

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: November 17, 2016

Panel: Cezary Paluch, Chair; Aly N. Alibhai and Daphne Simon, Members

Re: Ahmed Mohamed Mahdi
Applicant for a Taxicab Driver (Vehicle-For-Hire) Licence
(Application No B650903)

Counsel for Municipal Licensing and Standards: Ms. Brennagh Smith

BRIEF BACKGROUND

1. Mr. Ahmed Mohamed Mahdi (“Mr. Mahdi”) requested a hearing before the Toronto Licensing Tribunal (the “Tribunal”) to determine whether or not a Taxicab Driver’s (Vehicle-for-Hire) Licence should be issued, have conditions placed on it or, if the application should be denied.
2. Mr. Mahdi was first before the Tribunal on January 21, 2010. At that time, his Taxicab Driver’s Licence was granted and conditions were placed on it including a fourteen (14) day suspension, and a three (3) year probation period with reporting requirements.
3. On January 9, 2014, Mr. Mahdi appeared before the Tribunal a second time. The Tribunal found that Mr. Mahdi did not report new charges or convictions on twenty-two (22) separate occasions during his probationary period and revoked Mr. Mahdi’s Taxicab Driver’s Licence.
4. Subsequently, on June 1, 2016, Mr. Mahdi submitted a new application for a Taxicab Driver’s Licence. However, on June 2, 2016, a Notice of Licence Non-Renewal Recommendation was sent by the City to Mr. Mahdi outlining the grounds for licence refusal including breach of the Business Licensing Thresholds. On June 24, 2016, the City received a request for a hearing from Mr. Mahdi.
5. The key issue before the Tribunal was whether enough has changed since January 2014 and whether there were reasonable grounds to believe that Mr. Mahdi’s operation of a taxicab would pose a risk to public safety and that he would not carry out his business with honesty and integrity.
6. The Tribunal informed Mr. Mahdi of his right to legal counsel or legal representation and that he may be at a disadvantage if he is not represented at the hearing. Mr. Mahdi stated that he understood his rights and wished to continue with the hearing unrepresented. Mr. Mahdi was assisted by a Somali interpreter, Ms. Ayan Mahdi, during the hearing who was sworn or affirmed. The interpreter who had the same family name as Mr. Mahdi confirmed that she was not related to Mr. Mahdi and had just met him on the day of the hearing.

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CITY'S EVIDENCE

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

7. Mr. Terry Van Elswyk ("Mr. Van Elswyk"), Supervisor, Licensing Services for Municipal Licensing and Standards ("MLS"), identified Report # 6646 dated August 8, 2016, (Pages 1-204, (the "Report") prepared and signed by him. Ms. Brennagh submitted this Report as evidence, without objections from Mr. Mahdi. It was marked as Exhibit # 1.

8. Mr. Van Elswyk identified the following portions of the Report:
 - Pages 3-4 – first two pages of Report # 4971 dated December 21, 2009 prepared by MLS;
 - Page 5 – Driver's Abstract created by the Ministry of Transportation (MTO) ordered on May 13, 2008 with hand written notations to identify whether a particular offence took place in a taxicab;
 - Page 25 – Driver's Abstract created by MTO ordered on November 26, 2009 with hand written notations indicating taxi plate;
 - Pages 39-41 – extracted Minutes of Hearing of Tribunal from January 21, 2010 hearing granting renewal of licence with 14-day suspension, 3-year probation, reporting requirements and other conditions;
 - Pages 42-43 - Written Reasons for Decision of Tribunal from January 21, 2010 hearing and in relation to Report # 4971;
 - Pages 44-45 – first two pages of Report # 6054 dated September 9, 2013;
 - Pages 144-145 - extracted Minutes of Hearing of Tribunal from January 9, 2014 hearing revoking Mr. Mahdi's taxicab driver's licence;
 - Pages 146-147 - Written Reasons for Decision of Tribunal from January 9, 2014 hearing in relation to Report 6054;
 - Page 149 – Mr. Mahdi's Taxicab Driver's Licence Application dated June 1, 2016;
 - Pages 150-151 - an undated chart ("Chart #1") created by MLS staff which summarized Highway Traffic Act (HTA) and By-law charges and convictions registered against Mr. Mahdi included in Report 4971;
 - Pages 151-154 - an undated chart ("Chart #2") created by MLS which summarized Highway Traffic Act (HTA), Criminal Code and By-law charges and convictions registered against Mr. Mahdi not included in Report 4971;
 - Pages 152-154 - an undated chart ("Chart #3") created by MLS which summarized Highway Traffic Act (HTA) and By-law charges and convictions registered against Mr. Mahdi included in Report 6054;
 - Pages 154-155 - an undated chart ("Chart #4") created by MLS which summarized Highway Traffic Act (HTA) and By-law charges and convictions registered against Mr. Mahdi not included in Report 6054; and

