

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
ROBERT SKRAK,)
Appellant(s))
vs.)
SF MUNICIPAL TRANSPORTATION AGENCY (SFMTA))
Respondent)

Appeal No. **22-007**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on February 15, 2022, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on February 1, 2022, by the SFMTA Hearing Section, of the Statement of Decision: SFMTA v. Robert Skrak (Robert Skrak does not have a current California Driver's License or an A-Card; the Taxi & Accessible Services' Notice of Nonrenewal is upheld, and Medallion No. 878 is revoked by the explicit operation of the provisions of the San Francisco Transportation Code).

APPLICATION NO. Medallion No. 878

FOR HEARING ON April 13, 2022

Address of Appellant(s):

Address of Other Parties:

Robert Skrak, Appellant(s) c/o Heidi Machen, Attorney for Appellant(s) Machen Law Firm 345 Franklin Street, Suite 204 San Francisco, CA 94102	SFMTA Taxi Services Division c/o Philip Cranna, Enforcement and Legal Affairs Manager One South Van Ness Ave., 7 th Floor San Francisco, CA 94103
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Date Filed: February 15, 2022

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 22-007

I / We, Robert Skrak, hereby appeal the following departmental action: **Statement of Decision: SFMTA v. Robert Skrak (Taxi Medallion No. 878)** which was issued by the **SFMTA Hearing Section on February 1, 2022.**

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: 4:30 p.m. on **Thursday, March 24, 2022, (no later than three Wednesdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, and Philip.cranna@sfmta.com.

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **Thursday, April 7, 2022**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy should be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, and heidimachen@machenlaw.com.

Hard copies of the briefs do NOT need to be submitted.

Hearing Date: **Wednesday, April 13, 2022, 5:00 p.m.**, Room 416 SF City Hall, 1 Dr. Carlton B. Goodlett Place.

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule MAY also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than Thursday, April 7, 2022 by 4:30 p.m. to boardofappeals@sfgov.org. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection on the Board's website at www.sfgov.org/boa. You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

See attachment to the preliminary statement of appeal.

Filed electronically by Heidi Machen, Attorney for Appellant(s)

Background: By decision dated February 1 and received via email from SFMTA on February 2, 2022, SFMTA revoked Medallion 878 from Mr. Skrak, who now seeks to appeal this decision for reasons that include but are not limited to the following:

1) The hearing officer found that “Mr. Skrak does not have a current CDL [California Drivers’ License] which is necessary to obtain an A-Card and the possession of a CDL is required under TC 1103(c)(2).” *See*, SFMTA Hearing Section Statement of Decision (“Decision”) p. 4. The hearing officer concluded, “[M]edallion #878 is hereby revoked by the explicit operation of the provisions of the San Francisco Transportation Code.” *See*, Decision p. 5.

However, this decision is incorrectly based on an *a priori* assumption advanced by SFMTA but not, in fact or in law, supported by the Transportation Code. If you take a moment to read the code, §1103(c) is clearly labeled thus: “**Requirements Applicable to Driver Permit Applications.**” Mr. Skrak does not seek to renew his A-Card (Driver’s Permit). Instead, he seeks to renew his Medallion that allows him to “operate” a taxi in the City of San Francisco. The Transportation Code contains NO requirement that a Medallion holder have an active A-Card (which, admittedly, would require holding a California Drivers’ License). Should the City and County Transportation Code actually require that all medallion holder have an active A-Card and a drivers’ license, it risks negating any policy allowing an ADA exemption to the driving requirement.

(2) Mr. Skrak held a **Driver Permit** for decades, beginning in 1982; and, a **Medallion Permit Holder** since 1997. In 2012, he informed the SFMTA that he could not drive the requisite hours. On (detrimental) reliance of assurances by SFMTA staff that he could continue to keep his Medallion anyway, Mr. Skrak made life decisions, including retiring and permanently relocating to Nevada. To now revoke Mr. Skrak’s Medallion for his failure to hold an A-Card and California Drivers’ license (which is not required for a Medallion Holder) is simply unlawful. As well, by taking a taxi off the road, it deprives riders of options, taxi drivers of jobs and the City of permit revenues.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SFMTA HEARING SECTION

**SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY,**

vs.

