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NO. 72955-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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DALJIT SANGHA,

Appellant,

v.

KING COUNTY and its departments and/or agencies, KING  
COUNTY RECORDS AND LICENSING SERVICES, and the KING  
COUNTY BOARD OF APPEALS,

Respondents.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

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**BRIEF OF RESPONDENT**

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DANIEL T. SATTERBERG  
King County Prosecuting Attorney

NANCY A. BALIN  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W400 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 477-1120

ORIGINAL

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A. ISSUES PRESENTED

1. DID THE KING COUNTY SUPERIOR COURT ERR WHEN IT UPHELD THE KING COUNTY BOARD OF APPEALS' AFFIRMANCE OF THE KING COUNTY DEPARTMENT OF RECORDS AND LICENSING'S (HEREINAFTER, "RALS") DECISION TO DENY MR. SANGHA A FOR HIRE LICENSE WHEN, AFTER REVIEWING THE RECORD OF PROCEEDINGS AT THE KING COUNTY BOARD OF APPEALS, IT, TOO, FOUND THAT MR. SANGHA'S DRIVING RECORD SUPPORTED THE BOARD OF APPEALS' DECISION?
2. IS THIS COURT'S AUTHORITY LIMITED TO EITHER AFFIRMING THE SUPERIOR COURT'S RULING OR REVERSING THE RULING AND REMANDING THE MATTER TO THE BOARD OF APPEALS FOR FURTHER PROCEEDINGS?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On December 14, 2014, Mr. Sangha applied to RALS to renew his For Hire license. RP 11/41.<sup>1</sup> RALS Licensing Manager Jodie Trueblood denied Mr. Sangha's application on January 28, 2014. RP 11-12/41. Mr. Sangha timely appealed on January 31, 2014. RP 7-9/41.

The King County Board of Appeals heard Mr. Sangha's appeal on March 19, 2014. RP 4/41. On March 31, 2014, the

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<sup>1</sup> Appellant kindly has supplemented the record by attaching Appendix A to his Brief, which is the 41 pages of the Board of Appeals' file, which it apparently submitted electronically to the Superior Court Clerk's Office. The Clerk's Office was unable to file the record in that format. All references herein to "RP \_\_\_/41" relate to those pages of the Brief of Appellant, Exhibit A.

Board of Appeals issued its decision upholding RALS' denial on both grounds cited: material misstatement on his application, and past conduct while operating a taxicab or a past driving record which would lead the director to reasonably conclude that he would not operate a taxicab in a safe manner. RP 5/41. On April 29, 2014, Mr. Sangha filed a writ for certiorari in the King County Superior Court. CP 1-12.

On January 9, 2015, the Honorable Douglass North, having reviewed the parties' briefs and heard arguments of counsel, reversed the Board of Appeals' finding with regard to the "material misstatement" but upheld its finding that Mr. Sangha's past driving record led the director to reasonably conclude that Mr. Sangha would not operate a taxicab in a safe manner. CP 29. In so doing, the King County Superior Court affirmed RALS' decision to uphold the Board of Appeals decisions upholding RALS' denial.

Mr. Sangha timely appealed to this Court. CP 30-33.

## 2. SUBSTANTIVE FACTS

On December 9, 2011, Mr. Sangha was cited for speeding. RP 15/41. According to the Infraction report, Mr. Sangha was

driving 60 mph in a 40-mph zone, after passing at least three speed limit signs, with a passenger. Id.

Six days later, on December 15, 2011, Mr. Sangha, transporting a passenger and traveling 40 mph, failed to see and so ran over a traffic circle, lost control of his vehicle, crossed a sidewalk and slammed into a tree. He was cited for speeding and inattentive driving. RP 37-38/41.

Less than three months later, on March 6, 2012, during a period of heavy traffic on I-5, Mr. Sangha passed a patrol car while recklessly weaving in and out of traffic, tailgating (including two separate school buses full of small children), and driving at speeds in excess of 75 mph. Even after getting a ticket for Negligent Driving, Mr. Sangha then “quickly sped away” from the officer. RP 29/41. He was found guilty of Negligent Driving 2° on August 16, 2012. RP 36/41.

