

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: February 4, 2016

Panel: Cezary Paluch, Chair; Moira Calderwood and (Hedy) Anna Walsh, Members

Re: Granville Lovell
Holder of Tow Truck Driver's Licence No. D09-2018300

Counsel for Municipal Licensing and Standards: Ms. Amy Murakami

INTRODUCTION

1. Mr. Granville Lovell ("Mr. Lovell") has been requested to appear before the Toronto Licensing Tribunal (the "Tribunal") to determine whether or not his Tow Truck Driver's Licence should be suspended, revoked or have conditions placed on it.
2. The Tribunal informed Mr. Lovell of his right to legal counsel and that he may be at a disadvantage, if he is not represented at the hearing. Mr. Lovell stated that he understood his rights and wished to continue with the hearing unrepresented.
3. Mr. Lovell was first issued a Tow Truck Driver's Licence on June 22, 1994. This licence is valid until June 22, 2016.
4. At the start of the proceedings, Mr. Lovell informed the Tribunal that he only received Report No. 6468 on the day of the hearing. The Tribunal was willing to adjourn the matter to another day to allow Mr. Lovell time to review the report and prepare for the hearing. However, Mr. Lovell, unequivocally, stated that he wished to proceed with the hearing and did not wish any adjournment. Therefore, the matter proceeded.

CITY'S EVIDENCE

All witnesses who gave evidence at the hearing were sworn or affirmed. The City called three (3) witnesses.

1. First, Ms. Olga Kuztelska, ("Ms. Kuztelska") Supervisor, Bylaw Enforcement, Municipal Licensing and Standards ("MLS"), City of Toronto, identified Report #6468 dated December 4, 2015. Ms. Murakami, counsel for the City, submitted this report as evidence, without objections from Mr. Lovell. It was marked as Exhibit # 1.
2. Ms. Kuztelska identified a chart on pages 1, 2 and 3 of the report listing charges and convictions against Mr. Lovell under Chapter 545 of the Toronto Municipal Code. The chart showed seven (7) prior convictions. Namely: two (2) for fail to present an itemized bill; two (2) fail to produce licence; one (1) for fail to provide schedule of rates; one (1) for fail to be civil; and one (1) for obstruct/hinder

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inspection. Ms. Kuztelska also stated that as a result of the convictions several fines still remain outstanding and have not been paid.

3. Ms. Kuztelska also testified that there are four (4) current charges against Mr. Lovell before the courts: two (2) for obstruct/hinder inspection and fail to produce licence related to an incident that occurred on November 5, 2014; and the other two (2) charges for fail to present an itemized bill and fail to be civil and well behaved related to an incident that occurred on August 4, 2015.
4. Mr. Lovell was given the opportunity to ask Ms. Kuztelska questions about her evidence but he did not wish to do so. Her evidence was, therefore, unchallenged.
5. The second witness was Ms. Eliane Jouith ("Ms. Jouith"), Manager, Toronto East Accident Support Services Ltd. who testified that as a result of an altercation that occurred on August 4, 2015, between Mr. Lovell and a bylaw officer, Mr. David Williams, a trespass notice was issued by her company to Mr. Lovell that he was not to enter the Collision Reporting Centre for 30 days because it is private property on which threatening behaviour, violence and harassment are not permitted.
6. When Ms. Jouith was asked whether she saw the incident that prompted her company to issue the trespass notice, she stated that she did not.
7. The third witness was MLS Municipal Standards Officer, Mr. David Williams, who testified with respect to two incidents involving Mr. Lovell. The first occurred on November 5, 2014. Officer Williams approached him; identified himself as a bylaw officer; stood in front of his tow truck holding his hand up to stop and Mr. Lovell ignored him; and maneuvered his vehicle around the officer refusing to stop.
8. Officer Williams then testified regarding the more recent incident on August 4, 2015, when he was trying to conduct a regulatory inspection of Mr. Lovell's tow truck at a collision reporting center at 39 Howden Road. Officer Williams stated that he requested that Mr. Lovell show him his itemized bill of services which s. 545-105(a) of the Municipal Code requires a tow truck driver to prepare prior to hooking up of a vehicle.
9. Mr. Lovell said that he had not prepared one and was planning to do it later. When Officer Williams advised him that he would be getting a ticket for this alleged bylaw infraction, Mr. Lovell pointed at the officer and allegedly said "go fuck yourself" and "I will get you." He then accelerated quickly in his tow truck causing the tires to squeal and subsequently got out of his tow truck, lunged at Mr. Williams and apparently said "I'm going to kill you."
10. Officer Williams reported the incident to the police who opted to caution Mr. Lovell because Officer Williams did not wish to press criminal charges and did not feel that his life was in danger during this incident.
11. However, as a result of this incident, Mr. Lovell was charged under the Toronto Municipal Code for failing to present an itemized bill and for failing to be civil and well behaved. The court date is pending in this matter.

