

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

**Date of
Hearing:**

August 17, 2017

Panel:

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

Re:

Aziz Ahmad (Report No. 6707)
Holder of Toronto Vehicle-For-Hire Driver's Licence No D01-4431237

Counsel for Municipal Licensing and Standards:

Ms. Penelope Ma

INTRODUCTION

Mr. Aziz Ahmad has been requested to appear before the Toronto Licensing Tribunal ("Tribunal") to determine whether or not his Toronto Vehicle-For-Hire Driver's Licence should be revoked, suspended, or have conditions imposed on it.

Mr. Ahmad waived the right to an interpreter and chose to proceed without one, rather than adjourn the hearing to September 14, 2017, in order to secure a certified Urdu interpreter. Mr. Ahmad acknowledged that he wished to represent himself at the hearing.

The hearing proceeded on August 17, 2017.

ISSUE

Does the conduct of Mr. Ahmad afford reasonable grounds to believe that he will not carry on his business in accordance with the law and with honesty and integrity?

The Tribunal reviewed all of the evidence presented during the hearing and determined that Mr. Ahmad's conduct provided reasonable grounds to believe that he will not carry on his business in accordance with the law and with honesty and integrity. His licence was therefore revoked.

SUMMARY OF THE EVIDENCE

The City of Toronto's Evidence

The City presented evidence through three (3) witnesses, who were sworn or affirmed: Olga Kuztelska, Supervisor, Municipal Licensing and Standards; Cesar Jaramillo, Municipal Licensing and Standards Officer; and Detective Gregory Falconer, Toronto Police Service, 12 Division. The City also relied on the contents of MLS Report No. 6707. A summary of the relevant evidence presented during the hearing follows:

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Mr. Ahmad first applied for a taxicab driver's licence on May 12, 2015 with an expiry date of May 12, 2017. On July 24, 2017, Mr. Ahmad submitted a renewal payment and the licence was deemed to continue.

On August 15, 2016, MLS received information about a complaint of sexual assault in regard to a taxicab driver. MLS assisted the Toronto Police Service in identifying the cab driver and taxicab in question through a series of email messages, shared photograph images and video of the driver and the licence plate near the scene of the alleged sexual assault.

On September 6, 2016, Mr. Aziz Ahmad was charged with Sexual Assault and Theft Under \$5000 under the Criminal Code of Canada. It is alleged that Mr. Ahmad picked up a 16 year old female customer on the night of August 9, 2016 and that he sexually assaulted her while she sat in the front seat of his cab and eventually drove away with her knapsack. The City presented some of the evidence that was relied upon by the police when they arrested Mr. Ahmad. In April 2017, the Crown proceeded to a trial on the criminal charges.

Mr. Ahmad appeared before the Tribunal on October 20, 2016. At that time, MLS and the licensee agreed to joint proposed interim conditions, one of which suspended his taxi driving privileges and required that he surrender his taxi driver licence and photo identification card. The Tribunal approved these proposed interim conditions. In addition, one of the bail conditions of Mr. Ahmad's release in relation to the criminal charges was that he was not operate a taxi, or any ride sharing service vehicle, pending the outcome of the criminal charges..

The criminal charges were stayed on April 5, 2017. Detective Falconer testified that at the hearing that the complainant did not want to provide any further evidence under cross examination at the criminal trial and that she refused to continue. Detective Falconer explained that when charges are 'stayed' it means that the case is essentially on hold and that the Crown may bring the charges forward again, at any time within a 12 month period following the stay, if there is any new evidence.

The City's evidence referred to MLS' Report No 6707 (marked as Exhibit #1) which provided information on two convictions against Mr. Ahmad in 2015. One was a Highway Traffic Act charge of Disobey Lane Light and the other was a by-law conviction of Unauthorized Parking.

The Report also contained an updated chart of three (3) new by-law and three (3) new Highway Traffic Act charges issued against Mr. Ahmad, as reproduced below:

May 29, 2017- Taxicab Operator No Licence	Court date: February 21, 2018
May 29, 2017-Improper Stop-Traffic Sign Intersection	Court date: February 21, 2018
May 29, 2017- Fail to Keep Complete Operator Log- Taxi	Court date: February 21, 2018
May 29, 2017- Unsafe Turn/Lane Change Fail to Signal	Court date: February 21, 2018
April 30, 2017- Overcrowd/Interfere With Public Stand	Court date: February 21, 2018
April 12, 2017- Speeding 97 In A 60 Zone	Court date: February 21, 2018

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These recent charges were laid in the course of Mr. Ahmad driving his taxi and are in contravention of the interim conditions placed on Mr. Ahmad on October 20, 2016 which were still in effect at the time that these charges were incurred.

