

## **REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL**

---

**Date of**

**Hearing:** January 22, 2015

**Panel:** (Hedy) Anna Walsh, Chair; Moira Calderwood and Ted Yao, Members

**Re:** Gezae Asgedom Wureta  
Holder of Taxicab Driver's Licence No. D01-2025869, Drivers' List No.  
5603

**Counsel for Municipal Licensing and Standards:** Mr. David Gourlay

### **INTRODUCTION**

The Applicant waived his right to legal counsel and acknowledged his understanding of the matter before him.

The Applicant was instructed to attend a hearing before the Toronto Licensing Tribunal (TLT) to determine whether his name should be struck from the Drivers' List for interruption of services from January 1, 2010, to December 31, 2013, or whether the TLT may consider it to be entirely beyond his control, not in any way excessive, and that his employment service record should be deemed to be uninterrupted.

Municipal Licensing and Standards (MLS) maintains a list called the "Drivers' List" which shows the order of those waiting to obtain certain taxicab driver's licences.

He was first issued a taxicab driver's licence on January 9, 1991. This licence was not renewed and consequently canceled on December 31, 1993.

He was then issued a taxicab driver's licence on July 24, 1996, that was renewed annually and held up to and including July 24, 2015.

His name was placed on the list in 2004, for an ambassador or an accessible taxicab licence. He has not worked from January 1, 2010, to December 31, 2013, due to side effects of brain surgery.

After hearing the evidence submitted by the City and by the Applicant, as well as the submissions of both parties, TLT deemed that in spite of actual interruption of services from January 1, 2010, to December 31, 2013, the Applicant's employment service was uninterrupted, as set out hereafter.

### **CITY'S EVIDENCE**

The City did not call any witnesses to testify on its behalf.

The Report No. 6232, dated January 6, 2015, was entered into the record as Exhibit 1 on the consent of both parties.

January 22, 2015

The City submitted that the Applicant is currently licensed as a cab driver, is currently on the Drivers' List and has filed his annual filings indicating that he has not worked full time and that in order to have his driving service record deemed to be uninterrupted, he would have to satisfy the TLT that his failure to comply fully with the provisions of the bylaw was entirely beyond his control.

In cross-examination, counsel for the City referred to the following portions.

Page 4, a medical note dated May 9, 2011 from the Applicant's former family physician, Dr. Sol Werb indicating the inability to work from January 1- December 31 2010, as a result of ongoing side effects of brain surgery.

Pages 5-6, a document dated April 2011, of Annual Statutory Declaration of Affirmation, revealing annual filings for 2010 and declaration of no employment and report of no income.

Page 8, a medical note dated January 18, 2012 from the Applicant's former family physician, Dr. Sol Werb indicating the inability to work in 2011, as a result of side effects of brain surgery.

Pages 9–10, a document dated December 31, 2011, of Annual Statutory Declaration of Affirmation, revealing annual filings for 2011 and declaration of no employment and report of no income.

Page 11, a medical note with letterhead "Dr. Sol Werb and Dr. R. Phillipson", dated February 22, 2013 from the Applicant's former family physician, Dr. Sol Werb, indicating the inability to work in 2012, as a result of ongoing side effects of brain surgery.

Pages 12-13, a document dated December 31, 2011 of Annual Statutory Declaration of Affirmation, revealing annual filings for 2012 and declaration of no employment and report of no income.

Page 14, a medical note dated March 3, 2014, from the Applicant's former family physician, Dr. Sol Werb indicating the inability to work from January 1- December 31, 2013, as a result of ongoing side effects of brain surgery.

Pages 15-16, a document dated December 31, 2013 of Annual Statutory Declaration of Affirmation, revealing annual filings for 2013 and declaration of no employment and report of no income.

Page, 17, a letter dated September 23, 2014, from Alison Wolfe, Supervisor of Licensing Services with (MLS) requesting the Applicant's attendance at a hearing before TLT, advising that his Drivers' List position will be the subject of a review.

