

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: October 6, 2016

Panel: Melina Laverty, Chair; Aly Alibhai and (Hedy) Anna Walsh, Members

Re: Spiros Tsakopoulos
Applicant for a Master Plumber Licence (Application No. B538724)
AND
Rhino Rooter Ltd., O/A Rhino Rooter Ltd.
Applicant for Plumbing Contractor's Licence (Application No. B539315)

Counsel for Municipal Licensing and Standards: Ms. Lauren Elliott

BACKGROUND

Mr. Tsakopoulos requested a hearing before the Toronto Licensing Tribunal ("Tribunal") to determine whether or not a Master Plumber Licence and Plumbing Contractor's Licence should be issued, have conditions imposed on them, or be denied.

1. Mr. Tsakopoulos has held the following City of Toronto licences:
 - a. On May 8, 2000, Plumbing Contractor's Licence No. T94-3109159 was issued to Rhino Rooter (Mr. Tsakopoulos, Director). Municipal Licensing and Standards (MLS) refused to renew the licence on June 17, 2008, and as no hearing request was received, the licence was cancelled on July 29, 2008.
 - b. On March 10, 2011, the Tribunal granted Master Plumber Licence No. T95-3951367 and Plumbing Contractor's Licence No. T94-3951364 with conditions, including a five (5) year probation. These licences were cancelled on June 10, 2012, as the renewal fees were not paid.
2. In July 2015, Mr. Tsakopoulos applied to MLS for two (2) licences: a Master Plumber's Licence and for a Plumbing Contractor's Licence on behalf of Rhino Rooter, where he serves as President.
3. MLS turned down the applications due to Mr. Tsakopoulos's criminal record.
4. Mr. Tsakopoulos requested a hearing before the Tribunal. The hearing was held on October 6, 2016.

ISSUE

5. The TLT needed to determine whether Mr. Tsakopoulos's conduct [including his charges and convictions under the *Criminal Code of Canada* (CCC)] provides reasonable grounds to believe that in carrying out his trade as a master plumber, and/or his plumbing contractor business, he would pose a risk to public safety, and/or that he would not carry out his businesses with honesty and integrity.

October 6, 2016

CITY'S EVIDENCE

6. Mr. Terry Van Elswyk, Supervisor of Licensing Services, testified on behalf of MLS. He testified that MLS staff created MLS Report No. 6465, dated August 21, 2015 ("the Report") and that he had reviewed it and could attest to its contents. The Report was entered into the record and marked as Exhibit #1.
7. Mr. Van Elswyk referred to the following portions of the Report:
 - On May 8, 2000, MLS issued a Plumbing Contractor's Licence to Rhino Rooter (Mr. Tsakopoulos, Director). MLS refused to renew the licence on June 17, 2008, and cancelled it on July 29, 2008. (See page 1 of the Report)
 - On April 8, 2009, Mr. Tsakopoulos applied for a Master Plumber Licence for himself, and a Plumbing Contractor's Licence for his corporation, Rhino Rooter Plumber. MLS refused the licence applications and Mr. Tsakopoulos requested a hearing. In January 2011, MLS submitted Report No. 5296 to the Tribunal. On March 10, 2011, the Tribunal held a hearing, and decided to issue the licences with the following four (4) conditions:
 - i) a five year period of probation;
 - ii) Mr. Tsakopoulos was to provide an updated criminal record check at each renewal;
 - iii) during the probationary period, Mr. Tsakopoulos was required to report any new changes or convictions under any bylaw, the CCC or the *Controlled Drugs and Substances Act* (CDSA), to MLS in writing within three (3) business days; and
 - iv) during the probationary period, any concerns with the bylaw, CCC or CDSA charges or convictions, those matters and report 5296 may be brought back to the Tribunal for a full hearing. (See page 29 of the Report)
 - These licences were cancelled on June 10, 2012, as the renewal fees were not paid.
 - In July 2015, Mr. Tsakopoulos applied to MLS for two (2) licences: a Master Plumber's Licence and a Plumbing Contractor's Licence on behalf of Rhino Rooter, where he serves as President, and submitted an updated police criminal record check (see pages 32-34). This showed eleven (11) criminal convictions, with the first one dated April 9, 1996 and the last one dated July 5, 2012.