On September 7, 2012, Mr. Sangha was involved in an at-fault accident where witnesses saw that he was unconscious just before he hit a high-voltage transformer, ended up on the sidewalk and caused a small fire. RP 24-25/41.

On April 19, 2013, Mr. Sangha was in a three-car accident where he was found to be at fault. RP 14/41 Having stopped his

vehicle on the right shoulder, Mr. Sangha then pulled back into freeway traffic without signaling and directly into the path of a car that was right there and traveling at freeway speed. That vehicle hit his, and a third vehicle hit the second vehicle. RP 20-21/41.

On December 4, 2013, Mr. Sangha applied to RALS to renew his For Hire license. RP 11/41.

In her January 28, 2014 letter denying a For Hire license, RALS Manager Jodie Trueblood separately listed each of the five accidents Mr. Sangha had had in one 16-month period, all while driving his taxicab. RP 11-12/41.

In his January 31, 2014 appeal of RALS' decision, Mr. Sangha wrote to the Board of Appeals of his "exemplary driving record," claimed that he omitted "a single accident" (the most recent one) "by mistake," and claimed that "I operate my taxicab in a safe manner." RP 8/41. Mr. Sangha also noted that he had taken a safe driving class on June 3, 2012. RP 10/41. He was involved in two accidents after the completion of the course, one three months later, one seven months after that. RP 7-9/41.

On March 19, 2014, the Board of Appeals heard Mr. Sangha's appeal. RP 4/41. The Board of Appeals considered all of that same evidence, including the details of *all five* accidents, listing

the detailed evidence presented in the “Facts and Contentions” section of its written decision, issued March 31, 2014. The Board found that all five accidents occurred while Mr. Sangha was driving a “Cab.” RP 4-5/41.

In its Holding, the Board of Appeals found that RALS’ Licensing Manager had made her decision in accordance with both King County Code sections cited in her letter: Mr. Sangha made a material misstatement on his application by omitting an accident, and his past driving record led RALS reasonably to conclude that Mr. Sangha would not operate his taxicab in a safe manner. RP 5/41.

C. ARGUMENT

1. SCOPE OF REVIEW

This Court stands in the same position as did the King County Superior Court when it reviewed the decision of the quasi-judicial King County Board of Appeals to uphold RALS’ administrative decision to deny a For Hire license to Mr. Sangha. Swoboda v. Town of La Conner, 97 Wn. App. 613, 617, 987 P.2d 103 (1999). This Court is not in a position to review the Board of Appeals’ decision de novo but must apply “the appropriate standard of review directly to the administrative record.” Wilson v.

Employment Security Dep't, 87 Wn. App. 197, 200, 940 P.2d 269 (1997).

The Superior Court was charged with reviewing the evidence reviewed by the highest fact-finding forum, in this case the Board of Appeals, as well as any reasonable inferences drawn therefrom, in the light most favorable to the prevailing party: RALS. Boehm v. City of Vancouver, 111 Wn. App. 711, 717, 47 P.3d 137 (2002), citing Schofield v. Spokane County, 96 Wn. App. 581, 586, 980 P.2d 277 (1999).

## 2. STANDARD OF REVIEW

Reviewing courts must review the entire record underlying the administrative agency's decision and determine whether the evidence was both competent and sufficient to support the administrative agency's decision, or whether such decision was arbitrary and capricious. Andrew v. King County, 21 Wn. App. 566, 575, 586 P.2d 509 (Div. I 1978) (cits. om.). This is essentially the same test expressed in the statute addressing writs of certiorari from agency decisions. RCW 7.16.120(4) and (5).

The facts in Andrew are instructive. In this land use case, the issue was whether the Raging River Quarry was a legitimate nonconforming use permitted under the King County zoning code.

