July 18, 2019

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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SUMMARY ORDER

SUBJECT: King County For-Hire Licensing file no. **18179**

KINFEGEBREL LEMETA
For-Hire Driver Enforcement Appeal

License no.: 18179

Appellant: **Kinfegebrel Lemeta**
[redacted]
SeaTac, WA 98188
Telephone: [redacted]
Email: [redacted]

King County: King County For-Hire Licensing
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In October 2015, Kinfegebrel Lemeta was arrested and charged with driving under the influence of alcohol. In February 2016, the court entered a Stipulated Order of Continuance ("Order"), in which Mr. Lemeta admitted that his October 2015 conduct qualified as either the simple misdemeanor of first-degree negligent driving or the gross misdemeanor of driving under the influence, with the court waiting 24 months to determine which charge to find him guilty of.

In January 2017, Mr. Lemeta applied for a dual, Seattle/County for-hire driver's license. In March 2017, King County's Records and Licensing Services (RALS) denied his application, asserting that the Order was sufficient proof of at least first-degree negligent driving. Mr. Lemeta appealed the Seattle portion of the denial to Seattle and the County portion to us.

On May 30, 2017, Seattle decided Mr. Lemeta's appeal as it related to the *Seattle* portion of the dual license. Seattle's then-hearing officer provided a fine summary of the exhibits, testimony, and argument, but he wrapped things up with only a single sentence of analysis: "I find by a preponderance of evidence, that the cited violations of SMC 6.310.430.A.3, 6.310.430.B.1 and 6.310.430.B.2 are provided." That failed to fulfill the our Supreme Court's requirement that the decision-making process be "revealed" by findings and conclusions and admonishment that simply stating the parties' positions, summarizing the evidence and then reaching general conclusions drawn from an "undeterminative" narration is inadequate. *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 35-36, 873 P.2d 498, 503 (1994).

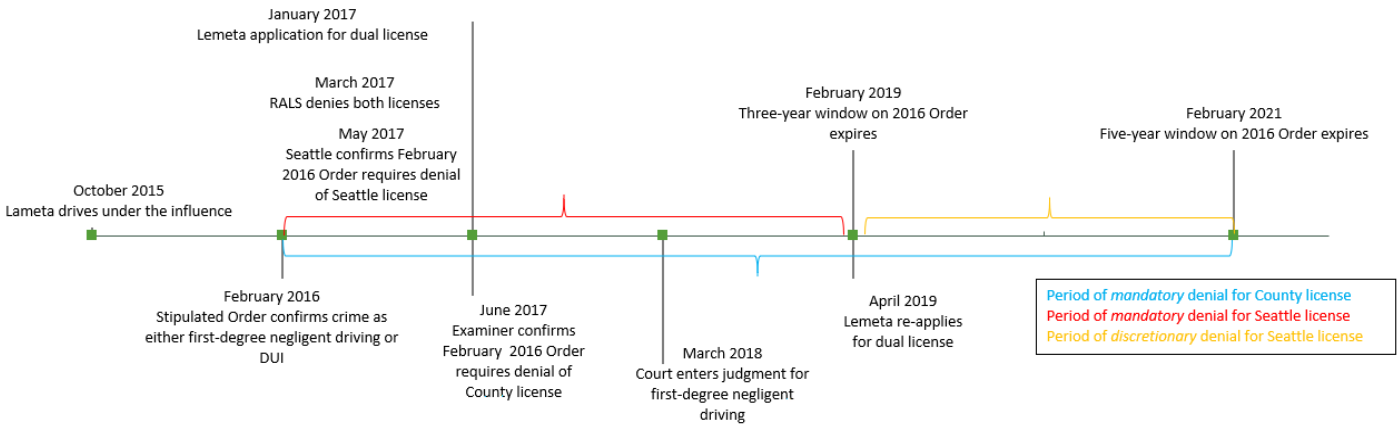
However, we do know from his single sentence that the hearing officer treated Mr. Lemeta's February 2016 Stipulated Order of Continuance ("Order") as a conviction or final determination of criminal liability. Otherwise, it was decidedly *un*true in 2017 that Mr. Lemeta had a "conviction, or other *final* adverse finding for crimes pertaining to…driving under the influence of alcohol or controlled substances while operating a vehicle, within three (3) years of the date of application." SMC 6.310.430.A.3 (italics added). If the 2016 Order was not treated essentially as a final determination of a crime pertaining to driving under the influence, Mr. Lemeta would have been eligible to drive for the remainder of 2017 and up until the court formally entered a guilty plea of first-degree negligent driving.