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- Page 156 – a chart updated August 4, 2016 (“Chart #5”) created by MLS which summarized Highway Traffic Act (HTA) and By-law charges and convictions registered against Mr. Mahdi included in Report 6646;
 - Page 202 – Mr. Mahdi’s Driver’s Abstract ordered on June 15, 2016 that showed two convictions for speeding and no driver’s licence or improper class of license; and
 - Pages 193-198 – Integrated Court Offences Network (ICON) supporting documents which indicated a driver’s licence number (half way down the page) of the alleged offender.
9. Mr. Van Elswyk testified that Chart # 5 showed three (3) taxicab related by-law convictions for Unauthorized Parking of a Taxicab Waiting for Hire and Fail to Keep Taxi Operator Log (offence date of February 4, 2014) and No Licence (offence date of May 6, 2014), which occurred in a licensed taxicab during the time when Mr. Mahdi’s taxicab license was revoked (it was revoked by the Tribunal on January 9, 2014) and he was not therefore allowed to operate a taxicab in the City of Toronto. Mr. Van Elswyk also testified that according to the provincial ICON system, the fine of \$113.00 (item # 3 of Chart 5) and a fine \$169.00 (item # 4 of Chart 5) remain outstanding and that the fine of \$1,325.00 (item # 2 of Chart 5) was paid.
10. Mr. Van Elswyk also testified that s. 1-A of Schedule K to Chapter 545 (now Chapter 546) required that MLS not issue or renew a licence if at the time of the application there were outstanding overdue by-law fines, unless the applicant provided proof that such fines have been paid. He explained that the unpaid fines was one reason why MLS did not issue a taxicab driver’s licence to Mr. Mahdi.
11. Mr. Mahdi was given the opportunity to ask Mr. Van Elswyk questions about his evidence but he did not wish to do so. Therefore, Mr. Van Elswyk’s evidence was unchallenged.

EVIDENCE OF MR. MAHDI

12. Mr. Mahdi testified that:
- he agreed with the first two charges listed on Chart 5 (items # 1 and #2) but did not agree with the last two charges on Chart 5 (items # 3 and #4) and did not know where this information came from;
 - he did not exactly know how he was convicted of the two charges for Unauthorized Parking of a Taxicab and Fail to keep Operator Log on Chart 5 (items #3 and #4) but he did pay the fine and brought proof of payment.
 - he paid all of the outstanding fines;
 - with respect to the conviction of speeding 55 km/h in a 40 km/h zone, Mr. Mahdi explained that he was not speeding and “knew the law of the city”;
 - he referred to a doctor’s note (although none was produced or entered into evidence) that confirmed that he was medically fit to serve as a taxicab driver that was filed with his application (but it did not include anything about his driving habits);
 - he worked 30-40 hours per week at a warehouse and drives to work.

