

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

COPY

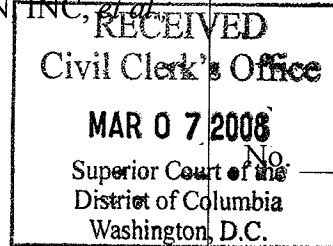
DISTRICT OF COLUMBIA PROFESSIONAL
TAXICAB DRIVERS ASSOCIATION, INC., *et al.*

Plaintiffs,

v.

LEON J. SWAIN, JR., *et al.*,

Defendants.



0001993-08

MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Superior Court Civil Rules 12-I and 65, plaintiffs hereby move for the entry of a preliminary injunction prohibiting the defendants, pending further order of the Court, from implementing or enforcing the new rates and rules for taxicabs licensed in the District of Columbia that defendant Swain purported to adopt on March 5, 2008, under authority purportedly delegated to him by defendant Fenty.

As more fully set out in the accompanying memorandum of points and authorities, the grounds for this motion are:

1. The defendants had no lawful authority to adopt these new rates and rules, because the District of Columbia Taxicab Commission has "exclusive authority for intrastate regulation of the taxicab industry," D.C. Code § 50-304, specifically including the "original jurisdiction, power, and duty to . . . [e]stablish methodologies for the determination of reasonable fares for taxicab service," and to "[e]stablish reasonable rates for taxicab service . . . within the District." D.C. Code § 50-307(b)(1). "No rule or rate

[relating to taxicab service] shall be effective unless a majority of the full Commission has voted affirmatively for the adoption of the rule or rate.” D.C. Code § 50-308(c).

2. If the rates and rules unlawfully adopted by the defendants are allowed to take effect, the plaintiffs, along with thousands of other D.C. taxi drivers and thousands of other D.C. taxi riders, will suffer irreparable injury without adequate remedy at law, including the loss of income, the unnecessary purchase and installation of time and distance meters, and the diminished availability and increased and unpredictable cost of taxi rides.

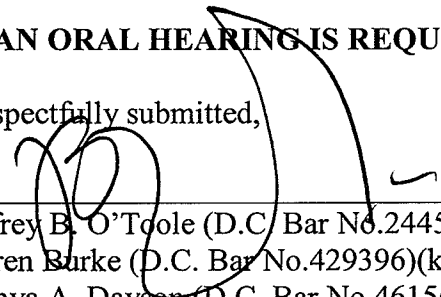
3. The defendants and the District of Columbia will suffer no harm by delaying action until the adoption of taxi rules and rates can be made through lawful procedures. The April 6, 2008 deadline for implementation is simply an arbitrary date chosen by the defendants, who had no lawful authority to make such a decision.

4. The public interest will not be disserved by the issuance of an injunction pending final judgment in this case; to the contrary, the public interest will affirmatively be served by having new rates and rules established through the system mandated by law, which provides opportunities for public input and specifies criteria for decision that the defendants ignored. The public interest is also served by having public officials obey the law. The public interest would be disserved by allowing the defendants to usurp the authority of the duly constituted Taxicab Commission, as they have attempted to do.

Counsel for the defendants have declined to consent to the relief sought in this motion.

AN ORAL HEARING IS REQUESTED

Respectfully submitted,



Jeffrey B. O'Toole (D.C. Bar No.244509)(otoole@otrns.com)
Karen Burke (D.C. Bar No.429396)(kburke@otrns.com)
Danya A. Dayson (D.C. Bar No.461566)(Danya@otrns.com)
O'Toole, Rothwell, Nassau & Steinbach
1350 Connecticut Avenue, N.W., Suite 200
Washington, DC 20036
(202) 775-1550 (telephone)
(202) 775-0008 (facsimile)

Counsel for plaintiffs

March 7, 2008

CERTIFICATE OF SERVICE

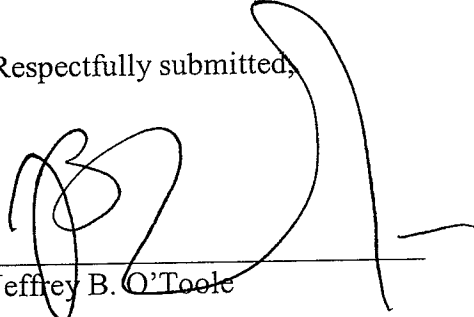
I hereby certify that a copy of the foregoing Motion, the accompanying Memorandum of Points and Authorities and Proposed Order and the Complaint in this case have been delivered, via hand delivery to:

Leon J. Swain, Jr.
Chairman
2041 Martin Luther King Jr. Ave., SE Suite 204
Washington, DC 20020

The Honorable Adrian M. Fenty
Mayor, District of Columbia
John H. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

on the 7 day of March, 2008.

