

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA : Case Number: 2024 CAB 4751
v. : Judge: Shana Frost Matini
YAZAM INC. d/b/a EMPOWER :

ORDER

Before the Court is the Plaintiff District of Columbia’s (“District”) Motion for Judgment on the Pleadings (“Mot.”) filed on September 26, 2024. Defendant Yazam Inc. d/b/a Empower (“Empower”) filed an Opposition (“Opp.”) on November 15, 2024, *see* Order (Nov. 1, 2024) (granting request to vacate judgment by consent and permitting the late filing of Defendant’s Opposition), and the District filed a Reply on November 22, 2024. For the reasons set forth, the District’s Motion is granted.

I. Background

Defendant Yazam Inc. d/b/a Empower (“Empower”) is a private vehicle-for-hire company with its primary place of business in Commonwealth of Virginia and formed under the laws of the State of Delaware. Compl. ¶ 4, Ans. ¶ 4. Empower is licensed to do business in the District, and as a private vehicle-for-hire company, Empower is subject to regulation by the Department of For-Hire Vehicles (DFHV). *Id.*

Empower develops and sells software accessible through mobile applications available on Android and iOS devices. Compl. ¶ 13, Ans. ¶ 13. Empower also provides access to Empower Platform, Empower Software, and Empower Subscriber Support (collectively “Empower Services”) to people wishing to provide automobile rides (“Subscribers”) and people seeking rides (“Consumers”). *Id.* Empower refers to services provided by Subscribers to Consumers as “Consumer Services.” *Id.*

Empower's Subscribers consist principally of persons contracting to provide rides in their automobiles to persons seeking rides. Compl. ¶ 13, Ans. ¶ 13. The Empower Platform is Empower's proprietary online dynamic booking network (or any successor network) consisting of any Empower websites, wireless platforms, or applications owned or operated (in whole or in part) by Empower, along with any third-party partner websites, platforms, or services used or provided in connection with Empower Services. *Id.*

All Subscribers must enter a Subscription Agreement, which governs Empower's provision of and Subscribers' use of Empower Services. Compl. ¶ 14; Ans. ¶ 14. Under the agreement, Empower does not provide Consumer Services, control Consumer Services, or control Consumer Services provided by a Subscriber, and a Subscriber has the sole right to determine when, where, how, how often, and for how long that Subscriber will provide Consumer Services. *Id.*

Empower does not require Subscribers to be licensed as commercial drivers, Compl. ¶ 15, Ans. ¶ 15, but does require under its Subscription Agreement that all Subscribers comply with all applicable laws. Ans. ¶ 15.

Subscribers set their own rates ("Rate Cards") comprising a minimum fare, base fare, per-minute fare, and per-mile fare. Compl. ¶ 16, Ans. ¶ 16. The Empower Platform then calculates fares paid by Consumers to Subscribers based on the Subscriber's pre-set Rate Card and the trip origin and destination set by Consumers. *Id.* Empower's Acceptable Use Policy makes no mention of how a Consumer could receive a refund from Empower. *Id.*

Consumers can only access the Empower Platform after agreeing to Empower's Acceptable Use Policy. Compl. ¶ 17, Ans. ¶ 17. The Empower Platform is available to the

general public in the District. *Id.* Empower provides phone and email support to Subscribers and Consumers. Compl. ¶ 18, Ans. ¶ 18.

Empower does not provide any trade dress that includes a trademark, logo, or service mark to its Subscribers to use while providing rides using Empower’s software. Compl. ¶ 22, Ans. ¶ 22. Empower does not set the rates that Subscribers charge their Consumers. Compl. ¶ 23, Ans. ¶ 23.

Empower’s Acceptable Use Policy provides that Empower “makes no representations or warranties about the safety of [its services.] Although [Empower] may conduct background checks or other screening (‘Optional Screening’) on Subscribers, such Optional Screening is conducted at [Empower]’s sole and absolute discretion and ... [Consumers] should not rely on it.” Compl. ¶ 24, Ans. ¶ 24.

Empower does not maintain on behalf of its Subscribers insurance that covers anything that might occur during rides booked through Empower’s software. Compl. ¶ 25, Ans. ¶ 25. Empower requires its subscribers to follow all applicable laws while using its software, and does not tolerate use of the software while under the influence of drugs or alcohol. Ans. ¶ 28.

Subscribers using the Empower Platform provide approximately 40,000 rides per week originating or terminating in the District. Compl. ¶ 31, Ans. ¶ 31. Empower has never registered as a private vehicle-for-hire company with DFHV. Compl. ¶ 32, Ans. ¶ 32. DFHV has had, and has repeatedly used, multiple points of contact with Empower since at least November 2020, but has never used any of those multiple available points of contact to communicate any consumer complaint to Empower. Ans. ¶ 29.

