

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: September 15, 2016

Panel: Cezary Paluch, Chair; and Melina Laverty, Members

Re: Mark Livingston
o/a Sweet Mark Towing
Applicant for Renewal of Tow Truck Owner's Licence No. V10-3013508;
and
Applicant for Renewal of Public Garage Licence No. B68-3130485

Counsel for Municipal Licensing and Standards: Ms. Amy Murakami

BRIEF BACKGROUND

1. Mr. Mark Livingston ("Mr. Livingston") requested a hearing before the Toronto Licensing Tribunal (the "Tribunal") to determine whether or not his Tow Truck Owner's Licence and Public Garage Licence should be renewed, revoked or denied, or have conditions placed on them.
2. Mr. Livingston has held four City of Toronto licenses between December 9, 1997 and the day of the hearing, including:
 - i) Tow Truck Owner's Licence No. V10-3013508 first issued on December 9, 1997 which is deemed to continue;
 - ii) Public Garage Licence No. B68-3130485 first issued on January 1, 2012 which is deemed to continue;
 - iii) Tow Truck Owner's Licence No. V10-3365857 issued on August 22, 2003, and cancelled on March 13, 2006; and
 - iv) Tow Truck Owner's Licence No. V10-3371308 issued on December 17, 2003, and cancelled on June 30, 2005.
3. The key issue is whether Mr. Livingstone's charges and convictions under the *Criminal Code*, *Highway Traffic Act* and By-law infractions provide reasonable grounds to believe that his operation of a tow truck and a public garage would pose a risk to public safety and that he would not carry out his businesses with honesty and integrity.
4. The Tribunal informed Mr. Livingston of his right to legal counsel and that he may be at a disadvantage, if he is not represented at the hearing. Mr. Livingston stated that he understood his rights and wished to continue with the hearing unrepresented.
5. The hearing began as a three-member panel. During the hearing, the Chair (Ms Hedy Ana Walsh) recused herself from the hearing. Both City Counsel and Mr. Livingston did not oppose the recusal and agreed the hearing could continue with a two-member panel pursuant to Rule 16(1) which provides that "*quorum for a*

September 15, 2016

hearing is two members of the Toronto Licensing Tribunal". Mr. Paluch assumed the role of Chair.

CITY'S EVIDENCE

All witnesses who gave evidence at the hearing were sworn or affirmed. The City called two (2) witnesses.

6. Mr. Terry Van Elswyk ("Mr. Van Elswyk"), Supervisor, Licensing Services for Municipal Licensing and Standards ("MLS"), identified Report # 5106 dated March 16 (Pages 1-177), and two updates dated June 6, 2016 (Pages 178-288) and August 31, 2016 (289-290) respectively (we will refer to these collectively as the "Report"). Part of Mr. Van Elswyk's duties is to oversee staff in preparing Tribunal reports. Ms. Murakami submitted this Report as evidence, without objections from Mr. Livingston. It was marked as Exhibit # 1.
7. Mr. Van Elswyk identified the following portions of the Report:
 - Pages 15-20 – an undated chart (the "Chart") created by MLS staff last updated March 3, 2016, which summarized Criminal Code, Highway Traffic Act (HTA) and By-law charges and convictions registered against Mr. Livingston.
 - Pages 21-132 - supporting Integrated Court Offences Network ("ICON") documentation used to create the Chart at pages 15-20.
 - Page 134-165 – documents sent to MLS from Staff Sergeant S. Meloche of the Toronto Police Service.
 - Page 166 – Ministry of Transportation (MTO) Driver's Abstract order date of September 18, 2013 showing that Mr. Livingston's provincial driver's licence was suspended on August 21, 2013 due to an unpaid fine.
 - Page 167 – Letter from MLS to Mr. Livingston dated September 18, 2013 advising that due to his suspension of his Provincial driver's licence his tow truck owner's licence and photo identification card were to be surrendered to MLS.
 - Page 168 – Ministry of Transportation (MTO) Driver's Abstract order date of March 16, 2016 showing that Mr. Livingston's Provincial driver's licence was suspended on March 14, 2015 as he failed to complete a remedial program.
 - Page 172 - Letter from MLS to Mr. Livingston dated February 9, 2016 requesting that he provide a Criminal Background Check.
 - Page 181-287 – Copy of Toronto Police Services Records #1828661, #1828594 and #1829108.