STATEMENT OF DECISION

ROBERT SKRAK,
Respondent

I. INTRODUCTION

This case came on for administrative hearing pursuant to a Complaint by the San Francisco Municipal Transportation Agency (SFMTA) after the Complaint was sent to respondent Robert Skrak on or about October 25, 2020. The SFMTA Complaint alleges that Mr. Skrak had not taken the necessary measures to renew his status as a qualified taxi medallion holder, and on that basis the SFMTA's Taxi and Accessible Services Division had notified Mr. Skrak on or about September 28, 2020, that his right to remain a medallion holder was being contested by the SFMTA.

Following that notice and the subsequent Complaint, a video-conference hearing was scheduled for Mr. Skrak by this Hearing Section for August 24, 2021, under the provisions of Article 1100 of the San Francisco Transportation Code (TC). That Article governs the rights granted to taxi medallion holders in San Francisco, as well as how hearings related to those rights are administered.

On August 24, 2021, Mr. Skrak appeared via videoconference along with his attorney, Ms. Heidi Machen, for this hearing. For the SFMTA, Taxi and Accessible Services Manager Philip Cranna appeared via videoconference. Principal Administrative Analyst Danny Yeung, and former Enforcement and Legal Affairs Manager for the SFMTA Taxi and Accessible Services Division, Jarvis Murray, appeared via telephone. The undersigned administrative hearing officer appeared via video and at that time testimony from each of the parties was received into evidence.

II. THE COMPLAINT

In its Complaint the SFMTA's Taxi and Accessible Services Division alleges that based upon "Post-K" provisions adopted by the TC, taxi medallion holders are subject to a full-time driving requirement and must hold an active A-Card to retain their legal status as medallion holders. Additionally, the TC also requires that for an A-Card permit to be

granted, a full-time driver must also have a valid California driver's license (CDL).

In terms of Mr. Skrak, the Complaint stated that because his A-Card had not been renewed since 2016, medallion #878, held by Mr. Skrak was not eligible to be renewed on the based on relevant provisions of Article 1100 of the TC.

The Taxi and Accessible Services Complaint also noted that under the provisions of Article 1103(c)(2)(C) of the TC, a person applying for a permit must have a valid CDL as a condition for entitlement to have an A-Card.

III. APPLICABLE LAW

Under the provisions of Article 1100 of the TC, the following statutory authority forms the relevant basis for this decision, including the Transportation Code's definitions of "A-Card," "Medallion Holder," "Notice of Nonrenewal," and "Permit Holder."

Also relevant to this case are these Article 1100 provisions:

- TC §1103(c)(2)(C), regarding driver qualifications
- TC §1103(c)(3), regarding the lapse of active permit status;
- TC §1105(a)(1), regarding permits required;
- TC §1105(a)(3), regarding permits as privilege, not property of the driver;
- TC §1105(a)(5)(A), regarding the duration of permits;
- TC §1105(a)(6), involving compliance with laws and regulations;
- TC §1109(a)(1), re required affiliation with Color Scheme;
- TC §1109(c)(1), regarding the full-time driving requirement;
- TC §1109(e)(1)(A), involving various aspects of medallion operation;
- TC §1116, covering surrender of medallions for consideration.

IV. TESTIMONY

A. SFMTA TESTIMONY AND EVIDENCE PRESENTED:

DANNY YEUNG:

Mr. Yeung, principal administrative analyst with the SFMTA's Taxi and Accessible Services Division, testified that he oversees the Taxi Data Systems for the SFMTA. Mr. Yeung testified that Mr. Skrak's Ground Transportation Management System (GTMS) driver profile (Exhibit A) shows that Mr. Skrak does not have a current CDL. Mr. Yeung testified that the GTMS updates in real-time with the California Department of Motor Vehicles (DMV) and that as of the hearing date Mr. Skrak did not have a current CDL. Mr. Yeung stated that Mr. Skrak's A-Card had expired in approximately 2015 and had not been renewed since 2016.

