

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: February 18, 2016

Panel: Cezary Paluch, Chair; Lori Marzinotto and (Hedy) Anna Walsh, Members

Re: Sibtain Akhtar
Holder of Taxicab Driver's Licence No. D01-3596126

Counsel for Municipal Licensing and Standards: Mr. David Tortell

INTRODUCTION

1. Mr. Sibtain Akhtar ("Mr. Akhtar") has been requested to appear before the Toronto Licensing Tribunal (the "Tribunal") to determine whether or not his taxicab driver's licence should be renewed, suspended, revoked or have conditions placed on it.
2. The key issue is whether Mr. Akhtar's failure to comply with the terms of his probationary licence, as well as his inability to surrender his taxicab licence and photo identification card when requested to do so by Municipal Licensing and Standards ("MLS") provide reasonable grounds to believe that his operations of a taxicab would pose a risk to public safety and that he would not carry out his business with honesty and integrity.
3. The Tribunal informed Mr. Akhtar of his right to legal counsel and that he may be at a disadvantage, if he is not represented at the hearing. Mr. Akhtar stated that he understood his rights and wished to continue with the hearing unrepresented.
4. Mr. Akhtar was first issued a taxicab driver's licence on August 31, 2005. The licence expired on August 31, 2014. A renewal payment was received on August 25, 2014. The licence was deemed to continue.
5. On December 13, 2012, Mr. Akhtar was first before the Tribunal and received a three (3) day suspension of his taxicab licence, a three (3) year probation period and reporting requirements. Mr. Akhtar was to report any new charges and convictions within three (3) business days. Over the course of about three years, he failed to report any new charges or convictions within the prescribed time.
6. At the start of this proceeding, Mr. David Tortell (Mr. Tortell), lawyer for the City, informed the Tribunal that the parties had reached a joint resolution. The Tribunal then took a brief recess to the allow parties to formulate the proposed resolution into a written agreement. However, after returning from the break, Mr. Tortell notified the Tribunal that Mr. Akhtar was not agreeing to the sixty (60) day licence suspension condition which was a key term of the global proposed resolution.
7. It appeared to the Tribunal that even though Mr. Akhtar stated that he was agreeing to the proposed resolution he still wanted to make submissions to

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request a reduction in the number of days that his licence should be suspended. Therefore, it was not a joint resolution as a key term of the proposal was not agreed upon.

8. Mr. Tortell also expressed concern that he did not feel comfortable with proceeding with the joint resolution because he felt that Mr. Akhtar was not fully agreeing to the entire resolution and he had concerns whether it was an informed decision. The City rescinded the entire proposal and the matter proceeded as a contested hearing.

CITY'S EVIDENCE

All witnesses who gave evidence at the hearing were sworn or affirmed. The City called one (1) witness.

1. Mr. Terry Van Elswyk ("Mr. Van Elswyk"), Supervisor, Licensing Services for Municipal Licensing and Standards ("MLS"), identified Report No. 6283 dated January 6, 2016. Mr. Tortell submitted this report as evidence, without objections from Mr. Akhtar. It was marked as Exhibit No.1. Part of Mr. Van Elswyk's duties is to review the report to ensure that all information in the document is brought before the Tribunal in a fair and accurate way.
2. Mr. Van Elswyk identified the following portions of the report:
 - Page 67 – Minutes of Hearing of the Tribunal dated December 13, 2012.
 - Page 70 – Letter from MLS to Mr. Akhtar dated December 30, 2013.
 - Page 79 – Letter from MLS to Mr. Akhtar dated April 17, 2014.
 - Page 81 – Letter from MLS to Mr. Akhtar dated July 17, 2014.
 - Page 92 – Letter from MLS to Mr. Akhtar dated March 17, 2015.
 - Page 99 and Pages 101 -144 – an undated chart which summarizes *Highway Traffic Act* (HTA) and By-Law charges and convictions between September 7, 2012 and November 20, 2015, and the supporting ICON documentation.
3. Mr. Van Elswyk testified that as a result of information received from the Ministry of Transportation Mr. Akhtar's provincial driver's licence was suspended, or he was unlicensed, letters were sent to him on December 30, 2013, April 17, 2014, July 17, 2014 and March 17, 2015, requesting that he surrender his taxicab driver's licence and photo identification card. Mr. Van Elswyk stated that, to his knowledge, Mr. Akhtar did not respond to any of these letters and failed to surrender his taxicab driver's licence or photo identification card.
4. Mr. Van Elswyk referred to a summary chart prepared by MLS listing five (5) charges and/or convictions against Mr. Akhtar from September 2012 until November 20, 2015. The chart showed convictions under the *Highway Traffic Act* for disobey lane light; speeding; and red light fail to stop, one by-law conviction for unauthorized parking of a taxicab; and one (1) one by-law charge of bill of rights not properly affixed.

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5. In conjunction with the summary chart, Mr. Van Elswyk also referred to minutes of the Tribunal dated December 13, 2012, and specifically condition No. 4 that required Mr. Akhtar to report to MLS within three (3) business days any new charges or convictions under the *Highway Traffic Act* or the *Toronto Municipal Code*. Mr. Van Elswyk testified that Mr. Akhtar failed to comply with his probationary term when he did not report any of the five (5) charges or conviction as listed on the summary chart.
6. Mr. Van Elswyk also referred to condition No. 3 of minutes of the Tribunal dated December 13, 2012, that required Mr. Akhtar to provide to MLS an updated driver's abstract to MLS at each renewal. Mr. Van Elswyk testified that Mr. Akhtar failed to comply with this condition during his probationary period.
7. Mr. Akhtar was given the opportunity to ask Mr. Van Elswyk questions about his evidence but he did not wish to do so. His evidence was, therefore, unchallenged.

