

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

PRESENT: DIANE A. LEBEDEFF
Justice

PART 8

Samuel H. Joann

INDEX NO. 123003/01

MOTION DATE 5/14/02

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

NYC Taxi & Limousine Commission

The following papers, numbered 1 to _____ were read on this motion to/for pfc

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

SCANNED
MAY 30 2002

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this ~~motion~~

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

Dated: MAY 28 2002

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: I.A.S. PART 8

-----X

SAMUEL H. SLOAN,

Petitioner,

For a Judgment Pursuant to CPLR Article 78,

-against-

Index No. 123003/01

Mot. Seq. No. 002

NEW YORK CITY TAXI AND LIMOUSINE
COMMISSION,

Respondent.

..... X

DIANE A. LEBEDEFF, J.:

By the within contempt motion, petitioner Samuel H. Sloan, pro se, addresses certain issues left unresolved by the decision of February 27, 2002. Following a review of the papers now submitted, and consistent with directions issued on the record on May 14, 2002, the court determines as follows:

1. The agency has determined that it will respond to the FOIL request; in this posture, the FOIL branch of the petition is premature and is severed and dismissed.

2. The agency has determined that it did receive, and rule upon, the administrative appeal regarding the TLC summons, but the decision was mailed to Mr. Sloan's former address; the agency is directed to serve a copy of the appeals decision upon Mr. Sloan at his current address forthwith. Mr. Sloan may then take such new legal action as is appropriate. Accordingly, the reference to a Special Referee is vacated as moot. Further, given that this issue is unresolved, the claim for a refund of the fine and related damages is severed and dismissed without prejudice to being raised anew in relation to any further challenge to the adjudication. The substantive and damages branch of the petition are severed and dismissed.

3. **As** to the "for hire" license, which has been suspended again, the agency is directed to reinstate such license forthwith, without prejudice to noticing the matter for hearing.

4. **As** to the application for a new hack license, the agency is directed to schedule a hearing forthwith, with such hearing to be held in the near future. Mr. Sloan is entitled, if such answer is truthful, to aver that he has no copies of the papers requested and the matter should proceed to a hearing.

5. **As** to the request to find the agency in contempt, the court does not find a willful contempt has been established at this time, especially given that the agency has steadily worked upon – and resolved – many of the points at issue. The purpose of contempt proceedings is to uphold the power of the court and to secure the aggrieved party the rights by it awarded (*Bessette v. W.B. Conkey Co.*, 194 U.S. 324 [1904]), but the right to use contempt as a sanction must be clear (*Inre Battista's Estate*, 176 Misc. 85 [Surrogate Ct. Kings Co. 1941]). "Guilt arises only where the authority of the court is flouted" (*Spector v. Allen*, 281 N.Y. 251, 260 [1939]).

6. To the extent other points are raised, the court does not find such points within the scope of this proceeding and they are denied.

This decision constitutes the order of the court.

Dated: May 28, 2002



J.S.C.