

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: October 13, 2016

Panel: Aly N. Alibhai, Chair; Moira Calderwood and Cezary Paluch, Members

Re: Muhammad Umar Tariq
Holder of Taxicab Driver's Licence No. D01-4426857
and
Ahmad Umair Dogar
Holder of Taxicab Driver's Licence No. D01-4536326

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett

INTRODUCTION:

Mr. Muhammad Umar Tariq ("Tariq") and Mr. Ahmad Umair Dogar ("Dogar") were requested to appear before the Toronto Licensing Tribunal (the "Tribunal") to determine whether their respective taxicab driver's licences should be suspended, revoked or have conditions imposed on them.

Both Tariq and Dogar waived their right to legal counsel and acknowledged that they understood the implications of proceeding without legal representation.

At the outset of the hearing, Counsel for the City of Toronto, Mr. Matthew Cornett ("Cornett"), asked that, given the similar issues in the two matters, the substantially similar fact patterns in both matters and the fact that the City of Toronto (the "City") would be relying on the same witnesses for both matters, the two matters be heard jointly. While Mr. Cornett did not provide any statutory or other basis for his request, we note that section 9.1 of the *Statutory Powers and Procedures Act* provides as follows:

Proceedings involving similar questions

- 9.1 (1) If two or more proceedings before a tribunal involve the same or similar questions of fact, law or policy, the tribunal may,
- (a) combine the proceedings or any part of them, with the consent of the parties;
 - (b) hear the proceedings at the same time, with the consent of the parties;
 - (c) hear the proceedings one immediately after the other; or
 - (d) stay one or more of the proceedings until after the determination of another one of them.

Both Tariq and Dogar consented to the City's request that their respective matters be combined and that the hearing of the two matters before the Tribunal proceed as a joint hearing. The Tribunal, therefore, proceeded with a joint hearing on these two matters.

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FACTS:

1. Municipal Licensing and Standards (MLS) has concerns with respect to the conduct of both Tariq and Dogar and, in particular, with their respective records of charges and convictions under the *Criminal Code of Canada*.
2. MLS also has concerns with respect to the record of charges and convictions of Tariq and Dogar under the *Highway Traffic Act* but Counsel for the City took the position that these charges and convictions were not as relevant as the criminal charges, for the purposes of the arguments that the City would be putting forward at the hearing of the two matters.
3. Neither Tariq nor Dogar gave any evidence at the hearing.
4. While Tariq asked one question of one of the City's witnesses, there was no substantive cross-examination conducted of the City's witnesses by Tariq or Dogar.
5. Neither Tariq nor Dogar called any witnesses.

ISSUE:

The issue before the Tribunal is whether, pursuant to Chapter 546, Licensing of Vehicles for Hire, of the *Toronto Municipal Code* (hereinafter the "Code") and, in particular, paragraph 546-4 A¹ of the Code, the taxicab driver's licences of Tariq

¹ § 546-4. Grounds and administrative thresholds for denial of licence.

- A. An applicant for a licence or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to the licence or renewal, except where:
- (1) The conduct of the applicant affords reasonable grounds to believe that the applicant has not carried on, or will not carry on, the business in accordance with law and with integrity and honesty; or
 - (2) There are reasonable grounds to believe that the carrying on of the business by the applicant has resulted, or will result, in a breach of this chapter or any law; or
 - (3) The applicant is a corporation and its conduct or the conduct of its officers, directors, employees, or agents affords reasonable grounds to believe that its business has not been, or will not be, carried on in accordance with law and with integrity and honesty; or
 - (4) There are reasonable grounds to believe that the premises, equipment, or facilities in respect of which the licence is required have not complied, or will not comply, with the provisions of this chapter or any other law; or
 - (5) The conduct of the applicant or other circumstances afford reasonable grounds to believe 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, their health or safety.

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(Licence No. D01-4426857) and Dogar (Licence No. D01-4536326) should be suspended, revoked or have conditions placed on them.

LAW:

Paragraph 546-9 of the *Code* provides, in part, as follows:

C. The Toronto Licensing Tribunal may, for any of the reasons set out in § 546-4:

- (1) Suspend or revoke any licence issued under this chapter;
- (2) Impose such conditions upon a licence as it considers appropriate and as are authorized by law; and
- (3) Suspend a licence or continue the suspension of a licence where a hearing that has been commenced is adjourned for any reason, pending its final disposition.