October 6, 2016

- On July 20, 2015, MLS denied the licence applications based on Mr. Tsakopoulos's criminal convictions. (page 35)
- Pages 38-41 of the Report are a series of three charts created by MLS staff and last updated on August 6, 2015, which summarize the charges and convictions under the CCC or the CDSA registered against Mr. Tsakopoulos.
- Pages 42-116 of the Report set out information from the Ministry of the Attorney General's Integrated Court Offences Network ("ICON") used to create the MLS charts described above.
- Page 41 of the Report lists offences that occurred on October 21, 2011, including trafficking in a substance (FE 325-5), possession for the purpose of trafficking (FE 325-5), and failure to comply with bail conditions (CCC 145), and possession of property obtained by crime over \$5,000 (CCC 355). Mr. Tsakopoulos held two licences and the licences were under probation but he not did notify MLS of these charges as he was required to under the terms of his probation.
- Mr. Tsakopoulos was convicted of the following offences (as detailed on pages 34-35 and 39-41 of the Report):
 - On April 9, 1996: possession of narcotics (FE NCA 3) [I-D 65 days custody and fined \$500], and two charges of failure to comply with recognizance, [22 days intermittent consecutive, and 6 months' probation].
 - On June 20, 1996: possession of narcotics for trafficking (FE NCA 4) [I-D 6 months custody and fined \$1000].
 - On August 27, 1998: utter counterfeit money (CCC 452), [60 days conditional sentence and one year probation].
 - On December 24, 1998:
 - i) possession of property obtained by crime, valued over \$5,000 (CCC 355) and fined \$100, [custodial sentence of 4 months, 2 years' probation and lifetime prohibition from possessions any firearms, ammunition, or explosives].
 - ii) two convictions of unauthorized possession of a firearm (CCC 91) and fined \$100 [custodial sentence of 4 months on each charge, 2 years' probation and lifetime prohibition from possessions any firearms, ammunition, or explosives].

October 6, 2016

- On July 28, 2004:
 - i) possession for the purpose of trafficking (FE 325-5) and fined \$100; [custodial sentence of 27 months (5 months and 15 days pre-sentence custody)].

- On July 30, 2004:
 - i) dangerous operation of a motor vehicle causing bodily harm (CCC 249), and fined \$100 [custodial sentence of 6 months to be served concurrently].
 - ii) possession of a firearm while prohibited (CCC 117.1) and fined \$100 on July 30, 2004, [custodial sentence of 3 months to be served concurrently].
 - iii) two convictions failure to comply with bail conditions (CCC 145), and fined \$100 [on each custodial sentence of 3 months to be served concurrently].

- On March 29, 2012:
 - i) Trafficking in a substance (FE 325-5) and possession for the purpose of trafficking (FE 325-5) [custodial sentence of 2 years and 10 months (5 months and 1 week pre-sentence custody credit)].

- On July 5, 2012:
 - i) Possession of a scheduled substance for the purpose of trafficking [custodial sentence of 18 months consecutive to sentence serving].
 - ii) Possession of a scheduled substance [custodial sentence of 6 months consecutive].

The Applicant declined to cross-examine Mr. Van Elswyk. Mr. Van Elswyk's evidence was therefore unchallenged.

EVIDENCE OF SPIROS TSAKOPOULOS

8. The applicant appeared on his own behalf, without legal representation and stated that he understood his rights and wished to continue with the hearing unrepresented. He was duly sworn in and provided testimony.

October 6, 2016

9. Mr. Tsakopoulos testified that:

- Since he was last before the Tribunal in March 2011, he only had one new conviction (with respect to an offence occurring on October 21, 2011). The other 2012 convictions relate to an offence that occurred before March 2011, and were already considered by the Tribunal in March 2011 when it decided to grant him conditional licences. In his view, the only convictions and charges that should be considered by the Tribunal are those from October 21, 2011, and described on p. 41 of the Report. He has no record of thefts, credit fraud etc. or mistakes on the job.
- He has been addicted to heroin since the age of 17. He recognizes he has a lengthy criminal record, but maintains it all relates to his heroin addiction, including the offence on October 21, 2011.
- He referenced the March 2011 Tribunal hearing in which he was represented by a lawyer, Mr. Feldman (p. 26 to 29 of the Report). He indicated he should be granted a licence based on the same reasons, that is any criminal offences relate to his heroin addiction and they all occurred on his own time, and weekends. None of his offences are connected to his work as a plumber. He brought the entire record of that hearing along with the exhibits.
- He was first licensed in the year 2000 and has been a plumber for some 15 years. He reported that he has never had any issues with his plumbing work. No client has ever complained and he has never made any errors on the job. He has no offences connected to his work; for example, he has never stolen from a client to support his addiction.
- He was convicted on March 29, 2012 and sentenced to a period of incarceration for six years.
- He reported that he was first released on parole on June 30, 2015, and attended at the MLS offices several days after that and applied for his licences again. While on parole, he attended 17 sessions at a halfway house. In January 2016, he was found to be in violation of his parole as his phone number was in the cell phone of someone who was arrested and this was considered “suspicion of criminal activity” and so he was returned to prison. He did not receive an additional sentence, however.
- He was next released a week ago, on September 29, 2016, and is on parole. He is currently on methadone treatment, which he began in jail. He attends the doctor every Thursday to receive his methadone doses. He indicated he could provide the receipts for the medication he is receiving to support his treatment if needed. He is “clean” now. He is trying to seek help and change.
- In October 2011, when he was pulled over by the police in his car he had heroin on him, and scales [for weighing heroin] in the car. He did

