

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: July 21, 2016

Panel: (Hedy) Anna Walsh, Chair; Cezary Paluch and Aly Alibhai, Members

Re: Imran Malik (Report No. 6309)
Holder of Taxicab Driver's Licence No. D01-3599786

Counsel for Municipal Licensing and Standards: Ms. Amy Murakami

INTRODUCTION

1. MLS requested Mr. Imran Malik ("Mr. Malik") to appear before the Toronto Licensing Tribunal (the "Tribunal") to determine whether or not his taxicab driver's licence should be suspended, revoked or have conditions placed on it.
2. The key issue is whether Mr. Malik's failure to comply with the terms of his probationary licence and his history of bylaw and *Highway Traffic Act* charges and convictions, as well as his criminal charges, provide reasonable grounds to believe that his operation of a taxicab would pose a risk for the public's safety, or that he would not carry out his business with honesty and integrity.
3. Mr. Malik was first licensed to drive a taxicab in 2006. He had previously been before the Tribunal on May 27, 2004, at which time an application for a taxicab driver's licence was denied and on October 10, 2013 for MLS report No. 6030, at which time a taxicab driver's licence was granted, with conditions. These conditions included: (i) four (4) days suspension; (ii) a three (3) year probation period; (iv) a requirement to provide to MLS, at his own expense, an updated abstract of his driving record; and (iv) to report to MLS any new charges or convictions under the *Toronto Municipal Code* or the *Highway Traffic Act*, in writing, within three (3) business days.
4. Mr. Malik has breached the terms of his probationary licence, in that he has failed to notify MLS, in writing, of new *Highway Traffic Act* charges and convictions that he incurred within the specified amount of time.
5. After hearing the evidence submitted by the City, the submissions of City counsel and from Mr. Malik, the Tribunal ordered that Mr. Malik's taxicab licence be revoked for the reasons as set out hereafter.

CITY'S EVIDENCE

6. The City called one witness to testify on its behalf.
 - (i) Mr. Terry Van Elswyk ("Mr. Van Elswyk") was duly sworn and identified himself as Supervisor of Licensing Services with MLS. He testified that MLS Report No. 6309, dated July 9, 2015, had been created by MLS staff and that he had reviewed it and could attest to its contents. 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

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fair and accurate way. The report was entered into the record as **Exhibit #1** without any objections of Mr. Malik.

Mr. Van Elswyk referred to the following portions of MLS Report No. 6309:

- a copy of extracted minutes of the Tribunal hearing, held May 27, 2004, in which Mr. Malik was denied a licence. There were concerns related to three (3) summonses pending; cab driver no licence, cab driver no photograph, cab driver no trip record (pages 19-21).
- Appendix 1, MLS Report No. 6030, dated July 2, 2013 (page 81).
- a report of Mr. Malik first licensed as a taxicab driver, February 23, 2006 (page 4).
- an Integrated Court Offences Network (ICON) printout of the Driver's Abstract for Mr. Malik, requested on June 28, 2013, revealing two (2) convictions, dated February 7, 2013 and May 2, 2012 that took place in a taxicab (page 78).
- a copy of bylaw and *Highway Traffic Act* charges and convictions registered against Mr. Malik (pages 28-29).
- a copy of Minutes of the Toronto Licensing Tribunal's Proposed Resolution, dated October 10, 2013, (MLS) Report No. 6030 licence granted subject to conditions of licence immediately suspended for four (4) days, that Mr. Malik must surrender his taxicab driver's licence and photo ID card on that date and that his licence be placed immediately on probation for a period of three (3) years. Mr. Malik must provide to Municipal Licensing and Standards, at his own expense, an updated abstract of his driving record; if, during the probationary period, Mr. Malik incurs any new charges or convictions under the *Toronto Municipal Code* or the *Highway Traffic Act*, he must notify Municipal Licensing and Standards, in writing, within three (3) business days and during the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions, those matters and report No. 6030, and any updating material, shall be brought back for a full hearing (pages 84-85).
- a copy of a fax received July 27, 2014 from Mr. Malik, advising that his licence has been suspended from July 23 -August 23, 2014. "My license was suspended for 30 days, also 23 July my trial date extended to 23 September 2013 for bylaw speeding", but particular charges not reported (page 86).
- a copy of Mr. Malik's Driver's Abstract, dated August 18, 2014 with status of licence suspended re: 7 demerits (page 87).
- a letter sent by registered mail by MLS, dated August 18, 2014 and signed by Mr. Wayne Mattless, Director, Business Licensing and Regulatory Services, informing Mr. Malik that as a result of his provincial driver's licence being suspended, his taxi licence was suspended (page 88). Mr. Van Elswyk indicated that it was Mr. Malik's responsibility to return the licence and photo ID card to MLS, but that no response was provided and that he never surrendered his taxi licence.
- a copy of Driver's Abstract for Mr. Malik, requested on August 27, 2014 and received September 30, 2014, with status 'licensed' (pages 90-92).
- a copy of Driver's Abstract with search date February 12, 2015, with licence status 'canceled, unlicensed', with two further convictions after licence reinstated (page 94).

