

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: June 15, 2017

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

Re: Rafiullah Jaweed Rashidi (Report No. 6823)
Applicant for a Tow Truck Driver's Licence (Application No. B7011729)

Counsel for Municipal Licensing and Standards: Mr. David Gourlay

INTRODUCTION and ISSUE

1. In January 2017, Mr. Rafiullah Jaweed Rashidi ("Mr. Rashidi") applied to the Municipal Licensing and Standards (MLS) of the City of Toronto for a Tow Truck Driver's Licence. MLS denied to issue a licence due to Mr. Rashidi's record of a conviction under the Criminal Code. Mr. Rashidi 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 be denied.
2. At the outset of the hearing, Mr. Rashidi was advised of his right to legal representation. Mr. Rashidi indicated that he understood that he had a right to be represented, but would proceed without representation.
3. The issue before the Tribunal was to determine whether Mr. Rashidi's conduct (including charges and convictions under the Criminal Code [CC], Highway Traffic Act, and Trespass to Property Act) provides reasonable grounds to believe that: Mr. Rashidi will not operate a Tow Truck in accordance with law, and with honesty and integrity; his carrying on of the operation of a Tow Truck will result in a breach of the law; and his operation of a Tow Truck would infringe or endanger public health and safety.
4. After hearing the evidence and submissions of MLS and Mr. Rashidi, the Tribunal denied to issue a Tow Truck Driver's Licence to Mr. Rashidi for the reasons set out hereafter.

CITY'S EVIDENCE

5. The City called Ms Alice Xu, Supervisor of Licensing Services, as a witness.
6. After being affirmed, Ms Xu testified that she was familiar with Report No. 6823, ("the report") dated March 30, 2017, and signed by Ms Olga Kuztelska, Supervisor MLS Bylaw Enforcement. MLS staff created the report, and Ms Xu had reviewed it, could attest to its contents, and had prepared the update on pages 53 to 65. The report (pgs. 1 to 65) was entered into evidence, and marked as Exhibit #1, without any objection.

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7. Ms Xu testified to the contents of Exhibit 1 and, in particular, the following:
 - a. A police criminal records check from June 2016 which showed that in May 2013 Mr. Rashidi was convicted for “assault with a weapon” resulting in a nine-month conditional sentence with nine months’ probation, and a two day pre-sentence custody, along with a s. 110 CC prohibition order (p. 5).
 - b. A three-year provincial driver record abstract for Mr. Rashidi, dated January 9, 2017, showing no record of convictions, discharges or other actions.
 - c. A chart prepared by MLS staff and last updated on February 3, 2017, outlining charges and convictions for Mr. Rashidi and based on information from the Integrated Court Offences Network (ICON) (pgs. 11-27).
 - d. A general occurrence report from York Regional Police Service in which Mr. Rashidi was charged with assault under s. 266 of the CC on July 20, 2013. (pgs. 30-36)
 - e. A record of arrest from the Toronto Police Service from September 23, 2012, in which Mr. Rashidi was charged with assault, carry concealed weapon, weapons dangerous, assault with a weapon, and assault causing bodily harm. (pgs. 39-48). In that record, it describes an incident at a nightclub in which Mr. Rashidi and the accused jumped the victims, and then were ejected from the nightclub. Mr. Rashidi stabbed the victim outside the nightclub.
 - f. An updated chart prepared by MLS staff and last updated on May 25, 2017, outlining one charge (speeding 75 km/h in a 60 zone) from February 2017 and three convictions for Mr. Rashidi based on information from the ICON (pgs. 55-64).
 - g. The convictions are summarized in an updated three-year provincial driver record abstract for Mr. Rashidi, dated May 25, 2017. Mr. Rashidi was convicted of “improper use of an HOV lane” and “failing to surrender his licence” on April 11, 2017, and then on April 21, 2017 of “disobeying a traffic sign.” The last offence occurred in a tow truck. The abstract indicates he has five demerit points on his Driver's Licence (p. 65).
8. Mr. Rashidi did not cross-examine Ms Xu.

APPLICANT'S EVIDENCE

The Applicant appeared on his own behalf, without legal representation, was duly sworn and testified as follows:

9. He has made mistakes in the past, but he has changed now. He has a wife and one-year-old daughter. He currently drives a tow truck in another municipality and that is his only source of income. Because of his past, it is hard to get another job. He is haunted by his past. He wants a second chance. He would follow whatever conditions were placed on his licence.