Respectfully submitted,



Jeffrey B. O'Toole

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DISTRICT OF COLUMBIA PROFESSIONAL
TAXICAB DRIVERS ASSOCIATION, INC⁷, *et al.*,

Plaintiffs,

v.

LEON J. SWAIN, JR., *et al.*,

Defendants.

No. _____

PRELIMINARY INJUNCTION

Upon consideration of plaintiffs' motion for a preliminary injunction and defendants' opposition thereto, the Court hereby finds as follows.

In order to obtain a preliminary injunction, a moving party must show "(1) that there is a substantial likelihood he or she will prevail on the merits; (2) that he or she is in danger of suffering irreparable harm during the pendency of the action; (3) that more harm will result to him or her from the denial of the injunction than will result to the defendant from its grant; and, in appropriate cases, (4) that the public interest will not be disserved by the issuance of the requested order." *In re Estate of Reilly*, 933 A.2d 830, 834 (D.C. 2007) (internal alterations omitted).

Plaintiffs have satisfied these standards here:

1. Plaintiffs have demonstrated an overwhelming likelihood of prevailing on the merits, because the law of the District of Columbia unequivocally vests the regulation of the taxicab business in the D.C. Taxicab Commission and its Panel on Rates and Rules. D.C. Code §§ 50-307; 50-308(c). While section 105 of the 2005 District of Columbia

Omnibus Authorization Act, 120 Stat. 2023, gave the Mayor the authority to override the congressional decision to mandate taxi meters in D.C. taxicabs – a power he elected not to exercise – nothing in that statute gives the Mayor any authority to regulate the taxi business by choosing the type of meter to be used to by establishing taxi rules or rates. He therefore had no power to “delegate” such authority to defendant Swain.

2. Plaintiffs have shown that if the rates and rules unlawfully adopted by the defendants are allowed to take effect, they along with thousands of other D.C. taxi drivers and thousands of other D.C. taxi riders, will suffer irreparable injury without adequate remedy at law, including the loss of income, the unnecessary purchase and installation of time and distance meters, and the diminished availability and increased and unpredictable cost of taxi rides.

3. The District of Columbia will suffer no harm from a temporary delay in the adoption of new taxi rates. Taxicabs in the District of Columbia have operated under a zone system for many decades. They are operating under that zone system today. They can continue operating under the zone system for the additional period of time needed for new rules and rates to be established and adopted in a lawful manner. Any harm that might occur from such delay is entirely the responsibility of the defendants, for choosing to proceed in a plainly unlawful manner.

4. The public interest will not be disserved by the issuance of an injunction pending final judgment in this case; to the contrary, the public interest will affirmatively be served by having new rates established through the due process system that is mandated by law. The public interest is also served by having public officials obey the law. The public interest would be disserved by allowing the defendants to usurp the

authority of the duty constituted Taxicab Commission and its Panel on Rates and Rules, as they have attempted to do.

Based upon these findings of fact and conclusions of law, the Court exercises its discretion to grant preliminary injunctive relief. Accordingly, it is hereby

ORDERED that the defendants, their employees and agents, and all persons acting under their direction or in concert with them, are hereby ENJOINED and PROHIBITED, pending further order of the Court, from taking final action to adopt the new rules and rates for taxicabs licensed in the District of Columbia published at 55 D.C. Register 777 (January 25, 2008); It is further

ORDERED that the defendants, their employees and agents, and all persons acting under their direction or in concert with them, are hereby ENJOINED and PROHIBITED, pending further order of the Court, from establishing, adopting or implementing any new taxicab rules or rates except in compliance with the procedures established by law in D.C. Code § 50-301 *et seq.*; It is further

ORDERED that this preliminary injunction shall take effect upon the posting of a cash bond in the amount of \$10 with the Clerk of Court.

Dated: March ____, 2008

Associate Judge
Superior Court of the District of Columbia

Copies of this Order shall be served upon:

Jeffrey B. O'Toole, Esq.
O'Toole, Rothwell, Nassau & Steinbach
1350 Connecticut Avenue, N.W., Suite 200
Washington, DC 20036

Hon. Peter J. Nickles
Interim Attorney General, D.C.

John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004