

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

**Date of
Hearing:**

June 11, 2015

Panel:

Leigh Lampert, Chair; David Peacock and Anna Walsh, Members

Re:

Tarza Construction Services Corp. o/a Tarza Construction Services
Holder of Building Renovator's Licence No. T85-4309458

Counsel for Municipal Licensing and Standards:

Ms. Lauren Elliott

INTRODUCTION

Tarza Construction Services Corp. ("TCSC") holds a Building Renovator's Licence that was issued to it by this Tribunal almost 2 years ago. The reason this matter was originally before the Tribunal was because when the company applied for a licence, CZ, the company's president, had 3 criminal convictions dating back at least to 2001: i) possession of a Schedule II substance; ii) assault causing bodily harm; and iii) uttering threats.

The Tribunal issued the licence for a probationary period of 2 years. Included in the conditions associated with this probationary period was a requirement that CZ report to Municipal Licensing and Standards ("MLS") any additional charges or convictions under the Criminal Code within 5 business days.

In February, 2015, one day after appearing in court, CZ faxed a letter to MLS advising that pursuant to the conditions on TCSC's licence, he (CZ) was writing to advise that he was facing 3 additional criminal charges: i) assault (December, 2012); ii) assault with a weapon (June, 2013); and iii) sexual assault (September, 2014). These charges remain pending with the next scheduled court date for later this month. However, it is unlikely that these matters will be concluded then since the court date is not for trial(s).

MLS has therefore brought this matter before the Tribunal to determine whether the licence should be suspended, revoked, have additional conditions placed it, or be left as is.

MLS'S POSITION

MLS is concerned with the number and nature of the charges. MLS recognizes that these are charges and not convictions, but the charges relate to serious allegations involving violence. Counsel for MLS states that there is a "concerning pattern of conduct" and refers to Chapter 545, Article I, Section 545-4, Subsection C(1)(a), (b), (c) and (e) of the Toronto Municipal Code (the "TMC"). MLS requests that this licence be revoked pursuant to these subsections, and in particular, out of concerns contemplated by (e) which relates to protecting the public.

In the alternative, MLS requests the licence be suspended until the criminal charges have been dealt with.

June 11, 2015

LICENSEE'S POSITION

The corporate licence holder was represented by CZ, its president and sole employee. He was advised of his right to legal representation and confirmed that he wished to proceed without such representation but that he had consulted with counsel in anticipation of this hearing.

CZ advises that pursuant to legal advice, he is not prepared to say much relating to the allegations as the charges are pending before the courts. Counsel for MLS referenced s.13 of the Charter and s.5 of the Canada Evidence Act which protect CZ from having anything he says before this Tribunal being used against him in the criminal proceedings, but he remained reluctant to say much.

CZ introduced documents into evidence which provide a little more context surrounding the allegations. The alleged victim is the same for all 3 charges and is a woman with whom CZ was in an intimate relationship for approximately 3 years.

CZ advises that he has sought a peace bond against the alleged victim.

Under cross-examination, CZ refused to discuss the circumstances relating to the charges, his version of what took place, whether it is alleged that any injuries occurred to the alleged victims, or any other matter of substance relating to the allegations. He maintains that he was not trying to be obstructionist or uncooperative but he was refusing these questions on the advice of his lawyer because he was concerned that his freedom is at stake as a result of the criminal proceedings.

CZ advised that he had some college education, but no diploma or degree and that his entire working career has been spent in construction and renovations. He suggested his employment prospects outside this field were not good. He testified that he lives alone but has significant financial obligations each month in connection with his teenage daughter who lives with her mother and that he relies on his income from TCSC to support himself and to partially support his daughter.

CZ asks that his licence be left as is, pursuant to the order of this Tribunal in 2013 when the licence was issued.

DECISION

The three pending charges are serious, in particular because they involve allegations of violence. However, there is no evidence to suggest that CZ has ever incurred charges or convictions relating to his work.

In our system, a person is entitled to be presumed innocent until proven guilty. This is not to say that licensees will never be affected by pending criminal charges. The relevant standard for this Tribunal is "reasonable grounds", as set out in the TMC, and not "guilt beyond reasonable doubt" or "balance of probability" which may be applicable before other tribunals and before the courts.

In this particular case, there is no evidence to suggest that CZ's work or his customers or sub-contractors have been affected by any criminal or dangerous activity in the past and no evidence to suggest that this will be the case in the future. In addition, there has been no evidence relating to the actual outstanding charges and no evidence from the alleged victim.

Decision of the Tribunal: Re: Tarza Construction Services Corp.

June 11, 2015

On this basis, we find no reasonable grounds to believe that CZ has or will conduct his business in a way that would infringe on the rights of or endanger the health or safety of members or the public, nor that he has not or will not carry on his business in accordance with the law and with integrity and honesty. Likewise, there are no reasonable grounds to conclude that he would otherwise be in breach of Chapter 545, Article I, Section 545-4, Subsection C of the TMC.

The Tribunal therefore declines to revoke or suspend this licence.

However, as a result of the number and nature of outstanding charges, the Tribunal extends the probationary period of the licence to July 31, 2017, with the same terms and conditions that were imposed by the Tribunal when it was originally issued in 2013, including the requirement for CZ to report any new Criminal Code charges or convictions within 5 business days.

Originally Signed

Leigh Lampert, Chair

Panel Members, David Peacock and (Hedy) Anna Walsh concurring

[Reference: Minute No. 82/15]

Date Signed: June 16, 2015