

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: March 17, 2016

Panel: Lori Marzinotto, Chair; Cezary Paluch and Dr. (Hedy) Anna Walsh, Members

Re: S.N.
Applicant for a Taxicab Driver's Licence (Application No. B315715)

Counsel for Municipal Licensing and Standards: Ms. Brennagh Smith

Counsel for Applicant: N/A

Applicant: Not Present

Interpreter (Urdu): Ms. Yasmin Amlani

INTRODUCTION

The Toronto Licensing Tribunal (the "TLT") had before it report No. 6216 dated March 5, 2015, concerning S.N.'s application to the City of Toronto's Municipal Licensing and Standards branch ("MLS") for a taxicab driver's licence.

MLS had concerns in relation to *Criminal Code of Canada* charges against S.N. and accordingly, sent a notice of a licence non-recommendation to S.N.

S.N. requested a hearing before the TLT to determine whether or not a taxicab driver's licence should be issued, have conditions placed on it or if the application should be denied.

This matter was previously scheduled to be heard on November 5, 2015 and the parties and the witnesses were in attendance. S.N. was represented by an agent on November 5, 2015. However, on November 5, 2015, Ms. Brennagh Smith ("Ms. Smith"), Counsel for MLS, brought a motion to have the matter proceed *in-camera* (which means that the matter would be closed to the public) and for an order sealing the file of the matter, including all documents filed, all exhibits entered and all court recordings of the matter, including the materials and record for the motion.

At the conclusion of the motion, the TLT rendered an oral decision and was ready to proceed with the hearing of the matter *in-camera*. However, after the Tribunal rendered its decision on the motion, S.N.'s agent asked for an adjournment of the hearing to allow S.N. to obtain legal counsel and have an Urdu interpreter present. S.N.'s agent made the adjournment request despite being prepared to proceed with the hearing without an interpreter at the beginning of the matter. MLS did not oppose the adjournment request

March 17, 2016

but asked that the matter be *peremptory* on S.N. (which means that S.N. could not delay the matter further).

Given that S.N. was not licensed and MLS did not oppose the adjournment request, the matter was adjourned *sine die* (which means that we did not set a date for the next hearing) pending the availability of counsel and witnesses.

Today's TLT hearings started at 9:30 a.m. As is customary, the TLT asked Ms. Smith what agenda item was ready to proceed first. The TLT dealt with two other matters on the agenda before reaching the S.N. matter.

By the time this matter was reached, S.N. was not present in the hearing room; nor did anyone appear on his behalf.

Ms. Yasmin Amlani, Urdu interpreter, was in attendance and available to assist S.N.

When the TLT was ready to proceed with this matter, Ms. Smith asked that all staff not involved with this matter and members of the public be excused from the hearing and that the matter proceed *in-camera* pursuant to the TLT's decision dated November 5, 2015.

By 11:40 a.m., S.N. was still not present and accordingly, Ms. Amlani was excused.

The issue to be decided by the TLT was as follows: Should the hearing on S.N.'s application for a taxicab driver's licence proceed in S.N.'s absence or should S.N.'s application be dismissed?

For the reasons which follow, the TLT dismissed S.N.'s application.

CITY'S EVIDENCE

Ms. Ann Harricharan ("Ms. Harricharan"), TLT Administrative Clerk, was duly sworn in and testified with regards to the efforts made by her and TLT staff to serve the notice of hearing on S.N. and attempts to contact S.N. and to provide the procedural history of this matter.

Ms. Harricharan testified that this matter has been before the TLT several times.

On September 17, 2015, a hearing was scheduled and MLS was prepared to proceed with its witnesses; however, S.N. did not attend and the matter was adjourned.

On November 5, 2015, at the end of the motion to determine if this matter should proceed *in-camera*, S.N.'s agent asked for an adjournment for reasons previously stated and the hearing was again adjourned.

Ms. Harricharan testified that TLT staff did not hear from S.N. after the November 5, 2015 attendance and in January 2016, the matter was scheduled to proceed on March 17, 2016.

On February 8, 2016, a Notice of Hearing (the "Notice of Hearing"), indicating that the hearing would take place on March 17, 2016, was sent by regular mail to S.N. to the

March 17, 2016

address indicated on S.N.'s Request For Hearing dated March 24, 2015, (the "Donland's address"). There was no evidence presented that the Notice of Hearing was returned to sender by Canada Post.

Ms. Harricharan further testified that on February 8, 2016, March 8, 2016 and on March 17, 2016, staff attempted to contact S.N. by telephone at the number provided by S.N. Each time staff attempted to call the number, a "not in service" message was received.

In an effort to contact S.N., Ms. Smith emailed Mr. Irshad, S.N.'s agent who appeared before the TLT on November 5, 2015 (*Exhibit #5*)¹.

In a further effort to ensure that S.N. received the notice of today's hearing, the Notice of Hearing was also sent to S.N. by registered mail at the Donland's address (the "Registered Letter"). A copy of the envelope and the registered letter customer receipt date stamped by Canada Post on March 11, 2016 was entered at *Exhibit #4*.

Ms. Harricharan testified that the Registered letter appeared to be delivered. A print out from the Canada Post website with package tracking information indicated that the Registered letter was delivered on March 14, 2016 and was signed as accepted by someone other than S.N. (*Exhibit #3*).

Prior to the commencement of today's proceedings, Ms. Harricharan indicated that she also contacted Mr. Irshad by telephone and spoke with him. Mr. Irshad indicated that he has not spoken with S.N. and did not think that S.N. would show up at the hearing today.

Ms. Smith submitted that there was sufficient evidence of the efforts made by TLT staff to contact S.N. and that notice of today's hearing was provided. The TLT agreed.

ANALYSIS

Rule 17 of the TLT's *Rules of Procedure* outlines what the TLT may do when a person who is properly served with notice of a hearing does not attend at the time and place indicated in the notice.

Where a person who is properly served with notice of a hearing, the TLT may proceed with the hearing in the person's absence or may dismiss the application without a hearing.

The TLT had to decide whether there was sufficient evidence to show that S.N. was properly served with the notice of hearing.

Rule 7(1) of the TLT's *Rules of Procedure*, may require the Tribunal Administrator to serve any document to any person to the hearing in any of the listed manners which includes regular mail or registered mail to the person's last known address.

¹ Exhibit numbers continued sequentially from the November 5, 2015 attendance.

March 17, 2016

Upon the evidence presented by MLS, the TLT is satisfied that S.N. was properly served with notice of the hearing. S.N. was served with notice of the hearing by regular mail at his last known Donlands address and although not required to do so by the *Rules*, MLS also served S.N. by registered mail. There was no evidence that the notice of hearing sent by regular mail was returned to the sender and the notice of hearing that was sent by registered mail was delivered and signed for by an individual.

The TLT noted that when it was ready to orally render its decision, S.N. was still not present at the hearing and was also not present at the time the TLT concluded the hearing at 12:55 p.m.

For all of the above reasons, the TLT dismisses S.N.'s application for a taxicab driver's licence.

If S.N. chooses to submit an application in the future, the TLT's dismissal of this matter does not prevent S.N. from requesting a hearing before the TLT should one be required.

Originally Signed

Lori Marzinotto, Chair
Panel Members, Cezary Paluch and Dr. (Hedy) Anna Walsh concurring

[Reference: Minute No. 37/16]

Date Signed: April 28, 2016