

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: August 3, 2017

Panel: (Hedy) Anna Walsh, Chair; and Aly N. Alibhai, Member

Re: Joon Kyoung Kim (Report No. 6516)
Applicant for the Renewal of Tow Truck Driver's Licence No. D09-4312579

Counsel for Municipal Licensing and Standards: Ms. Penelope Ma

INTRODUCTION

1. The Applicant, Mr. Joon Kyoung Kim, requested a hearing before the Toronto Licensing Tribunal (TLT) 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. The central issue related to the Applicant's conduct (including charges and convictions under the Highway Traffic Act (HTA), Toronto Municipal bylaws and the Criminal Code) provide reasonable grounds to believe that he will not operate a tow truck in accordance with the law, and with honesty and integrity and that his operation of a tow truck would infringe upon, or endanger, public health and safety.
3. After hearing the evidence submitted by the City and the Applicant, as well as the submissions of both parties, the Tribunal ordered the denial of the tow truck driver's licence application for reasons as set out hereafter.

CITY'S EVIDENCE

4. The City called one witness to testify on its behalf. Ms. Alice Xu, Supervisor of Municipal Licensing and Standards (MLS) Bylaw Enforcement, testified after being affirmed. She reported that Report No. 6516, ("the report") dated April 18, 2017 was created by MLS staff and was signed by her and that she could attest to its contents. It was entered into evidence and marked as Exhibit #1.
5. Ms. Alice Xu referred to:
 - a copy of an abstract from the Toronto Licensing Tribunal, Minute 138, dated July 28, 2011, at which time Mr. Kim was provided with a probationary tow truck driver's licence for a period of five (5) years with conditions (pages 7-8);
 - a copy of an abstract from the Toronto Licensing Tribunal, Minute 107, dated October 02, 2014, at which time the Tribunal granted Mr. Kim the

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- renewal of a tow truck driver's licence with conditions for a period of five (5) years (pages 9-10);
- a copy of a letter from Mr. Kim to MLS, dated October 02, 2015, indicating that he had changed his employment as of July 03, 2015, this being sixty-five (65) days after the commencement of his new employment, and therefore a breach of a condition imposed by the Toronto Licensing Tribunal on October 02, 2014 (page 13);
 - a copy of a letter, dated October 8, 2015 denying Mr. Kim a tow truck driver's licence (pages 14-15);
 - a copy of a letter from Mr. Kim to MLS requesting a hearing, dated October 05, 2015 (page 16);
 - a copy of a letter to MLS, dated October 02, 2015, confirming Mr. Kim's employment with Steve's towing (pages 11-13);
 - a copy of Mr. Kim's three (3) years driver record, dated October 19, 2016, revealing four (4) charges and convictions and fourteen (14) demerit points (page 17);
 - a copy of a letter from MLS to Mr. Kim, dated October 19, 2016 indicating that Mr. Kim's provincial driver's licence had been suspended (page 18);
 - an abstract of Mr. Kim's criminal background, dated September 27, 2016, revealing five (5) charges and convictions (pages 19-20);
 - an abstract from the Ontario Ministry of the Attorney General's Integrated Court Offences Network ("ICON"), dated July 28, 2011, revealing eighteen (18) *Highway Traffic Act* charges and sixteen (16) convictions (pages 22-23);
 - an abstract from the Ontario Ministry of the Attorney General's Integrated Court Offences Network ("ICON"), dated October 02, 2014 revealing twenty (20) *Highway Traffic Act* charges and twelve (12) convictions (pages 24-25);
 - an abstract from the Ontario Ministry of the Attorney General's Integrated Court Offences Network ("ICON"), dated April 06, 2017, revealing six (6) *Highway Traffic Act* charges and five (5) convictions, as well as outstanding fines totaling \$625.
6. Mr. Kim did not cross-examine Ms. Alice Xu and her evidence was therefore unchallenged.

APPLICANT'S EVIDENCE

7. The Applicant appeared on his own behalf, without legal representation, was duly sworn and testified to the contents of the report. The Applicant was advised of his right to have legal representation and indicated that he wanted to proceed without legal representation.
8. The Applicant testified that he was aware that he had fourteen (14) demerit points and claimed that many of the charges and convictions reflected the nature of the tow truck industry, in which tow truck drivers are expected to respond quickly to accidents and are often required to compete for business.