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- his wife worked part-time;
 - his 4 children were all over 18 years of age; and
 - his preference was to work full time as taxicab driver.
13. Ms. Smith cross examined Mr. Mahdi about his charge of driving without a licence, on August 9, 2013. He explained that his provincial driver's licence was suspended because of unpaid fines but he continued to drive because he was unaware of it.
 14. With respect to the Tribunal proceeding in January 9, 2014, Mr. Mahdi admitted that he was present at the hearing and gave testimony and understood on the day of the hearing that when the decision was rendered that he was not allowed to be driving a taxicab in the city. He also stated that after the hearing he received and read the Reasons of the Decision.
 15. With respect to the two taxicab related charges of No Licence and Plate Not Plainly Visible that occurred on May 6, 2014 at different times of the day (21:45 and 22:30) (items # 1 and 2 on Chart 5), Mr. Mahdi, in cross examination, denied that he was operating a taxicab and working that date and said that he was merely delivering the car for a friend. Mr. Mahdi denied that these two charges occurred at two different times of the day and stated that he was pulled over only once (not twice according to the information on Chart 5). Mr. Mahdi's also stated that his roof light was turned off to make sure that people were aware that he was not operating a taxicab but that he did not remove the hood light or take any further measures.
 16. With respect to the by-law charges laid on February 4, 2014 - Fail To Keep Taxi Operator Log and Unauthorized Parking of a Taxicab Waiting for Hire, which allegedly occurred at 333 Bay St., Mr. Mahdi stated that he was not driving on that day. He said: "on this day I never even drive" and the by-law enforcement officer made up the charges. He stated that he did not know why the by-law officer would do this. To inquire further, Mr. Mahdi was referred by Ms. Smith to p.193 of the Report which was the supporting Ministry of the Attorney General documentation used by MLS to create item # 3 on Chart 5, which set out Mr. Mahdi's name, address, driver's licence number, date of birth. He was asked to explain how the by-law officer could have obtained all of this very detailed information if Mr. Mahdi was not driving that day. Mr. Mahdi stated that sometimes they just "make a ticket" and send it to the court or maybe the ticket corresponded to a different day (before his licence was revoked). He said: "sometimes they just make a ticket and sent to the court." Ms. Smith also suggested that it was a police officer from Division 53 that laid the charges on February 4, 2014. Mr. Mahdi disagreed or seemed not to remember being pulled over by a police officer on February 4, 2014.
 17. The City was not able to confirm that Mr. Mahdi whether or not Mr. Mahdi had completed the driver refresher course pursuant to the Tribunal Order of January 21, 2010 but clarified that the City was not raising this as an issue.
 18. With respect to the outstanding fines, Mr. Mahdi provided proof of payment documentation which was marked as Exhibit # 2 (1 page re Case # 100728), Exhibit # 3 (2 pages re Case # 100729), Exhibit # 4 (1 page Case # 105889) and Exhibit # 5 (2 pages re Case # 102114). The sums paid appeared to be \$200, \$219, \$400, \$275 and \$1,000 which correlated to the outstanding fines plus interest. This documentation indicated that the fine of \$1,325 for the offence of May 6, 2014 was

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paid but that the fines of \$113 and \$169 with respect to the offences of February 4, 2014 were still outstanding. Mr. Mahdi did not have any other proof of payment or documentation other than the 6 pages that he provided.

19. Mr. Mahdi did not call any other witnesses to testify on his behalf.

SUBMISSIONS

City's submissions.