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- a letter sent by registered mail by MLS to Mr. Malik's current address, dated January 19, 2015 and signed by Mr. Wayne Mattless, Director, Business Licensing and Regulatory Services, informing Mr. Malik that as a result of his provincial driver's licence being suspended, his taxi licence was also suspended and a request to surrender his taxi licence and photo ID card (page 95). Mr. Van Elswyk indicated that no response was provided and that he never surrendered his licence.
- a copy of Driver's Abstract with search date February 2, 2015, with licence status 'canceled, unlicensed' (page 97).
- a copy of the Ministry of Transportation's Driver's Abstract for Mr. Malik received February 18, 2015, with status 'licensed' (pages 99-101).
- a chart of bylaw and *Highway Traffic Act* charges and convictions against Mr. Malik in reference to Report No. 6030, with charges and convictions after October 10, 2013 while driving a taxicab, that were unreported to MLS as required as part of the reporting requirements of Mr. Malik's probationary conditions (pages 103-104).
- a copy of Driver's Abstract for Mr. Malik requested on February 2, 2016, with status 'licensed', with four (4) new *Highway Traffic Act* charges and convictions (page 172).
- a chart of bylaw and *Highway Traffic Act* charges and convictions and *Criminal Code* charges (pages 123-125).
- a copy of four (4) *Criminal Code* charges including Trafficking in Substance, Possession for the Purpose of Trafficking, Possession of Property (page 123).

The licensee declined to cross-examine Mr. Van Elswyk and his evidence was therefore unchallenged.

LICENSEE'S EVIDENCE

7. The licensee 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 affirmed and testified to the contents of the MLS Report No. 6309. He was assisted by an Urdu interpreter, Ms. Hadia Khan, who was affirmed.
8. The licensee claimed that he was under the impression that his licence was placed on probation for only one year, rather than three years and that accordingly he was required to report all charges and convictions for only one year. The licensee stated: "To the best of my knowledge, I thought it was one year, and now I looked at the document and it says three years." He claimed that his licence was his "bread and butter", that he works twelve hours a day, seven days a week, every day of the year and depends on his work as a taxicab driver to support his family that includes his wife and five children. He claimed that he surrendered his licence the first time and that the letters from MLS were sent to the wrong address. He insisted that his charges and convictions were very minor, "for example if the speed limit is 40 and I go 50, I get a ticket. I never hit pedestrians; they mentioned everything for 13 years." He stated that his provincial driver's licence was "suspended only once not more than that." He stated that: "I respect people."

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9. He referred to the following in Report No. 6309:

Page 123 and claimed that the criminal charges alleged to have occurred on July 24, 2015 related to an incident in which the police conducted a search of his taxicab after a passenger vacated the vehicle and that the police charged him with possession of drugs and stolen property. He maintained that he was innocent of these charges and that the passenger was allegedly in possession of the drugs and stolen property that resulted in the charges.

