



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Appeals Division

9 Bond Street, 6th Floor
Brooklyn, NY 11201
Tel: (212) 436-0624

Appeal No. 73221705A

TLC v. Jose C. Bataller

March 6, 2026

Appeal Decision

The appeal of Respondent, driver licensed by Taxi and Limousine Commission (TLC), is **denied**.

Respondent appeals from a hearing decision by Judicial Hearing Officer (JHO) T. Jordan, dated January 8, 2026, sustaining a violation of TLC Rule 80-12(e), contained in Title 35 of the Rules of the City of New York (RCNY), for threatening, harassing, or abusing any person. Having fully reviewed the record, the Tribunal finds that the JHO’s decision is supported by the law and a preponderance of the evidence. Therefore, the Tribunal finds as follows:

Summons	Law Charged	Hearing Decision	Appeal Decision	Penalty
73221705A	TLC Rule 80-12(e)	In Violation	Affirmed – In Violation	\$500 3 points 5-day suspension

In the summons, the issuing officer (IO) affirmed observing on August 23, 2025, at 5:20 p.m. at the intersection of North 14th Street and Franklin Street in Brooklyn, after stopping the medallion taxicab operated by Respondent and issuing Respondent a summons for not wearing a seatbelt, Respondent called the IO a fucking coward.

At a telephonic hearing, held on January 8, 2026, the attorney for Petitioner, TLC, relied on the IO’s affirmed statements in the summons, submitted a copy of the decision in *TLC v. Anthony N Sanchez*, Appeal No. 73662596A (May 1, 2025), and argued that Respondent’s use of profanity, by itself, established the violation. Respondent’s attorney argued, in relevant part, as follows. The relevant word spoken by Respondent is coward. A prima facie case was not established because Respondent had the right to voice his opinion of the IO as a coward and engage in free speech in a non-threatening manner, his speech is protected by the Constitution, and this Tribunal has the authority to rule on a constitutional issue. Respondent’s words did not rise to the level of a violation as he said nothing that was actually threatening, harassing, or abusive, the IO was not prevented or limited in his ability to enforce rules and regulations, and the words did not place the IO in fear for his life. Respondent was present at the hearing, but he did not testify.

In the decision sustaining the violation, the JHO credited the IO's sworn statement and found that Respondent's use of profanity established the violation.

On appeal, Respondent's attorney reiterates the arguments made at the hearing, citing several United States Supreme Court decisions in support of the argument that an offensive utterance, without more, is protected speech, and further arguing that this Tribunal cannot enforce a rule that, if interpreted, would violate Respondent's constitutional rights. Petitioner did not answer the appeal.

The Tribunal affirms the hearing decision. TLC Rule 80-12(e) prohibits threatening, harassing, or abusing any person while performing the duties and responsibilities of a TLC licensee. The proper standard is not whether the person at whom the respondent's words were directed subjectively felt threatened, harassed, or abused, but rather whether, objectively, a reasonable person in that person's position would feel threatened, harassed, or abused. *See TLC v. Wagner C. Oliveira*, Appeal No. 70600808A (March 30, 2016). Here, the IO's affirmed statements in the summons indicate that Respondent used profanity, calling the IO a "fucking coward." Without the profanity, this could be interpreted as merely Respondent's opinion of the IO, and a reasonable person might not interpret a similar statement without the profanity as abuse, but Respondent's statement included profanity. As a result, the charged violation was established by a preponderance of the evidence since the use of profanity is sufficient to make out a violation of TLC Rule 80-12(e) for verbal abuse. *See TLC v. Shabier Ahmed*, Appeal No. 467445 (April 22, 2009).

As a TLC-licensed driver operating a TLC-licensed vehicle at the time of the incident, Respondent's conduct was subject to regulation by TLC. *See TLC v. Elie Merhy*, Appeal No. 10075098C (May 1, 2017), citing *Scherr v. City of New York*, 55 Misc.2d 176 (Sup. Ct., N.Y. Cty., 1967) (a person who "chooses to engage in a publicly regulated business, such as the taxicab business, by doing so surrenders his right to unfettered discretion as to how to conduct the same"). For the reasons set forth more fully in *TLC v. Sanchez*, 73662596A, the Tribunal will not consider Respondent's constitutional challenge to Respondent's violation of TLC Rule 80-12(e), which should be addressed in an appropriate forum. *See also 156 W. 15th St. Chelsea L.L.C. v. City of New York*, 2020 N.Y. Misc. LEXIS 40 (Sup. Ct. NY Co. January 6, 2020) ("an Article 78 proceeding provides an adequate post-deprivation forum in which petitioner's constitutional arguments can be raised or addressed").

Accordingly, the Tribunal affirms the JHO's decision finding Respondent in violation of TLC Rule 80-12(e) and imposing a civil penalty in the amount of \$500, three points on Respondent's TLC driver's license, and suspension of Respondent's license for five days.

By: OATH Appeals Division