

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: July 6, 2017

Panel: Aly N. Alibhai, Chair; (Hedy) Anna Walsh and Daphne Simon, Members

Re: Jeremy Nicholas George Mercer (Report No. 6733)
Applicant for a Tow Truck Driver's Licence (Application No. B670888)

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett

INTRODUCTION

1. Mr. Jeremy Nicholas George Mercer (“Mr. Mercer”) requested a hearing before the Toronto Licensing Tribunal (the “Tribunal”) to determine if a Tow Truck Driver's Licence should be issued, have conditions placed on it or if the application should be denied.
2. Mr. Mercer was represented by a licensed paralegal, Isai Chalmiev (“Mr. Chalmiev”)
3. For the reasons that follow, the Tribunal concluded that, at this time, Mr. Mercer's application for a Tow Truck Driver's Licence should be denied.

FACTS

4. The City called Ms. Olga Kuztelska, Supervisor with MLS, as a witness. Ms. Kuztelska was affirmed.
5. Ms. Kuztelska testified that she was familiar with MLS Report No. 6733 which had been prepared by her predecessor; Mr. Terry Van Elswyk, and that she had prepared the update to MLS Report No. 6733 dated May 5, 2017 at page 112 (MLS Report No. 6733 -UPDATE) and the update to MLS Report 6733 dated June 23, 2017 at page 150 (6733 – UPDATE).
6. MLS Report No. 6733, comprising of pages 1 through to 162 was entered into the record as Exhibit 1 without any objection.
7. Ms. Kuztelska testified to the contents of Exhibit 1 and, in particular, the following:
 - Mr. Mercer's four (4) convictions for driving while suspended and two (2) convictions for operating a motor vehicle without insurance as set out in the chart at pages 11 to 13 of Exhibit 1.

July 6, 2017

- The facts as set out in the Toronto Police Service Occurrence Report with respect to charges laid against Mr. Mercer on May 29, 2013 for failing to identify himself, driving while under suspension and operating a motor vehicle without insurance at pages 101 and 102 of Exhibit 1. Ms. Kuztelska testified that these are the same charges which are set out in line 2 at the chart on page 11 of Exhibit 1, two of which resulted in convictions.
 - The facts as set out in the Toronto Police Service General Occurrence Report with respect to two (2) charges of criminal harassment and two (2) charges of mischief/obstruct user property exceeding \$5000 under the *Criminal Code of Canada* laid against Mr. Mercer as set out at pages 118 to 120 of Exhibit 1.
 - The facts as set out in the Durham Regional Police Service General Occurrence Report with respect to three (3) charges of fail to comply with recognizance under the *Criminal Code of Canada* laid against Mr. Mercer as set out at pages 140 to 142 of Exhibit 1. Ms. Kuztelska testified that all these three charges are pending before the courts (see chart at page 150 of Exhibit 1).
8. Mr. Chalmiev cross-examined Ms. Kuztelska and during cross-examination, Ms. Kuztelska testified that all but one of these four charges were withdrawn and that one charge of criminal harassment resulted in Mr. Mercer receiving a conditional discharge (see chart at page 150 of Exhibit 1). She further testified that she could not speak to the disposition of the charge of criminal harassment which resulted in a conditional discharge, other than to state that the disposition was a conditional discharge.
9. Mr. Chalmiev called Mr. Mercer as a witness. Mr. Mercer was sworn and testified as follows:
- The criminal charges that were laid against him relate to a relationship in which he was involved with the victim for two years and that all the charges except one for criminal harassment were withdrawn.
 - He first received his driver's license in 2005 and he was young at the time and made a lot of mistakes then, but he is now the father of three children aged six, seven and nine and he needs a Tow Truck Driver's Licence now in order to make a living and support his family.
 - He took a loan from his father to pay \$12,000 in outstanding fines and is appealing some outstanding fines in the hopes of having them reduced.
 - An electronic mail message dated June 27, 2017 from Azary Gililvov to Tribunal staff member, Ann Harricharan, attaching several images of receipts in respect of outstanding fines paid by Mr. Mercer as well as other documents such as a Recognizance form under section 111 of the *Provincial Offences Act* were entered as Exhibit 2 without any objection.
 - While Mr. Mercer identified the various images contained in Exhibit 2 to indicate that he has paid a number of outstanding fines, some images with respect to, for example, a notice of appeal of a driving under suspension conviction referred to by Mr. Mercer, were not visible to the Tribunal. Some \$12,000 of the total of \$27,000 in outstanding fines has been paid by Mr. Mercer.
 - He has only ever worked as a tow truck driver and has never done any other work. He has previously worked as tow truck driver in Richmond Hill, but presently only works as a tow truck driver in Markham.

