver's certificate in 2009. By letters dated June 23, 2009, the PPA denied Petitioners' applications under section 5(h) of the Taxicab Regulations due to Petitioners' prior criminal convictions.³

Petitioners timely requested a hearing *de novo*, after which the PPA again denied their applications. The PPA concluded that "the crimes for which each of these applicants was convicted reflects negatively on their fitness to be driving members of the unsuspecting public at all hours of the day and night." (PPA Op., 9/28/09, at 4.) Therefore, the PPA ordered as follows: (1) Flowers is not eligible to be a PPA certified driver until January 24, 2015; (2) Johnson is not eligible to be a PPA certified driver until March 2, 2016; (3) Wiggins is not eligible to be a PPA certified driver until February 6, 2013; and (4) Stroman is not eligible to be a PPA certified driver until January 1, 2012. (*Id.*)

In their petition for review, Petitioners assert that section 5(h) of the Taxicab Regulations is invalid and unenforceable under *Germantown Cab Company v. Philadelphia Parking Authority*, 993 A.2d 933 (Pa. Cmwlth. 2010) (*en banc*),

³ Flowers pled guilty to robbery in 1991 and was sentenced to five to ten years in prison. Johnson pled guilty to aggravated assault in 2000 and was sentenced to three to ten years in prison. Wiggins pled guilty to possession with intent to deliver in 2006 and was sentenced to three to twenty-three months in prison. Stroman was convicted of possession with intent to deliver in 2004 and was sentenced to three years' probation. Both Flowers and Johnson were on parole at the time of the hearing.

appeal granted, ___ Pa. ___, ___ A.3d ___, 2011 Pa. LEXIS 423 (filed Feb. 23, 2011), because the regulation was not promulgated in accordance with the Commonwealth Documents Law (CDL), Act of July 31, 1968, P.L. 769, *as amended*, 45 P.S. §§1102-1602, and 45 Pa. C.S. §§501-907. We agree.

In *Germantown Cab*, this court considered the very same issue with respect to another of the PPA’s Taxicab Regulations. In that case, the PPA cited, fined, and suspended 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 the CDL. *Germantown Cab*, 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 regulation is at issue in this case, we agree with Petitioners and the PPA⁴ that we are bound by *Germantown Cab*. Therefore, we hold that section 5(h) of the Taxicab Regulations is invalid and unenforceable because it was not promulgated in accordance with the CDL.

Petitioners also assert that: (1) notwithstanding the PPA’s regulations, they are eligible to drive taxicabs in Philadelphia under the regulations promulgated

⁴ (See PPA’s Brief at 10 (stating that, in light of *Germantown Cab*, “this Court should hold that Section 5(h) of the PPA’s regulations is unenforceable”).)

by the Pennsylvania Public Utility Commission (PUC); and (2) they are entitled to a refund of their application fees. However, neither of these issues was raised in their petition for review or considered by the PPA below. Therefore, they are waived. *See McDonough v. Unemployment Compensation Board of Review*, 670 A.2d 749, 750 (Pa. Cmwlth. 1996) (declining to consider issue raised in claimant’s brief on appeal but not raised in claimant’s petition for review or fairly comprised therein); Pa. R.A.P. 1513(d).⁵

Accordingly, we reverse.

ROCHELLE S. FRIEDMAN, Senior Judge

⁵ In their petition for review, Petitioners ask this court to: (1) vacate the PPA’s order; (2) declare the Taxicab Regulation invalid; and (3) allow Petitioners to work as taxicab drivers in Philadelphia. (Petition for Review, ¶ 9.) In their briefs, however, Petitioners argue for the first time that they are eligible to work as taxicab drivers under the applicable PUC regulations. (Petitioners’ Brief at 15-16; Petitioners’ Reply Brief at 2.) Even if we were to consider this claim as being “fairly comprised” in their petition for review, we decline to consider the PUC regulations in the first instance. It is for the PPA, and not this court, to interpret and apply the PUC regulations to Petitioners’ applications.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Darnell Flowers, Harold Johnson,	:	
Jemal Wiggins, David Stroman,	:	
Petitioners	:	
	:	
v.	:	No. 789 C.D. 2010
	:	
Philadelphia Parking Authority,	:	
Respondent	:	

ORDER

AND NOW, this 3rd day of March, 2011, we hereby reverse the March 30, 2010, order of the Philadelphia Parking Authority.

ROCHELLE S. FRIEDMAN, Senior Judge