

No. 21-
IN THE
SUPREME COURT OF THE UNITED STATES

CLASSIC CAB COMPANY,

Petitioner,

vs.

DISTRICT OF COLUMBIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA

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QUESTIONS PRESENTED FOR REVIEW

I. Is the use of a sham hearing process where the agency subject to an appeals process has the authority to overturn the determination of an independent adjudicating officer a violation of due process?

II. Is a hearing where a judicial officer advocates for a government agency by admitted otherwise inadmissible evidence and by looking up or obtaining evidence otherwise not introduced a violation of due process?

III. Is it a denial of due process where a petitioner has a right to judicial review under state law but the highest court of that state refuses to review the matter on the merit of the issue based on a mootness determination admittedly caused by the action of the

government agency's action and in direct
contradiction of its own state precedent?

PARTIES IN COURT BELOW

Other than Petitioner and Respondent, the other parties are as follows:

1. Mustaq Gilani is the primary owner of Classic Cab. He is domiciled and is a resident of Virginia.
2. The Department of For Hire Vehicles (DFHV) is a state agency within the District of Columbia. The Respondent owns, operates, manages, directs, and controls the DFHV
3. Muriel Bowser (Mayor) is and was at all times relevant to this matter the mayor of the District of Columbia. She was sued in her official capacity.
4. Ernest Chrappah (Director who was at times relevant to this matter an employee of the DFHV and

is presently the acting director of the DFHV. He was sued in his official capacity.

5. David Do (Director of DFHV who was and currently is relevant to this matter an employee of the DFHV. He was sued in his official capacity.)

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Classic Cab Company, respectfully requests that this Court grant his Writ of Certiorari and reverse the decision of the District of Columbia Court of Appeals in 19-AA-0044 dismissing Petitioner's appeal of an Administrative finding as moot, find that the administrative process and subsequent ruling from the D.C. Court of Appeals denied Classic Cab both procedural and substantive due process interests in property and liberty, and remand the matter back to the DC Court of Appeals to make a determination on the matter based on the merits of Petitioner's appeal.

In this matter, Classic Cab is a company that until 2018 held and maintained a license to operate as a Taxicab company in the District of Columbia for many years. In 2018, in spite of the fact that Classic Cab

complied with all criteria for renewal of his license and already held a license, the Director of the Division of For Hire Vehicles in the District of Columbia denied his renewal application based on a finding that Classic Cab did not meet the definition of a Taxicab company. This is in spite of the fact that there is no requirement for a taxicab company that already exists to meet the definition for obtaining an initial license as a taxicab company to obtain a renewal for a license already in existence and Classic Cab did, in actual reality, meet the definition for a taxicab company. The agency allows for an appeal of the decision, however, the decision is not final until it is reviewed and approved by the Director of the division that took the adverse action in the first place. Here, the hearing examiner made a determination in favor of the Director based solely on hearsay evidence which is specifically forbidden by local laws, and immediately acted in a

manner that destroyed Petitioner's business by instructing his employees and contractors to immediately cease working with Petitioner or be subject to penalties and by disabling Petitioner's meter system thus eliminating his ability to do business. Subsequently, Petitioner filed an appeal to the Court of Last resort in the District of Columbia as a matter of right under local law, yet the Court dismissed the matter as moot without ruling on the merits despite the fact that the Petitioner was never afforded due process under the law and the fact that it was the government agencies actions, the exact actions subject to appeal by right, were directly responsible for destroying Petitioner's business and removing his ability to operate as a taxicab company.

OPINIONS BELOW

This is an appeal from a March 15, 2021, 19 AA 0044 (App. B: 1.) decision of the District of Columbia Court of Appeals to deny Petitioner's request to rehear the opinion issued on February 4, 2021 19-AA-0044(App. B: 1.) that affirmed the Administrative Decision denying Petitioner's application to renew his business license.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to U.S. Constitution Art. III Sec. II and Supreme Court Rule 13.

