

## **REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL**

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**Date of  
Hearing:**

November 17, 2016

**Panel:**

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

**Re:**

Jenny Del Carme Nunez Almonte  
Applicant for an Entertainer's Licence (Application No. B647986)

**Counsel for Municipal Licensing and Standards:**

Ms. Brennagh Smith

### **BRIEF INTRODUCTION**

1. Jenny Del Carme Nunez Almonte ("Ms. Nunez") requested a hearing before the Toronto Licensing Tribunal (the "Tribunal") to determine whether or not an Entertainer Licence should be issued to her, have conditions placed on it or if the application should be denied.
2. The key issue is whether Ms. Nunez' history of serious charges and convictions under the Criminal Code provide reasonable grounds to believe that her work as an entertainer would pose a risk to public safety and that she would not carry out her business with honesty and integrity or in accordance with the law.
3. The Tribunal informed Ms. Nunez of her right to legal counsel and that she may be at a disadvantage, if she chose to proceed with the hearing without legal counsel or representation. Ms. Nunez stated that she understood the Tribunal's warning and wished to continue with the hearing unrepresented.

### **CITY'S EVIDENCE**

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

4. Mr. Terry Van Elswyk ("Mr. Van Elswyk"), Supervisor, Licensing Services for Municipal Licensing and Standards ("MLS"), identified Report # 6603 dated July 12, 2016 (Pages 1-107) (the "Report").
5. Mr. Van Elswyk referred to a Chart at pages 21-23 of the Report that listed seventeen (17) criminal convictions registered against Ms. Nunez for offences that occurred between 2010 and 2015, including Assault Peace Officer, Mischief, Obstruct Peace Officer, Assault with a Weapon, Assault Resist Arrest and Fail to Comply with a Probation Order.
6. Mr. Van Elswyk testified that several of these incidents involved violence. For example, with respect to an incident that occurred on December 4, 2010, Mr. Van Elswyk referred to an Arrest Report from the Belleville Police Service that stated

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that Ms. Nunez assaulted two males with a knife and a glass bottle during an episode of violent rage. During the same incident, Ms. Nunez was also alleged to have kicked the arresting officer and having attempted to grab one of the officer's pistols. As a result, she was convicted of two counts of Assault, Assault Resist Arrest and Mischief. She was sentenced to 45 days in custody.

7. With respect to another violent incident that occurred on June 16, 2011, Mr. Van Elswyk testified that the Arrest Report from the Belleville Police Service alleged that Ms. Nunez, while on a probation order, was intoxicated and attacked a person with a knife and caused cuts to his skin. As a result, Ms. Nunez was charged with Assault with a Weapon, Threaten Death/Bodily Harm, Fail to Comply with Bail Condition and Fail to Comply with Probation Order.
8. During a more recent incident on November 9, 2015, while in prison in Belleville, Mr. Van Elswyk testified that the Arrest Report showed that Ms. Nunez was being transported and that during an altercation while being transported, she slapped a Special Constable on the face with an open right hand. As a result of this incident, Ms. Nunez was convicted of Assaulting a Peace Officer.

## **EVIDENCE OF MS. NUNEZ**

9. Ms. Nunez testified that she does not have an alcohol abuse problem. She testified that the Children's Aid Society took custody of her child in 2010 because she was homeless at the time. She explained that during several of the incidents which resulted in criminal incidents against her involving violence, she was acting in self-defense and that she was not the aggressor. She testified that during the November 9, 2015 incident, she did not grab the police hand gun and said that she was punched by the police. She denied hitting the special constable when she was being transported as a prisoner. With respect to the incident involving the throwing of a beer bottle in the beer store, she stated that "she did not do it on purpose." While in prison, she acknowledged that she was put into solitary confinement because of arguments with other inmates.
10. With respect to an incident in Ottawa in 2014 when Ms. Nunez was convicted of Fail to Provide Proof of Payment while using the Ottawa public transit system, she explained that she merely forgot to take a transfer.
11. In questioning by the Panel, Ms. Nunez stated, among other things, as follows:

"I am not a violent person."  
"I am very quiet."  
"I guarantee it there is no way I can raise my hand."
12. Ms. Nunez did not call any other witnesses to testify on her behalf.