July 6, 2017

- He obtained a Police Criminal Records Check from the York Regional Police for purposes of his application for a Tow Truck Driver's Licence with the City of Toronto and this check revealed that he currently has no criminal conviction(s) in the RCMP National Repository of Criminal Records and/or police local files. This Police Criminal Records Check dated June 29, 2017 was entered as Exhibit 3 without any objection.
- He wants to work as a Tow Truck Driver in the city of Toronto and that is why he is before the Tribunal.
- His three children live with him and he lives with his mother.
- His is the only source of income for his family.
- Although he is working full-time as tow truck driver in Markham, not having a licence to operate a tow truck in Toronto would create a financial burden for him.
- He has become a different person over the last two years since his children have started living with him after their mother encountered some problems and he has learned from his past mistakes and now wants to be able to earn a living in order to provide for his children.

10. Mr. Cornett cross-examined Mr. Mercer and during cross-examination, Mr. Mercer testified as follows:

- The mother of his children does not earn any income, she is on social assistance and she does not provide any support for the children.
- He is no longer working as a tow truck driver in Richmond Hill because it is "out of the area" and he wishes to work in Toronto and to continue working in Markham.
- He wants to work as a tow truck driver in Toronto because there are more opportunities for business in Toronto given the presence of the Highway 401 and the greater number of roads.
- The recent criminal charges laid against him for breach of bail (recognizance) conditions are based on inaccurate and wrong facts and in fact two of the charges resulted from him being out after 8 p.m. and one relates to the fact that he was not at the residence at which he was required to be according to the condition of bail.
- He lied about his identity to the police when he was previously caught driving while under suspension because he panicked, was nervous as he had his children with him and had not paid his \$27,000 in outstanding fines at the time. He made a mistake and has learned from it.
- His first conviction of operating a motor vehicle without insurance was a result of him not being able to afford insurance and he takes responsibility for this conviction. However, the second such conviction resulted from his cousin, Terry Mercer, fraudulently using his driver's licence when he used his vehicle and, as such, he is now appealing the second conviction. He looks like his cousin, Terry, and his cousin has admitted to Mr. Mercer, his family and Mr. Mercer's lawyer that he perpetrated a fraud by using Mr. Mercer's driver's licence.
- The vehicle used at the time of the second conviction for operating a motor vehicle without insurance was Mr. Mercer's vehicle and the vehicle was used by both Mr. Mercer and his cousin who, at that time, lived together. His cousin, Terry, had no knowledge that the vehicle he was driving was not insured.

July 6, 2017

- He is considered a “highway chaser” and works primarily as a tow truck driver on highways and is paid on a commission and first come, first served basis.
- He does not get paid if he is unable to get any tows while he works, but he has previously made as much as between \$15,000 and \$20,000 in a month when he was working full time in both Markham and Richmond Hill.
- He currently can make up to \$5000 a month working as a tow truck driver in Markham.
- Although he recently made a mistake when leaving a threatening and profane voicemail message for his ex-girlfriend in 2016, he has now changed his life, paid a number of his outstanding fines, no longer drives while under suspension or without insurance and the other allegations of criminal wrongdoing that have been made against him are not true.

ISSUE

11. The issue before the Tribunal was whether, pursuant to Chapter 545-4 C of the *Toronto Municipal Code*¹ there are reasonable grounds to believe that Mr. Mercer will not carry on the business of a tow truck driver in accordance with the law and with integrity and honesty or that the carrying on of the business of a tow truck driver by Mr. Mercer would result in the breach of Chapter 546-4 of the *Toronto Municipal Code* or if the conduct of Mr. Mercer affords reasonable grounds to believe that his carrying on of the business of a tow truck driver would infringe the rights of members of the public or would endanger their health or safety. The Tribunal must also consider the requirement in Chapter 545-4 C.1 of the *Toronto Municipal Code* that MLS shall refuse to issue a licence where an applicant has not met the business licensing thresholds set out in Appendix K to Chapter 545, Section 1².

¹ C. Grounds for denial of licence.

(1) An applicant for a licence, or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to be issued the licence or renewal, except where:

(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.

² Administrative thresholds for denial of licence. [Added 2004-01-29 by By-law No. 117-200452; amended 2004-06-24 by By-law No. 483-200453]

(1) In addition to the grounds set out in Subsection C of this section, the Municipal Licensing and Standards Division shall, with respect to applications received on or after July 1, 2004, refuse the issuance or renewal of a licence where an applicant has not met the business licensing thresholds as set out in Appendix K to this chapter.