On November 13, 2020, DFHV obtained information that Empower was providing vehicle-for-hire services in the District through its Empower Platform. Compl. ¶ 33, Ans. ¶ 33.

On November 16, 2020, DFHV issued its first cease and desist order to Empower requiring it to register as a private vehicle-for-hire company and digital dispatch service. Compl. ¶ 34, Ans. ¶ 34. The order further required Empower to cease and desist operations due to its failure to register and specified that Empower must cease and desist dispatching vehicles-for-hire to District pickup and drop-off locations through its software and mobile telephone applications. Compl. ¶ 34, Ans. ¶ 34.

Empower requested a hearing on DFHV's November 16, 2020 cease and desist order to the Office of Administrative Hearings (OAH). Compl. ¶ 35, Ans. ¶ 35. On December 7, 2020, Empower appealed the cease and desist order to OAH. And. ¶ 35. DFHV and Empower were in ongoing discussions and Empower filed motions to continue initial status conferences before OAH. *Id.* Following the issuance of the cease and desist order, at no point until March 16, 2021 did DFHV ask Empower whether subscribers were continuing to provide Consumer Services in the District. *Id.*

OAH ultimately affirmed DFHV's cease-and-desist order in a final order issued on July 22, 2021. Compl. ¶ 36, Ans. ¶ 36. Empower did not move to stay OAH's final Order. *Id.* Empower filed a petition for review of OAH's order in the District Court of Appeals. Compl. ¶ 37, Ans. ¶ 37.

Despite OAH's final order affirming DFHV's cease and desist order, Empower continued operating as a private vehicle-for-hire company in the District. Compl. ¶ 38, Ans. ¶ 38. Accordingly, the District filed suit in Superior Court seeking to enforce OAH's final order. Compl. ¶ 39, Ans. ¶ 39. *See also District of Columbia v. Yazam Inc. d/b/a Empower*, Case No. 2023-CAB-003317. On February 22, 2024, the Superior Court granted the District's Motion for

Judgment on the Pleadings and directed that OAH's final order be enforced pending the adjudication of Empower's petition for review before the Court of Appeals. *Id.*

On February 29, 2024, the Court of Appeals ruled that Empower is a private vehicle-for-hire company subject to DFHV's regulatory authority. Compl. ¶ 41, Ans. ¶ 41. However, the Court of Appeals reversed OAH's final order, finding that DFHV's November 16, 2020 cease-and-desist order did not allege (and DFHV had not shown) that Empower's failure to register had caused or may cause immediate and irreparable harm to the public. *Id.*

On March 19, 2024, DFHV issued a Compliance Order for Immediate Registration to Empower. Compl. ¶ 42, Ans. ¶ 42. The order required Empower to complete the registration process with DFHV as a private vehicle-for-hire company by April 4, 2024. *Id.* It also required Empower to submit documentation demonstrating its compliance with the other provisions of D.C. Code §§ 50-301.29a through 50-301.29g. *Id.* Empower did not comply with DFHV's Compliance Order by the April 4, 2024 deadline. Compl. ¶ 43, Ans. ¶ 43.

On April 10, 2024, DFHV issued an order to Empower to cease and desist all vehicle-for-hire operations in the District and to rectify all compliance issues including registration and the submission of documentation required to show Empower's compliance with the law. Compl. ¶ 44, Ans. ¶ 44. Empower appealed the April 10, 2024 cease-and-desist order to OAH, which held an evidentiary hearing on May 10, 2024. Compl. ¶ 45, Ans. ¶ 45. At that hearing, Empower was forced to make an expedited presentation of its case and was denied any discovery from DFHV. Ans. ¶ 45.

On May 22, 2024, OAH issued a final order affirming DFHV's April 10, 2024 cease and desist order. Compl. ¶ 46, Ans. ¶ 46. While Empower disputes the evidentiary bases for OAH's findings, *see* Ans. ¶ 46, OAH found that DFHV had met its burden of showing that Empower

was violating the law by failing to register as a private vehicle-for-hire company and by failing to comply with various other statutory provisions. *Id.* For example, OAH found that Empower failed to conduct adequate background checks, failed to maintain adequate records of all drivers who provided vehicle-for-hire services through its platform, failed to ensure that drivers had the required insurance, failed to ensure that the vehicles used to provide vehicle-for-hire services passed the required safety inspections, failed to establish a zero tolerance policy for alcohol or substance use or for discrimination, actively prohibited drivers from displaying Empower’s trade dress when providing services booked through Empower’s software, failed to disclose and charge rates in the manner required by law, failed to provide a mechanism through which Consumers could make complaints, and failed to remit the required fees to the District. Compl. ¶ 46. OAH also found that Empower’s violations “create a reasonable possibility of immediate and irreparable harm to the public in the form of physical injury, discrimination, and financial exploitation.” *Id.*

On June 10, 2024, Empower filed a petition for review in the Court of Appeals challenging OAH’s final order. Compl. ¶ 47, Ans. ¶ 47. Empower has not moved to stay enforcement of the OAH final order, which also provides that a request for a hearing shall not suspend the order’s enforcement. Compl. ¶¶ 48-49, Ans. ¶¶ 48-49.