Further, paragraph 546-8 of the *Code* sets out the mandate of the Tribunal and provides, in part, as follows:

A. Mandate of the Toronto Licensing Tribunal.

- (1) The Toronto Licensing Tribunal is created as a quasi-judicial adjudicative body empowered to hear evidence and submissions and make independent decisions and shall perform the duties that are assigned to it under this chapter.
- (2) City Council has delegated its decision-making powers to the Toronto Licensing Tribunal to determine whether a licence under this chapter should be issued, refused, suspended, revoked, or have conditions placed upon it.
- (3) This chapter sets out City Council's objectives with respect to the licensing of vehicles-for-hire, and the Toronto Licensing Tribunal shall:
 - (c) Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood;

ANALYSIS:

All witnesses who gave evidence at the hearing were sworn or affirmed.

CITY'S EVIDENCE

Mr. Gil Manzano

Mr. Gil Manzano ("Manzano"), Acting Supervisor, Bylaw Enforcement, with MLS, testified on behalf of MLS. Through Manzano, MLS submitted into evidence, without objection, MLS Report Number 6636, consisting of sixty-six (66) pages (**Exhibit 1**) and MLS Report Number 6635 (**Exhibit 2**) consisting of eighty-one (81) pages. Manzano's testimony at the hearing served to establish the facts as set out in both **Exhibit 1** and **Exhibit 2** and, in particular, the following salient facts contained in the two exhibits:

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Exhibit 1

- MLS Report Number 6636 was created by Manzano on June 7, 2016;
- Tariq was before the Tribunal because of the criminal charges that have been laid against him;
- The chart at page two (2) of MLS Report Number 6636 sets out the *Criminal Code of Canada* charges against Tariq and indicates that he has been convicted of several offences including failing to comply with bail conditions and disobey a court order and that he was given a peace bond for a charge of assault;
- At pages six to nine of MLS Report Number 6636, a Toronto Police Service news release dated June 7, 2016 makes reference to Tariq having been arrested and charged with several offences including three counts of fraud under \$5000, three counts of possession of a credit card obtained by crime and forgery and further, contains a headshot photograph of Tariq; and
- Page fifty-seven (57) of MLS Report Number 6636 indicates that seven of the charges for the offences listed at page two of the MLS Report were to have been dealt with in court on September 29, 2016 but, according to Manzano, will now be dealt with in court on October 20, 2016.

Exhibit 2

- MLS Report Number 6635 was created by Manzano and it indicated that Dogar was first issued a taxicab driver's licence on August 8, 2015;
- Dogar was before the Tribunal because of the criminal charges laid against him;
- The chart at page two of MLS Report Number 6635 sets out a list of sixteen charges under the *Criminal Code of Canada* that have been laid against Dogar which include fraud under \$5000, forgery, theft of a credit card and possession/use of a credit card and the chart indicates that these charges were to have been dealt with in Court on July 5, 2016;
- The chart at pages thirty-six to thirty-eight of MLS Report Number 6635 sets out an additional thirty-one charges laid against Dogar for the offences of fraud under \$5000, fraud over \$5000, forgery, theft of a credit card and possession/use of a credit card and indicates that all forty-one (41) charges (i.e., the sixteen charges set out in the chart at page two of MLS Report Number 6635 plus the additional thirty-one charges set out in the chart at pages thirty-six to thirty-eight of MLS Report Number 6635) were to be dealt with in Court on October 13, 2016;
- Manzano testified that he was not aware what was to have taken place or what took place in court on October 13, 2016 with respect to the charges against Dogar as set out in the chart at pages thirty-six to thirty-eight of MLS Report Number 6635; and
- At pages five to eight of MLS Report Number 6635, a Toronto Police Service news release dated June 7, 2016 makes reference to Dogar having been arrested and charged with several offences including theft of a credit card, six counts of possession of a credit card obtained by crime, five counts of fraud under \$5000, fraud over \$5000 and three counts of forgery and also contains a headshot photograph of Dogar.

