
REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: November 26, 2015

Panel: Lori Marzinotto, Chair; Cezary Paluch, Richard Quan, Members

Re: Toronto Limo and Livery Inc.
Mudassar Azhar Virk, President
Applicant for a Limousine Owner's Licence (Application No. B540934)

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett
Counsel for Applicant: Unrepresented
Interpreter (Urdu): Ms. Zaheda Khan

INTRODUCTION

Mudassar Azhar Virk ("Mr. Virk"), requested a hearing before the Toronto Licensing Tribunal ("TLT"), to determine whether or not a Limousine Owner's Licence should be issued, have conditions place on it or if the application will be denied.

Mr. Virk waived his right to legal counsel and acknowledged his understanding of the matter before him. Mr. Virk was assisted by an Urdu interpreter, Ms. Zaheda Khan.

On August 31, 2015, Toronto Limo and Livery Inc., through its President, Mr. Virk, submitted a Limousine Owner's Licence application to the City of Toronto's Municipal Licensing and Standards branch ("MLS").

On September 1, 2015, MLS issued a Notice of Licence Non-recommendation to Toronto Limo and Livery Inc. indicating it had reasonable grounds to believe that the business or occupation would not be carried out in accordance with Chapter 545 of the City of Toronto Municipal Code (the "Code"). The reasonable grounds were based on Mr. Virk's previous conduct as a Limousine Owner's Licence holder.

On September 14, 2015, MLS received a Request for Hearing from Mr. Virk.

The issue for the TLT was whether Mr. Virk's by-law convictions and driving record demonstrate that it would be in the public interest to permit Mr. Virk to carry on business as a limousine owner.

For the reasons stated below, the TLT decided not to grant Toronto Limo and Livery Inc., Mr. Virk as President, with a Limousine Owner's Licence.

CITY'S EVIDENCE

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Mr. Terry Van Elswyk ("Mr. Van Elswyk"), was affirmed and identified himself as the Supervisor of MLS. He testified that Report No. 6489, dated October 1, 2015 had been created by MLS staff and that he had reviewed it and could attest to its contents. The report was entered into the record as Exhibit #1.

Mr. Van Elswyk testified that Mr. Virk was first licensed by the City of Toronto as a Limousine Driver on April 9, 2008. This licence is due to expire on April 9, 2016. As part of the renewal process, MLS obtained a Driver Record Check from the Ministry of Transportation (p.5 of Exhibit #1). The Driver Record Check showed that Mr. Virk's Ontario Provincial Driver's Licence had been suspended on December 23, 2013 as a result of an unpaid fine.

Mr. Van Elswyk testified that a registered letter was mailed to Mr. Virk on January 30, 2014, advising Mr. Virk that his Limousine Driver's Licence was under suspension and that he was to surrender the Limousine Driver's Licence and Limousine Driver's Photo Identification. Of concern to Mr. Van Elswyk was that MLS received notice from Canada Post that the registered letter, which was clearly marked as being from MLS, was "unclaimed". In addition, Mr. Virk failed to surrender the Limousine Driver's Licence and Limousine Driver's Photo Identification. However, subsequently on June 9, 2014, Mr. Virk submitted to MLS, an updated Driver Record Search from the Ministry of Transportation which indicated that the status of the Ontario Provincial Driver's Licence was now "Licensed".

Mr. Van Elswyk also testified that Last Choice Limo Inc., Mr. Virk as President, was first licensed by the City of Toronto as a Limousine Owner on June 2, 2010. The renewal payment of the licence was not received by the City of Toronto's Municipal Licensing and Standards branch ("MLS"), and the licence was cancelled on September 2, 2012.

Mr. Van Elswyk testified that prior to the Limousine Owner's Licence being cancelled, Last Choice Limo Inc. missed a scheduled inspection on October 24, 2011. As a result of the missed scheduled inspection, a "No Show" invoice, dated November 10, 2011 was issued MLS (p.11 Exhibit #1). The payment of this invoice is outstanding. In addition, a Notice of Suspension was mailed to Last Choice Limo Inc. which also requested that the Limousine Owner's Licence and Limousine Plate be surrendered. Last Choice Limo Inc. also missed a second scheduled inspection on June 22, 2012 (p.14 Exhibit #1). This resulted in a second "No Show" invoice, dated July 13, 2012, being issued by MLS. Payment of this second invoice is also outstanding.

In accordance with Chapter 545, Article XXXIX, Section 545-478A (1) of the Code, every Limousine Owner is required to have their vehicle inspected twice per year on dates scheduled by MLS. Mr. Van Elswyk testified that limousines need to be inspected twice per year to ensure that the vehicle is in a good state of repair in order to protect public safety.

In addition, Mr. Van Elswyk testified that MLS did not receive proof of insurance for the vehicle attached to the Limousine Owner's Licence. A Notice of Suspension, dated May 29, 2012 (p.12 Exhibit #1), was mailed to Last Choice Limo Inc. stating that the Limousine Owner's Licence had been suspended and the Limousine Owner's Licence and Limousine Plate were required to be surrendered.