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Under cross-examination, Mr. Kim testified that:

9. He is currently working 40 (forty) hours a week as a construction worker and that he has been employed in this capacity for only one month. He claimed that the work was seasonal and that it was possible that he might not be working during the winter. He reported that in the past he had worked in factories and garages. He claimed to have also worked as a tow truck driver in Whitby, but was no longer working there anymore, because of the aggressive and competitive nature of the tow truck driving industry there. He claimed that the company "Tow Brothers" has offered him employment, as a tow truck driver in Toronto.
10. He lives with his wife, who is 11 years older than him and is a senior citizen and is currently not working. He reported that he has one adult son who resides in North Bay.
11. He claimed to have paid all outstanding fines but could not produce any receipts to support his claim. He claimed to have reported all charges and convictions, as well as the change in employment, pursuant to a condition of his probationary licence and alleged that the fax machine was either not fully operational, or that he didn't have the right number. He reported that he could not defend his charges, as he could not afford legal assistance and did not qualify for legal aid, as he was self-employed.
12. He admitted to driving when his licence was suspended on July 26, 2013. He also admitted to the charge and conviction of assault with a weapon on October 23, 2009, but claimed to have been unable to afford legal representation to defend himself and that he was therefore convicted. He claimed that the camera security video of the event was "blurry" and that his innocence could therefore not be proven. He claimed to have thrown a crumpled Styrofoam cup against his former employer's car, following a verbal altercation between them. He maintained that although his former employer was seated in the car, at the time the doors and windows of the vehicle were closed and, as such, the Styrofoam cup hit the door of the vehicle in which his former employer was sitting.
13. The Applicant did not call any witnesses to testify on his behalf.

CITY'S SUBMISSIONS

14. In her closing submissions, Counsel for MLS, expressed the view that Mr. Kim's application for tow truck licence should be denied, as there are reasonable grounds to believe that the Applicant has not carried on, or would not carry on, his business as a tow truck driver in accordance with law and with integrity and honesty and should therefore not be issued a licence. He has appeared before the Tribunal on two previous occasions and has not demonstrated that he can modify his behaviour in accordance with the law.

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APPLICANT'S SUBMISSIONS

15. The Applicant expressed the need for a tow truck driver's licence in Toronto to better support himself and his wife who does not work because of health related issues. He claimed that working as a tow truck driver would also be physically easier on him than working in construction and as a labourer. He conceded that many of his wrongdoings were attributable to the fact that the tow truck industry encourages fierce competition and aggressive driving and behaviour. He reported to want to modify his behaviour and comply with the law in the future and to be a positive role model for his son.

DECISION

16. In its determination of whether a licence should be issued, denied, or have conditions placed on it, the Tribunal was mindful of the Toronto Municipal Code, Chapter 545-Section 545-4 which provides grounds to deny a licence:

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.
17. The Applicant has a long history with the Tribunal. He was before the Tribunal on July 28, 2011, at which time he was provided with a probationary tow truck driver's licence for a period of five (5) years with conditions and again on October 02, 2014, at which time he was also provided with a probationary tow truck driver's licence for a period of five (5) years with conditions. Despite prior assurances that he would reform his behaviour, his ongoing driving record clearly raises questions about road safety, especially in light of his history of several serious driving offences, including those most recently of six (6) Highway Traffic Act charges and five (5) convictions, in addition to outstanding fines for these convictions of \$625. The gravity of these offences is further reflected in the

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recurring nature and pattern of his serious driving record. The Tribunal therefore believes that there are to reasonable grounds to believe that Mr. Kim will not conduct behave in accordance with the law, with honesty and integrity, or with due regard to public health and safety.

18. The Tribunal, in its deliberations also considered the Applicant's need to make a living. Chapter 545-3 B (3), subsection (c) of the Toronto Municipal Code requires that the Tribunal consider the need to balance the protection of the public interest with the need for licensees to make a living. The Applicant reported that he had other means of employment and was currently working as a construction worker.
19. The rules governing tow truck drivers exist for a reason: to protect the safety of the public and to ensure the performance of activities with integrity and honesty. Although the Applicant demonstrated remorse for his wrongdoings and offered some credible and consistent testimony, the requisite evidence to support his interest in reforming his past conduct was lacking. Mr. Kim conceded that he wished to make a genuine effort to reform his behaviour and comply with the law in the future. Evidence therefore of his ability to modify his behaviour and conduct himself in accordance with the law and with honesty and integrity, and without endangering the health or safety of the public, would certainly be to his benefit in being considered for a tow truck driver's licence in the future.
20. Given all the evidence of the Applicant's current record of behaviour and pattern of disregard for the law, there are convincing and compelling grounds to believe that he has not carried on or will not carry on his business of operating a tow truck with integrity and honesty. Accordingly, taking all the evidence into account and the submissions of both Counsel for the City and the Applicant, the Tribunal ordered to deny the Applicant a tow truck driver's licence in order to protect the health and safety of the public, in accordance with Section 545-4C(1), subsections (a), (b) and (e) of the Municipal Code.

Originally Signed

(Hedy) Anna Walsh, Chair
Panel Member, Aly N. Alibhai concurring

[Reference: Minute No. 225/17]

Date Signed: August 17, 2017