EVIDENCE OF SIBTAIN AKHTAR

1. Mr. Akhtar provided testimony that:
 - His actual taxicab licence was not issued to him after 2012 and he could therefore not have surrendered it.
 - That he received only two letters (not four) from the City requesting that he turn in his taxicab licence and photo identification card.
 - That he fully did not understand that he had to report any new charges and convictions as set out in his probationary order of December 13, 2012.
 - That the terms of his probationary order were not fully explained when he appeared before the Tribunal on December 13, 2012.
2. Mr. Tortell cross-examined Mr. Akhtar who admitted that he agreed with the conditions imposed upon him by the Tribunal back in 2012 and that he understood that there was a three (3) year probationary period. However, when asked to explain why he did not comply with the reporting requirements, Mr. Akhtar sated that he was “scared.”
3. Mr. Akhtar did not call any other witnesses to testify on his behalf.

CITY'S SUBMISSIONS

1. In his closing submissions, Mr. Tortell expressed the view that revocation would not be appropriate in this case given Mr. Akhtar's age, that he is the sole income earner in his family and has a need to make a living. Mr. Tortell also stated Mr. Akhtar appeared to have taken the matter seriously and understood why it is important to report any new charges or convictions.

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2. However, the City had serious concerns regarding Mr. Akhtar's failure to report his charges and convictions pursuant to the previous Toronto Licensing Tribunal Order and also that he ignored correspondence from the MLS and several requests to turn in his taxicab licence and photo identification card. The City described these as "flagrant violations" and "significant breaches."
3. The City asked that Mr. Akhtar's taxicab driver's licence be suspended for sixty (60) days to communicate to him in significant terms the consequences for not complying with an order, together with a 4 year probation term and reporting requirements.

MR. AKHTAR'S SUBMISSIONS

4. Mr. Akhtar stated in his submissions that he wished for the suspension period to be thirty (30) days not the sixty (60) days that the City was requesting. He was in agreement with the other terms that the City was requesting. He stated that it would be hard for him not to work for two months and he would face financial hardships trying to support his family during that time.

DECISION

1. The Tribunal must balance the protection of the public interest with the need for the applicant to earn a living.
2. We noted that Mr. Akhtar is 57 years old, has a 12 year old daughter and his wife has medical conditions and is unable to work. He is the sole income provider for his family. To his credit, he has acknowledged that he did not comply with the Tribunal Order of December 13, 2012.
3. Mr. Akhtar clearly breached condition No. 3 placed on his taxicab driver's licence by the Tribunal in that he failed to provide to MLS his abstract of his Driving record at the renewal date and condition No. 4 in that he failed to notify MLS in writing of new *Highway Traffic Act* and by-law charges and convictions within the specified amount of time.
4. The explanation provided by Mr. Akhtar that he was "*scared*" to report any new charges or conviction is not a valid reason or explanation for not complying with a Tribunal Order. The rules governing taxicab drivers exist for a reason: to protect the safety of the public and ensure for the performance of activities with integrity and honesty.
5. Having weighed all of the evidence presented, the Tribunal accepted the position of the City and concluded that the protection of the public interest is addressed by suspending Mr. Akhtar's licence for sixty (60) days. This is a significant period of time for a driver to lose his licence privileges. The Tribunal also put forth strict reporting requirements which would allow MLS to monitor Mr. Akhtar during his probationary period. The placement of such conditions on a

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licence is done to correct and monitor behaviour.

6. Accordingly, the Tribunal ordered that Mr. Akhtar's taxicab driver's licence shall be issued subject to the following conditions imposed, effective immediately:
- 1) The licence shall be immediately suspended for a period of sixty (60) days, to commence on February 18, 2016; and the licensee must surrender his taxicab driver's licence and photo card on that date;
 - 2) The licence will be placed on probation for a period of four (4) years to commence on February 18, 2016;
 - 3) Mr. Akhtar is to provide to MLS an updated driver's abstract every 6 months. Accordingly, Mr. Akhtar must provide MLS at his own expense, an updated Ministry of Transportation driver's abstract, to be submitted within three days of the following dates:
 - April 18, 2016
 - August 31, 2016
 - February 23, 2017
 - August 31, 2017
 - February 22, 2018
 - August 31, 2018
 - February 28, 2019
 - August 31, 2019
 - February 18, 2020
 - 4) During the probationary period, if Mr. Akhtar incurs any new charges or convictions under the *Toronto Municipal Code* or the *Highway Traffic Act*, he must notify Municipal Licensing and Standards, in writing, within three (3) business days. The notification shall include his MLS licence number and ticket number(s). Mr. Akhtar can notify Municipal Licensing and Standards in one of the following ways:
 - in person at 850 Coxwell Ave. Toronto, Ontario, M4C 5R1
 - via regular mail to: 850 Coxwell Ave., Toronto, Ontario, M4C 5R1;
 - via email to mlsconditionreporting@toronto.ca;
 - via fax at 416 392-3102
 - 5) During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions, those matters and report No. 6283, and any updating material, shall be brought back before the Tribunal for a full hearing.

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Originally Signed

Cezary Paluch, Chair
Panel Members, Moira Calderwood and (Hedy) Anna Walsh concurring

[Reference: Minute No. 22 /16]

Date Signed: March 17, 2016