Ten days after Seattle ruled, we decided the *County* portion of the appeal, and we reached the same result as Seattle. Starting our June 9, 2017, decision with, "This is a sad case," we set the factual and legal background. We then analyzed the situation thusly:

> The procedural posture of this case is somewhat unusual. In at least a few appeals, RALS has denied a license, and cited as support for its denial a *pending* infraction or criminal charge. In such cases, we have ignored the charge, a driver being innocent until proven guilty. However here, while it is unclear *which* charge will ultimately stick—the more serious gross misdemeanor of driving under the influence, or the simple misdemeanor of first-degree negligent driving—Mr. Lemeta has already admitted to *at least* first-degree negligent driving. Ex. 4; *compare* RCW 46.61.502(5) *to* RCW 46.61.5249(1)(a).
>
> "A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, *and exhibits the effects of having consumed liquor*…" RCW 46.61.5249(1)(a) (emphasis added). That qualifies as a "crime pertaining to…driving under the influence of alcohol" under KCC 6.64.600.A.3. Moreover, to wait to start the five-year mandatory bar until the court actually enters judgment in about February 2018 would have absurd consequences, both for the exposed public and also for Mr. Lemeta, who has lost driving income for the eight months since RALS denied his renewal application in October 2016 (Exhibit 6) and yet who would be automatically barred from driving in the County for an *additional* five years, presumably from February 2018 until February 2023.

> Conversely, treating Mr. Lemeta's February 2016 plea as the key date, as Seattle did, would in a sense give Mr. Lemeta "credit for time served," and would also count the seven months he was still driving between his February 2016 plea and RALS's October 2016 denial as part of his mandatory denial period. Plus, while the County has a mandatory ("shall deny") bar of five years from the date of a conviction pertaining to driving under the influence of alcohol, Seattle only has a three-year mandatory ("shall deny") bar. *Compare* KCC 6.64.600.A.3 *with* SMC 6.310.430.A.3. Viewing February 6, 2016, as the crucial date, Mr. Lemeta could reapply to RALS on February 7, 2019 for the *Seattle* portion of his license. That does not mean that he will necessarily *get* a license—in years three-through-five following a conviction related to driving under the influence of alcohol, Seattle employs a *discretionary* ("may deny") standard. SMC 6.310.430.B.3. But at least he is free to take another shot in less than 20 months.

Mr. Lemeta complied with the terms of the court's February 2016 Order, and in March 2018 the court formally entered a guilty plea of first-degree negligent driving. In April 2019, Mr. Lemeta resubmitted an application for a dual license. The timeline of essential legal events as of the date of his application thus looked like this:



However, in RALS's June 2019 order denying Mr. Lemeta's application, RALS essentially treated March 2018 as the key starting date. Admittedly the timing is complex—we created the above timeline graph after showing a text-only draft to staff and hearing that the timing was difficult to track. We assume RALS was not consciously disregarding Seattle's and our 2017 decisions.

In any event, both hearing officials accepted RALS's 2017 position that we treat February 2016 as the definitive date establishing criminal liability and starting the five-year window. RALS may not now reverse course and claim that, no, March 2018 is the definitive date starting a new five-year window.[1] Instead, when neither the Seattle hearing officer's decision nor our decision was appealed in 2017, they became final. Those decisions are as binding on RALS as they are on Mr. Lemeta. RALS's time computation in its June 2019 denial letter—treating March 2018 (instead of February 2016) as the pertinent start date—is clear error.