October 6, 2016

not, as required, report the charge from October 21, 2011 to MLS, as he was detained, and did not get bail. As soon as he was released in July 2015, he attended at MLS to re-apply for his licences and also obtained an updated criminal record check. He did ask his brother to attend at MLS on his behalf but his brother was not able to do anything and MLS said he had to attend himself.

- If he did not obtain these licences today, he would continue to work but for his uncle's plumbing business, and while he would earn a living, his income would be lower than if he held a master plumber's licence and plumbing contractor's licence which would allow him to run his own business. It is also a sense of pride for him to use his own truck with his name on it as a master plumber, and to be able to run the business his father established and gave to him when he died in 2012.
 - He currently lives with his mom and brother. He supports his mother but otherwise has no dependents. He is currently living with his mother and has a mortgage to pay.
 - He described the current supports he has, which included regular meetings with his parole officer, weekly methadone treatment on Thursdays, and attendance at the Keele Centre three to four times a week. Another condition of his parole is to maintain employment and the parole officer wants to make sure his days are full to help ensure he stays out of trouble. The parole officer has extended the geographic region he can be in because he is a plumber. There are no conditions as to the time of day he can work. He is on parole for 5 months as his six years are almost done. He also indicates he has the support of his family.
 - He reported that he is a functional addict, and is a good son other than his addiction. He is hardworking. He claimed not to be the type of addict who sits on the couch and collects money from the government. He has done thousands of jobs and there have never been any complaints about his work.
10. Ms Elliott cross-examined Mr. Tsakopoulos. Under cross-examination, he explained that he has been on methadone since going into jail, and that his urine samples were clean while he was out on parole. His parole was suspended on January 9, 2016 and the reason was "suspicion of criminal activity" and it was because he gave his phone number to a fellow inmate who was arrested after being released. Mr. Tsakopoulos also agreed that he was convicted on March 2012, but again indicated that one of his convictions was attributable to offences that occurred before March 2011.
11. On cross-examination regarding the October 21, 2011 incident, Mr. Tsakopoulos indicated that he was pulled over by the police while driving and was with a friend. He indicated he had scales and other drug paraphernalia, but no heroin in the car. His friend told the police the drugs were at his home, and the police later searched his home and found 60-70 grams of heroin.

October 6, 2016

12. On cross-examination, Mr. Tsakopoulos maintained he did not report the charges to MLS in October 2011 or the convictions in March 2012 because he was in jail. He reported when he got out of jail in July 2015 and brought in the new criminal record update.
13. On cross-examination regarding the conviction of dangerous operation of a motor vehicle causing bodily harm in July 2004, Mr. Tsakopoulos indicated he did not get convicted of causing bodily harm, just dangerous driving. He reported that a person grabbed his car window and that he reversed the car, not realizing the person was a police officer; he does not recall anyone being injured other than a couple of scratches. Also, regarding the conviction on the same date for possession of a firearm while prohibited and showing a fine of \$100, Mr. Tsakopoulos recalls a firearm when he was around 18 years old. He thinks this charge must have been related to a “ninja star” or ammunition, and not a gun. His only firearm conviction was back in 1996 or 1998. He stated that the firearm charge in 2004 must be a mistake and that the offence must have been “possession of a weapon.” He maintains it was not a firearm but another kind of weapon, as you do not get fined \$100 for having a gun. He also mentioned that his Dad was a hunter and had guns.
14. On cross-examination regarding whether he had used drugs the night before working, Mr. Tsakopoulos indicated he does not and that he never does drugs at work. During the week he uses methadone. He has done plumbing work, which he agrees requires precision and that he has never had an incident in 15 years. He was incarcerated from October 21, 2011 until June 30, 2015.
15. Mr. Tsakopoulos did not call any witnesses to testify on his behalf.

