

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: September 14, 2017

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

Re: Kevin Singh (Report No. 6888)
Applicant for a Tow Truck Driver Licence (Application No. B714612)

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett

INTRODUCTION

1. Mr. Kevin Singh ("Mr. Singh") requested a hearing before the Toronto Licensing Tribunal (the "Tribunal") to determine if a Tow Truck Driver's Licence should be issued, have conditions placed on it or if the application should be denied.
2. At the outset of the hearing, Mr. Singh was advised of his right to be represented by a lawyer or a licensed paralegal and indicated that he wished to proceed without the assistance of a lawyer or paralegal.
3. For the reasons which follow, the Tribunal concluded that Mr. Singh's application for a Tow Truck Driver's Licence should be denied.

FACTS

4. The City called Ms. Olga Kuztelska, Supervisor with MLS, as a witness. Ms. Kuztelska was affirmed.
5. Ms. Kuztelska testified that she was familiar with MLS Report No. 6888 and that she had overseen the preparation of the report.
6. MLS Report No. 6888, comprising of pages 1 through to 165, was entered into the record as Exhibit 1 without any objection.
7. Ms. Kuztelska testified to the contents of Exhibit 1 and, in particular, the following:
 - Mr. Singh first received a Tow Truck Driver's Licence in 1999 and first appeared before the Tribunal on March 24, 2005, at which time the Tribunal renewed his Tow Truck Driver's Licence with conditions (see Extracted Minute No. 87 of the Tribunal hearing held on March 24, 2005 at page 135 of Exhibit 1).
 - Mr. Singh's Tow Truck Driver's Licence was then cancelled on September 30, 2005 because he did not pay the renewal fee.

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- On December 3, 2008, Mr. Singh submitted an application for a Tow Truck Driver's Licence. A Tow Truck Driver's Licence was issued to him on May 11, 2009.
- On May 21, 2015, Mr. Singh was again before the Tribunal and, at that time, his Tow Truck Driver's Licence was revoked (see Reasons for Decision of the Tribunal at pages 139 and 140 of Exhibit 1).
- On January 7, 2016, Mr. Singh submitted an application for a Tow Truck Driver's Licence which was subject of a hearing before the Tribunal on May 5, 2016 and resulted in a decision of the Tribunal to deny his application for a Tow Truck Driver's Licence (see Reasons for Decision of the Tribunal at pages 128 to 132 of Exhibit 1).
- Page 142 of Exhibit 1 is a three year Driver Record of Mr. Singh which sets out a conviction for careless driving on April 9, 2015 and for speeding on August 30, 2016; and while the latter offence was pending when Mr. Singh was last before the Tribunal, it is not clear if this offence was brought to the attention of the Tribunal at that time.
- Page 146 of Exhibit 1 is a chart of various charges and convictions against Mr. Singh since May 5, 2016, the date on which he was last before the Tribunal. The first charge on the chart at page 146 of Exhibit 1 is for Drive Motor Vehicle Using Handheld Device under the Highway Traffic Act and, as set out in the chart at page 160 of Exhibit 1, has a pending court date of November 17, 2017.
- The other two offences set out in the chart at page 146 of Exhibit 1 are for operating a Tow Truck without a licence under the Toronto Municipal Code and Unreasonable Noise/Smoke/Signal Device under the Highway Traffic Act, and both of these offences occurred following Mr. Singh's last appearance before the Tribunal on May 5, 2016 and resulted in convictions.
- Pages 147 and 148 of Exhibit 1 set out the particulars of the Drive Motor Vehicle Using Handheld Device offence with which Mr. Singh has been charged, including the fact that the offence location was in the City of Toronto.
- Pages 151 and 152 of Exhibit 1 set out the particulars of the offence of Unreasonable Noise/Smoke/Signal Device of which Mr. Singh was convicted, including the fact that the offence location was in the City of Toronto.
- Page 153 of Exhibit 1 has two charts setting out the offences with which Mr. Singh was charged and convicted under both the Highway Traffic Act and the Toronto Municipal Code and which were before the Tribunal when he last appeared on May 5, 2016. These charts indicate that Mr. Singh still has outstanding fines owing for convictions of offences under the Toronto Municipal Code.
- Page 160 of Exhibit 1 is a chart of updated charges against Mr. Singh (updated at August 23, 2017), including the charge of Drive Motor Vehicle Using Handheld Device under the Highway Traffic Act, also set out at page 146 of Exhibit 1, as well as a charge of Improper Means of Attachment – Commercial Motor Vehicle, for which a court date is pending.

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- Page 162 of Exhibit 1 sets out the particulars of the offence of Improper Means of Attachment – Commercial Motor Vehicle with which Mr. Singh has been charged, including the fact that the offence location was in the City of Toronto.
 - Page 163 is a print out of an MLS Plate Inquiry which indicates that the owner of MLS Plate 466, the MLS plate number corresponding to all the offences with which Mr. Singh has been charged and/or convicted and for which an MLS plate number is available, is Nationwide Roadside Assistance Corporation.
8. Mr. Singh did not cross-examine Ms. Kuzstelska and so her evidence was unchallenged. Mr. Singh did not give any evidence at the hearing and did not call any witnesses.