20. In her closing submissions, Ms. Smith, on behalf of the City, requested that Mr. Mahdi's application be denied and a Taxicab (Vehicle-for-Hire) Licence not be issued to him at this time. One of the main concerns for the City was that Mr. Mahdi was driving a taxicab without a valid taxicab driver's licence after his licence was revoked by the Tribunal. He also seemed unable to take responsibility for his actions and denied driving a taxicab on February 4, 2014 when he was charged with two taxicab by-law offences.
21. Another concern for the City was that since January 9, 2014, Mr. Mahdi has not taken any steps to improve his driving habits or improve administrative practices to manage his infraction notices or penalties in keeping with the suggestions from the Tribunal in their previous Reasons for Decision.
22. Ms. Smith's position was that Chapter 546 (not 545) of the Toronto Municipal Code is the applicable legislation for the Tribunal to consider because the Tribunal was making the determination today (not the day that Mr. Mahdi made his request for a hearing) and notwithstanding that the extract from Chapter 545 was provided with the Report at page 204.

Mr. Mahdi's submissions

23. Mr. Mahdi stated in his submissions that he wanted a second chance to get his licence back and asked the Tribunal to forgive him for all of his mistakes so he can work for his children. He said: "I will never go back to another mistake."

DECISION

24. The Tribunal must balance the protection of the public interest with the need for the applicant to earn a living.
25. We noted that Mr. Mahdi currently works 30-40 hours a week at a warehouse and has been doing so since at least early 2014, being a period of over 2 years. In other words, he is employed full time and has been able to support his family. His wife also works. On the evidence before us, this is not a case where the Applicant would have no other means to support himself and his family if a licence is denied.
26. S. 546-4. A (former 545-4) of the Toronto Municipal Code sets out the reasons for denying a licence, including the following:

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- (1) 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
 - (2) 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
 - (5) 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 or safety of other members of the public.
27. In addition to the grounds set out in Subsection A, as above, MLS shall refuse to issue or renew a licence where an applicant has not met the screening criteria for taxicab owners. One of the grounds in the screening criteria is if an applicant for a taxicab operator licence has:
- (h) Any overdue by-law fines, unless the applicant provides proof that such fines have been subsequently paid.
28. With respect to the outstanding fines, Mr. Mahdi provided proof at the hearing that the fine of \$1,325.00 related to the May 6, 2014 offence was paid. The City's position was that the fines of \$113 and \$169 with respect to the February 4, 2014 incident still remained outstanding. The Tribunal accepted the City's position as there was no documentary evidence to the contrary.
29. Mr. Mahdi was first before the Tribunal on January 21, 2010 when his licence was suspended and his taxicab driver's licence was put on probation. Unfortunately, he failed to comply with the reporting requirements during the probationary period by failing to report new charges or convictions at least 20 times and was brought before the Tribunal on January 9, 2014. His licence was then revoked. Now, nearly 3 year later, he is before the Tribunal a third time and asks for another a chance – not a second chance but a third chance. The main issue was whether enough time has elapsed since January 9, 2014 to warrant giving Mr. Mahdi a third chance and what has happened in the intervening period.
30. The testimony of the witnesses and documentary evidence in the Report established the following list of new charges and in some cases convictions since January 9, 2014:
- | | | | |
|----------------------|--------|---------------------------------|------------------|
| 1. February 4, 2014 | By law | Unauthorized parking of taxicab | Fine, \$169.00 |
| 2. February 4, 2014 | By law | Fail to Keep Taxi Operator Log | Fine, \$113.00 |
| 3. February 18, 2014 | HTA | Speeding 55 kmh in 40 kmh zone | |
| 4. May 6, 2014 | By law | No Licence | Fine, \$1,325.00 |
| 5. May 6, 2014 | HTA | Plate Not Plainly Visible | Withdrawn |
| 6. June 13, 2014 | HTA | No Driver's Licence | |

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31. On its face, the above record, over a 3-year period, seems fairly ordinary. However, what is problematic for the Tribunal is that several of the charges occurred while Mr. Mahdi was driving a taxicab when his licence had been revoked. Even more alarming was the fact that the first time it happened was a mere 36 days after he appeared before the Tribunal when his licence was cancelled and he knew very well that he could not operate a taxicab in the City. Mr. Mahdi acknowledged that he knew that. He acknowledged that he received the Reasons for Decision and read them. However, Mr. Mahdi's explanation with respect to the February 4, 2014 charges was that he did not drive on that day and that the tickets were either issued by mistake or applied to an earlier date when he was able to drive a taxi. The Tribunal did not accept Mr. Mahdi's version of the events with respect to the offences on February 4, 2014 for the following reasons:

