

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: October 16, 2015

Panel: Ted Yao, Chair; Leigh Lampert and David Peacock

Re: Morgan Otuo Acheampong
Holder of Taxicab Driver's Licence No. D01-3121821

Counsel for Municipal Licensing and Standards: Ms. Amy Murakami

Counsel for Applicant: Mr. Tyrone Crawford

INTRODUCTION

On Sunday, May 25, 2014, Mr. Acheampong was driving home from a wedding in Newmarket, alone. He has been a licensed cab driver with 13 years' experience, but on this date he was driving his personal car. Just north of the 401, his front driver's side tire blew out forcing him to stop. He decided not to call a tow truck, but to change the tire himself, requiring him to kneel down at roadside, close to speeding traffic. This attracted the attention of the police and a cruiser stopped. The officer spoke to Mr. Acheampong, detected alcohol on his breath, and asked Mr. Acheampong to go to the station. The car was towed. At the station, Mr. Acheampong blew 130, 80 being the legal limit. On October 5, 2015, he was convicted of being impaired by alcohol contrary to Section 253 of the Criminal Code. After review of his driving and licensing history and applying the risk assessment for the protection of the public as mandated in the By-law, we decided to revoke Mr. Acheampong's licence.

HISTORY

Mar 20, 2002 Mr. Acheampong is re-licensed as a taxicab driver, after a lapse when he was not in the country.

May 18, 2006 First Tribunal hearing. The Tribunal had before it driver's abstracts that show the following:

- 2002 Two Highway Traffic Act convictions
- 2003 Six Highway Traffic Act convictions
- 2004 Three Highway Traffic Act convictions
- 2005 Three Highway Traffic Act convictions

The Tribunal ordered that Mr. Acheampong be granted a five year probationary licence, with conditions lasting to May 2011.

July 14, 2011 Second Tribunal hearing. The Tribunal had before it driver's abstracts that show the following:

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- 2008 Two Highway Traffic Act convictions, including one careless driving.
- 2009 One Highway Traffic Act conviction for a second careless driving and a 30 day suspension for too many points.
- 2010 Two Highway Traffic Act convictions, both being “driving while under suspension”, one of which was incurred when Mr. Acheampong was driving a cab. Both suspensions carried further one year suspensions (there was a six month overlap) and fines of \$1130 and \$900, both paid. The second suspension expired July 8, 2011.

The Tribunal ordered that Mr. Acheampong be granted a fresh five year probationary licence, with conditions lasting to July 2016. However this second probationary licence required reporting every three months for the first year (2011-2012) and every six months thereafter instead of the usual yearly reporting.

Subsequently, Mr. Acheampong reported tickets (charges) and convictions. Items in the following list mean a charge and a conviction was reported except when a charge was quashed or withdrawn, when only the charge was reported, all as required by the terms of the order. The last three matters have not come to trial so there is no conviction to report.

- Sept 30, 2012 careless, fail to surrender driver’s licence (both charges withdrawn)
- Nov 1, 2012 careless driving (charge eventually quashed), fail to comply with inspection (charge withdrawn)
- Jan 9, 2013 proceed contrary to sign
- Aug 19, 2013 left turn (charge not reported, but conviction reported)
- Sept 16, 2013 careless, later changed to fail to avoid collision
- Oct 29, 2013 proceed contrary to sign
- Feb 7, 2014 improper stop
- Feb 26, 2014 turn signals
- Mar 3, 2014 speeding
- May 25, 2014 impaired (Mr. Acheampong reported this even though he was not required to do so.)
- Nov 19, 2014 proceed contrary to sign
- Feb 14, 2015 amber light (the three 2015 charges listed here were reported but have not yet come to trial)
- Mar 20, 2015 stop sign
- Jul 23, 2015 fail to produce
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Dates generally refer to trial date. One or two incidents were reported late and two were omitted completely. However, Mr. Acheampong did report the criminal charges and by-law charge, which he was not obliged to do.

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Aug 1, 2013 Third Tribunal hearing.

