

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: December 1, 2016

Panel: Daphne Simon, Chair; Aly N. Alibhai and Richard Quan, Members

Re: Mohammad Shah Jahan (Report No. 6492)
Applicant for Renewal of Taxicab Driver's Licence No. D01-3955189

Counsel for Municipal Licensing and Standards: Mr. David Tortell

BRIEF BACKGROUND

The Applicant, Mohammad Shah Jahan ("Mr. Jahan"), was first issued a taxicab driver's licence, Number D01-3955189, on September 29, 2009. On July 23 2015, Municipal Licensing and Standards ("MLS") received information from the Toronto Police Service that on July 22, 2015, Mr. Jahan was operating a Beck taxicab while impaired. Mr. Jahan was charged under section 253 of the Criminal Code for Operation of a motor vehicle impaired by alcohol or drug and under section 254 for Refuse to provide a breath sample. On December 1, 2015, Mr. Jahan attended a pre-hearing interview at which MLS and Mr. Jahan agreed to the imposition of certain Interim Conditions on his taxicab driver's licence. The Toronto Licensing Tribunal ("TLT") approved the Interim Conditions on December 10, 2015 and the matter was adjourned sine die pending the resolution of Mr. Jahan's criminal charges.

Mr. Jahan was required to report any new charges under the Criminal Code that occurred after December 1, 2015 and to notify MLS of the disposition of the outstanding criminal charges that occurred on July 22, 2015.

On August 2, 2016, Mr. Jahan was convicted under section 253 of the Criminal Code for Operation of a motor vehicle impaired by alcohol or drug and his driver's licence was suspended for one year.

MLS has requested that this matter be returned for a hearing before the Tribunal to determine whether Mr. Jahan's application for the renewal of his taxicab driver's licence should be denied.

ISSUE

Whether Mr. Jahan's application for the renewal of his taxicab driver's licence should be denied because of his criminal conviction of August 2, 2016?

THE HEARING

Mr. Jahan waived his right to representation and acknowledged his understanding of the matter before him.

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The Tribunal ordered the exclusion of witnesses.

All witnesses were sworn or affirmed before testifying.

CITY'S EVIDENCE

The City called three witnesses.

Witness #1 Olga Kuztelska, Supervisor, Bylaw Enforcement

Ms. Kuztelska is the Supervisor of Bylaw Enforcement, MLS. She testified that she oversaw MLS staff in their preparation of Report No. 6942 (“the Report”) and has reviewed the Report and the Report Update, commencing at page 28. The Report was entered as Exhibit 1.

Ms. Kuztelska referred to the MLS chart of Criminal Code, bylaw and Highway Traffic Act charges and convictions at pages 1 and 2 of the Report and noted two Criminal Code charges, namely s. 253 Operation of a motor vehicle impaired by alcohol or drug and s. 254 Refuse to provide sample.

At page 28 of the Report, another MLS chart lists the disposition of the two criminal charges.

Ms. Kuztelska referred to the chart on page 28 and testified that, on August 2, 2016, Mr. Jahan was convicted of Operation of a motor vehicle impaired by alcohol or drug. The charge of Refuse to provide sample was withdrawn.

Ms. Kuztelska testified that the last item on the chart showed a Highway Traffic Act charge that occurred on May 14, 2016 for unsafe turn/lane change fail to signal. Mr. Jahan was convicted of that offence on November 24, 2016. The Integrated Court Offences Network (ICON) extract was entered as Exhibit 2.

Witness #2 P.C. TriCan Truong, Badge #10083, Toronto Police Service, Traffic Services

Police Constable (P.C.) TriCan Truong (“Officer Truong”) is with the Toronto Police Service. He testified that he has worked as an officer for the last 8 years and has been assigned to traffic services for the last 3 years. He has been a qualified breath technician since 2013. He testified that, in this role, he has administered approximately 400 breath sample tests during the course of his duties.

Officer Truong was involved in the incidents that involved Mr. Jahan on July 22, 2015. He testified that he was working as a highway patrol officer in the early morning hours of July 22, 2015 when he received a dispatch call of a taxicab driving all over the road going westbound on the Gardiner Expressway and weaving back and forth. He caught up to the vehicle on the ramp from the westbound Gardiner Expressway to the

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northbound Hwy. #427. He attempted to stop the vehicle by turning on his emergency lights.