1-C. The Municipal Licensing and Standards Division shall not issue or renew a

July 6, 2017

CITY'S SUBMISSIONS

12. In his closing submissions, counsel for the City asked that the application by Mr. Mercer for a Tow Truck Driver's Licence be denied as there are reasonable grounds to believe that Mr. Mercer has not conducted himself in accordance with the law, with honesty and integrity, or with due regard to public health and safety. In particular, the City submitted as follows:

- Mr. Mercer has been licensed as driver since 2005 and over the course of four years during the twelve year period in which he has been licensed to drive, he has been convicted twice for driving while under suspension and twice for driving without insurance.
- In one case of driving under suspension, Mr. Mercer provided police with a false name.
- In the one case of driving without insurance which Mr. Mercer attributes to a fraud being perpetrated by his cousin, Terry, there is no evidence to support this and Terry Mercer did not give evidence before the Tribunal.
- Mr. Mercer has not taken his convictions and penalties, including jail time, seriously and his driving record is a grave concern for the city in the case of an application for a Tow Truck Driver's Licence which involves driving.
- The city of Markham issued Mr. Mercer a Tow Truck Driver's Licence before criminal charges were laid against him and, as such, the fact that he has a licence from Markham cannot be relied upon as the basis to grant a licence for Toronto.
- Mr. Mercer's recent actions which have resulted in criminal charges being laid against him raise concerns about his potential to engage in violent behaviour.
- While Mr. Mercer disputes the allegations on which his recent charges for breach of recognizance are based, the allegations are consistent with a pattern of non-compliance with the law.
- Mr. Mercer is able to earn a livelihood by working full-time as a tow truck driver in Markham and he also previously worked in Richmond Hill and his assertion now that Richmond Hill is "out of area" is not compelling.
- That Mr. Mercer works as "highway chaser" creates an even greater risk for the public in light of his record of non-compliance with the law as a driver and not enough time has elapsed since his convictions on serious driving offences and the present.
- If Mr. Mercer were to come before the Tribunal in the future after sufficient time has elapsed between his record of non-compliance with the law and with a record that clearly establishes that he is able to conduct himself in accordance with the law and with honesty and integrity, the City of Toronto would be more favourably disposed to granting a Tow Truck Driver's Licence to him.

licence but may recommend that the Toronto Licensing Tribunal issue or renew a licence on conditions if, at the time of an application for a licence or renewal, an applicant has:

.....

(ix) any restriction code 07 conviction that is more than one year old, but not more than three years old;

July 6, 2017

APPLICANT'S SUBMISSIONS

13. Mr. Chalmiev submitted that:

- It would be highly prejudicial to deny Mr. Mercer's application for a Tow Truck Driver's licence on the basis of charges and allegations which have not yet been proven in court.
- Mr. Mercer has paid some \$12,000 of his outstanding fines and has even spent time in jail as a result of his driving offences.
- There is nothing unusual about a six (6) month suspension when one is caught driving while under suspension because a six month suspension is the norm for such an offence.
- Mr. Mercer is currently appealing two of his convictions.
- Mr. Mercer has three young children and is the sole provider for his family.
- Mr. Mercer is trying now to turn his life around, all he knows how to do is be a tow truck driver, he has not been in trouble with the law in some time and he needs a licence in order to be able to provide for his family.

DECISION

14. On the basis of the facts and the law as set out in these reasons and taking into account the mandate of the Tribunal to protect the public interest, the Tribunal decided, at this time, to deny Mr. Mercer's application for a Tow Truck Driver's Licence.
15. The Tribunal concluded that Mr. Mercer's history and pattern of non-compliance with the law, as a driver and in particular, his four convictions for driving while under suspension and two convictions for operating a motor vehicle without insurance over a relatively short period of time in a twelve year history as a licensed driver, compelled the Tribunal to place greater emphasis on the need to protect the public interest by not granting a Tow Truck Driver's Licence at this time. This was especially so considering that the Tribunal was also presented with evidence of allegations of serious criminal wrongdoing including one conviction for criminal harassment resulting in a conditional discharge.
16. The Tribunal also concluded that Mr. Mercer is currently able to earn a livelihood and that, in fact, it may very well be that he can earn more if, as in the past, he works as a tow truck driver in both Markham and Richmond Hill. The Tribunal was therefore not convinced that Mr. Mercer will not be able to earn a livelihood if his application for a Tow Truck Driver's Licence is denied at this time.
17. In rendering its decision, the Tribunal remarked that should, in the future, Mr. Mercer decide to make application for a Tow Truck Driver's Licence in the city of Toronto, he would be well advised to come before the Tribunal with a driving record which serves to clearly establish that he has, over a period of time,

July 6, 2017

conducted himself with honesty and integrity and in accordance with the law, and that he has put his past behind him.

18. The Tribunal indicated that the passage of time would be to the benefit of Mr. Mercer and, in particular, that it would give him the opportunity, through his deeds and conduct, to demonstrate to the Tribunal and MLS that he is able to abide by the law, and that sufficient time has elapsed since any breaches of the law and therefore, that the public interest grounds for the denial of his Tow Truck Driver's Licence application as set out above are no longer as relevant as they were to the Tribunal in considering his application made on September 27, 2016.

Originally Signed

Aly N. Alibhai, Chair
Daphne Simon and (Hedy) Anna Walsh concurring

[Reference: Minute No. 198/17]

Date Signed: July 20, 2017