September 15, 2016

8. The Chart showed fourteen (14) convictions registered to Mr. Livingston under the Highway Traffic Act and city by-law infractions for offences that occurred between 2003 - 2011, including fail to produce licence, tow truck not in good repair, speeding, and fail to use seatbelt. All these offences occurred in the operation of a tow truck.
9. Mr. Van Elswyk testified that Mr. Livingston did not respond to the letter from MLS dated September 18, 2013 requesting that he surrender his tow truck owner's licence and photo identification card and letter of February 9, 2016 from MLS requesting he provide a criminal background check.
10. Mr. Van Elswyk also testified that Mr. Livingston had outstanding fines including \$20.00 (item 22 of Report) and \$3,212.00 (item 30 of Report).
11. Mr. Livingston was given the opportunity to ask Mr. Van Elswyk questions about his evidence but he did not wish to do so. Therefore, Mr. Van Elswyk's evidence was unchallenged.
12. The City's second witness was Staff Sergeant Shawn Meloche ("Sergeant Meloche"). Sergeant Meloche was a member of the Toronto Police Service for almost 29 years. He had been a supervisory Staff Sergeant since 2008. He testified that:
 - On October 29, 2007, he attended a collision in Scarborough, which led to a wider police investigation into staged motor vehicle collisions in the City for financial gain.
 - On May 7, 2007, Mr. Livingston's tow truck was involved in a motor vehicle collision in which one passenger was seriously injured, suffering a fracture and permanent brain injury.
 - Mr. Livingston's tow truck had significant front-end damage;
 - Mr. Livingston filed an insurance claim and received a payout of approximately \$48,000 (some for his damaged vehicle and for other expenses).
 - Mr. Livingston became involved with a criminal organization who assisted with staging this collision.
 - Mr. Livingston's objective was to "write off" his tow truck as he was having mechanical problems with it.
 - The other vehicle involved in the May 7 accident was cosmetically repaired and made to appear that it was road worthy.
 - As a result of the May 7, 2007 accident and subsequent police investigation Mr. Livingston was charged under the Criminal Code with:
 - i) Conspiracy to Commit Indictable Offence;
 - ii) Fraud over \$5,000;
 - iii) Obstruct Peace Officer;
 - iv) Criminal Negligence Causing Bodily Harm; and
 - v) Dangerous Operation/Driving Causing Bodily Harm.
 - On September 21, 2007 another alleged collision occurred between three vehicles. As a result of this incident, Mr. Livingston was charged under the Criminal Code with: Conspiracy to Commit Indictable Offence, Fraud Over

September 15, 2016

\$5,000, Possession of Proceeds of Crime. However, as result of a plea agreement these charges were withdrawn and Mr. Livingston pled guilty to three charges related to the May 7, 2007 incident.

- On March 15, 2015, as part of a plea agreement Mr. Livingston pled guilty to Dangerous Driving Causing Bodily Harm, Fraud Over \$5,000 and Obstruct Peace Officer.
- As a result, he received a 15-month custodial sentence together with 2-year probation, a 2-year driving prohibition, a 2-year HTA driving suspension, \$18,000 free standing restitution order and other terms.

EVIDENCE OF MARK LIVINGSTON

13. Mr. Livingston testified that:

- He paid a mechanic approximately \$2,700 to fix his truck prior to the May 7, 2007 accident and the truck was in good condition. He later drove his truck through a large puddle of water on a rainy day. His truck began to smoke and he returned to the mechanic and was told the compression on the truck was no longer working, and that it would require a new engine at a cost of \$10,000. Another mechanic, however, indicated the engine was still good but he should not drive the truck for several days.
- He operated a body shop before but he is no longer operating it as a public garage.
- While in jail, he worked in the kitchen and attended church regularly, he applied for early release, and was released on July 18, 2013, having served 5 months of this 15 month sentence.
- He has been employed since April 2014 at Home Lumber on 744 Birchmount Avenue, assisting contractors with their lumber orders during the time that his driver's licence was suspended.
- He had been working 7 days a week and still continues to work there 6 days a week.
- Regarding his driver's licence which noted in March 2015 that he had failed to complete remedial program. He completed that this year (including an eye test and written test), and finished he believes in June 2016.
- He has not paid any of the restitution order of \$18,000.

14. Ms. Murakami cross examined Mr. Livingston who admitted that page 166 of the Report being a Driver's Abstract was a true reflection of his driving convictions at that time which included a conviction for Speeding in March 2011, Operating Motor Vehicle with No Insurance in March 2011; and Dangerous Driving Causing Bodily Harm in December 2012.

15. Mr. Livingston did not call any other witnesses to testify on his behalf.

September 15, 2016

SUBMISSIONS

City's submissions.

16. In her closing submissions, Ms. Murakami, on behalf of the City, requested that Mr. Livingston's tow truck owner's licence and public garage's licence be revoked. Ms. Murakami stated that Mr. Livingston participated in a staged elaborate motor vehicle accident scheme to financially profit, which resulted in very serious criminal charges and convictions against him. She noted that these convictions were connected to the very business to which Mr. Livingston was licensed. She submitted that the accident that occurred on May 7, 2007, put the public at risk that is anyone in the area when the collision occurred, and also resulted in a very serious permanent brain injury to one person. She added that in spite of what happened after this first incident, Mr. Livingston went on to be involved in a second scheme of a fake collision for financial profit, and was charged, though those charges were withdrawn as part of the guilty plea she submitted they should be considered to show a pattern of behaviour.
17. Ms. Murakami stated: "This is not a theoretical risk – it has happened we have grave concerns about his continued ability to operate these businesses without harming the public."
18. Aside from the criminal matters, the City highlighted various HTA and by-law charges and convictions registered against Mr. Livingston which Ms. Murakami stated are relevant and should be viewed in their totality and suggested that they also show that Mr. Livingston has not been able to carry on his trade or business in accordance with law.