The vehicle did not stop but continued at approximately 60 km./hr. Officer Truong testified that he pulled up by the driver's side door and observed Mr. Jahan behind the wheel. He made several attempts to have Mr. Jahan pull over but without success. He finally was able to pull up in front of the vehicle in a live lane in order to block him and eventually got him to stop.

Officer Truong testified that he observed Mr. Jahan to be stumbling, swaying as he stood up and that Mr. Jahan almost fell as he got out of his car. He placed him under arrest. While being transported to 22 Division, Mr. Jahan seemed confused. He was in the back of the police vehicle and asked Officer Truong to open the windows. It was explained to him that the rear windows did not open. Several minutes later, Mr. Jahan repeated the same request. This behaviour continued.

Officer Truong testified that in all of his experience as a qualified breath technician, he would rate Mr. Jahan's level of intoxication as a "10 out of 10". He testified that Mr. Jahan did not provide a breath sample and was subsequently charged with Refuse to provide a breath sample. This charge resulted in an automatic 90 day suspension of his driver's licence at that time.

Officer Truong sent an email message to Kevin Lurkhur at MLS on August 17, 2015 detailing the circumstances of Mr. Jahan's arrest.

Witness #3 Kevin Lurkhur, Municipal Standards Bylaw Officer

Kevin Lurkhur ("Officer Lurkhur") has worked with MLS since November 2009. One of his duties is to enforce municipal bylaws pursuant to the Toronto Municipal Code. He testified that he received an email message about Mr. Jahan's arrest on July 22, 2015. The email message came from P.C. Niziul at 5:02 a.m. on July 22, 2015. He testified that it is common practice for MLS to be notified of these matters and that some of the traffic services officers have his contact information.

Later that day, at approximately 8:04pm on July 22, 2015, he attended at Mr. Jahan's residence in Brampton to ask Mr. Jahan to surrender his licence. He testified that Mr. Jahan's eyes were bloodshot when he came to the door to meet him. Officer Lurkhur later followed up with P.C. Truong and received detailed information about the events leading up to Mr. Jahan's arrest by email message dated August 17, 2015. Officer Lurkhur described this incident as a serious one.

Evidence of Mohammad Jahan

He was affirmed and did not call any witnesses.

Mr. Jahan testified that he was very tired on the night of July 22, 2015. He testified that he was on his way home after an 11 hour shift. He said that he drank two beers. He regrets doing this and admitted he never should have been driving. He testified that

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since this incident his life has not been easy. It has turned his life “upside down” and he needs to put food on the table and provide for his family.

Mr. Jahan is a 48 year old man. He is the sole supporter of a wife, a six year old child and two aging parents.

He testified that the reason he stumbled when exiting his vehicle was due to arthritis in his knees. He did not have any medical evidence to substantiate his condition.

Mr. Jahan testified that he pleaded guilty to the charge of Operation of motor vehicle impaired by alcohol or drug. Upon his conviction on August 2, 2016, his driver’s licence was suspended for one year. About three months ago, he found a job at a pizzeria and works between 30-35 hours a week. He uses public transportation to get around.

Mr. Jahan testified, upon questioning from the Tribunal, that approximately one week after his conviction he presented himself to the MLS office at 850 Coxwell Avenue to report his conviction. He stated that a male staff person behind the counter told him not to worry about it and that he would be getting a letter in the mail soon. Mr. Jahan confirmed receiving a letter from MLS dated August 12, 2016. He testified that he received this letter in the mail after his visit to MLS.

Ms. Kuzstelska was able to search the MLS visitor records and confirm that Mr. Jahan did attend at the MLS office on August 3, 2016.

SUBMISSIONS

The City’s submissions

The City takes the position that the Tribunal must apply two principles in denying the renewal of Mr. Jahan’s taxicab licence. Mr. Tortell, on behalf of the City, stated that the question is whether Mr. Jahan meets the tests set out in section 545 of the Code that require a licence holder to 1) operate with honesty and integrity and 2) ensure that the public’s health and safety is not endangered.