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On August 31, 2015, Mr. Virk as President of Toronto Limo and Livery Inc., submitted a new Limousine Owner's application to MLS.

Given MLS's concerns relative to Mr. Virk's conduct when he previously held a Limousine Owner's Licence and what was seen by MLS as a complete disregard of the Code, a Notice of Licence Non-recommendation was sent to Toronto Limo and Livery Inc. On September 14, 2015, a Request for Hearing was received by MLS.

Mr. Van Elswyk testified that MLS staff obtained an updated Driving Record Check from the Ministry of Transportation, dated September 21, 2015 (p.20 Exhibit #1). In addition, a review of the MLS and Ministry of the Attorney General's Integrated Court Offences Network ("ICON"), revealed a list of City of Toronto By-law charges and convictions as well as a number of Highway Traffic Act ("HTA"), convictions (p.21, 22, 73 Exhibit #1), including but not limited to, driving while under suspension, driving while holding a hand-held device and driving an unlicensed limousine.

Mr. Van Elswyk testified that a number of By-law charges and convictions occurred after September 2, 2012, which was the date the Limousine Owner's Licence for Last Choice Limo Inc. was cancelled. There were four charges and convictions relating to an incident that occurred on December 19, 2012 resulting in a number of fines, one of which remains unpaid. Mr. Virk was found operating a limousine without the required licence from MLS.

Mr. Virk did not cross-examine Mr. Van Elswyk.

The City called its second witness, Mr. Kevin Lurkhur ("Mr. Lurkhur"), Municipal Standards Officer for the City of Toronto, who was duly affirmed and provided evidence of events that took place on December 19, 2012.

Mr. Lurkhur indicated that he made notes at the time of the inspection and shortly thereafter (which he clarified was on the same day), and was allowed to refer to his notes while testifying. Mr. Virk did not object to Mr. Lurkhur referring to his notes while testifying.

Mr. Lurkhur testified that on December 19, 2012, he had received a complaint of a "limo staging" which he explained to mean that there was no prearranged pickup for the limousine.

Mr. Lurkhur observed Mr. Virk, who identified himself and produced his Provincial Driver's Licence, parked at the front entrance of the Royal York Hotel on the north side of Front Street, Toronto, Ontario

Mr. Lurkhur testified that:

- i) Mr. Virk was in the driver's seat in business attire, including a suit and tie;
- ii) The front passenger seat was in the forward position (common in the limousine industry);
- iii) There was a limousine plate displayed in the front windshield area rather than affixed to the vehicle;
- iv) Newspapers were available in the backseat; and
- v) Mr. Virk did not have the required daily service log.

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Mr. Virk also produced a Limousine Driver's Licence and the ownership for the vehicle which indicated it was owned by Last Choice Limo Inc.

Mr. Lurkhur testified that he found it odd that the Limousine plate was not affixed to the vehicle and therefore checked the City of Toronto Licensing System Database. Mr. Lurkhur found that the Limousine Owner's Licence had been cancelled on September 2, 2012. In addition, the Licensing System Database indicated that vehicle insurance was not provided and the vehicle inspection was not attended.

Mr. Lurkhur questioned Mr. Virk and received two different statements: 1) that Mr. Virk was waiting for friend, and then; 2) that Mr. Virk was waiting for a family member.

As a result of Mr. Lurkhur's findings and belief that Mr. Virk was the operator of an unlicensed limousine, Mr. Virk was issued several Provincial Offence Act notices and the plate was removed from the vehicle. Mr. Virk was convicted and fined for the charges relating to the December 19, 2012 incidents and one fine remains unpaid.

Mr. Virk cross-examined Mr. Lurkhur. Mr. Virk asked Mr. Lurkhur if he was able to drive the limousine and use it for his family. Mr. Lurkhur responded that he was permitted to use the vehicle for his family but that the totality of what he witnessed and the information he obtained on December 19, 2012, led Mr. Lurkhur to believe that Mr. Virk was the operator of a limousine.

APPLICANT'S EVIDENCE

Prior to Mr. Virk being sworn in, Mr. Cornett requested that Mr. Virk's witnesses be excluded from the hearing room. The TLT granted Mr. Cornett's request. Mr. Virk confirmed that he had one witness who then left the hearing room.

Mr. Virk was duly sworn and identified himself.

Mr. Virk testified that he did not know that his Provincial Driver's Licence had been suspended and only found out as a result of being pulled over. Once he learned that his licence was suspended, he paid the fine in order to have the licence reinstated.

Mr. Virk confirmed that he did not attend the scheduled vehicle inspections because his vehicle had not been fixed and that he was having family and money issues.