JARVIS MURRAY:

Mr. Murray is currently the for-hire transportation administrator for the City of Los Angeles. Mr. Murray was the SFMTA Taxi and Accessible Services enforcement and legal affairs

manager from approximately October 2009 to August 2016. Mr. Murray testified that he recalls Mr. Skrak was a medallion holder and elected not to be placed on the “sellers list” and that Mr. Skrak had completed a waiver of the full-time driving requirement based on Mr. Skrak’s disability. Mr. Murray testified that a waiver is renewed annually and limited to three years, however, the SFMTA would approve additional waivers for multiple disabilities or unexpected injuries. Mr. Murray stated that he was contacted by Mr. Skrak regarding these proceedings, and they spoke sometime in early 2021. Mr. Murray testified that he would not have approved a lifetime waiver of the A-Card requirement for anyone.

B. HEIDI MACHEN ON BEHALF OF ROBERT SKRAK:

Heidi Machen testified that in 1982 Mr. Skrak received an A-Card and subsequently began driving a taxicab. Ms. Machen stated that in 1997 Mr. Skrak became a medallion holder. Ms. Machen stated that in 2012 Mr. Skrak was diagnosed with three different types of disabilities that prevented him from driving starting in 2012. Ms. Machen alleges that after Mr. Skrak first applied for a disability waiver in 2012, he and Michael Harris, a former manager with the SFMTA Taxi and Accessible Services Division bonded. Ms. Machen alleges that Mr. Harris told Mr. Skrak he could have sold his medallion but why not just hold the medallion for life. Ms. Machen stated that Mr. Skrak agreed, and Mr. Murray approved Mr. Harris’ proposal for Mr. Skrak to keep the medallion for life and a contract was signed.

Ms. Machen stated that Mr. Skrak relocated to Nevada and in 2015 Mr. Skrak spoke to another former SFMTA Taxi and Accessible Services manager, Paige Standfield, regarding Mr. Skrak having a driver’s license from two states. Ms. Machen stated that Ms. Standfield told Mr. Skrak that Mr. Skrak did not need to maintain his CDL. Ms. Machen drew parallels of this conversation between Ms. Standfield and Mr. Skrak to an email from Ms. Standfield to another medallion holder dated March 27, 2017 (Respondent Exhibit C). In the email Ms. Standfield told this medallion holder, in reference to maintaining their A-Card, that if the medallion holder was “not driving you don’t have to renew.” Ms. Machen stated the parallel was unmistakable and that Ms. Standfield would have probably said the same thing to Mr. Skrak regarding Mr. Skrak having to maintain a CDL.

In addition to the exhibits offered in this case by the SFMTA, the following documents offered by Ms. Machen were reviewed and admitted in the record:

- Skrak Declaration, 5/26/2021 (Exhibit A)
- Email from SFMTA Hearings Section, 5/27/2021 (Exhibit B)
- Rathbone Declaration, 7/10/2021 and email from Paige Standfield to Charles Rathbone, 3/27/2017 (Exhibit C)
- Skrak Hearing Brief, 8/13/2021
- SFMTA response to Sunshine Act request (Exhibits A1-A4)

V. FINDINGS

A. RESPONDENT SKRAK WITHOUT CALIFORNIA DRIVER’S LICENSE AND CURRENT A-CARD

Based upon the testimony adduced at the hearing and upon the evidence of record, I find that the
STATEMENT OF DECISION: SFMTA v. Robert Skrak

respondent, Robert Skrak has not lived in California since at least 2015 and accordingly, has not been able to renew his A-Card over that length of time. In addition, Mr. Skrak does not have a current CDL which is necessary to obtain an A-Card and the possession of a CDL is required under TC 1103(c)(2)(c).

Ms. Machen drew parallels between a 2015 telephone conversation Mr. Skrak had with Ms. Standfield and a 2017 email Ms. Standfield wrote to another medallion holder. I do not agree with this comparison. Ms. Standfield's email was regarding a different matter but if I were to draw the same parallel as Ms. Machen, that Ms. Standfield possibly told Mr. Skrak that he was not required to maintain a CDL, Ms. Standfield goes on to say in the email that she would send the medallion holder a form to complete. Ms. Machen did not provide any evidence that memorialized this alleged conversation with Ms. Standfield where Ms. Standfield waived the requirement to maintain a CDL.