The evidence before the Tribunal was that since the second Tribunal hearing, Mr. Acheampong had incurred ten traffic tickets and only reported the first four. The City itself did not ask that his licence be revoked, but only requested the probation period be extended. The Tribunal accepted the City's submission and extended the probationary licence to Aug 2018.

THIS HEARING

Up-to-date driver's abstracts show the following driving record (dates being when the offence occurred, not the trial date).

- 2011 Two speeding charges and convictions.
- 2012 Two Highway Traffic Act convictions:
 - May 5, 2012 speeding, fine \$132.50, paid
 - July 20, 2012 improper left, \$60 fine, paid
- 2013 Four Highway Traffic Act convictions:
 - Jan 5, 2013 fail to proceed, \$80 fine, paid
 - Jan 31, 2013 careless, changed to fail to avoid collision, \$110, paid
 - Sept 8, 2013 improper stop, \$80, paid.
 - Sept 24, 2013 unauthorized parking (this is a by-law offence)
 - Nov 2, 2013 improper use of turn signals, fine \$80, outstanding
- 2014 no Highway Traffic Act convictions
 - May 25, 2014 impaired, as described, \$2340 fine, six months to pay
- 2015 Three Highway Traffic Act charges:
 - Feb 14, 2015 amber light fail to stop, pending
 - Mar 20, 2015 disobey stop sign, pending
 - July 23, 2015 fail to produce licence, pending

This hearing has had a lengthy history. It was commenced by letter of July 31, 2014 because a City of Toronto staff investigation¹ revealed that Mr. Acheampong's Provincial Driver's Licence was currently under suspension and he had "Criminal Code of Canada charges of Impaired Operation by Alcohol or Drug and Operation over 80 mgs – which pose a concern to Municipal Licensing and Standards" (p. 155). Another panel gave Mr. Acheampong an adjournment on January 23, 2015 and this panel began to hear evidence April 16, 2015. There were two more adjournments, whose purpose was to have the benefit of a court ruling on the Criminal Code charges. On October 5, 2015, Justice Weinper convicted him of impaired operation, stayed the over 80 and pronounced an order under Section 253 of the Code prohibiting Mr. Acheampong from driving for one year.

In April 2015, Mr. Acheampong's lawyer for the Criminal Code matters, Mr. Pasquale, advised him:

¹ Although we did not have evidence on this point, it seems a reasonable inference that this staff investigation was triggered by Mr. Acheampong's voluntary reporting of the May 2014 Criminal Code charges.

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“As I have discussed with you previously, the Crown will have difficulty proving both of the charges of 253(1)(a) and 253(1)(b) of the *Criminal Code*. The arrest, the breath demand and seizure of breath samples were made in violation of your rights protected by the *Canadian Charter of Rights and Freedoms*, specifically section 8 of the Charter. We have already made an application concerning that issue. In addition the Crown does not have direct (eye witness) evidence concerning when the last moment of care or control or operation of any motor vehicle occurred by you, (sic) which is required to prove both charges.”

On September 18, 2015, the penultimate hearing date, Mr. Crawford, Mr. Acheampong’s lawyer for the licensing matter, arguing for a further short adjournment, referred to Mr. Pasquale’s letter. Using a basketball term, he predicted that if Mr. Acheampong were convicted of the criminal charges, the case would be an easy one for the City.

As set out previously, Mr. Acheampong pleaded guilty to one of the charges and the other was stayed. He says it was a plea bargain. However the conviction alone does not constitute the full range of matters we must consider. Since we have to look at his need to make a livelihood, we have to consider that Mr. Acheampong is the sole supporter of his family of a stay-at-home wife and four children. He is 63, an immigrant from Ghana and has no other skill than being a cab driver. He works 12 hour days, six days a week. He also attempted to establish that his driving record since the last Tribunal date, not counting the Criminal Code incident, is better than pre-2013. This has some validity. Finally he stated no one has told him explicitly that he had to improve his driving record². This Tribunal and the City it serves want cab drivers to be successful. Unfortunately, with the one year court prohibition in place and Mr. Acheampong’s conduct in relation to the other probationary orders, we cannot think of any further probationary order that has a realistic chance of working.