Mr. Virk testified that he did not received the letter dated May 29, 2012 (p.12 Exhibit #1) from MLS indicating that it had not received proof of insurance. Mr. Virk testified that the vehicle was in fact insured. The TLT noted that the insurance expired on May 28, 2012 (p.13 Exhibit #1). During Mr. Virk's cross-examination by Mr. Cornett, Mr. Virk indicated that he was not driving as a commercial driver and only had personal insurance rather than commercial insurance on the vehicle. Mr. Cornett asked Mr. Virk to confirm that by May 28, 2012, he knew he could not drive a limousine. Mr. Virk responded that he purchased a personal policy of insurance because he was not driving a limousine.

Mr. Virk further argued that the charges and convictions entered for the offence date of December 19, 2012 (p.21 Exhibit #1) are incorrect and that he should not have paid the

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fines he received once convicted. Mr. Virk did not provide the TLT with any evidence to suggest that the charges and convictions were incorrect.

Mr. Cornett cross-examined Mr. Virk. Mr. Virk testified that he was parked in front of the Royal York Hotel to pick up a family friend from the train station. Mr. Virk indicated that it was his mistake that he was parked on the north side of the street rather than the south side of the street where the train station is located.

Mr. Virk testified that his friend, later identified as Mr. Muhammad Irfan ("Mr. Irfan"), was coming to Toronto from Ottawa for pleasure and was staying at different places. Mr. Virk indicated that Mr. Irfan stayed with him for 3-4 days and also stayed with other friends and family. When asked by Mr. Cornett where Mr. Irfan lives now, Mr. Virk replied that he currently lives with him.

Mr. Virk testified that he obtained a vehicle so that he can be a limousine driver. In addition, he is currently training to be a mechanic.

Mr. Virk called his witness Mr. Irfan, who was duly affirmed and identified himself. Mr. Irfan testified that he had called Mr. Virk and that it was during the morning hours when he arrived in Toronto.

On cross-examination by Mr. Cornett, Mr. Irfan testified that he is a distant relative of Mr. Virk. Mr. Irfan provided conflicting evidence as to where he has been living. When Mr. Cornett asked him why he was visiting Toronto in 2012, Mr. Irfan answered that he was living in Toronto but that he went to Ottawa. Mr. Irfan first indicated that he has been living with Mr. Virk since he came to Canada from Pakistan. He then indicated that he moved in with Mr. Virk in November 2012 and lived with him for 8-9 months.

Mr. Irfan could not recall the length of the train ride and indicated that he took a GO train from Ottawa to Toronto. Mr. Irfan did not provide any evidence of his travel arrangements.

CITY'S SUBMISSION

Mr. Cornett asked that the application for the Limousine Owner's Licence be denied because Mr. Virk would not be a responsible limousine owner. Mr. Virk missed two vehicle inspections while he previously held a Limousine Owner's Licence which is a safety issue. Mr. Virk continued to operate a limousine even though the limousine owner's plate had been cancelled and he did not have commercial insurance. Mr. Cornett further submitted that Mr. Virk's driving record is also a concern to the City.

APPLICANT'S SUBMISSION

Mr. Virk indicated that he is the sole provider for his family. He indicated that he needs to drive the vehicle he purchased but also confirmed and acknowledged that he does have a Limousine Driver Licence and therefore could drive for another limousine company. He further submitted that his only mistake was that he did not attend the vehicle inspections.

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DECISION

Having weighed all of the evidence, the TLT did not grant a Limousine Owner's Licence.

The TLT has reasonable grounds to believe that Mr. Virk will not comply with Chapter 545 of the *Code* given his pattern of behavior and his past dealings with MLS specifically:

- i) Failing to attend two vehicle inspections;
- ii) Ignoring MLS correspondence that was sent to Mr. Virk by registered mail;
- iii) Failing to pay outstanding fines, which are outstanding to date;
- iv) Failing to surrender the Limousine Owner's Licence and limousine plate; and
- v) Operating a limousine without the proper licence or commercial insurance

The failure of Mr. Virk to attend two vehicle inspections is concerning to the TLT. Limousine inspections are important as they are the only method to ensure that the limousine is mechanically fit. Mr. Virk admitted that he failed to have his limousine inspected on two separate occasions.

The TLT notes the conflicting evidence from Mr. Virk and Mr. Irfan regarding the timing and location of where Mr. Irfan resides. In addition, there were inconsistent statements from Mr. Virk and Mr. Irfan regarding their relationship.

The TLT must balance the protection of the public interest with the need for the applicant to earn a living. Mr. Virk testified that he is in training as a mechanic and also continues to hold a limousine driver's licence where he could seek employment elsewhere.

The TLT is of the view that there are reasonable grounds to conclude that Mr. Virk will not operate as a limousine owner in accordance with the law and will likely endanger the public.

For these reasons, the Tribunal denied the application for a Limousine Owner's Licence.

Originally Signed

Lori Marzinotto, Chair
Panel Members, Cezary Paluch, Richard Quan concurring

[Reference: Minute No. 184/15]

Date Signed: January 13, 2016