RELEVANT CONSTITUTIONAL PROVISIONS

Section I of the Fourteenth Amendment of the Constitution (the Due Process Clause) states the following:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Takings Clause of the Fifth Amendment to the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; ***nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.***

STATEMENT OF THE CASE

This is an appeal from a March 15, 2021, 19 AA 0044 (App. B: 1.) decision of the District of Columbia Court

of Appeals to deny Petitioner's request to rehear the opinion issued on February 4, 2021 19-AA-0044(App. B: 1.) that affirmed the Administrative Decision denying Petitioner's application to renew his business license. This case concerns the DFHV Office of the Director's denial of Classic Cab's renewal license application on January 26, 2018, the hearing examiner's decision to uphold said revocation and the Office of the Director's final approval of the decision.

In 2018, and for many years prior, Classic Cab Company ("Petitioner") had operated in the District of Columbia as a Taxi Cab Company licensed (meaning specifically provided a certificate granting the company operating authority in the District of Columbia) by the District of Columbia's Division of For Hire Vehicles (formerly known as the Taxi Cab Commission)("Respondent") As required, Petitioner filed its annual application for renewal of its then

current license to operate as a taxi cab company. At that time, Petitioner clearly qualified under the statute to operate as a taxicab company.

The Supreme Court has defined a “property interest” as an “entitlement.” *Board of Regents of State Colleges v. Roth*, 408 US 564 (1972). According to *Roth*, “to have a property interest in a benefit, a person must ... have a legitimate claim of entitlement to it.” *Id.* at 577. Accordingly, a property interest exists where federal, state or local law creates a reasonable expectation to receipt of a benefit, regardless of the importance of that interest. Government licenses are a form of property because they constitute an entitlement to engage in a valuable activity. Therefore, the government must have a fair procedure to determine whether professional or occupational licenses should be revoked. Where governments create criteria for the receipt and continuation of the benefit and the

individual has a present enjoyment and a claim of entitlement to its continuation under state law, he then has a property interest that is protected by the due process clause. See *Bell v. Burson*, 402 US 535 (1971) and *In re Ruffalo*, 390 US 544, 55 (1968). Additionally, where government actions foreclose a range of economic or professional opportunities such action violates an individual's liberty interests. See *Weiberger v. Hynson*, 412 US 609, 638 (1973).

In this matter Petitioner had a due process property interest in its taxicab license and had a legitimate claim of entitlement to it as the government created criteria in DCMR 31-501 for receipt and continuation of the taxicab company license or operating authority and Petitioner had a present and longstanding enjoyment and a claim of entitlement to its continuation under DC law. Additionally, Petitioner had a liberty interest in retaining its taxicab license

because it enabled petitioner to avail itself to a range of economic or professional opportunities.

Nevertheless, in a letter on January 26, 2018, Respondent denied Petitioner's application stating "You have failed to meet the vehicle ownership requirement of 20 vehicles for a taxi company as required by D.C. Official Code § 50-301.03 (23)" in spite of the facts that Classic Cab had 28 taxicabs in its fleet and satisfied all the requirements for renewal of certificate of operating authority found within Title 31 (specifically DCMR 31-501). It is also noteworthy that, in reality, D.C. Code 50-301.03 provides no cause of action, penalty or any other remedial action to take against any "taxicab company" or "taxicab fleet" that does not meet its definitional criteria for being a taxicab company after it is initially granted operating authority and, in fact, only provides for the specific requirements under DCMR 31 – 501 for applications

for renewal. DCMR 31-501 never even refers to DC Code § 50-301.03. Petitioner made a timely appeal of the Respondent's denial to the DFHV Office of Hearing Examiners pursuant to DCMR 31-709.5.