Empower has always required its Subscribers to submit the results of a third-party background check and motor-vehicle-history report in order to access Empower’s software. Ans. ¶ 51. Empower’s software provides a Consumer with identifying details concerning the Subscriber and the Subscriber’s vehicle—including a photograph of the driver, along with the vehicle license plate number, vehicle make, vehicle model, and vehicle color. *Id.* ¶ 55.

On July 29, 2024, the District filed the instant matter, asserting that Empower failed to comply with DFHV’s April 10, 2024 cease and desist order (Count I) and OAH’s May 22, 2024 final order (Count II). *See generally* Compl. Empower filed its Answer to the Complaint on September 19, 2024, and the District now seeks judgment on the pleadings for both counts. *See generally* Mot.

II. Standard of Review

A motion for judgment on the pleadings pursuant to Rule 12(c) is appropriately filed “[a]fter pleadings are closed – but early enough not to delay trial[.]” Super. Ct. Civ. R. 12(c). A motion for “judgment on the pleadings may be granted only if, on the facts as so admitted, the moving party is clearly entitled to judgment.” *See Wilson Court Tenants Ass’n, Inc. v. 523–525 Mellon Street, LLC.*, 924 A.2d 289, 292 (D.C. 2007) (citing *Bennings Assocs. v. Joseph M. Zamoiski Co.*, 379 A.2d 1171, 1173 (D.C.1977)). When considering a motion for judgment on the pleadings, “the trial court is required to view the facts presented in the pleadings and the inferences to be drawn there from in the light most favorable to the nonmoving party.” *Id.* The motion “should not be granted where there is a genuine issue of material fact.” *Id.*

III. Analysis

DFHV issued its April 10, 2024 Cease and Desist Order (“DFHV Order”) ordering Empower to “[c]ease all vehicle-for-hire operations within the District” and to “rectify all compliance issues.” DFHV Order at 2. After Empower challenged the DFHV Order before the OAH, OAH affirmed the DFHV Order, finding that “[s]ubstantial evidence establishes that Empower is violating the law,” OAH Final Order at 13, and “create[ing] a reasonable possibility of immediate and irreparable harm to the public in the form of physical injury, discrimination, and financial exploitation.” *Id.* at 24.

In its Motion, the District argues that “Defendant did not seek a stay of the OAH Final Order or the DFHV cease-and-desist order before OAH,” Mot. at 1, and instead Defendant “is operating as an unregistered digital dispatch service and unregistered private sedan business in violation of D.C. Code § 50-301.29a(12) and 31 DCMR §§ 1605.1, 1605.2, 1902.1, and 1902.2.” *Id.*

Empower argues that it is “challenging the validity of DFHV’s cease-and-desist order” before the District of Columbia Court of Appeals, and that this Court should not “enjoin[] conduct under the new cease-and desist order until after the Court of Appeals has ruled on its validity.” Opp. at 1. Empower also urges the Court to make its own determination as to whether “Empower’s continued operations pose an imminent and irreparable harm sufficient to warrant being enjoined from operating.” *Id.* at 1-2. Empower argues that the Court “cannot independently provide injunctive relief ... [w]ithout a factual inquiry into the effect of Empower’s decision not to register.” *Id.* at 6.

In response, the District argues that Empower’s admission that “it is not in compliance with a final, enforceable order from the [OAH], that it has not registered with the [DFHV] as required by the DFHV cease and desist order and OAH final order, and that it has not even sought, let alone obtained, a stay of these orders” is “dispositive” of this matter. Reply at 1.

The District also asserts that the Court “is obligated...to rely on OAH’s findings that Defendant’s continued operation and failure to comply with the registration requirement pose immediate and irreparable harm to the public,” Reply at 2, and that “this Court lacks jurisdiction to disturb OAH’s final order affirming DFHV’s cease-and-desist order.” *Id.* at 3 (citing D.C. Code § 2-1831.16(e)).