21 Wn. App. at 568. King County's administrative agency decided that it was. Id. After conducting a de novo review, the quasi-judicial King County Board of Appeals agreed and upheld the agency's decision. Id. at 569.

On a writ of certiorari, the King County Superior Court not only reversed the Board of Appeals but went even further, deciding the substantive underlying issue and holding that the quarry had not been a legitimate nonconforming use. Id.

On the quarry owner's appeal, this Court affirmed the Superior Court's reversal of the Board of Appeals, agreeing that the Board of Appeals had not found facts that were necessary to reach its conclusion and hence had made an error of law. Id. at 570. However, this Court also held that the Superior Court exceeded the scope of its authority when it went on to find what the facts were and then decide the ultimate issue. Id. at 574.

As this Court explained, the Superior Court's hearing was not a trial de novo. As a result, not only did the Superior Court not have the authority to decide the ultimate issue, but neither did the Court of Appeals. Id. at 574, cit. om. Instead, the Superior Court should have remanded the case to the Board of Appeals with instructions to make findings of all the necessary facts and then

make its own (re)determination as to whether to uphold the administrative agency's decision. Id. at 576.

This Court is in the exact same position in this case.

3. THE SUPERIOR COURT DID NOT ERR IN AFFIRMING THE BOARD OF APPEALS' DECISION, WHICH WAS "[B]ASED ON MR. SANGHA'S DRIVING RECORD."

This Court, in Andrews, supra, laid out the five factors inherent in the Superior Court's scope of review of a quasi-judicial agency's decision, here the Board of Appeals:

- Did the Board of Appeals have jurisdiction of the subject matter?
- Did the Board of Appeals exercise its authority in a legal manner?
- Did the Board of Appeals violate a rule of law?
- Was there any competent proof of all of the facts necessary for the Board of Appeals to find, in order to uphold RALS' decision?
- Were the Board of Appeals' factual determinations supported by substantive evidence? Or was the Board of Appeals' decision arbitrary and capricious, based on the entire record?

21 Wn. App. at 573-74. Based upon these factors, there is no question that the King County Superior Court rightfully upheld the Board of Appeals' decision in this case.

Mr. Sangha has not argued that the Board of Appeals lacked subject matter jurisdiction, that it did not exercise its authority in a legal manner or that it violated a rule of law, and hence those are verities on appeal. Fuller v. Employment Sec. Dept. of State of Wash., 52 Wn. App. 603, 762 P.2d 367 (1988).

Mr. Sangha mistakenly alleges that the Board of Appeals made its determination based on only one accident, the latest one. Brief at 4. He is mistaken in two aspects.

First, the record reflects that the Board of Appeals considered Mr. Sangha's entire driving record, comprising five accidents in sixteen months, including *but not limited to* the last one, which occurred on April 19, 2013. RP 4/41. In no part of its decision did the Board of Appeals state, or even give the impression, that the only accident it considered was the fifth one for, if it did, why would it have listed the earlier four? Too, the Licensing Manager, in making the decision to deny the For Hire license, after listing all five accidents in detail, stated "I carefully reviewed the above five at fault moving violation police reports." RP 11/41.

Perhaps Mr. Sangha inferred that the denial of a For Hire license after the fifth accident, when it had been granted despite

earlier accidents, was the result of only that last accident. Such inference is not supported by the record.

Second, even if the April 19, 2013 accident had been the only one the Board of Appeals considered, it would not have been arbitrary or capricious for the Board to agree with RALS that the facts of that accident alone demonstrated a driver who one could reasonably conclude would not operate his taxicab in a safe manner.

Mr. Sangha's allegation that the record was "devoid of any finding of fault" is incorrect. The driving record contained a recitation of driving violations committed by Mr. Sangha, not just alleged. RP 11/41.

Mr. Sangha alleges that the Shoreline police officer's five-page report and citation for Failure to Yield Right of Way is not "adequate evidence on which to establish fault" but does not explain why. Brief at 4. Additionally, it was not "just" the report and citation that Ms. Trueblood of RALS examined eight months later when reviewing the Washington Department of Licensing's report of Mr. Sangha's driving record, it was the finding of "Failure to yield." RP 11/41.