Pursuant to D.C. Code 50–301.09b, upon the filing of a hearing “the hearing examiner shall hear and decide appeals taken from license denials.” 50–301.09b (a). A “hearing examiner may issue decisions for review and approval by the [Respondent], to be issued as the final decision of the [Respondent] or refer matters for contested hearing before the Office of Administrative Hearings.” Simply put, this means that all of the hearing examiners decisions must be reviewed and approved by the [Respondent], the party whose initial

decision is being appealed, because the DC. Code requires it.¹

After a two day fact finding hearing beginning July 11, 2018 and completed on August 1, 2018, a hearing examiner rendered a decision and held that “petitioner is liable for violating D.C. Code 50-301.03” based solely on uncorroborated hearsay testimony and one lone piece of hearsay evidence (a 1 page spreadsheet), and further ruled that Classic Cab did not have a sufficient number of taxicabs to maintain its status as a “taxicab company” thus revoking it’s currently active license to operate as such. In fact, Respondent never introduced into evidence the

¹ Pursuant to DCMR 31-2118.4, where “the Establishment Act requires that a hearing examiner’s decision be approved by the Director, the hearing examiner shall promptly refer the matter to the Director.” DCMR 31-2118.4.

application that it challenged and actually conceded that Petitioner's application met all criteria (pursuant to local regulations and law under DCMR 31-501.1-501.15.) for the renewal of its operating authority.

In spite of the requirements of the law that a hearing examiner's decision is automatically stayed until there is a final determination by the Director, mere moments after the hearing examiner issued his order, Respondent sent out letters and emails ordering all Classic Cab's drivers to leave Classic Cab and on October 15, 2018, less than three business days after the ruling and prior to the order being referred to the Director of the Division, the Director electronically shut off all Classic Cab's DTS operations (the meter system that allows D.C. taxicab drivers to accept payment and calculate taxicab fares) effectively

closing Petitioner's business permanently.² Moreover, the hearing officer's order erroneously instructed Classic Cab to appeal the Final Order to the DC Court of Appeals. Pursuant to the hearing examiner's erroneous instructions, on October 15, 2018 (coincidentally the exact same day that Respondent permanently closed Classic Cab by discontinuing the DTS access) Petitioner filed an appeal at the DC Court of Appeals (Case # 18-AA-1081). On November 29, 2018 the Court of Appeals remanded the case back to the hearing examiner for immediate referral to the Director based on the aforementioned requirements. Noting the hearing examiner's mistake, the Court of Appeals explained that the Petitioner's appeal was prematurely filed in contravention of DCMR 31-2118.4, which required the hearing examiner to immediately forward his decision

² No cab may be operated in DC without a DTS. See DCMR 31-602.3 (c)

to the Director for a final ruling. This is in spite of the fact that the Respondent had immediately taken action to effectively destroy the Petitioner's business. DC Court of appeals further refused to intervene in the matter despite having knowledge of the Respondent's illegal destruction of Petitioner's business. On January 10, 2019, Respondent affirmed the hearing examiner's decision without any explanation and Petitioner promptly filed an appeal, as a matter of right, with the D.C. Court of Appeals (the court of last resort in the District of Columbia) on January 15, 2019. Amazingly enough, the DC Court of Appeals ruled that the matter was moot because Classic Cab no longer existed without ruling on the merits of the appeal, which clearly favored the Petitioner, and in spite of the fact that the only reason Petitioner was no longer in existence was due to the illegal actions of the Respondent after a sham show

trial style hearing which denied Petitioner substantive and procedural due process rights.

REASONS FOR GRANTING THE WRIT

SUPREME COURT REVIEW IS APPROPRIATE TO DECIDE THE IMPORTANT QUESTION WHETHER THE USE OF A SHAM HEARING PROCESS WHERE THE AGENCY SUBJECT TO AN APPEALS PROCESS HAS THE AUTHORITY TO OVERTURN THE DETERMINATION OF AN INDEPENDENT ADJUDICATING OFFICER A VIOLATION OF DUE PROCESS

It has long been the precedent of this Court that there is a denial of due process where the individual ultimately in charge of making a determination is also an interested party. See generally *Tumey v. Ohio*, 273 US 510 (1927) *In fact*, this Court's inquiry into judicial bias is an objective one based not on actual subjectively bias, but whether the average judge in the position in question is likely to be neutral, or whether there is an unconstitutional 'potential for

bias. See *Caperton, et al. v. A.T. Massey Coal Co., et al.*, 568 US 868, 874-875 (2009) This Court should grant certiorari review to consider the implications of a statutory scheme that creates a hearing process where the agency decision being appealed is ultimately subject only to the individual that originally made that decision in the first place.