SUBMISSIONS

City's submissions

16. In her closing submissions, counsel for MLS submitted that Mr. Tsakopoulos' applications should be denied. Given the serious nature of the criminal convictions and the number, there were reasonable grounds to believe that Mr. Tsakopoulos has not complied with the law and would not meet the standards as set out in the *Toronto Municipal Code* and that the licences should therefore not be granted, in order to uphold and ensure for public safety.
17. MLS is concerned about the number and nature of criminal charges against Mr. Tsakopoulos and his long history of criminal convictions. MLS believes this shows a pattern of conduct such that Mr. Tsakopoulos is not entitled to the licences. Though MLS recognizes that some of the offences are old, there has been no indication of reform. Mr. Tsakopoulos does not have regard for the criminal law and MLS is not convinced he will have regard for the licensing regime.
18. Mr. Tsakopoulos suggests that his crimes only harm himself, and lessens his offences by describing them as a result of “partying with friends” on the

October 6, 2016

“weekend.” Mr. Tsakopoulos has had many charges over the years in which matters of public safety, including dangerous operation of a motor vehicle causing bodily harm and firearm offences, are at issue.

19. As a plumber, Mr. Tsakopoulos will be given privileged access to people’s homes. If he is granted the licences, the message that would be sent to the public is that this is acceptable.
20. When the Tribunal granted Mr. Tsakopoulos a licence in March 2011, his licence was put on five years’ probation. The Tribunal gave him a chance then, and seven months later he was again charged with criminal offences which he then did not report to the MLS. His actions show that Mr. Tsakopoulos has shown a disregard for the Tribunal’s authority and that he is ungovernable. This is bolstered by the convictions with respect to failures to comply with bail conditions.
21. The Tribunal can consider Mr. Tsakopoulos criminal convictions over the last 20 years, which show a concerning pattern of conduct. As Mr. Tsakopoulos was issued the two licences in March 2011 on a probationary basis, that allowed MLS to bring back the report considered at that time (Report 5296) and for the Tribunal to consider Mr. Tsakopoulos’ entire criminal history. The charge he incurred in October 2011 was of a similar nature as those in the past, and was not something new or isolated, but rather shows an ongoing pattern of conduct. Although the Tribunal gave him a chance in 2011, this does not mean that the Tribunal has to give him a second or third chance and in MLS’ view, Mr. Tsakopoulos did not take the Tribunal’s authority seriously when he incurred new charges while his licences were under probation.
22. Furthermore, the licences are not essential as Mr. Tsakopoulos is still able to find plumbing work, only in a more limited capacity. Therefore, Mr. Tsakopoulos does not require the licences to earn a livelihood.
23. MLS cannot control what type of work Mr. Tsakopoulos seeks or whether he will have access to people’s homes as a result of that work. However, MLS can deny licences that would entitle him to that access.

Mr. Tsakopoulos’s submissions

24. The Applicant claimed that his criminal record relates only to his addiction to heroin. His offences occurred on weekends and were not in any way connected to his work as a plumber. He is a functioning addict, and his addiction has never impacted his work, nor has he ever stolen anything from a customer.
25. His father died in 2012 and left him the company (Rhino Rooter) because his father believed in him. This is all that his father ever wanted and that was for him to take over the business and support his mother with the income from the business. His family trusts him.
26. He has been addicted to heroin since he was 17 years old. Addiction is an illness. He is nearly 40 years old and is seeking the help that he needs now. His more serious offences (e.g., using counterfeit money) occurred more than 20 years ago.

October 6, 2016

27. He is hardworking and dedicated, and takes pride in his skills as a plumber and in owning his own business. If he does not get the licences, he will work for his uncle's plumbing business and so he will still be entering people's homes and doing plumbing work, and so that should not be a reason to deny him the licences.

DECISION

28. In considering whether to grant or deny a licence, or grant a licence with conditions, the Tribunal must balance the protection of the public interest with the need for the applicant to earn a living.
29. S. 546-4 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.
30. Having weighed the evidence, the Tribunal is satisfied that MLS has shown that there are reasonable grounds to deny these licences to Mr. Tsakopoulos. Mr. Tsakopoulos 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. At this time, the Tribunal is of the opinion that there are reasonable grounds to believe that the Applicant will not comply with the law in the future and that he will continue to constitute a danger to other members of the public.
31. Mr. Tsakopoulos has a lengthy and concerning history of criminal convictions, beginning about 20 years ago with a few breaks and significant amounts of jail time. Mr. Tsakopoulos was released only a week prior to this hearing after being incarcerated for five years. Although some of his most troubling convictions are old, for example, the 1998 and 2004 convictions with respect to firearms, even the most recent convictions in 2012 led to long custodial sentences.
32. Mr. Tsakopoulos was sentenced on March 29 and July 5 2012 to about five and a half years to be served consecutively according to the information in the criminal

October 6, 2016

record check in the Report. Mr. Tsakopoulos provided some information regarding the offence committed on October 2011. Aside from that information we do not have any other details of the offences leading to the 2012 convictions; however, the long custodial sentence is indicative of the nature of the offences and suggests to the Tribunal they are more serious in nature.