Testimony of Mr. Aziz Ahmad

Mr. Ahmad was sworn before presenting his evidence.

Mr. Ahmad testified as to how he came to find out about the allegations against him. He testified that he was contacted on September 6, 2016 to attend the police station and was arrested at that time. He was placed under 'house arrest' pending his criminal trial. He also confirmed that one of his bail conditions was that he could not drive a taxi or ride sharing vehicle. He disputed the criminal charges against him and proclaimed his innocence. His testimony to the Tribunal of the incidents surrounding the alleged sexual assault charge differed greatly from the evidence provided by the City, even to the extent of his testimony regarding the location where he picked up the female customer. He testified that the complainant's allegations and the surrounding circumstances were fabricated and that his criminal lawyer proved this at the criminal trial and that this is why the criminal charges were stayed.

Mr. Ahmad testified that when the criminal charges were stayed in April 2017, he attended at the MLS office to determine when he could have his taxi driver licence reinstated. He was advised to wait for a notice from the Tribunal.

Mr. Ahmad admitted that he drove his taxicab in April and May 2017 resulting in the by-law and Highway Traffic Act charges laid against him. He submitted that he was driving his family to the grocery store on those occasions. He testified that he kept the meter on and the roof light off the taxi during these rides with his family. He did this so he could claim insurance in case of an accident. He does not collect money from his family for the rides as he would for regular customers.

Under cross-examination from counsel for the City, he stated that he was aware that his taxi driving privileges had been suspended since October 2016, but that when he attended at MLS, no one told him that he could not drive his taxicab following the conclusion of his criminal trial. In fact, he stated that his criminal lawyer told him he was 'good to go' and that his understanding was that he could start driving his taxicab right away following the conclusion of his criminal trial and the stay of his charges. He admitted that he had turned over his taxi driver licence to MLS in October 2016 and that it had not been returned.

Mr. Ahmad testified that he has been in Canada for five years. He is the sole income support for his wife and three kids (aged 4, 3 and 1.5yrs old) and driving a taxi provides him with the flexibility to determine his own hours and, at the same time, take care of his family. He previously worked heavy labour jobs, as a forklift operator and in construction. He also was an office assistant and a translator working with the United States Army back home.

SUBMISSIONS

Ms. Ma for the City of Toronto

Ms. Ma submitted that the City is asking for Mr. Ahmad's licence to be revoked. The City has serious concerns about the conduct of Mr. Ahmad and submitted that the evidence provided reasonable grounds for belief that Mr. Ahmad will not carry on his business in accordance with the law and with honesty and integrity, pursuant to the Toronto Municipal Code, § 546-4.A.

The City provided three main reasons for its submission:

- 1) The serious charges of Sexual Assault and Theft Under \$5000 under the Criminal Code of Canada;
- 2) The charges and convictions under the by law and Highway Traffic Act; and
- 3) The very recent breach of the proposed interim Tribunal conditions.

Ms. Ma submitted that the criminal charges were of concern to the City as they involved a minor and that the incident allegedly occurred during the course of Mr. Ahmad's driving a taxi. Ms. Ma submitted that the fact that the Crown proceeded to trial should be noted as it meant that there was a reasonable prospect for conviction. The threshold to be met in denying a taxi driver licence was a lower threshold than proof of guilt beyond a reasonable doubt, the threshold for conviction in criminal matters.

Ms. Ma submitted that Mr. Ahmad continued to drive his taxi while his licence was suspended. This, too, was of concern to the City. His six recent offences in April and May 2017 highlighted the point. He had not been given his physical taxi licence back by MLS and should therefore not have been driving a taxi. His explanation that he was driving his family to go shopping and that he kept the meter running for insurance purposes was yet another example of his lack of honesty and integrity and conduct that was not in accordance with the law.