The Fourteenth Amendment's Due Process Clause prevents the states, and the District of Columbia, from denying litigants the use of established adjudicatory procedures when their action would be "the equivalent of denying them an opportunity to be heard upon their claimed right[s]" See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-430 (1982) Furthermore, where there exists an unconstitutional potential for judicial bias, a litigant is denied due process and any decision against him must be reversed. See *Caperton, et al. v. A.T. Massey Coal Co., et al.*, 568 US 868, (2009)

Pursuant to DCMR 31-709.5, the Respondent (being the Director of the Division of For Hire Vehicles) ultimately reviews his own decisions on appeal. Accordingly, where the hearing examiner has ruled against the Director's order to deny a renewal license application, the Director would then simply appeal to himself and uphold his own decision. In the alternative, where the hearing examiner upholds the Director's decision and the applicant appeals the decision to the Director, then the Director would be in a position to review and uphold his own decision. This scheme plainly creates the potential for an unconstitutional judicial bias as the decision of any judicial officer is subject to the whims of the individual that made the decision being appealed in the first place. Accordingly, the hearing process itself defeats the entire purpose of initialing an appeal and violates Due Process and any appearance of fairness.

Furthermore, in the requisite statutory and regulatory scheme involving DCMR 31-2120.2, a party (in this matter the Director of the Division of For Hire Vehicles referred to herein as the Respondent) in a contested factfinding hearing is also acting as the judge or ultimate decider upon final review and thereby in a position to always support and uphold its own decisions. Such a statutory scheme transforms the hearing examiner into a puppet and serves as an event where the referee judging a game he is a participating contestant. This results in a violation and deprivation of Due Process.

SUPREME COURT REVIEW IS APPROPRIATE TO DECIDE THE IMPORTANT QUESTION WHETHER A HEARING WHERE A JUDICIAL OFFICER ADVOCATES FOR A GOVERNMENT AGENCY BY MAKING A DETERMINATION BASED ON HEARSAY NOT ALLOWED BY LOCAL LAW A VIOLATION OF DUE PROCESS?

Pursuant to DCMR 31-2117.2, Hearsay may be considered during a hearing, provided however, **that hearsay shall not serve as the sole evidentiary basis for a suspension or revocation of a license.**

In this matter, it is conceded that the only evidence relied upon to make a decision in this matter was uncorroborated hearsay. Again, this is the entirety of evidence in the record supporting Respondent's decision after a two-day hearing.

When a court creates procedures outside of accepted jurisprudence and ignores black letter law it creates the appearance of bias or prejudice against the litigant. See *United States v. Hage*, 810 F.3d 712, 722-724 (9th Cir. 2015) Once established, judicial bias

denies due process regardless of the evidence against the adverse party. See *Tumey at 535*. In this matter, where Petitioner in fact raised the specific provision forbidding determinations based solely on hearsay in revoking licensure or operating authority, all involved individuals concede that all evidence presented at hearing was hearsay, and the hearing examiner still made its determination to revoke Petitioner's license based solely on hearsay, the hearing officer was indeed biased, and the determination cannot stand.

SUPREME COURT REVIEW IS APPROPRIATE TO DECIDE THE IMPORTANT QUESTION WHETHER A DENIAL OF DUE PROCESS EXISTS WHERE A PETITIONER HAS A RIGHT TO JUDICIAL REVIEW UNDER STATE LAW BUT THE HIGHEST COURT OF THAT STATE REFUSES TO REVIEW THE MATTER ON THE MERIT OF THE ISSUE BASED ON A MOOTNESS DETERMINATION ADMITTEDLY CAUSED BY THE ACTION OF THE GOVERNMENT AGENCY'S ACTION AND IN DIRECT CONTRADICTION OF ITS OWN STATE PRECEDENT?

