

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: January 7, 2016

Panel: Aly N. Alibhai, Chair; Moira Calderwood and (Hedy) Anna Walsh, Members

Re: Mary Ann Batac and Janilyn Batac
o/a 6ixside Ink Studio
Applicant for a Personal Service Settings Licence (Application No.
B536383)

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett

INTRODUCTION

Mary Ann Batac and Janilyn Batac, respectively mother and daughter, requested a hearing before the Toronto Licensing Tribunal (the "Tribunal") to determine whether or not a Personal Service Setting's Licence should be issued, have conditions placed on it or if the application should be denied.

Mary Ann Batac and Janilyn Batac waived their right to legal counsel and acknowledged their understanding of the matter before them.

FACTS

1. On May 11, 2015, Mary Ann Batac and Janilyn Batac submitted a Business Partnership Application for a Personal Service Setting's Licence.
2. As part of the application process, Municipal Licensing and Standards ("MLS") received a letter from the Toronto Police Service dated May 14, 2015 indicating that Mary Ann Batac does not have a criminal record.
3. As part of the application process, MLS also received correspondence from the Royal Canadian Mounted Police (RCMP) indicating that Janilyn Batac has convictions for robbery under s. 334 of the *Criminal Code of Canada* and for failure to comply with a probation order under s. 733.1(1) (A) of the *Criminal Code of Canada* as well as possession of a Schedule I substance under s. 4(3) of the *Controlled Drugs and Substances Act*.
4. Janilyn Batac's conviction for robbery under s. 334 of the *Criminal Code of Canada* was entered on February 28, 2013 and she was given a suspended sentence, eighteen months' probation and a mandatory prohibition order under s. 109 of the *Criminal Code of Canada*. Janilyn Batac was twenty-four (24) years old at the time of conviction.
5. Janilyn Batac's convictions for failure to comply with a probation order under

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- s. 733.1(1)(A) of the *Criminal Code of Canada* and possession of a Schedule I substance under s. 4(3) of the *Controlled Drugs and Substances Act* were entered on August 14, 2014 and she was given a suspended sentence and twelve (12) months' probation having spent twenty-one (21) days in pre-sentence custody. Janilyn Batac was twenty-five (25) years old at the time of conviction.
6. By way of letter dated August 21, 2015, MLS advised Mary Ann Batac and Janilyn Batac that Janilyn Batac's record of *Criminal Code of Canada* convictions posed a concern for MLS and also placed Janilyn Batac in breach of the Business Licensing Thresholds under Chapter 545 of the *City of Toronto Municipal Code* (the "Code"). Accordingly, MLS advised Mary Ann Batac and Janilyn Batac that their Business Partnership Application for a Personal Service Setting's Licence was being refused.
 7. On September 18, 2015, MLS received from Mary Ann Batac and Janilyn Batac a Request for Hearing before the Tribunal dated September 16, 2015.

ISSUE

The issue before the Tribunal was whether or not the Business Partnership Application for a Personal Service Setting's Licence of Mary Ann Batac and Janilyn Batac should be issued, have conditions placed on it or if the Application should be denied.

ANALYSIS

All witnesses who gave evidence at the hearing were sworn or affirmed.

CITY'S EVIDENCE

Mr. Terry Van Elswyk, Acting Supervisor of Licensing Services with MLS, testified on behalf of MLS. Through Mr. Van Elswyk, MLS submitted into evidence, without objection, Report No. 6491, consisting of fifty (50) pages (**Exhibit 1**). Mr. Van Elswyk's testimony at the hearing served to establish the facts as set out above in the "Facts" section of these Reasons for Decision. These facts are also set out in **Exhibit 1**. Of particular relevance is *Appendix 2-1 of Exhibit 1*, a copy of the Record of Conviction of Janilyn Batac dated July 22, 2015, which delineates the convictions and associated particulars of Janilyn Batac under the *Criminal Code of Canada* and the *Controlled Drugs and Substances Act* on February 28, 2013 and August 14, 2014.

Mary Ann Batac and Janilyn Batac chose not to cross-examine Mr. Van Elswyk, and his testimony was, therefore, unchallenged.