- i) the Ministry of the Attorney General documentation at page 193 of the Report with respect to the charge of Fail to Keep Taxi Operator Log was reliable as it contained Mr. Mahdi's personal information including his address, birth date, driver licence and license plate;
 - ii) the charge of Fail to Keep Taxi Operator Log was laid by a Toronto Police Officer and yet Mr. Mahdi denied or did not recall being pulled over by a police officer on that day;
 - iii) Mr. Mahdi was convicted of Fail to Keep Taxi Operator Log on March 24, 2014;
 - iv) the taxicab that Mr. Mahdi was driving on February 4, 2014 with Plate # AEPP202 was the same taxicab that he was driving on May 6, 2014;
 - v) Mr. Mahdi did not appeal his conviction;
 - vi) Mr. Mahdi had no supporting evidence to in support of his explanation that he was not driving a taxicab on February 4, 2014 or that this was somehow a mistake;
 - vii) during cross examination, Mr. Mahdi's story changed and he had trouble recalling certain events; and
 - viii) there were too many inconsistencies in Mr. Mahdi's explanations.
32. When Mr. Mahdi was last before the Tribunal on January 9, 2014, the Reasons for Decision encouraged that:

"If Mr. Mahdi applies for a taxicab driver's licence in the future, he would be well advised to show the city that he tried to deal with his behavior by bringing proof that he has sought some professional assistance, be it a lawyer or paralegal, a social worker, a medical doctor, a driving teacher, psychologist or some other person who can help him. There is no shame in seeking assistance of experts and developing a plan to change."

33. Unfortunately, Mr. Mahdi did not bring any proof that he has sought some professional to help with respect to his driving habits or to improve his ability to keep track of charges and reporting requirements to alleviate some of the concerns that the City had. The same concerns in January 2014 remained valid for the panel at this hearing as really nothing had changed since the last time he was before the Tribunal.

34. Having weighed all of the evidence presented in support of the applicant's disobedience and disregard for the law, the Tribunal accepted the position of the

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City that there are grounds for denial of the licence. It was clear to the Tribunal, based on the totality of the circumstances, that Mr. Mahdi has not complied with the law in the past and has engaged in conduct which threatened the health or safety of other members of the public by driving a taxicab without a licence. Operation of a taxicab by an unlicensed taxicab driver removes it from the regulatory control of MLS. It allows unlicensed taxicab drivers who have not been screened and approved by MLS to transport members of the public without any assurance for their safety. The Tribunal also held that there were reasonable grounds to believe that the Applicant will not comply with the law in the future and will constitute a danger to other members of the public.

35. The Tribunal also believes that, in this case, the protection of the public outweighs the applicant's need to make a living by operating a taxicab in the city given that Mr. Mahdi has another source of income by way of his current employment at a warehouse.
36. Accordingly, the Tribunal orders that Mr. Mahdi's Taxicab Driver's application No. B650903 be denied and the Taxicab Driver (Vehicle-for-Hire) licence not be issued at this time.
37. Although the Tribunal decided to deny the taxicab driver's the licence, if Mr. Mahdi applies for a licence in the future, he would be well advised to show MLS that he has put the past behind him; that he has made concerted efforts to improve his driving habits; that he has prepared and developed a written plan of employment and a reliable system of keeping track of his unpaid fines or violations; that he has paid his outstanding fines, and that he is willing to accept responsibility for his actions.

Originally Signed

Cezary Paluch, Chair
Panel Members, Aly N. Alibhai and Daphne Simon concurring

[Reference: Minute No. 187/16]

Date Signed: December 15, 2016