## **DECISION**

13. This was a difficult case. Ms. Nunez is 39 years of age and originally from the Dominican Republic. She sends money back to her family in the Dominican

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Republic when she can. The Children's Aid Society (CAS) took custody of her child in 2010. One of the reasons for this was that she was homeless. She has lived in many different cities. She has struggled with alcohol abuse although she does not admit that she has a problem. Several of the criminal charges occurred when alcohol was being consumed. She has been in a violent domestic relationship that eventually came to an end. She has been charged with approximately 39 criminal offences. Seventeen criminal convictions have been registered against her. She has spent time in jail and has been granted probation on more than one occasion. She has spent time in solitary confinement. While in jail, she had leg irons put on her ankles. It appears, however, that the sentences of incarceration have not served to rehabilitate her. They have not helped her. Regrettably, they have not deterred her from repeating the same offences and a lengthy record of recidivism. She now wants to work so she can go back to school. She wants to turn her life around. The Tribunal empathized with Ms. Nunez. Yet, the Tribunal was impressed by her strength and confidence in spite of the struggles that she has faced in her life. When asked about her plans, she said: "I believe in myself." She spoke with assurance and stated: "I am here now. I want my job back." The Tribunal believes that Ms. Nunez has come to a point in her life where she is ready for change and but that she requires more time, assistance and support in order to make a complete and full recovery.

14. Notwithstanding the human difficulties that this case raised for the Tribunal, the Tribunal has a mandate, in law, to balance the protection of the public interest with the need for the applicant to earn a livelihood.
15. The Tribunal noted that Ms. Nunez has worked for an employment agency in the past and that she attended university in the Dominican Republic. Previously, she also worked at a circus. Ms. Nunez also stated that she plans to become a real estate agent in the future and wants to return to school. On the evidence before us therefore, this is not a case where the Applicant would have no other means to support herself if the application is denied.
16. S. 545-4. C(1) of the Toronto Municipal Code sets out the reasons for denying a licence, including the following:
  - (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
  - (e) 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.

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17. The testimony of the witnesses confirm that Ms. Nunez was convicted of very serious violent offences under the Criminal Code. Many of the incidents involved elements of danger and the presence of weapons (i.e., a knife, scissors, a beer can and bottle) and alcohol. The Tribunal determined that if an Entertainer's Licence was granted, Ms. Nunez would inevitably be working in an environment where she would have regular contact with the public and be exposed to alcohol at all times. There was no compelling evidence before the Tribunal that she had successfully completed an alcohol rehabilitation program or an anger management program such that the panel could be satisfied that her past behavior and actions have been addressed in a real and meaningful manner and would not be repeated in the future, especially in the context of work as an adult entertainer.
18. Some of the convictions, such as Fail to Comply with Bail Condition, Fail to Comply with Probation Order, Fail to Provide Proof of Payment, reflect an absence of any sense of responsibility or willingness to respect and obey court orders. This raised concerns for the Tribunal that even if Ms. Nunez' entertainer licence was issued and then placed on probation, she may very well not be able to comply with any conditions imposed on her licence by the Tribunal.
19. Similarly, Ms. Nunez has failed to take any responsibility for her actions as evidenced by her own version of the events which, in almost all cases, was completely different than what was reported by the complainants or in the various police service reports. In several cases, injuries were sustained by the complainants – yet Ms. Nunez demonstrated no remorse whatsoever and explained that she was merely acting in self-defense or that the incident never happened. The large number of convictions involving persons in positions authority also demonstrated an utter disregard for the law. This also led the Tribunal to conclude that, for the foreseeable future at least, it was unlikely that Ms. Nunez would conduct herself as a licensed entertainer in the City of Toronto in accordance with the law.
20. Therefore, having weighed all of the evidence presented, the Tribunal accepted the position of the City that there were grounds for denial of the application for an entertainer licence. It was clear to the Tribunal that Ms. Nunez had not complied with the law in the past and had engaged in conduct which threatened the health or safety of other members of the public. The Tribunal therefore determined that there were reasonable grounds to believe that the Applicant would not comply with the law in the future and that, for the foreseeable future at least, constitutes a danger to other members of the public.
21. The Tribunal also believed that, in this case, the protection of the public outweighs the applicant's need to make a living by working as an entertainer in the City of Toronto, especially taking into account the evidence of the applicant that she had other viable means of earning a livelihood.
22. Accordingly, the Tribunal orders that Ms. Nunez' Application No. B647986 be denied and the Entertainer's Licence not issue at this time.

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23. If Ms. Nunez was to apply for an Entertainer's Licence in the future, it would be beneficial for her to demonstrate to MLS that she has taken responsibility for her past behavior and effectively put her troubled past behind her with no further criminal charges or convictions.

Originally Signed

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

[Reference: Minute No. 188/16]

**Date Signed:** December 15, 2016