

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH Justice

PART 32

Index Number : 154059/2017
HERVIAS, MARCELINO
vs
CITY OF NEW YORK
Sequence Number : 001
ARTICLE 78

INDEX NO.
MOTION DATE
MOTION SEQ. NO.

The following papers, numbered 1 to 3, were read on this motion tofor Article 78
Notice of Motion/Order to Show Cause - Affidavits - Exhibits No(s) 1
Answering Affidavits - Exhibits No(s) 2, 3
Replying Affidavits No(s)

Upon the foregoing papers, it is ordered that the motion is the petition and the cross-motion to dismiss are decided in accordance with the accompanying memorandum decision, order and judgment

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 11/29/17

[Signature] J.S.C.
HON. ARLENE P. BLUTH

- 1. CHECK ONE: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: [ ] GRANTED [ ] DENIED [ ] GRANTED IN PART [X] OTHER
3. CHECK IF APPROPRIATE: [ ] SETTLE ORDER [ ] SUBMIT ORDER [ ] DO NOT POST [ ] FIDUCIARY APPOINTMENT [ ] REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 32**

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**In the Matter of the Application of**

**MARCELINO HERVIAS and WILLIAM GUERRA,**

**Petitioners,**

**-against-**

**THE CITY OF NEW YORK, THE NEW YORK CITY  
TAXI AND LIMOUSINE COMMISSION and MEERA  
JOSHI, in her Capacity as Chair fo the New York City  
Taxi and Limousine Commission,**

**Respondents.**

**For a Judgment Pursuant to Article 78 of the Civil  
Practice Law and Rules**

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**Index No. 154059/2017  
Motion Seq: 001**

**DECISION, ORDER &  
JUDGMENT**

**HON. ARLENE P. BLUTH**

The cross-motion to dismiss the petition is granted and this proceeding is dismissed.

**Background**

This proceeding concerns the value of taxicab medallions owned by petitioners. With the advent of applications designed to hail rides, such as Uber and Lyft, it is undisputed that the value of the medallions and the income generated from taxis have plummeted. Petitioners, understandably upset with the loss of their investment, bring this proceeding to compel this Court to order respondents to establish and enforce standards to ensure that the taxicab medallions

remain financially stable.

Petitioners point out that taxis face more onerous restrictions than vehicles used for the ride-hailing apps. Although there is no cap on the number of cars on these apps, there are a finite number of taxis allowed on the road. Taxis also have caps on fares, exclusionary zones for green taxis, additional accessibility requirements and vehicle restrictions. Taxis must also be hacked up— they must have certain paint, lighting, partitions, etc. Petitioners complain that the strict regulatory scheme overseeing taxis is particularly unfair when compared with the relative freedom afforded to drivers working for companies like Uber. Petitioners argue that taxis simply cannot compete with ride-sharing apps and that respondents are violating their duty to ensure that licensees remain financially stable.

In support of its cross-motion to dismiss, respondents argue that the individual petitioners in this proceeding own medallions that have actually increased in value. Respondents also argue that petitioners lack standing because Hervias and Guerra failed to submit affidavits demonstrating injury, petitioners' claims are time-barred because the petition attacks the decision to allow the use of ride-sharing apps in 2011, and petitioners failed to state a cause of action for mandamus relief.

In opposition, petitioners offer the affidavits of Hervias and Guerra and claim that respondents have a mandatory duty to ensure that medallions are financially stable. Petitioners insist that although the Court cannot direct respondents *how* to do their job, the Court can insist that respondents fulfill their responsibilities.

## Discussion

“Mandamus to compel is a judicial command to an officer or body to perform a specified ministerial act that is required by law to be performed. It does not lie to enforce a duty that is discretionary. The availability of mandamus to compel the performance of a duty does not depend on the applicant’s substantive entitlement to prevail, but on the nature of the duty sought to be commanded” (*Alliance to End Chickens as Kaporos v New York City Police Dept.*, 152 AD3d 113, 117, 55 NYS3d 31 [1st Dept 2017]). “Mandamus is generally not available to compel government officials to enforce laws and rules or regulatory schemes that plaintiffs claim are not being adequately pursued” (*id.* at 118).

The motion to dismiss is granted for several reasons. First, petitioners failed to state a cause of action for mandamus relief. As explained above, the Court can only compel respondents to take actions that are ministerial. Here, petitioners seek an order compelling respondents to establish and enforce standards to ensure that all licensees are financially stable because what they have, petitioners urge, is not good enough. The Court finds that such action is clearly discretionary and therefore cannot be the basis of mandamus relief. How respondents oversee the regulatory scheme applicable to taxis is at the discretion of respondents and is not ministerial.

Second, this Court cannot compel respondents to take actions to obtain a result that is not clearly defined. Surely, petitioners cannot credibly argue, for example, that “financial stability” means that respondents are responsible for guaranteeing that the value of medallions increases a certain percentage each year. Petitioner has not cited to a specific definition of “financial stability”; likewise, petitioners’ vague request that respondents must promulgate rules is bereft of

any specificity whatsoever.

Third, the motion is granted because petitioners failed to demonstrate that they have standing. Petitioners may think that their medallions should be worth more, but that does not establish injury. In fact, the affidavits of Hervias and Guerra do not state how much each person paid for their medallions or attempt to demonstrate the current value of these medallions. Even if the Court were to consider these affidavits (which were not submitted in support of the petition), they do not demonstrate that Hervias or Guerra suffered an injury-in-fact necessary to establish standing.<sup>1</sup>

### Summary

As petitioners acknowledge, respondents have broad discretion in overseeing for-hire car services, including taxis and ride-sharing apps. The rise of ride-sharing apps has clearly hurt the financial viability of taxis and taxicab medallions. With options available to consumers, taxis earn less money. However, the decline in the value of medallions and in the income generated by taxis does not form the basis of a mandamus to compel. Petitioners have pointed to no statute or regulation that compels respondents to artificially inflate the value of medallions to a level deemed acceptable to petitioners.

Clearly, the most significant cause of the decline in the value of medallions was the 2011 decision by respondents to allow ride-sharing apps to operate. But this petition does not (and

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<sup>1</sup>The discussion of the inequities regarding the application of wheelchair accessibility rules for taxis and cars used for ride-sharing apps may have some merit, but the instant petition does not challenge alleged unequal application of certain rules. Instead, it seeks to compel respondents to promulgate rules to ensure financial stability.

could not due to the statute of limitations) challenge that determination. There may be legal options available to petitioners to ensure that taxis and ride-sharing apps are treated equally and perhaps taxis would become more profitable.

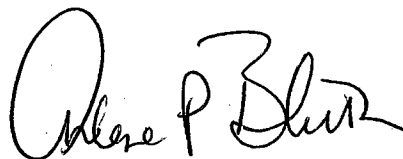
Petitioners raise legitimate issues about the efficacy of respondents' oversight of for-hire car services. However, a broad, conclusory request that respondents promulgate unspecified rules to achieve the outcome of "financial stability" when that term has no clear objective meaning and no defined meaning in the existing rules, is not the proper remedy.

Accordingly, it is hereby

ORDERED and ADJUDGED that the cross-motion to dismiss is granted, this proceeding is dismissed and the clerk is directed to enter judgment accordingly.

This is the Decision, Order and Judgment of the Court.

**Dated: November 29, 2017**  
**New York, New York**



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ARLENE P. BLUTH, JSC