33. Though Mr. Tsakopoulos attributes his record to his heroin addiction, MLS pointed out, and the Tribunal agrees, that although many of the crimes relate to drug use, they do not only harm Mr. Tsakopoulos as he claims or relate simply to “weekend partying.” There are many offences of a more serious nature, including trafficking in drugs, as well as firearms offences, all of which pose a serious risk to public safety. Most recently, in October 2011, Mr. Tsakopoulos was charged with four offences, and was eventually convicted of “trafficking in a schedule 1 substance” and “possession of a schedule 1 substance”, and was sentenced to 2 years and 10 months with a 5 month and 1 week credit for pre-sentence custody.
34. MLS submitted that Mr. Tsakopoulos is ungovernable and the Tribunal has similar concerns. When the Tribunal last issued licences to Mr. Tsakopoulos and Rhino Rooter in March 2011, it was only seven months after the Tribunal had issued these licences that Mr. Tsakopoulos was charged with several criminal offences and then failed to report those charges to MLS as required.
35. Mr. Tsakopoulos indicated that this was because he did not get bail, and that he asked his brother to attend at MLS on his behalf. MLS has no record of anyone contacting them on Mr. Tsakopoulos’ behalf. The Tribunal specifically ordered that Mr. Tsakopoulos inform MLS in writing, yet Mr. Tsakopoulos did not provide any written note to MLS either by mail, and/or to a family member or other representative at any time after his detention or once he was convicted.
36. The first time Mr. Tsakopoulos contacted MLS appears to be after his initial release on parole in July 2015 when he submitted the two applications that are before us.
37. In his testimony, Mr. Tsakopoulos indicated that he was released on parole in June 2015, which allowed him to submit applications for licences in July 2015. Mr. Tsakopoulos did not abide by the conditions of his parole, and was returned to prison. Conditions are intended to reduce the risk of reoffending. His inability to comply with his parole conditions is also troubling, and raises additional concerns about his governability if the Tribunal decided to issue conditional licences.
38. The Tribunal recognized Mr. Tsakopoulos’ commitment to his profession, and his desire to regain his Master Plumber’s Licence and his Plumbing Contractor’s licence, as reflected in the fact that having only been released from custody on September 29, 2016, he attended the hearing on October 6, 2016. However, the Tribunal did not feel there was sufficient evidence before it at present to satisfy the Tribunal that Mr. Tsakopoulos has changed his ways and that, going forward, he would be able to comply with the law.
39. Mr. Tsakopoulos testified that if the Tribunal did not issue the licences, he would be able to obtain employment in the plumbing industry but that he would not earn

October 6, 2016

as much income or have the pride of ownership associated with owning his own business. On the evidence before us, this is not a case where the Applicant would have no other means to support himself if we decide to deny the licences. In addition, Mr. Tsakopoulos testified that aside from his mother with whom he currently lives, he has no other dependents. The Tribunal is satisfied therefore that in this case, the protection of the public interest outweighs the applicant's need to make a living as a master plumber or a plumbing contractor.

40. While Mr. Tsakopoulos will have to enter people's homes if he works for another plumbing business, such as his uncle's business, he will be supervised and overseen, whereas if we grant the licences to him to operate his own plumbing business there would be no such oversight of Mr. Tsakopoulos.
41. Even though we decided to deny the licences, Mr. Tsakopoulos has shown remorse and the law supports the principle of rehabilitation. If Mr. Tsakopoulos applies for a Master Plumber or Plumbing Contractor's licence in the future, he would be advised to clearly demonstrate that he has put the past behind him, and that he is able to comply with the law and any conditions that the MLS may, in the future, wish to impose on any licences that he is issued.

Originally Signed

Melina Laverty, Chair
Panel Members, Aly Alibhai and (Hedy) Anna Walsh concurring

[Reference: Minute No. 158/16]

Date Signed: December 8, 2016