

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: June 30, 2016

Panel: Cezary Paluch, Chair; Richard Quan, Member

Re: Rathiesh Jeganathan
Applicant for a Tow Truck Driver's Licence (Application No. B647345)

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett

BRIEF BACKGROUND

1. Mr. Rathiesh Jeganathan (we will refer to as “Mr. Jeganathan”) has requested a hearing before the Toronto Licensing Tribunal (the “Tribunal”) to determine whether or not his Tow Truck Driver's Licence should be issued, have conditions placed on it or if the application should be denied.
2. Mr. Jeganathan has never been previously licensed as a tow truck driver in the City of Toronto.
3. The key issue is whether Mr. Jeganathan’s charges and convictions under the *Highway Traffic Act* provide reasonable grounds to believe that his operations of a tow truck would pose a risk to public safety and that he would not carry out his business with honesty and integrity.
4. The Tribunal informed Mr. Jeganathan of his right to legal counsel and that he may be at a disadvantage, if he is not represented at the hearing. Mr. Jeganathan stated that he understood his rights and wished to continue with the hearing unrepresented.

CITY'S EVIDENCE

All witnesses who gave evidence at the hearing were sworn or affirmed. The City called one (1) witness.

5. Mr. Terry Van Elswyk (we will refer to as “Mr. Van Elswyk”), Supervisor, Licensing Services for Municipal Licensing and Standards (“MLS”), identified Report No. 6595 dated April 18, 2016 (we will refer to as the “Report”). Mr. Cornett submitted this Report as evidence, without objections from Mr. Jeganathan. It was marked as Exhibit No. 1. Part of Mr. Van Elswyk’s duties is to review the report to ensure that all information in the document is brought before the Tribunal in a fair and accurate way.
6. Mr. Van Elswyk identified the following portions of the Report:

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- Page 4 - Police Criminal Records Check dated March 14, 2016.
 - Page 16 - an undated chart last updated April 6, 2016, which summarized Highway Traffic Act (HTA) charges and convictions between June 20, 2013 and March 30, 2016, and the supporting ICON documentation.
 - Page 48 - Ministry of Transportation (MTO) Driver's Abstract order date of April 18, 2016.
7. Mr. Van Elswyk testified that the Criminal Records Check dated March 14, 2016 did not disclose any criminal convictions against Mr. Jeganathan.
8. Mr. Van Elswyk testified that Mr. Jeganathan's driver's licence has been suspended three (3) times over the last three years:
- i) in March/April 2014 for 30 days when he operated a vehicle having a G1 licence while unaccompanied by qualified driver as the law requires;
 - ii) in September 2015 for 3 months for incurring demerit points; and
 - iii) in April 2016 he was charged with racing contest or stunt driving (this charge is currently still before the court) and received an administrative suspension for 7 days.
9. Mr. Van Elswyk also referred to a summary chart prepared by MLS listing five (5) convictions against Mr. Jeganathan from June 2013 until March 30, 2016. The chart showed convictions under the *Highway Traffic Act* for:
- Speeding 149 in a 100 zone;
 - Speeding 75 in a 60 zone;
 - Speeding 58 in a 50 zone;
 - Driving a Motor Vehicle While Using a Handheld Device;
10. Mr. Jeganathan was given the opportunity to ask Mr. Van Elswyk questions about his evidence. He specifically referred Mr. Van Elswyk to line 14 of page 16 of the Report being reference to a speeding conviction of 58 in 50 zone (apparently against him) with offence date of June 20, 2013 and page 46 of the Report being the supporting ICON offence overview information that showed that the driver involved in this incident was not in fact Mr. Jeganathan but another person named A.S. who was driving. Mr. Van Elswyk explained that's possible that when this information was entered by MLS staff the "link was incorrect" and the charge on page 16 of the Chart did reference a different individual. (The Tribunal therefore noted that the chart on page 16 should only have referred to 4 HTA convictions against Mr. Jeganathan, and not 5, as incorrectly set out on the chart of page 16 of the Report.)
11. Mr. Jeganathan also referred Mr. Van Elswyk to page 48 of the Report and asked that since the racing or stunt driving charge was still before the Court and returnable July 21, 2016, why did MLS still have concerns regarding this charge. Mr. Van Elswyk responded that when this charge is viewed in conjunction with the conviction of speeding charge of 149 in a 100 zone MLS certainly did have great concerns with this charge (even though no conviction has ever been entered) given the nature of the application requesting to operate a tow truck in the city.

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12. Mr. Jeganathan did not ask any further questions. Therefore, Mr. Van Elswyk's evidence was largely unchallenged.