Mr. Livingston's submissions

19. Mr. Livingston stated in his submissions that he was sorry for what happened and wished to get his licenses back. He said that he is now a "very changed person" and "won't do such things anymore."

DECISION

20. The Tribunal must balance the protection of the public interest with the need for the applicant to earn a living.
21. We noted that Mr. Livingston currently works 6 days a week at Home Lumber. Previously, he operated a body shop. In other words, he is employed full time and has other skills and experiences. On the evidence before us, this is not a case where the Applicant would have no other means to support himself if a licence was denied.
22. S. 545-4. C(1) of the *Toronto Municipal Code* sets out the reasons for denying a licence, including the following:

September 15, 2016

- (a) The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or
 - (b) There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
 - (e) The conduct of the applicant or other circumstances afford reasonable grounds for belief that the carrying on of the business by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, the health or safety of other members of the public.
23. The testimony of the witnesses and documentary evidence in the Report established that Mr. Livingstone in 2015 was convicted of very serious offences under the *Criminal Code* and was involved in an organized scheme whereby vehicles were purchased, salvaged, re-registered and subsequently involved in either staged or reported collisions for the purpose of defrauding several insurance companies and thus financial gain.
24. On one occasion, on May 7, 2007, Mr. Livingston, intentionally drove his two truck into another vehicle, and on the other, on September 21, 2007, he towed a vehicle to the collision centre, where a collision that never occurred was fraudulently reported. With respect to the May 7, 2007 accident, one of the occupants of the motor vehicle, who was only 17 years of age at the time, fractured his 7th rib and cervical spine and suffered a closed head injury that resulted in a permanent brain injury.
25. It is clear to the Tribunal that, through his actions on this occasion, even if the plan was for the vehicles to collide without injury, Mr. Livingston endangered the safety of the public where the collision occurred, including the first responders, other drivers and passengers travelling on the road, as well as any pedestrians or cyclists in the area.
26. An aggravating factor in this case is that after the accident, Mr. Livingston filed a claim with his insurance company knowing that the claim was being made fraudulently and Kingsway General Insurance paid out \$48,126.14 of which \$18,468.20 went directly to Mr. Livingston. As of May 2010, Nordic Insurance paid out a total of \$982,120.83 in relation to the 17-year-old accident victim whose injuries were deemed catastrophic. This incident clearly demonstrates that Mr. Livingston did not act with integrity and honesty. Even after the May accident and injuries, Mr. Livingston went on to be part of a second fraudulent scheme involving a 'fake' accident only four months later in September 2010.
27. In addition, Mr. Livingston has incurred multiple *Highway Traffic Act* charges and convictions and by-law violations which show a clear and repetitive pattern of conduct and demonstrates difficulty on his part complying with prescribed rules. He has outstanding fines and has not made any payments towards the criminal

September 15, 2016

restitution order. He has ignored and not complied with written correspondence from MLS on at least two occasions.

28. Having weighed all of the evidence presented, the Tribunal accepts the position of the City that there are grounds for denial of the licence. It is clear to the Tribunal that Mr. Livingston has not complied with the law in the past and has engaged in conduct which threatened the health or safety of other members of the public. The Tribunal believes that there are reasonable grounds to believe that the Applicant will not comply with the law in the future and will constitute a danger to other members of the public.
29. The Tribunal also believes that, in this case, the protection of the public outweighs the applicant's need to make a living by operating a tow truck or public garage in the city given that Mr. Livingston has another source of income through his current employment at a lumber yard and has gained experience in this area. He also has the skills and experience to seek employment at an auto body shop.
30. Accordingly, the Tribunal orders that Mr. Livingston's Tow Truck Owner's Licence No. V10-3013508 and Public Garage Licence No. B68-3130485 be revoked or denied.
31. In addition, the Tribunal orders that Mr. Livingston provide to MLS as soon as possible:
 - i) his tow truck's owner's licence and photo identification card;
 - ii) original deemed to continue letter dated January 20, 2010 (a copy of which can be found at page 14 of Report);
 - iii) blue licence cards;
 - iv) the physical plates for the tow truck owner's licence.
32. If Mr. Livingston is unable to locate items i) – iv), as above, and provide them to MLS, in lieu, he can sign a Statutory Declaration explaining that he is unable to find these items and provide the original document to MLS.
33. Even though we revoked the licences, Mr. Livingston has shown remorse and the law believes in rehabilitation. If Mr. Livingston applies for a city licence in the future, he would be well advised to show the City that he has put the past behind him, made efforts to pay his outstanding fines and is able to cooperate with MLS.

Originally Signed

Cezary Paluch, Chair
Panel Member, Melina Laverty concurring

[Reference: Minute No. 143/16]

Date Signed: October 27, 2016