Testimony of Detective Constable Victoria Balice

Detective Constable (D.C.), Victoria Balice, also testified for the City, as follows:

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- She works for the Financial Crimes Unit in the organized crime section of Toronto Police Service and has been working in that capacity since October 2013;
- She was involved in activities that include, for example, mobile surveillance of organized crime activities and she is an affiant under the *Controlled Drugs and Substances Act*;
- She was involved in the investigation of the matters before the Tribunal which related to the alleged criminal activity of Tariq and Dogar in using both debit and credit cards;
- In October 2015, a fraud scheme was started in Toronto whereby, late in the evening and early morning, credit and debit card fraud became rampant in taxicabs as a result of taxicab drivers stealing the credit and debit cards used by passengers to pay for taxi fare at these times of the day;
- She became involved in the investigation of Tariq and Dogar in April 2015 when reports came in from taxicab passengers, the day following the evening that they had used either their credit or debit cards to pay for taxi fare, that their credit or debit cards would not function with their designated Personal Identification Numbers (PIN);
- Thirty-one victims of the fraud scheme are attributable to Dogar and three victims are attributable to Tariq;
- The incidents occurred from late 2015 to around May of 2016;
- The scheme was facilitated in circumstances where vulnerable taxicab passengers (i.e., passengers who were under the influence of alcohol) provided their credit or debit card PIN to the taxicab driver because they were unable to independently enter their PIN into the mobile payment device, or through the taxicab drivers' powers of observation in looking over the shoulders of the passengers when they entered their PINs into the mobile payment devices, or in some cases, through the use of mobile payment devices which functioned to record PINs and while identical in appearance to a legitimate mobile payment device, were not in fact actual mobile payment devices;
- She observed still photographs of video surveillance taken at financial institutions which show both Tariq and Dogar withdrawing money from Automated Teller Machines (ATM);
- Taxicab company Global Positioning System (GPS) records were also examined to determine who was driving a particular taxicab at a particular time on a particular day and such records, along with taxi companies' trip sheet records, confirmed that Tariq and Dogar were both driving taxicabs in April 2015 at the time of the alleged fraudulent activity;
- Dogar expended a total of \$37,000 in purchases and ATM withdrawals using the debit and credit cards of other persons; and Tariq expended a total of \$6,700 in purchases and ATM withdrawals using the debit and credit cards of other persons;
- Search warrants were executed at the homes of both Dogar and Tariq and that, as a result of the execution of the search warrants at their homes, additional charges were laid against Dogar;
- She was not aware what transpired in Court on July 5, 2016; and
- While both Tariq and Dogar were granted bail, she did not know whether bail was granted with or without conditions.
- She was constrained from revealing certain evidence at the hearing because of the ongoing criminal investigation into the matters.

In response to Tariq asking D.C. Balice how she knew if in fact credit and debit cards had been switched by the taxicab drivers and who was responsible for the switching of

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the credit and debit cards, D.C. Balice testified that these are the allegations of the Toronto Police Service in support of a criminal complaint that will be addressed in due course during the criminal proceedings in court.

City's Submissions

Cornett, on behalf of the City, submitted that the Tribunal should suspend the taxicab driver's licences of both Tariq and Dogar based on the evidence that was adduced by the City through Manzano and D.C. Balice. Cornett noted that the City had grave and obvious concerns given the charges against Dogar and Tariq for offences including fraud, forgery and unauthorized use of credit cards. Mr. Cornett submitted that the offences against both Tariq and Dogar are alleged to have occurred in taxicabs that they operated; that both Tariq and Dogar used credit and debit cards of taxicab passengers to make fraudulent purchases and withdraw funds from ATMs; and that a review by D.C. Balice, of still photographs created from video surveillance, indicates that Dogar was responsible for taking advantage of vulnerable passengers in a state of intoxication.

Cornett submitted that Dogar faces forty-seven charges, and that although Tariq faces fewer charges under the *Criminal Code of Canada*, the charges are of the same nature as those that Dogar faces and are equally serious.

Cornett further argued that because Tariq and Dogar had only been licensed for between twelve and eighteen months before they engaged in the criminal acts that had brought them before the Tribunal, they had therefore acquired their taxicab driver licences as a tool to defraud the public. It was also submitted that neither Tariq nor Dogar had put forward any evidence that they needed their taxicab driver licences in order to earn a livelihood and therefore, that the Tribunal was not in a position to balance the need of the licensees to earn a livelihood as contemplated by paragraph 546-8 A (3) (c) of the *Code*.

Cornett indicated that the City plans eventually to seek revocation of the licences of both Dogar and Tariq. He stated, however, that, for the time being and given the evidence put forward at the hearing and, in particular, D.C. Balice's testimony that certain evidence could not be given at the hearing because of the ongoing criminal investigation into the matters, the City was requesting that the Tribunal suspend the licences of Tariq and Dogar until the criminal proceedings have definitively concluded.

Submissions of Tariq

Tariq submitted that his licence should not be suspended because he has not been convicted of any offences in a court and that the evidence of the police against him is not strong. While Tariq did not lead any evidence during the hearing, he indicated, at the time of making submissions, that his bail conditions do not permit him to accept credit or debit cards as a form of payment when driving his taxicab and that the Tribunal should impose similar conditions on his licence.