10. On cross-examination, he reported that he was found not guilty of many of the bylaw and *Highway Traffic Act* charges but could not provide any evidence to that effect. He acknowledged the four (4) convictions registered against him from March 8, 2012-February 7, 2013 but maintained that he was not driving a taxicab, contrary to that which was reported as having occurred in taxicab, plate number 1786. He admitted to having an Urdu interpreter when he last appeared at the Tribunal on October 10, 2013, but claimed not to know that his licence was placed on probation for three years and that he thought it was placed on probation for one year, with reporting requirements for only one year. He claimed to have notified MLS of a charge for an improper stop at a traffic light on July 2, 2013.
11. He acknowledged that the postal code, as noted by MLS, was accurate and current. He claimed that any reported accidents, were not his fault, as he was rear-ended.
12. He claimed that he was in receipt of a letter every six months, providing him with a taxi permit to drive, that was valid for six or three months, with the last one dated June 23, 2016, which was entered into the record as **Exhibit #2**.
13. He claimed that prior to his licence being suspended, he didn't have a photo ID card and didn't drive for two months. He reported that he did not know what happened to his photo ID for those two months. He stated: "Maybe it was left in the taxi when my licence was suspended or another driver took it. I don't know". He claimed that he reported his photo ID as being lost or stolen, "I reported my licence was stolen or lost 3 or more times", but could not provide any evidence to that effect.
14. He claimed that in the last two years, whenever he went to renew his licence that he was never provided with any receipt and could therefore not provide any evidence of renewal of his licence. He claimed that "the officer at the front is lying or people here are not aware of the situation. If my licence is cancelled or it seems they are after my licence to be cancelled".
15. When asked to explain why he was driving without a licence, he complained that: "City counsel is trying to confuse me by asking the same questions over and over."
16. He claims to have had other employment prior to 2006. He claims to have lived in Montréal and to have worked there as a factory worker and at a pizza restaurant.
17. He reported that his wife is not working, that he is the sole provider and that he has five children, with the eldest being twelve years of age and the youngest fifteen

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days old. He maintained that he drives for no company in particular "whoever offers me a cab, like Crown or Co-op." He claimed to not have worked for the past month and a half, because his wife was unwell and pregnant and that he borrowed money from his brother. He claimed that as a result of being on cholesterol medication and on another medication for his stomach, he can only engage in work as a taxicab driver.

18. He acknowledged that his licence was previously denied by the Tribunal in 2004, and that his driver's licence was suspended once for thirty days and then once it had expired.

Mr. Malik did not call any witnesses to testify on his behalf.

CITY'S SUBMISSIONS

19. In her closing submissions, counsel for MLS submitted that Mr. Malik's licence should be revoked, as he did not comply with his probationary conditions. On October 10, 2013, the Tribunal imposed conditions that were central to the decision reached to issue a licence and these included the conditions set out above at paragraph 6 of these Reasons. Counsel for MLS submitted that despite having had the assistance of an interpreter at the Tribunal on October 10, 2013, Mr. Malik did not comply with those probationary conditions. During the probationary term, he failed to report nine (9) *Highway Traffic Act* convictions. There were a total of twenty-three (23) incidents that he was required to report and that two of the three which were reported, were reported late. Furthermore, there were additional bylaw and *Highway Traffic Act* charges and convictions, suggesting no improvement at all in his driving record, in addition to pending *Criminal Code* charges.
20. Counsel for MLS maintained that Mr. Malik did not appear to acknowledge his wrongdoing, that he was combative and provided no evidence to refute any evidence provided by the City.
21. Furthermore, Mr. Malik admitted to not keeping his "eye on the speedometer sometimes". In addition, there was nothing on file, nor did Mr. Malik provide any evidence, in support of his alleged medical condition.
22. In her closing submissions, counsel for MLS expressed the view that given the serious nature of the circumstances, there were reasonable grounds to believe that Mr. Malik has not complied with the law and would not meet the standards as set out in the *Municipal Code* and that the licence should therefore be revoked, in order to uphold and ensure for public safety.

SUBMISSIONS - LICENSEE

23. The licensee claims to rely on driving a taxicab since 2006 and that although he has engaged in other work in the past, asserts that has no other means to support himself and his family. He asked to be given another chance, to be placed on

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probation for one year or two and promised to be "very careful", but claimed that driving every day inevitably results in being "pulled over".