Mr. Ahmad

Mr. Ahmad forcefully denied any guilt with respect to the criminal charges. He submitted, once again, that the complainant's story was fabricated and that is why the charges did not result in a conviction and were instead stayed. He cooperated with the police and everyone involved in this matter but now he wishes to be able to resume driving his taxi. He cannot work at another job and needs to be able to drive a taxi to support his family and earn a livelihood.

DECISION

The Tribunal considered all of the evidence as presented in MLS Report No 6707, the testimony of the City's witnesses, Mr. Ahmad's testimony and the submissions from both the City and Mr. Ahmad. The Tribunal accepted the City's submissions.

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The Tribunal viewed the criminal charges as serious and noted that the stay of the charges meant that the matter could be re-opened within 12 months if the Crown deems appropriate and necessary. The Tribunal was not in a position to favour one version of events over the other version in terms of the allegations of criminal conduct. Indeed, the Tribunal did not need to make a determination as to Mr. Ahmad's guilt or innocence on the criminal matters. The test for revocation of a taxi licence is subject to much lower standard of proof than that required for a criminal conviction as referenced in the Toronto Municipal Code below:

Toronto Municipal Code, § 546-4.A.

Grounds and administrative thresholds for denial of a licence

- A. An applicant for a licence or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to the licence or the renewal, except where:
- 1) The conduct of the application affords reasonable grounds to believe that the applicant has not carried on, or will carry on, the business in accordance with law and integrity and honesty, or
 - 2) There are reasonable grounds to belief (sic) that the carrying on of the business by the applicant has resulted, or will result, in a breach of this chapter or any law; or
 - 3) The conduct of the applicant or other circumstances afford reasonable grounds to believe 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, their health and safety.

In considering the test as set out above, the Tribunal placed emphasis on Mr. Ahmad's conduct after the criminal trial. Specifically, the Tribunal was concerned by Mr. Ahmad's numerous breaches of the interim conditions imposed by the Tribunal that suspended his driving privileges. The fact that Mr. Ahmad drove a taxi in violation of the interim conditions was a grave concern for the Tribunal. The Tribunal did not find Mr. Ahmad's explanation credible when he stated that he thought he was able to drive a taxi again following the conclusion of his criminal trial. He never received his physical taxi licence back from MLS and the Tribunal found that he knew he could not drive a taxi but that he chose not to obey the conditions because of his view that he had been vindicated in the criminal matter. This conduct on the part of Mr. Ahmad showed a lack of honesty and integrity. Further, if Mr. Ahmad chose not to comply with conditions imposed by the Toronto Licensing Tribunal, there were no other means available to the City to oversee and administer his taxi licence.

Further, his admission that he kept the meter on while driving his family 'for insurance purposes', in case of an accident, is tantamount to insurance fraud, and in the Tribunal's view is problematic. This was another basis for concluding that Mr. Ahmad's conduct demonstrated that he could not carry on his business in accordance with the law and with integrity and honesty.

In reaching our decision, we also applied the Tribunal's mandate, as set out in the Toronto Municipal Code, § 546-8.A(3)(c), which requires that the Tribunal:

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Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.

The Tribunal decided that, in all the circumstances of this matter, the protection of the public interest outweighed the need for the licensee to earn a livelihood. The Tribunal took note of the serious nature of the criminal charges as well as the fact that Mr. Ahmad took a rather cavalier attitude about breaching the Tribunal's interim conditions. This led the panel to conclude that the public interest outweighed Mr. Ahmad's need to earn a livelihood by driving a taxicab. The Tribunal noted that Mr. Ahmad has previously worked as an office assistant and an interpreter prior to coming to Canada. He is a young man and presented as intelligent and articulate with a promising future ahead of him. The Tribunal noted that Mr. Ahmad could always make application for a taxi driver licence at a later date after the passage of sufficient time and when he is able to present clear and compelling evidence of his ability to conduct himself in accordance with the law and with honesty and integrity.

For the foregoing reasons, the Tribunal revoked Mr. Ahmad's Vehicle-For-Hire Driver's Licence No D01-4431237.

Originally Signed

Daphne Simon, Chair
Panel Members, A.N. Alibhai and (Hedy) Anna Walsh concurring

[Reference: Minute No. 233/17]

Date Signed: September 28, 2017