Submissions of Dogar

Dogar submitted that he wanted the Tribunal not to suspend his licence because he requires it to earn a livelihood and that although driving a taxicab was not his full-time job

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at present, if he should lose his current employment, he will need a licence in order to drive a taxicab and earn a livelihood. While Dogar did not lead any evidence during the hearing, he submitted that his bail conditions also prevent him from accepting debit or credit cards as forms of payment from passengers when driving his taxicab and also that he is not permitted to carry a credit card bearing his name while operating a taxicab. Dogar also submitted that the argument put forward by the City that he had used his taxicab licence as a tool to engage in criminal activity intended to defraud the public was not true.

Reply of Cornett

Cornett submitted that any evidence given by Tariq and Dogar during their submissions had not been given as sworn testimony at the hearing, and therefore was not subject of cross-examination, and, as such, should not be considered by the Tribunal in reaching its decision.

ANALYSIS

The evidence of the City was entirely unchallenged. It established, to the Tribunal's satisfaction, that the conduct of both Tariq and Dogar afford reasonable grounds to believe that they have not carried on the business of operating a taxicab in accordance with law and with integrity and honesty, and further, that there are reasonable grounds to believe that the continued operation of a taxicab by Tariq and Dogar has infringed, or would infringe, the rights of other members of the public.

The criminal charges against Dogar and Tariq have not yet been tested at trial. In the Tribunal's view, however, this does not prevent our considering the unchallenged evidence of D.C. Balice which we found to be compelling in tying both Dogar and Tariq to fraudulent actions involving debit or credit cards (although we, of course, make no comment as to whether or not these actions are or can be proven to the standard required in a criminal proceeding of proof beyond a reasonable doubt). For the Tribunal's purposes, there was photographic evidence along with compelling information from the Toronto Police Service and there was no information or evidence put forward by either Dogar or Tariq that would provide us with any alternative explanation about what seemed to have happened. Indeed, for purposes of the standard of proof required at the Tribunal of "reasonable grounds" to believe that a licensee has not conducted himself or herself in accordance with law and with honesty and integrity, we are satisfied that, in this case, the City has met the standard of proof.

Dogar and Tariq submitted that their bail conditions (not to use debit or credit cards in their taxis) sufficiently protected the public. The Tribunal had two problems with those submissions. First, there was no evidence whatsoever before the Tribunal, documentary or in the form of testimony, as to what, if any, bail conditions Tariq or Dogar may be under. Second, even accepting (without deciding) that those were the relevant bail conditions, the Tribunal was still not satisfied that the public would be adequately protected by imposing such conditions on their licences, as both Dogar and Tariq would still presumably have to handle cash, and we had very grave doubts about their honesty or integrity in doing so. We were satisfied therefore that public protection could only be achieved by suspending Dogar's and Tariq's licences.

Dogar and Tariq both adverted, in their submissions, to their need to make a living. We

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agree with Cornett, however, that they failed to lead any evidence on this point and we are therefore without any facts in evidence that would allow us to weigh this factor in the balance as required under the *Code*.

DECISION

Taking into account the mandate of the Tribunal to protect the public as set out in paragraph 546-8 A (3) (c) of the *Code* and the grounds and administrative thresholds for denial of a licence in paragraph 546-4 A of the *Code*, the Tribunal decided to suspend the licences of Tariq and Dogar effective immediately and, with respect to each of Tariq and Dogar, until the criminal charges laid against each of them and pertaining to these matters have been disposed of and the matters, in respect of each of the licensees, is brought back to the Tribunal for consideration and a determination.

ORDER

As set out above, the Tribunal suspended taxicab driver's licence No. D01-4426857 of Tariq and taxicab driver's licence No. D01-4536326 of Dogar effective immediately. Further, the Tribunal issued an Order that Tariq and Dogar shall by 12 noon on Thursday, October 20, 2016, return their licences and the photographs attached to their licences to MLS at 850 Coxwell Avenue, Toronto, Ontario and that should they be unable to locate their licences and/or the photographs attached to their licences, they shall complete a declaration in the form prescribed by MLS and available at the MLS Offices at 850 Coxwell Avenue, Toronto, Ontario.

Originally Signed

Aly N. Alibhai, Chair
Panel Members, Moira Calderwood and Cezary Paluch concurring

[Reference: Minute No. 162/16]

Date Signed: October 27, 2016