DECISION

24. The Tribunal orders that Mr. Malik's taxicab driver's licence be revoked, effective immediately, and that he turn in his photo ID card and taxicab driver's licence to MLS.
25. Having weighed all of the evidence presented, the Tribunal concluded that the evidence afforded reasonable grounds to believe that the licensee has not or will not carry on, his trade or business in accordance with the law and with integrity and honesty; and that carrying on of his occupation has resulted and will result in a breach of Chapter 545-4 of the *Municipal Code* and other laws. The Tribunal held that there is compelling evidence that Mr. Malik repeatedly failed to comply with the conditions of his probationary licence that he submit updated abstracts of his bylaw and *Highway Traffic Act* charges and convictions to MLS.
26. When the Tribunal granted Mr. Malik a conditional licence in 2013, the licence was placed on probation for a period of three (3) years to commence on October 10, 2013; and prior to each of the three renewals of the licence, Mr. Malik was to provide to MLS, at his own expense, an updated abstract of his driving record, and to notify MLS, in writing, within three (3) business days, during the probationary period, of any new charges or convictions under the *Toronto Municipal Code* or the *Highway Traffic Act*. He failed to comply with this condition, despite having had the assistance of an interpreter when he was before the Tribunal and also being furnished with a written copy of the agreement. In addition, he incurred additional *Highway Traffic Act* charges and convictions, as well as *Criminal Code* charges that are currently before the Courts.
27. The Tribunal was not encouraged by the licensee's argumentative behaviour during the hearing, or by his lack of acknowledgment for his wrongdoing and corresponding lack of remorse. Rather, the evidence before the Tribunal appears to indicate his complete disregard for the rules and the law. He reiterated several times that his convictions were minor, that he has never "hit a pedestrian" and that he "doesn't keep his eye on the speedometer sometimes".
28. His complete disregard for rules was even observed during the course of the hearing. Despite direction at the outset to refrain from using mobile devices in the courtroom and repeated reminders after each recess to turn off mobile devices, Mr. Malik was observed to open and check his cell phone. Furthermore, he interrupted the process on several occasions and requested that the hearing be conducted differently. For example, when providing testimony, he asked instead to be cross-examined. When having to adduce evidence, he questioned why he had to provide proof and argued that the City should be required to conduct a more thorough search.
29. Accordingly, the strong convincing evidence presented at the hearing provides reasonable grounds to believe that Mr. Malik has not carried on, or will not carry on his operation of a taxicab with integrity and honesty, and his continuing to be

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licensed constitutes a danger to members of the public. In addition to his failure to comply with his probationary conditions, Mr. Malik has several bylaw and *Highway Traffic Act* convictions and *Criminal Code* charges that provide reasonable grounds to believe that he has not complied with the law in the past, and will not comply with the law in the future and that his operation of a taxicab would constitute a danger to other members of the public.

30. The Tribunal, in its deliberations, also considered the licensee's need to make a livelihood. Chapter 545-3B (3) of the *Municipal Code*, subsection (c) requires the Tribunal to balance the protection of the public interest with the need for licensees to earn a living. The licensee revealed during his testimony that he has had other means of support in the past and that he has worked previously in a pizzeria and in a factory.
31. The above evidence, supporting the licensee's disobedience and disregard for the law is convincing and compelling and provides reasonable grounds to believe that Mr. Malik has not carried on and will not carry on his business of driving a taxicab with integrity and honesty. We therefore accept the City's position that Mr. Malik's licence should be revoked.
32. The rules governing taxicab drivers exist to protect the safety of the public and to ensure for the performance of activities with integrity and honesty. Based on the totality of all of the evidence and circumstances outlined above, the Tribunal orders revocation of Mr. Malik's licence, in order to protect the health and safety of the public, in accordance with Section 545-4C(1), subsections (a), (b) and (e) of the *Municipal Code*.

Originally Signed

(Hedy) Anna Walsh, Chair
Panel Members, Cezary Paluch and Aly Alibhai concurring

[Reference: Minute 120/16]

Date Signed: September 8, 2016