EVIDENCE OF MARY ANN BATAc

Mary Ann Batac testified that she is separated from her husband and is the mother of Janilyn Batac, aged twenty-five (25), and that she has two other daughters, aged fourteen (14) and twenty (20). She testified that her daughter, Janilyn, had made serious mistakes in the past but that she wants to support her daughter as she attempts now to get her life back on track and make an honest livelihood. Mary Ann Batac testified that

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she has invested her life savings in the business, a partnership between herself and her daughter, which was initiated in the summer of 2015 and is operated by her daughter, because she wants to give her daughter the opportunity to make an honest living. Mary Ann Batac testified that she is employed as a personal support care worker and that although she is not involved in the day-to-day operations of the business, she arranges her schedule so that she can attend at the business in the afternoon, after she has finished work, at least three to four days a week and as her schedule permits. She testified that she also supports her daughter, Janilyn, by providing care for her daughter's young children.

While counsel for the City, Mr. Cornett, engaged in cross-examination which elicited further particulars, the essence of Mary Ann Batac's testimony remained unchanged.

EVIDENCE OF JANILYN BATAc

Janilyn Batac testified that she did not complete high school and that she dropped out of high school after Grade 11. She testified that while she has previously been employed for short periods of time in minimum wage type jobs, the only work that has held her interest is her work as a tattoo artist because art has been a passion of hers for many years. She testified that she has had an interest in drawing from a young age and that although she took up tattoo art six years ago as a means of not having to pay for her own tattoos, tattoo art is the only work in which she has been engaged for any significant length of time. She testified that she has no employees at the business, that the business is open from 11AM to 10 PM daily except on Sundays when she visits her son. She noted that the business combines tattoo art with the sale of clothing on consignment, at the same premises.

Janilyn Batac testified that she is currently receiving government assistance and has three children aged six (6), three (3) and one (1) and that she is currently expecting a fourth child. She testified that she is not presently married or in a relationship and that she is the sole provider for two of her three children. She further testified that she has previously lost the custody of her children to the Children's Aid Society because of her past criminal behaviour and that she is therefore committed now not to doing anything that in future will jeopardize her relationship with her children. Janilyn Batac testified that her file with the Children's Aid Society has now been closed.

Janilyn Batac testified that while she was present in a stairwell during the robbery that resulted in her conviction on February 28, 2013, she was not directly involved in the robbery and that it was her co-accused who committed the acts giving rise to the charge and subsequent conviction. She testified that the robbery involved the use of a gun and the removal of money and a wallet from the victim.

Janilyn Batac testified that her conviction for failure to comply with a probation order and possession of a Schedule I substance resulted from her having been given a package to hold during a police raid of a house where she was present with four other people, including a friend that she was visiting. She testified that the package she was given to hold contained a small amount of cocaine and that she was not aware at the time what, exactly, was in the package. She testified that although she was also charged with possession of a firearm, she was not convicted of this offence.

Janilyn Batac testified that she was sorry about her past criminal behaviour, that she takes full responsibility for her previous criminal conduct, that she does not wish to remain on welfare and that she very much wishes to be able to earn a livelihood and support her children and family by pursuing her passion for tattoo art. She testified that she is aware of the seriousness of her past errors and that she very much wants now to turn a page on her past criminal activity. She further testified that she will be moving in to live with her mother on February 1, 2016.

CITY'S SUBMISSIONS

Mr. Cornett, on behalf of the City, submitted that the Tribunal should deny the Business Partnership Application for a Personal Service Setting's Licence of Mary Ann Batac and Janilyn Batac because of Janilyn Batac's criminal record. Mr. Cornett submitted that the City has concerns about the serious nature of the offences for which Janilyn Batac was convicted and that the offences occurred in the past several years. He submitted that Janilyn Batac's criminal record poses a risk for public safety as she would be interacting with the public when operating her business. Mr. Cornett noted that while the City acknowledges that Janilyn Batac's mother, Mary Ann Batac, is a partner in the business and that she does not have a criminal record, the fact is that she is not at the business at all times. Mr. Cornett submitted that the evidence at the hearing from Mary Ann Batac and Janilyn Batac did not allay the City's concerns in respect of public safety.

SUBMISSIONS OF MARY ANN BATAC AND JANILY BATAc

Mary Ann Batac submitted that although her daughter had made mistakes in the past and had been in trouble with the law, her daughter now wants to put her life back together and wishes to make a fresh start. She submitted that she would do what is necessary to support her daughter and importantly, she would ensure that, going forward, her daughter makes the right decisions and choices. Mary Ann Batac submitted that she wanted the Tribunal to issue the Personal Service Setting's Licence for her and her daughter so that her daughter can earn a livelihood and support her children. She emphasized her intention to take a supervisory role in the operation of the business.