EVIDENCE OF RATHIESH JEGANATHAN

13. Mr. Jeganathan provided testimony that:
- he currently lives in Toronto with his parents;
 - he is single and has no children;
 - he has had a Markham tow-truck licence for approximately 2 years;
 - most of the accident calls for a tow truck are in Toronto area and to respond to these calls he requires a tow-truck licence from the City of Toronto;
 - he works 7 days a week (5 days towing cars and 2 days at the pizza store);
 - he also works as a cook at a pizza store on the weekend;
 - he was first licensed as a G1 driver in Ontario in January 29, 2013;
 - he obtained his full G licence about 1 year ago;
 - he has taken an introduction course at Centennial College and recently applied for automotive technician program which he hopes to enroll in.
14. Mr. Cornett cross examined Mr. Jeganathan who admitted that on February 22, 2014, he was charged with 4 traffic offences on this day and convicted of speeding – 149 KMH in a 100 KMH zone (the three charges related to this incident were withdrawn). He explained that he was late to opening the pizza store and was trying to get to work.
15. With respect to the racing contest or stunt driving charge/incident and the suspension that occurred on April 12, 2016, Mr. Jeganathan explained that he was speeding on the 407 doing about 174 (this is the speed that the police officer told him he was travelling) and was trying to get to a customer who had a flat tire.
16. Mr. Jeganathan did not call any other witnesses to testify on his behalf.

CITY'S SUBMISSIONS

17. In his closing submissions, Mr. Cornett on behalf of the city opposed Mr. Jeganathan's application for a tow truck licence citing concerns with his driving record including three different suspensions of his licence in a very short period of time. The city also had concerns that he would pose a danger to the public as the incident on February 22, 2014 occurred while he was involved in the course of his employment (as he was on his way to work). As well, in light of his short driving history, he has shown an ongoing level of irresponsibility by not following the established requirements of supervised driving while attaining his G1 driver's licence, threatening the safety of others through stunt driving and speeding, and

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accumulating ongoing driving related convictions and charges. Finally, the City submitted that Mr. Jeganathan's ability to earn a livelihood did not solely rely on attaining the licence; he had other areas of income including his tow truck work in Markham and his part-time pizza jobs.

MR. JEGANATHAN'S SUBMISSIONS

18. Mr. Jeganathan stated in his submissions that he wished for a probation period of one or three months and that he needed a tow truck licence to be able to work in the City of Toronto. He also expressed that if his tow truck licence in Markham was not renewed he would not be able to work as a tow truck driver.

DECISION

19. The Tribunal must balance the protection of the public interest with the need for the applicant to earn a living.
20. We noted that Mr. Jeganathan is only 19 years old. He is single, has no children and lives with his parents. He is employed as a full time tow truck driver in Markham and works on the weekends as a cook at a pizza restaurant. He also has plans to return to school and pursue a career in automotive technician training.
21. 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:
 - (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 documentary evidence in the Report established that Mr. Jeganathan has possessed an Ontario driver's licence since January 29, 2013 (for just for over 3 years) and in such a short period of time has had his licence suspended already

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three times. In addition, he has incurred multiple *Highway Traffic Act* charges and convictions in the same period.

24. The testimony of Mr. Jeganathan confirmed his reckless and irresponsible conduct on February 22, 2014. He was driving alone on the 401 highway in his father's Mercedes (while he still had his G1 licence and was not allowed to drive on the highway alone) and going very fast, speeding far in excess of the posted speed limit. He was charged with 4 offences including Reckless Driving, Speeding and Class G1 Drive Prohibited Highway. He was convicted on August 28, 2015 of speeding 149 KMH in a 100 KMH zone.
25. Another more recent incident showing Mr. Jeganathan's inability to follow the law and endanger the safety of the public happened on April 12, 2016 when he was charged with Racing Contest or Stunt Driving contrary to the *Highway Traffic Act*. Even though this matter is still before the court and the Tribunal recognizes the presumption of innocence, the relevant standard for this Tribunal is "reasonable grounds" and "not guilty beyond reasonable doubt" or "balance of probability".
26. Regarding this incident, Mr. Jeganathan's testimony confirms that he was travelling on the 407 highway in his uniform to change a customer's flat tire and was pulled over by a police officer who told him he was going 174 KMH in a 100 KMH zone. Although it is not clear how fast he was going, Mr. Jeganathan admitted that he was speeding. Therefore, his actions and conduct on this day and the serious nature of this charge have to be taken into account by the Tribunal. It is clear to the Tribunal that, through his actions on this occasion and by similar behaviour throughout his short driving history, Mr. Jeganathan endangered the safety of the members of the public including the police officer and other drivers on the road and passengers in vehicles travelling on the highway that day.
27. Having weighed all of the evidence presented, as outlined above, it is clear that there is a concerning pattern of conduct on the part of the Applicant and he 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.
28. 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 in the city given that he has other sources of income through his employment as a cook in a restaurant and by his work in Markham as a tow truck driver.
29. Accordingly, the Tribunal orders that Mr. Jeganathan's Application for a tow truck driver's licence be denied and no licence be issued at this time.

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Originally Signed

Cezary Paluch, Chair
Panel Member, Richard Quan concurring

[Reference: Minute No. 105 / 16]

Date Signed: August 11, 2016