The appropriate framework for assessing the deprivation of due process in this matter involves a balancing test that evaluates the government's chosen procedure with respect to the private interest affected, the risk of erroneous deprivation of that interest under the chosen procedure, and the government interest at stake. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) Additionally, the Court has held that post-deprivation procedures would not satisfy due process if it is "the state system itself that destroys a complainant's property interest. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436–437(1982)

In this matter, pursuant to DC Code § 2-510,

Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof in accordance with this

subchapter upon filing in the District of Columbia Court of Appeals a written petition for review. ... Upon the filing of a petition for review, the Court shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require. ... The Court shall hear and determine all appeals upon the exclusive record for decision before the Mayor or the agency. The review of all administrative orders and decisions by the Court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this subchapter. In all other cases the review by the Court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative proceedings. Such rules

shall include, but not be limited to, the power of the Court: So far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action;...To hold unlawful and set aside any action or findings and conclusions found to be:(A) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) Contrary to constitutional right, power, privilege, or immunity; (C) In excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights; (D) Without observance of procedure required by law, including any applicable procedure provided by this subchapter; or(E) Unsupported by substantial evidence in the record of the proceedings before the Court.... In

reviewing administrative orders and decisions, the Court shall review such portions of the exclusive record as may be designated by any party. The Court may invoke the rule of prejudicial error.

Accordingly, where the Respondent, as is the case here, fails to provide due process in depriving Petitioner of property interest, then deprives Petitioner of that interest by utterly incapacitating and destroying his business, it must then be a further denial for the Court of Last Resort charged with reviewing such decision to refuse to review the matter on the merits because of the thoroughness by which the Respondent themselves destroyed the Petitioner's business.

In this matter the DC Court of Appeals initially ruled in Case # 18-AA-1081 that they could not hear the case because the hearing examiner had never referred

the matter back to the director for a final review and order in spite of the fact that the very same director immediately enforced the order that he was deemed responsible for reviewing and finalizing. Accordingly, either the Respondent had illegally enforced an order that was not final, or the DC Court of Appeals should have taken the matter up on appeal as a final order reviewed by the director and simply failed to do so. As discussed before, the predictable result where the Respondent promptly finalized a determination upholding its initial determination occurred. Petitioner then filed an appeal and promptly requested a stay of the Respondents enforcement of the order based on the conceded facts that the Petitioner's application met the standards of renewal, that the Petitioner met the definition of a taxicab company, and Respondent's continued enforcement of the order was and would continue to cause irreparable

harm to the Petitioner. Respondent argued that there was no need for a stay because the Court would decide on the merits and if the Petitioner's position was correct then they would be made whole. The Court essentially agreed with this position, denied the stay, and scheduled briefing of the matter. Subsequently, in response to Petitioner's brief and citing the same arguments that Respondent had roundly rejected from Petitioner's motion for an emergency stay, Respondent raises for the first time an argument that Petitioner's claim was moot because the Petitioner no longer met the definition of a taxicab company. Although Respondent never made any cognizable argument justifying its determination that Petitioner did not meet such definition at the time they denied its application for renewal and in light of the fact that the Respondent conceded that the Petitioner had otherwise met all of the application criteria for

renewal and that the determination was made solely based on hearsay in direct contradiction of local laws and regulations, the Court determined that the matter was moot.

In this matter, the practical implications of this determination under these circumstances turns the Due Process Clause of the 5th and 14th amendments of the Constitution into a hollow shell if allowed to stand. Consider that an Agency can deprive through revocation a citizen of a license to operate a business through a hearing process that allows that very same Agency veto power over any decision made about its own actions, then that same agency has the authority to enforce its decision by destroying the very business in question and thereafter the Courts cannot review the decision of the Agency because the Agency has destroyed the business in question. Under this scheme, both the hearing process and the role of the

Court in reviewing that process are feckless at best and at worse resemble the type of kangaroo court system designed for tyrannical dictatorships.

CONCLUSION

For the above reasons, Petitioner Classic Cab respectfully requests that this Court grant a writ of certiorari to review the decision of the District of Columbia Court of Appeals.

Dated this 12th day of August, 2021.

Respectfully submitted,

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