

## REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

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**Date of**

**Hearing:** July 14, 2016

**Panel:** Moira Calderwood, Chair; Melina Laverty and Richard Quan, Members

**Re:** Kiflom Haile Ameha  
Holder of Taxicab Driver's Licence No. D01-3135128, Driver's List No. 5657

**Counsel for Municipal Licensing and Standards:** Ms. Brennagh Smith

### WRITTEN DECISION

1. The parties agreed at the beginning of the hearing that Report 6586 would be admitted as an agreed statement of fact. Report 6586 was marked as Exhibit One. The documentary information was supplemented by testimony from Mr. Ameha.

#### *Introduction*

2. Mr. Ameha holds a Toronto Taxicab Driver's Licence. He is also on the Drivers' List, that is, the list maintained by Municipal Licensing and Standards (we will call this "MLS") of the City of Toronto to determine taxi drivers' eligibility to acquire certain Toronto taxicab licences as they become available.
3. Mr. Ameha placed his name on the Drivers' List in February 2005.
4. Mr. Ameha developed a medical condition, eventually diagnosed as polymyositis. This is a painful condition which has rendered Mr. Ameha unable to work as a taxi driver for some years. One of the requirements under the *Toronto Municipal Code* (we will call this "the Code") for a driver to remain on the Drivers' List is that the driver must earn a living in the City of Toronto on a full-time basis as a taxi driver.
5. A person on the Drivers' List is required to submit certain information (including a Statutory Declaration and an Employer's Statement) annually to MLS. MLS may require a Drivers' List candidate to submit his or her income tax return.
6. Mr. Ameha did not submit the Statutory Declaration and Employer's Statement respecting 2014 to MLS, in spite of correspondence from MLS reminding him to do so.
7. On May 12, 2015, MLS sent Mr. Ameha notice that his name had been removed from the Drivers' List, due to his failure to submit the required 2014 documentation.

July 14, 2016

8. Mr. Ameha wrote a letter dated April 28, 2015 (although apparently not received at MLS until May 15, 2015) explaining that he had not been working as a taxi driver since the beginning of 2014, due to illness. He wrote that he could not submit the annual statutory declaration. He wrote that he had made efforts to make an appointment with MLS staff to discuss the situation.
9. Another provision under the Code is that, in certain circumstances, the Tribunal can deem that the employment service of the person on the Drivers' List has been uninterrupted. Mr. Ameha wishes the Tribunal to do so in this case.

***Issue***

10. On July 14, 2016, Mr. Ameha asked the Tribunal to deem his employment service to have been uninterrupted for the calendar years 2014 and 2015.

***Mr. Ameha's testimony***

11. In his testimony in chief and under cross-examination, Mr. Ameha told the Tribunal:
  - He made efforts to contact MLS in the spring of 2015, as set out in his letter dated April 20, 2015.
  - In May 2015, he submitted medical documentation to MLS supporting his assertion that he was ill.
  - As well as working as a taxicab driver, he works for the City of Toronto as a parking lot attendant. His illness has prevented him from doing either job since March 2014.
  - He has claimed short-term and long-term disability benefits from the insurer for City employees.
  - The polymyositis affects his sitting, walking and movement. It is an inflammatory disease. He sees the doctor regularly and undertakes treatment. His medical condition is improving, but he is not yet fully recovered, and is still unable to work.
  - He did not file the Statutory Declaration for 2015, as by that time, he had been struck off the List.
  - He did not file the Statutory Declaration for 2014 as his income was zero. He was not aware that he should still have completed and filed a Statutory Declaration, setting out that his income was zero.
  - He still has a provincial driver's licence. He can drive short distances.
  - His wife is working. They have two children, aged 21 and 17, to whom they provide financial support.

July 14, 2016

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### ***Submissions***

12. Mr. Ameha wished the Tribunal to deem his service uninterrupted.
13. MLS saw no reason to dispute the evidence. Counsel observed that at the hearing, Mr. Ameha appeared to have some difficulty with movement. Counsel submitted that the Tribunal should deem Mr. Ameha's service uninterrupted for the years 2014 and 2015.