ISSUE

9. The issue before the Tribunal was whether, pursuant to Chapter 545-4 C of the Toronto Municipal Code¹ there are reasonable grounds to believe that Mr. Singh will not carry on the business of tow truck driver in accordance with the law and with integrity and honesty, or that the carrying on of the business of tow truck driver by Mr. Singh would result in the breach of Chapter 546-4 of the Toronto Municipal Code, or if the conduct of Mr. Singh affords reasonable grounds to believe that his carrying of the business of a tow truck driver would infringe the rights of members of the public or would endanger their health or safety.

CITY'S SUBMISSIONS

10. In his closing submissions, counsel for the City asked that the application by Mr. Singh for a Tow Truck Driver's Licence be denied as there are reasonable grounds to believe that Mr. Singh has not conducted himself in accordance with the law and with honesty and integrity. In particular, the City submitted as follows:

¹ 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.....

(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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- Mr. Singh has previously appeared before the Tribunal on three separate occasions, most recently a little over a year ago in May of 2016, and it is very clear from the record before the Tribunal, including the Extracted Minute of the Tribunal Hearing held on March 24, 2005 (see page 134 of Exhibit 1), the Reasons for Decision of the Tribunal hearing held on May 21, 2015 (see pages 139 and 140 of Exhibit 1) and the Reasons for Decision of the Tribunal hearing held on May 5, 2016 (see pages 127 to 132 of Exhibit 1) that Mr. Singh has a very long record of driving related offences and convictions, including convictions for serious driving related offences.
- As was previously observed by the Tribunal during the hearing which was held on May 5, 2016, Mr. Singh's conduct shows a consistent pattern of driving behaviour which is contrary to the law and poses serious concerns for the City in terms of the protection of the public interest including, for example, offences related to operating a tow truck without a licence.
- Mr. Singh has been convicted of a number of driving related offences since his last appearance before the Tribunal in May 2016, including an offence for Unreasonable Noise/Smoke/Signal Device under the Highway Traffic, the offence date for which was May 17, 2016, a mere twelve days after he had appeared before the Tribunal.
- The record before the Tribunal makes plain that Mr. Singh has failed to obey previously issued orders of the Tribunal, that his very serious and problematic pattern of driving behaviour has not changed, that he has continued to show complete disregard for the law and that he has been charged with and convicted of driving related offences which occurred in the City of Toronto.
- Mr. Singh did not give any evidence during the hearing regarding his need for a Tow Truck Driver's Licence in order to earn a livelihood and, as such, the Tribunal does not have any evidence upon which it can base any findings concerning his need for a Tow Truck Driver's Licence to earn a living. If anything, the Tribunal must rely on Mr. Singh's evidence given at the hearing held on May 5, 2016 during which he testified that he has worked towing scrap vehicles and jacking cars for tire changes, both of which are towing related jobs which do not require a Tow Truck Driver's Licence.

APPLICANT'S SUBMISSIONS

11. Mr. Singh submitted that he needs a Tow Truck Driver's Licence in order to make ends meet and that although he has tried to earn a living through other avenues such as towing scrap vehicles, he has not been successful in making his ends meet. He submitted that he needs a Tow Truck Driver's Licence to earn a livelihood and to support himself and his family.

DECISION

12. The Tribunal accepted the submissions of the City and, in particular, the City's position that, since Mr. Singh was last before the Tribunal in May 2016, there had

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been no change in Mr. Singh's consistent and long history of driving behaviour in contravention of the law. On the contrary, the Tribunal noted that Mr. Singh had been charged with additional driving related offences since his last appearance in May 2016 and that these offences demonstrate a continued disregard for the law.

13. The Tribunal was especially concerned that Mr. Singh had knowingly operated a tow truck without a licence and that his conduct clearly established that he is unable to comply with the Tribunal's orders.
14. The Tribunal therefore accepted the City's submission that since his last appearance before the Tribunal on May 5, 2016, a mere sixteen months ago, Mr. Singh's conduct has not improved and indeed, that his conduct continued today to afford reasonable grounds for belief that he will not carry on his trade as a tow truck driver in accordance with law and with integrity and honesty contrary to the Municipal Code.
15. On all of the evidence before it, the Tribunal was persuaded that Mr. Singh's conduct since his last appearance before the Tribunal affords reasonable grounds for the belief that his carrying of the business of a tow truck driver would infringe the rights of other members of the public and would endanger the safety of the public in contravention of the Municipal Code.
16. In view of the fact that the Tribunal did not hear any evidence in support of Mr. Singh's assertion that he needs a Tow Truck Driver's Licence to earn a livelihood, the Tribunal was not persuaded that Mr. Singh could not earn a livelihood through alternative means. In this regard, the Tribunal accepted the submission of the City that, on this point, the only evidence that it could rely on is that which was given by Mr. Singh at his May 2016 hearing at which he testified that he has worked at jobs which do not require a Tow Truck Driver's Licence including, for example, towing scrap vehicles and jacking cars for tire changes.
17. Accordingly, on the basis of the facts and the law as set out in these reasons and taking into account the mandate of the Tribunal to protect the public interest, the Tribunal denied Mr. Singh's application for a Tow Truck Driver's Licence in the City of Toronto.

Originally Signed

Aly N. Alibhai, Chair
Panel Members, (Hedy) Anna Walsh and Keith Cooper concurring

Reference: Minute No. 257/17

Date Signed: September 28, 2017