He has had his driver’s licence suspended and driven during the suspension on two occasions. The following is a list of suspension dates:

May 18 2006	ten day suspension
July 14, 2009	one month suspension, demerit point total
Jan 2, 2010	one year suspension for driving while licence is suspended
July 29, 2010	one year suspension for driving while licence is suspended
May 25, 2014	three month ADLS suspension (same date as the Criminal Code charge)

“ADLS” is a three month administrative suspension that is imposed on a roadside basis and is in addition to any other court ordered sanction. In cross examination, Mr. Acheampong said he could not remember whether there were extensive periods when he did not drive in 2014, while his memory was excellent about Highway Traffic Act infractions in 2013. He was in every case able to minimize the circumstances, always with no fares or passengers when he received a ticket, there was never a personal injury, and except for one case, no property damage. We do not have to make a finding of credibility with respect to whether he actually obeyed the three month roadside driving suspension in 2014. It is clear from his testimony that he has failed to use the time from

² This is not true; he took a one day driving improvement course in 2011, on the advice of his lawyer.

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May 2014 to today, October 2015, to thoughtfully reflect on his driving behavior, show some remorse and responsibility and come up with a concrete plan for the future. The July 2011 panel indicated that he said he had problems for the last five or six years back home in Ghana and now he is staying in a shelter with his children, and that he would like to be given a second chance; *he will now abide by the rules*. Having received the opportunity for a second chance twice, he has failed to keep this promise.

The test in Toronto Municipal Code has a number of parts, and any one of which will justify revocation:

- whether there are reasonable grounds for belief that Mr. Acheampong's cab driving has broken the law in the past³; amply proven from his many Highway Traffic Act infractions and one Criminal Code conviction.
- whether there are reasonable grounds for belief that Mr. Acheampong's cab driving will break the law in the future⁴; he has incurred three new charges in 2015 during the currency of this hearing process, when he should have been on his best driving behaviour. From his testimony before us today, he has not taken any private driving courses since the one he took in 2011. He has taken the mandatory cab driver refresher courses (every four years) and he stated that he never had "advice from them [Municipal Licensing and Standards] to improve my driving record". We conclude he has not, up to now, displayed any real desire to change.
- whether there are reasonable grounds for belief that Mr. Acheampong's cab driving has infringed or will infringe the health and safety of other members of the public⁵. The act of driving down the 400 Highway, having consumed large amounts of alcohol, changing a driver's side tire by the side of the road, at night, was grossly irresponsible. It endangered his life as well as other members of the public.

whether there are reasonable grounds for belief that Mr. Acheampong's cab driving has not or will not be carried on with honesty and integrity⁶; he has broken his promise to this Tribunal (July 2011) to now abide by the rules.

DECISION

Accordingly Mr. Acheampong's cab driver's licence is revoked.

At the pronouncement of this order orally, the City asked us to ask Mr. Acheampong to return his driver's photo ID and 2014 licence. Mr. Acheampong cooperated.

³ Chapter 545-4C 1(b)

⁴ 545-4C 1 (b)

⁵ 545-4C 1 (e)

⁶ 545-4C 1 (c)

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Since the two probationary orders gave Mr. Acheampong a licence that ordered him to report charges and convictions and his probationary licence is revoked, there is no need to report the three Highway Traffic Act matters that still need to go to trial. However, should he re-apply in the future, these will be relevant. He should carefully record the outcomes for his own benefit and if he reports to the City voluntarily, he would benefit from their record-keeping.

The law believes in rehabilitation. Mr. Acheampong indicated he would like some guidance in this regard. He has testified that he now refrains from drinking. This is a good start. He should seek help from a professional or community organization for his issues. In other mobile business licence cases, this Tribunal has benefitted from character testimony, such as attendance at self-help groups. Such evidence could provide an indication of changes in an individual's relationship with addictive behavior etc. as an aspect of demonstrated rehabilitation. If Mr. Acheampong re-applies for a licence in the future, this, along with an absence of further Highway Traffic Act charges, could be helpful.

Originally Signed

Ted Yao, Chair
Panel Members, Leigh Lampert and David Peacock

[Reference: Minute No. 161]

Date Signed: February 2nd, 2016