Janilyn Batac submitted that although she was convicted for possession of a Schedule I substance, she was not charged with, or convicted for, trafficking in any such substances. She also submitted that her mother, Mary Ann Batac, is able to constantly monitor her activity at the business on her mobile telephone with the aid of video cameras that have been installed at the business.

DECISION

In considering the circumstances of this case, the Tribunal was persuaded by the compelling evidence put forward by Mary Ann Batac and Janilyn Batac. While the Tribunal has serious concerns about the criminal record of the applicant, Janilyn Batac, it notes that the convictions entered against Janilyn Batac relate to her behaviour during the years 2012 and 2013 and, as such, that over two years have elapsed with no record of criminal behaviour on the part of Janilyn Batac before the Tribunal. Further, the Tribunal noted that both of Janilyn Batac's 2013 and 2014 convictions each drew

suspended sentences and a period of probation, rather than a custodial sentence, indicating that the sentencing judge did not believe that Mary Ann Batac's conduct was at the extreme end of serious criminal behaviour.

The Tribunal further notes that the business in respect of which a Personal Service Setting's Licence has been sought is a partnership between Mary Ann Batac and Janilyn Batac, respectively mother and daughter, and that the former has no criminal record and, by all accounts, appears to be a hardworking and upstanding citizen. The Tribunal is of the opinion that the prospect of putting at risk the significant financial and personal investment made by Mary Ann Batac in the business will serve as a deterrent for Janilyn Batac from engaging in further criminal behaviour. In this regard, the Tribunal heard testimony that Mary Ann Batac attends at the business operated by her daughter at least three to four times a week and that Mary Ann Batac is able to closely and regularly monitor her daughter's activities at the business on her mobile telephone with the aid of video cameras that have been installed at the place of business. The Tribunal is therefore of the opinion that the safety of the public can be adequately protected by way of both the aforementioned moral imperative and the imposition of strict conditions on a licence that may issue.

The Tribunal observed that the applicant, Janilyn Batac, was remorseful and that she took full responsibility for her past criminal behaviour and was intent on abandoning her past criminal conduct and assuming her familial and employment obligations.

The Tribunal is also of the opinion that the applicant, Janilyn Batac's, previous record of employment, consisting as it did of minimum wage jobs, combined with the fact that she does not have a high school diploma and her existing criminal record will likely make it difficult for her to secure and maintain meaningful employment and thereby earn a livelihood in order to support her family. In this regard, the Tribunal has noted the testimony of the applicant, Janilyn Batac, that tattoo art work is the only occupation with which she has stuck over the long-term because of her longstanding passion for this type work.

The Tribunal is also persuaded by the testimony of the applicant, Janilyn Batac, that her strong desire to keep custody of her children is a further incentive for her to ensure that her activities are conducted within the law, so as to avoid involvement of the Children's Aid Society in her and her children's lives in the future. The Tribunal notes that her file with the Children's Aid Society has now been closed and accepted her testimony that she is therefore well on her way to putting her life back on track and less likely, in the present circumstances, to engage in criminal activity only to risk her relationship with her three children and a soon-to-be born baby.

CONCLUSION

On the basis of the foregoing and applying the mandate of the Tribunal as set out in §. 545-3 B(3), subsection (c)¹ of the *Code*, the Tribunal ordered that:

¹ Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.

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- (1) the Personal Service Setting's Licence (Application No. B536383) will be placed on probation for a period of four (4) years to commence on January 7, 2016;
- (2) prior to each of the next four (4) renewals of the licence, Mary Ann Batac and Janilyn Batac, must provide to MLS, at their own expense, updated criminal record abstracts;
- (3) during the probationary period, if either Mary Ann Batac or Janilyn Batac, incur any new charges or convictions under the *Code* or the *Criminal Code of Canada*, they must notify MLS, in writing, within three (3) business days. The notification shall include their MLS licence number and the ticket number(s). Mary Ann Batac and Janilyn Batac can notify MLS 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; or
 - via fax at 416-392-3102; and
- (4) during the probationary period, if MLS has concerns with any new charges or convictions, those matters and report No. 6491 and any updating material, shall be brought back before the Tribunal for a full hearing.

Originally Signed

Aly N. Alibhai, Chair

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

[Reference: Minute No. 4/16]

Date Signed: January 13, 2016