Faced with the details of the five accidents comprising that driving record, all of which occurred while Mr. Sangha was driving a taxicab, it would not be difficult for *any* reasonable person to fear, and conclude, that Mr. Sangha would not operate his taxi in a safe manner. He had already proved that he does not.

Charged with deciding which taxicab drivers are allowed to drive a vehicle For Hire in King County, reviewing Mr. Sangha's complete driving record while keeping public safety paramount in its decision, RALS reasonably decided not to affix its imprimatur on Mr. Sangha as one of those drivers.

Based on the same body of evidence considered by RALS, as evidenced in the record it certified for this Court, the Board of Appeals agreed that Ms. Trueblood's was a reasonable decision based on the substantive evidence. Finally, so did the Superior Court, after reviewing the same record. As such, the Superior Court did not err in upholding the Board of Appeals' affirmance of RALS' decision to protect the citizens of King County by denying a For Hire license to Mr. Sangha.

4. THE ONLY OPTION AVAILABLE, IF THIS COURT DOES NOT AFFIRM, IS REMAND.

Mr. Sangha prays that this Court “overturn[]” the Board of Appeals’ decision. Brief of Appellant at 5. While King County contends that there is no legal basis for such “overturning” (reversal), if this Court finds otherwise, it is limited to remanding the case back to the Board of Appeals with instructions to clarify its Findings of Fact and the bases therefor; it may not reverse the substantive decision of the Board of Appeals or RALS.

Should this Court make that decision, King County suggests that, in providing further instructions to the Board of Appeals, this Court require the Board of Appeals to change the format of its decisions, perhaps including delineated sections for Evidence (including “Testimony” and “Exhibits” sections), Findings of Fact, and Decision, which latter would include a clear statement of the specific evidence on which the decision is based. As this Court noted in Andrew:

Where, as here, the administrative tribunal is required to enter written findings of fact, the purpose of such findings is not only to inform the parties of the basis of the decision, but is also to assist the courts in reviewing the administrative action.

21 Wn. App. at 575, cit. om.

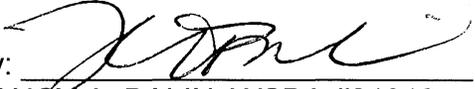
D. CONCLUSION

The King County Superior Court did not err in affirming the Board of Appeals' decision to uphold RALS' denial of Mr. Sangha's For Hire license. The Board of Appeals had and considered sufficient and competent evidence in order to make its factual findings, and its determination to uphold the decision was not arbitrary and capricious. As such, the decision of the King County Superior Court should be affirmed.

DATED this 17<sup>th</sup> day of April, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: 

NANCY A. BALIN, WSBA #21912  
Senior Deputy Prosecuting Attorney  
Attorneys for the Respondents  
Office #91002.

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IN THE COURT OF APPEALS FOR  
THE STATE OF WASHINGTON  
DIVISION I

DALJIT SANGHA,

No. 72955-1-I

Appellant,

CERTIFICATE OF SERVICE

v.

KING COUNTY,

Respondent.

1. I am a legal secretary employed by King County Prosecutor's Office, am over the age of 18, am not a party to this action and am competent to testify herein.
2. On April 17<sup>th</sup>, 2015, I did cause to be delivered by electronic mail and U.S. first class mail a true copy of the Respondent's Brief and this Certificate of Service to the following:

Spencer Nathan Thal  
Teamsters Local 117  
14675 Interurban Ave S, Ste 307  
Tukwila, WA 98168-4614  
[spencer@teamsters117.org](mailto:spencer@teamsters117.org)

I declare under penalty of perjury under the laws of the State of Washington that  
the foregoing is true and correct.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of April, 2015.

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: *Amy Tower*  
Amy Tower, Legal Assistant to  
NANCY BALIN, WSBA #21912  
Senior Deputy Prosecuting Attorney  
Attorneys for King County