Although I cannot compel witnesses to appear before me, I was disappointed with SFMTA staff when Mr. Cranna admitted that he was in possession of Ms. Standfield's personal cell phone number but did not make any efforts to contact Ms. Standfield regarding the hearing. With that said, Mr. Murray did appear before me and when asked if he recalled ever approving a lifetime waiver of the A-Card requirement for any medallion holders, Mr. Murray affirmatively stated that, "No, I wouldn't have approved that for anyone." Ms. Machen did not provide any evidence of the alleged contract that Mr. Skrak executed with Mr. Harris and Mr. Murray.

Pursuant to the provisions of TC §§1103 and 1105, as noted above, the nonrenewal of this medallion is appropriate here under the circumstances.

VI. EQUITABLE CIRCUMSTANCES RELATING TO DECISION

While current conditions nullify any monetary transfer value of any held medallions in San Francisco, that situation may change in 2022, and it remains possible for medallion transfers to someday resume, and for some medallion holders to enjoy a surrender value of their medallions.

Currently, and at least since 2016, there has been no market for medallions in San Francisco, largely due to the influx of TNC operations. In October 2021, the litigation between the San Francisco Federal Credit Union and SFMTA was resolved in favor of the SFMTA. The litigation had resulted in a moratorium in the sale and transfer of taxi medallions due to an established fixed price of medallion surrender as set forth in TC §1116(b)—which greatly exceeds the current market price of a local taxi medallion. Now that the trial is over my hope is that the SFMTA and San Francisco Federal Credit Union can work collaboratively on a plan to lower the medallion sales price.

As noted here, there is no indication that the surrender and transferring of medallions will dramatically change if there is no agreement between the SFMTA and San Francisco Federal Credit Union. In the meantime, the SFMTA Board of Directors may change the provisions of TC §1116(a)(5), but no such changes to Article 1100 of the TC will be considered until later this year at the earliest.

Until the medallion surrender program is ended by the Board of Directors, TC §1116(a)(1)(A) provides a certain ongoing “eligibility” for the surrender of their medallions to any drivers with disabilities that prevents the full-time driving requirement for both “Pre-K” and “Post-K” medallion holders, as mandated by TC §1116(c)(1).

Respondent Skrak may now be unable to drive a taxi on a full-time basis, and on that basis may someday be a potentially eligible candidate under the current provisions of TC §1116 to surrender his medallion for some monetary consideration. That there is no current market for medallion transfer in San Francisco was a condition artificially influenced by the aforementioned litigation, and under most scenarios the resulting transfer moratorium cannot continue indefinitely.

On the basis of this apparent uncertainty in expectations on the part of medallion holders for some eventual surrender value in their medallions, our Hearing Section officers would have preferred to defer the revocation of this and other medallions—if provisions within section 1120 of the Transportation Code would have permitted these hearings to be postponed until such time as the MTA Board of Directors has an opportunity to make a definitive decision on the issues of surrender, or until the San Francisco Federal Credit Union and the SFMTA resolved to allow the surrender or transfer of medallions.

But inasmuch as our Hearing Section does not have the inherent authority to ignore the explicit permit renewal provisions of Article 1100 the Transportation Code, and because there is no current transfer value in any taxi medallion in this jurisdiction, and none on the near horizon, our Hearing Section has determined that in nonrenewal cases of this nature, we have no other recourse than to follow the existing Transportation Code provisions, regardless of the equitable considerations that have been outlined here.

VII. ORDER

By reason of the Findings stated above, the Taxi and Accessible Services’ Notice of Nonrenewal is upheld, and medallion #878 is hereby revoked by the explicit operation of the provisions of the San Francisco Transportation Code.

Dated this 1st day of February 2022



Hakam Ibrahim
Neutral Hearing Officer
SFMTA Hearing Section

RIGHT OF REVIEW

Under the provisions of the San Francisco Transportation Code, a decision of a hearing officer is a final administrative decision. Any party or entity adversely affected by this decision may seek review of the decision by filing an Appeal in accordance with the provisions and the 15-day timeline set forth in the rules provided by the San Francisco Board of Appeals.