## **APPLICANT'S EVIDENCE**

The Applicant testified to the contents of the report.

January 22, 2015

The Applicant provided testimony that in August 2004, he was involved in a motor vehicle accident while driving alone on Highway 401 in Toronto. He was sent for an MRI of his head, after experiencing ongoing pain that revealed a brain tumor. In March 2010, he underwent surgery and as a result of side effects of the surgery, has experienced visual loss, depression and stress and has consequently been unable to work.

In cross-examination, he admitted to not working and relying on unemployment insurance for support and not having other prospects for work. He reported visual loss in both eyes, with the left eye being worse than the right and claimed to not have been told that it was permanent. He has difficulty with depth perception. The Applicant stated that "if God is willing", he will recover his vision completely. The Applicant acknowledged his inability to drive until his vision is restored and admitted to last driving a taxicab in 2009, prior to his surgery.

He revealed that he is currently being followed by Dr. Ian Michael, a family physician and that Dr. Sol Werb who had been his family doctor for over 20 years had retired. He revealed that he continues to have follow-up checkups every six months and takes medication for his eyes and is currently not driving, but is still licensed to drive in the province of Ontario and has a taxicab licence.

He reported that he is married, that his wife is working and that he has 2 young children and receives unemployment insurance and has no other means of support.

The Applicant acknowledged that all of the evidence adduced by the City was correct.

## **CITY'S SUBMISSIONS**

In his closing submission, counsel for Municipal Licensing and Standards (MLS) expressed the view that the Applicant adduced sufficient evidence to meet the test to allow the TLT to deem his service continuous, and that any order be limited to 2010 – 2013.

## **APPLICANT'S SUBMISSIONS**

The Applicant pleaded for compassion and asked the TLT to exercise its discretion to deem his employment to be uninterrupted, thereby preserving his position on the Drivers' List and promised not to drive until his vision was fully restored.

## **DECISION**

This was a difficult case in which an Applicant is still licensed to drive a cab, but has been unable to work full time, as a result of ongoing side effects of brain surgery.

The *Toronto Municipal Code* (also called "the by-law"), § 545-133 sets out a regulatory scheme for drivers who wish to maintain their position on the Drivers' List. The requirements relevant to this case are:

Subsection 545-137.3

January 22, 2015

A. An applicant on the drivers' list shall cease to continue to be eligible for a Toronto Taxicab licence and shall be struck off the drivers' list if:

(3) Subject to Subsections E, F and G, the applicant ceases to earn a living in the City of Toronto on a full-time basis as a driver, provided that a driver whose licence has been suspended under this chapter shall be deemed not to cease to earn a living on a full-time basis as a driver during the period of suspension; or  
and

E. Where an applicant satisfies the Toronto Licensing Tribunal that his or her failure to comply fully with the provisions of § 545-137.2A is the result of illness or injury and is entirely beyond the control of the applicant and that the interruption in service is not in all the circumstances excessive, the Toronto Licensing Tribunal may deem the employment service of the applicant to be uninterrupted.

The TLT was persuaded that the Applicant intends to retain his position on the Drivers' List. The Applicant testified that he had remitted payment for insurance and also provided evidence of annual filings with the Municipal Licensing and Standards Division as per Subsection 545-137.2A. There was also compelling evidence of ongoing medical problems beyond his control, that interfered with his ability to work full-time.

In considering the circumstances of this case, the TLT was persuaded by the compelling evidence brought forth by the Applicant and was satisfied that his failure to fully comply with the provisions of the bylaw from January 1, 2010, to December 31, 2013 was the result of illness, or injury, entirely beyond the control of the Applicant and that interruption in service was not in all the circumstances, excessive. Accordingly, the TLT ordered the employment service of the Applicant from January 1, 2010, to December 31, 2013 to be deemed uninterrupted.

---

(Hedy) Anna Walsh, Chair  
Panel Members, Moira Calderwood and Ted Yao concurring

*[Reference: Minute No. 3/15]*

**Date Signed:** \_\_\_\_\_