Mr. Tortell advanced the argument that Mr. Jahan did not act with honesty and integrity in three ways. The first being that he stated that he was tired when questioned about his behavior surrounding the July 22 incident. Mr. Tortell submitted this was a flimsy excuse for a professional night shift cab driver. The second way was that he could not be believed when he stated he only had two beers on that night. Mr. Tortell summarized the evidence given by at least two witnesses to suggest that there was a severe impairment. He underscored the point that Mr. Jahan appeared by all accounts to be very intoxicated. The third example given as not acting with honesty and integrity was Mr. Jahan’s failure to report the conviction in writing or to respond to the letter from MLS dated August 12, 2016.

In regard to the public’s health and safety, the City takes the position that this is an egregious situation. Mr. Tortell reviewed the evidence of the numerous attempts made to pull over Mr. Jahan’s vehicle in the early morning hours of July 22, 2015. He submitted that Mr. Jahan’s behavior behind the wheel put the public safety at risk. And that “we just cannot have someone like that driving a taxicab”.

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The Applicant's submissions

Mr. Jahan once again stated that he regretted his mistake. He stated he will not make that mistake again. His driver's licence is currently suspended until August 2017. He wishes to drive a taxicab once his driver's licence is re-instated. He maintains that he did report the conviction, in person, when he attended at MLS' office on August 3, 2016.

DECISION

Relevant provisions of the Code

1. The Toronto Municipal Code, § 545-4, sets out the grounds for denial of a licence.

545-4 Licences, applications and renewals

C. Grounds for denial of licence

1) An applicant for a licence, or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to be issued the licence or renewal, except where:

- a. The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or
- b. There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
- c. The applicant is a corporation and its conduct or the conduct of its officers, directors, employees or agents affords reasonable grounds for belief that its trade, business or occupation has not been, or will not be, carried on in accordance with law and with integrity and honesty; or
- d. The conduct of the applicant or other circumstances afford reasonable grounds for belief 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, the health and safety of other members of the public.

The Tribunal found that Mr. Jahan's behaviour and criminal conviction for impaired driving was enough to satisfy the threshold, set out in § s. 545-4 C 1. d) of the Toronto Municipal Code, that his conduct endangered the health and safety of other members of the public. The Tribunal believed the evidence of Officer Truong and Municipal Standards Officer Lurkhur. The Tribunal was not persuaded by the evidence of Mr. Jahan. In other words, it appeared that Mr. Jahan was severely impaired, having consumed more than just two beers. The Tribunal had the benefit of relying on the first-hand account of Officer Truong's observations that Mr. Jahan was stumbling, unsteady on his feet and very confused while being transported in the back of the police car.

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In reaching our decision, we also considered the Tribunal's mandate, as set out in part in the Toronto Municipal Code, § 545-3.B(3), subsection (c) which requires that the Tribunal:

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

The Tribunal found that it was not unreasonable to assume that Mr. Jahan would be able to find alternate employment. In fact, he has already been working at a pizzeria for the last three months. Furthermore, even if the Tribunal was to grant him his taxicab licence, it would not afford Mr. Jahan the opportunity to earn a livelihood as a taxicab driver because his driver's licence is suspended until August 2017. The Tribunal is therefore satisfied that Mr. Jahan's opportunity to earn a livelihood will not be adversely affected by a decision to deny his application for the renewal of his taxicab driver's licence.

With respect to the second threshold test that the City asked the Tribunal to consider, the Tribunal would not go so far as to say that Mr. Jahan did not act with honesty and integrity. We noted that Mr. Jahan was very remorseful for his behaviour and vowed never to repeat the actions that led to his conviction. Further, Mr. Jahan testified that he attended at the MLS office following his conviction and the evidence is that he did in fact attend at 850 Coxwell Avenue on August 3, 2016, the day after his conviction. It is the Tribunal's view that Mr. Jahan attended at the MLS offices with good intentions- to report his conviction- but was told not to worry about it and to wait for a letter to be sent to him in the mail. As such, we did not find that, in weighing of all the evidence, Mr. Jahan had not acted with honesty and integrity.

Accordingly, for the reasons outlined above, the Tribunal orders that the application for a renewal of taxicab licence Number D01-3955189 be denied at this time.

Originally Signed

Daphne Simon, Chair
Panel Members, Aly Alibhai and Richard Quan, concurring

[Reference: Minute No. 201/16]

Date Signed: December 15, 2016