### ***Relevant provisions of the Code***

14. The Code, § 545-137, sets out a regulatory scheme for drivers who wish to maintain their position on the Drivers' List. (The Committee is aware that the Code is about to undergo major revisions, including to the sections governing the Drivers' List. At the time of the hearing on July 14, 2016, however, the sections quoted here were in force.)
15. The requirements of the Code relevant to this case are:

#### § 545-137.3.A

- A. An applicant on the Drivers' List shall cease to continue to be eligible for a Toronto Taxicab Licence and shall be struck off the Drivers' List if:
  - (3) ...the applicant ceases to earn a living in the City of Toronto on a full-time basis as a driver...
- E. Where an applicant satisfies the Toronto Licensing Tribunal that his or her failure to comply fully... is the result of illness or injury and is entirely beyond the control of the applicant and that the interruption in service is not in all the circumstances excessive, the Toronto Licensing Tribunal may deem the employment service of the applicant to be uninterrupted.

### ***Analysis and decision***

16. It is not disputed that in 2014 Mr. Ameha ceased to earn his living as a full-time Toronto taxi driver.
17. The Tribunal can exercise its discretion to deem that his service has continued, if it is satisfied on three points:
  - i. The failure to comply with the Code (i.e., to work full time as a Toronto taxi driver) is the result of illness or injury
  - ii. The failure to comply with the Code is entirely beyond the control of the applicant
  - iii. The interruption in services is not, in all the circumstances, excessive.
18. The Tribunal is satisfied that Mr. Ameha's failure to comply with the Code (i.e., to work full time as a Toronto taxi driver) is the result of illness or injury. Report 6586, combined with Mr. Ameha's testimony, provides sufficient medical

July 14, 2016

evidence to allow us to conclude that there is a medical basis for Mr. Ameha's inability to drive in 2014 and 2015. We note in particular:

- documentation respecting Mr. Ameha's February 2014 admission to Mount Sinai Hospital
  - documentation from Forest Hill Family Health Centre stating that Mr. Ameha will need to be off work, in one document (July 2014) for three months, and in another, "indefinitely"
  - an August 2014 consultation report from internist/rheumatologist Dr. Karasik, discussing Mr. Ameha's polymyositis
  - a December 2014 consultation report from Dr. Karasik, discussing Mr. Ameha's polymyositis
  - a February 2015 consultation report from Dr. Karasik, discussing Mr. Ameha's polymyositis, and noting he has fibromyalgia-like symptoms
  - Mr. Ameha's testimony as to the ongoing nature of his illness, to present.
19. The Tribunal is satisfied that Mr. Ameha's failure to comply with the Code is entirely beyond his control. Mr. Ameha is diligently pursuing medical help, but, to date, has not found a treatment modality to improve his condition to the point where he can drive a cab or return to full-time work.
20. The Tribunal is satisfied that the interruption in services is not excessive. Mr. Ameha has been on the Drivers' List for over 11 years and has not been able to drive for approximately two of those years. Thus, the interruption, in this case, is not excessive.

**Note**

21. There was a suggestion at the hearing that the Tribunal return Mr. Ameha's name to the Drivers' List. We were unable to find, in the governing legislation, any provision that would give the Tribunal the authority to do so. Adding names to the Drivers' List is an administrative function of MLS and the Tribunal does not have the jurisdiction to direct that it do so. That said, we simply note that we are aware of no reason that Mr. Ameha's name should not be reinstated, but it is not our function, rather it is MLS's, to gather the necessary information and decide what to do with respect to reinstatement in this case.

**DECISION**

22. Mr. Ameha's employment service for 2014 and 2015 is deemed to be uninterrupted.

July 14, 2016

Originally Signed

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Moira Calderwood, Chair  
Melina Lavery and Richard Quan concurring

*[Reference: Minute No. 115/16]*

**Date Signed: August 11, 2016**