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12. Mr. Lovell chose not to cross-examine Officer Williams. Therefore, Officer Williams testimony was also unchallenged.

EVIDENCE OF GRANVILLE LOVELL

1. Mr. Lovell testified that Officer Williams does not like him and he has had many encounters with him in the recent past. He explained that when he picks up a tow he cannot start an itemized bill because he does not know who the owner is at that point.
2. With respect to the incident on August 4, 2015, Mr. Lovell indicated that he had “heated words” with Officer Williams but denied that he threatened Officer Williams or used any profanities.
3. Mr. Lovell explained that he does not do private towing work. He works for an insurer. The insurer’s office dispatches him to accident scenes. The car owner is not present by the time he arrives on scene to hook up the vehicle, so he is unable to present an itemized bill to the hirer, as no “hirer” is present.
4. Mr. Lovell further expressed his opinion that Officer Williams has been pursuing him while letting other tow truck drivers go.
5. Ms. Murakami cross-examined Mr. Lovell and he admitted that he has been convicted on prior occasions of bylaw violations and that several of the fines still remain unpaid. He also admitted that it is his general practice not to prepare an itemized bill before hooking up a car.
6. Mr. Lovell did not call any other witnesses to testify on his behalf.

CITY'S SUBMISSIONS

1. The City has concerns with respect to Mr. Lovell’s charges and convictions under Chapter 545 of the Toronto Municipal Code and his conduct toward Officer Williams.
2. There were 7 convictions registered against Mr. Lovell during the last 5 years and 4 charges are still before the courts – some of which are repeat offences showing a recent pattern of disregard for City by-laws.
3. The City cited s. 545-105(a) of the Municipal Code which states:

*Every owner or driver hired to perform or provide services **shall, before commencing such services, present to the hirer an itemized bill for such services, in a form approved by the Executive Director. [emphasis added]***
4. Of particular concern to the City was Mr. Lovell’s aggressive and uncooperative conduct towards Officer Williams who was merely fulfilling his duties as a by-law enforcement officer. Ms. Murakami said that Mr. Lovell’s behaviour on two separate occasions showed a lack of integrity.

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5. The City asked that Mr. Lovell's Tow Truck Driver's Licence be suspended for 2 days. The City did not ask for a probation period or any other conditions.

MR. LOVELL'S SUBMISSIONS

6. Mr. Lovell stated in his submissions that he did not do anything wrong and said that he felt harassed by Officer Williams.

DECISION

1. [The Tribunal applied its mandate, set out in part in the Toronto Municipal Code, s. 545-3. B(3), subsection (c):

...The Toronto Licensing Tribunal...shall...having regard for the need to balance the protection of the public interest with the need for the licensee to make a living...

2. The Tribunal considered that Mr. Lovell does not have any convictions under the Highway Traffic Act (quite an uncommon accomplishment compared to many applicants whom we see at the Tribunal). He has been working as a tow truck driver for approximately 30 years, and many of those years, without any reported incidents or infractions. Mr. Lovell is the sole income supporter in his family, and given his age, it would be difficult for him to find any alternative employment, if he was unable to work as a tow truck driver for any extended time. We noted that although his record has been exemplary in the past, he has recently had a spate of charges and convictions under the Toronto Municipal Code, starting in the fall of 2014.
3. Although the Tribunal recognizes that a tow truck driver may find it challenging to prepare an itemized bill of services prior to starting a tow, the language in s. 105(a) of the Toronto Municipal Code is clear, unambiguous and mandatory in that Mr. Lovell must prior to commencing to provide services while working as a tow truck driver present an itemized bill for his services to the hirer. If Mr. Lovell finds this impractical or even impossible, his recourse is not to disobey the law. He could take reasonable steps (for example, bringing the problem formally to the attention of his employer and/or MLS) to find a solution. He must also cooperate with any by-law enforcement officer by providing his name (s. 72) and producing his tow truck driver's licence when requested to do so (s. 116).
4. Having weighed all of the evidence presented, the Tribunal concluded that the evidence afforded reasonable grounds to believe that the licensee has not or will not carry on, its trade or business in accordance with the law and with integrity and honesty; that carrying on of the business or occupation has resulted and will result in a breach of Chapter 545-4 and other laws. The Tribunal however also had regard for the Applicant's years of employment without reported incidents or infractions and his need to make a living. Balancing these, we decided to impose a penalty, to make it clear that operating a tow truck must be conducted in accordance with the law. Accordingly, the Tribunal ordered that Mr. Lovell's Tow Truck Driver's Licence should be suspended for two (2) days starting on February 4, 2016.

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Originally Signed

Cezary Paluch, Chair

Panel Members, Moira Calderwood and (Hedy) Anna Walsh concurring

[Reference: Minute No. 16/16]

Date Signed: February 25, 2016