DFHV is vested with the exclusive authority to regulate the public-vehicle-for-hire industry. D.C. Code § 50-301.04. DFHV can issue cease-and-desist orders if it “has reason to believe that a person is violating a provision of [Title 31 of the D.C.M.R.] or other applicable law and the violation has caused or may cause immediate and irreparable harm to the public.” *Yazam, Inc. v. D.C. Dep't of For-Hire Vehicles*, 310 A.3d 616, 621 (D.C. 2024) (quoting 31 DCMR § 705.1). “The subject of such an order can seek a prompt hearing before OAH.” *Id.* (citing 31 DCMR § 705.4).

Pursuant to D.C. Code § 2-1831.16(a), an order from the OAH “shall be effective upon its issuance, unless stayed by an Administrative Law Judge *sua sponte* or upon motion of any party.” As such, cease and desist orders “shall be enforced pending a final decision on the merits.” 31 D.C.M.R. 705.6.

“Judicial review of all orders of the Office [of Administrative Appeals] in contested cases shall be in the District of Columbia Court of Appeals.” D.C. Code § 2-1831.16(e). “If a respondent fails to comply with a cease-and-desist order, the Commission or Office may, through the Office of the Attorney General, petition the District of Columbia Superior Court for injunctive relief.” 31 DCMR § 705.7.

Here, Empower acknowledges that it “is a vehicle-for-hire company subject to DFHV’s regulation.” *Yazam*, 310 A.3d at 629. *See also* Ans. ¶ 41 (admitting the Court of Appeals’ finding). It is also undisputed that “Empower has never registered as a private vehicle-for-hire company with DFHV,” Ans. ¶ 32, and has continued to “provide approximately 40,000 rides per week originating or terminating in the District.” *Id.* ¶ 31.

By continuing to engage in its vehicle-for-hire operation and failing to register with the DFHV, Empower has violated the DFHV cease-and-desist order, *see* DFHV Order at 2, and the

Final Order of OAH. *See generally* Final Order. While Empower urges this Court to (1) avoid taking any action until the Court of Appeals has ruled on the validity of DFHV’s cease-and-desist order, Opp. at 1, and (2) to independently determine whether “Empower’s continued operations pose an imminent and irreparable harm sufficient to warrant being enjoined from operating,” *id.* at 1-2, Empower’s position is inconsistent with the law.

First, the District’s municipal regulations are clear that cease and desist orders “shall be enforced pending a final decision on the merits,” 31 D.C.M.R. 705.6, a decision that is “exclusively in the District of Columbia Court of Appeals, not the Superior Court of the District of Columbia.” *Northeast Neighbors for Responsible Growth, Inc. v. Appletree Inst. for Educ. Innovation, Inc.*, 92 A.3d 1114, 1121 (D.C. 2014); *see also* D.C. Code § 2-510(a) (noting that “[f]iling of a petition for review shall not in itself stay enforcement of the order or decision of the Mayor or the agency.”).

Second, the Court is prohibited from considering the merits of the DFHV cease-and-desist order, because the established review process under District law “provides for exclusive appellate review of administrative action in contested cases [in the Court of Appeals], and thereby precludes concurrent jurisdiction in the Superior Court.” *Northeast Neighbors for Responsible Growth, Inc.*, 92 A.3d at 1122 (quoting *Fair Care Found., A.G. v. District of Columbia Dep’t of Ins. & Sec. Regulation*, 716 A.2d 987, 997 (D.C. 1998); *see also* D.C. Code § 2-510(a) (noting that a petition for review of administrative action in a contested case must be filed in the District Court of Appeals, and that upon the filing of such petition, the Court of Appeals “shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require.”).

Therefore, the Court finds that there is no genuine issue of material fact and “on the facts as so admitted, [the District] is clearly entitled to judgment.” *Wilson Court Tenants Ass’n, Inc.*, 924 A.2d at 292. The Court therefore finds that the District has demonstrated a prima facie entitlement to relief it seeks.

Conclusion

Accordingly, for the reasons set forth above, it is this 26th day of November 2024, hereby: **ORDERED** that the District’s Motion for Judgment on the Pleadings is **GRANTED**; and it is further

ORDERED that Yazam Inc. d/b/a Empower shall immediately cease operations as a digital dispatch service and private sedan business, to include a prohibition on using the Empower platform to provide any rides which originate or terminate in the District, until such a time as Defendant has registered as a Private Vehicle-For-Hire Company under D.C. Code § 50–301.29a(12) and 31 DCMR §§ 1605.1, 1902.1, as required by the May 22, 2024, Order issued by the Office of Administrative Hearings affirming the cease and desist order issued to Defendant by the District Department of For-Hire Vehicles; and it is further

ORDERED that the January 3, 2025 scheduling conference is **VACATED** and this case is **CLOSED**.

SO ORDERED.



Judge Shana Frost Matini
District of Columbia Superior Court

Copies served electronically upon all counsel of record.