[1] One could envision a scenario with multiple denial windows. If Mr. Lemeta was convicted of a *different* crime, at least one stemming from an event other than the October 2015 incident, that conviction could have its own window. That is not our scenario.

That error is harmless for RALS's denial of the *County* portion of the dual license. Mr. Lemeta's April 2019 application was within five years of the February 2016 Order. RALS was required to bar Mr. Lemeta from picking up passengers in most of King County. KCC 6.64.600.A.3. Because denial in that scenario is mandatory, not discretionary, we today deny Mr. Lemeta's appeal. Mr. Lemeta may reapply for a County license any time **after February 5, 2021**, the five-year anniversary of the 2016 Order.

RALS's incorrect time computation is decidedly not a harmless error for its denial of the *Seattle* portion of the dual license. Mr. Lemeta's April 2019 application arrived over three years after the February 2016 Order. Yet the sole ground RALS provided in June 2019 for denying Mr. Lemeta's April 2019 application to pick up passengers in Seattle was the three-year, automatic disqualification ("shall deny") ground of SMC 6.310.430.A.3. Subsection A.3 had become irrelevant by February 2019. RALS's denial of the *Seattle* portion of Mr. Lemeta's is thus void on its face.

That does not mean that Mr. Lemeta is entitled to a Seattle license. In years four and five after a final determination related to driving under the influence of alcohol (i.e. for an application Mr. Lemeta submitted between February 5, 2019, and February 5, 2021), RALS "may deny" the application. SMC 6.310.430.B.1. Unlike a mandatory "shall deny," a "may deny" is a discretionary denial.

RALS thus has a duty to consider the specific facts of this case, such as the October 2015 crime itself (first-degree negligent driving), the court's determination that Mr. Lemeta abided by the terms of the 24-month Order, the time elapsed from the underlying incident (October 2015), Mr. Lemeta's overall driving record, Mr. Lemeta's personal situation, etc. It may be that, balancing the potential harm to the public from allowing Mr. Lemeta to continue driving with the potential harm to the Mr. Lemeta and his family from denying a license, RALS will ultimately re-deny his Seattle license under SMC 6.310.430.B.1. If it does, Mr. Lemeta would then need to appeal that denial to Seattle; Seattle would render the ultimate decision. However, RALS needs to re-start now and weigh the evidence under the correct legal standard.

Accordingly, we **DENY** Mr. Lemeta's appeal as it relates to the portion of RALS's June 2019 order denying a license to pick up passengers within the County.

We **REMAND** to RALS the portion of its June 2019 order denying a license to pick up passengers within Seattle. By **August 21, 2019**, RALS shall consider the facts of this case under SMC 6.310.430.B.1 and re-decide the Seattle portion of Mr. Lemeta's application. (If RALS re-denies the application, Mr. Lemeta will have only 10 days to appeal that denial to Seattle's hearing officer.)

DATED July 18, 2019.

David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless appealed to superior court by *August 19, 2019*. Either party may appeal this decision by applying for a writ of review in superior court in accordance with chapter 7.16 RCW.

DS/jo

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CERTIFICATE OF SERVICE

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KINFEGEBREL LEMETA
For-Hire Driver Enforcement Appeal

I, Jessica Oscoy, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **SUMMARY ORDER** to those listed on the attached page as follows:

☒ EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

☒ placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED July 18, 2019.

Jessica Oscoy
Legislative Secretary

Cantu, Eddie
King County For-Hire Licensing

Cockbain, Sean
King County For-Hire Licensing

Kham, Joanna
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Leisy, Craig
Finance and Admin Srvcs, Consumer Protection Div

Lemeta, Kinfegebrel
Hardcopy

Litzau, Ronda
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