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Mr. Gourlay cross-examined Mr. Rashidi and during cross-examination, Mr. Rashidi testified as follows:

10. Everything that happened [in the report] is true. He was convicted for those two incidents (assault and assault with a weapon.) These mistakes haunt him. He was also convicted for the driving offences.
11. With respect to the 2012 stabbing outside the nightclub, Mr. Rashidi testified:
 - a. He was 21 years old at the time. (He is now 25 years old.) It was a big mistake and he cannot afford for this to happen again.
 - b. He did not recall why he was carrying a folding knife that night and does not remember how the argument started.
 - c. While people were drunk that night, he was not drunk or doing drugs. He was with two or three friends and they were kicked out of the nightclub for being "rowdy." He is no longer friends with the people he was with that night.
 - d. When asked if he intended to kill the victim, he said no, but the incident haunts him.
 - e. When asked if he went to jail as a result of this conviction, he said he spent 30 days in jail but is not sure for which of the two convictions. It was possible the 30 days in jail was the sentence for the 2013 assault conviction.
12. Regarding the 2013 conviction for assault, Mr. Rashidi testified:
 - a. He was on his electric scooter, there were people on the sidewalk who whistled at him and taunted him. They did not threaten him, but said something like "Rev your engine," which is not possible on an electric bike. They were drunk but he was not. He returned with a friend. He denied hitting the victim with a "sucker punch" (that is unexpectedly). They were facing each other and the victim would have been expecting the punch. He did "knock out" the victim, but the victim was drunk and so that was not difficult to do.
 - b. He completed two to three months of court-ordered anger management counseling after this second conviction as part of his probation. It helped and he has learned to control his anger, so "stuff like this" does not come up anymore. He does not hang around with the same group of friends, only with family. He has not had a drink in years.
13. He does not recall anything about the conviction for "engage in prohibited activity" under the Trespass to Property Act that occurred at Warden Station in which he was fined \$103. He honestly had no memory of this incident.
14. Regarding the April 22, 2016 driving convictions for improper use of an HOV lane and fail to give identification, Mr. Rashidi testified that he was working when the officer gave these tickets. A friend gave his name and he has requested these convictions be re-opened. He could not explain why his friend would do this. This was not one of the friends involved in earlier criminal incidents.

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15. He was driving a tow truck when he was charged with “disobeying a stop sign” in 2017. He was charged at Yonge and Bloor when he turned when it was not allowed. At the time, he was dropping off a car that he had picked up in Durham. He did not have a passenger/customer in the truck.
16. The speeding charge for driving 75 km/h in a 60 zone did not occur in a tow truck.
17. He is currently working full time as a tow truck driver for Durham CAA. His cousin has a towing business in Toronto and that is why he is seeking a licence there.

Panel members questioned Mr. Rashidi and he testified as follows:

18. He works full time as a tow truck driver for CAA in Durham.
19. He has tried to get other jobs, such as with the TTC and Bombardier, but was unsuccessful due to his criminal convictions.
20. He is able to support himself and his family with his current job, but is living “paycheck to paycheck.” He would like to build a better life for himself and his family but is unable to do so with his current job.
21. He is not currently doing counseling; he only completed the court-ordered counseling.
22. When asked why his friend would blame him and use his name when stopped by the police in a car, Mr. Rashidi indicated that he did not know why his friend would do that, but it has ruined his driving abstract and his insurance. His friend was not driving Mr. Rashidi’s car but his own car.

On re-examination, Mr. Gourlay re-examined Mr. Rashidi, and he testified that:

23. He was married on December 1, 2012. His wife is from Afghanistan and he brought her here to Canada.

Mr. Rashidi did not call any witnesses to testify on his behalf.

CITY’S SUBMISSIONS

In his closing submissions, Mr. Gourlay on behalf of MLS submitted that a Tow Truck Driver’s Licence should not be issued to Mr. Rashidi at this time. In particular, he submitted that:

24. Though Mr. Rashidi presents a compelling story that he has turned his life around, his past criminal convictions were very violent in nature and did not happen that long ago and this poses serious concerns for MLS. However if more time passes, Mr. Rashidi may well be an excellent tow truck driver.
25. Mr. Rashidi was somewhat vague about the two incidents leading to convictions. We did not hear that he was drunk at the time.

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26. While the fact that the two serious incidents occurred a few years ago is encouraging; however, the recent incident with two driving offences where Mr. Rashidi states a friend gave his name to the police suggest Mr. Rashidi may not have completely broken his ties with his past.
27. When balancing the public interest, and in particular public safety, with the livelihood of the applicant, in this case the balance is tipped by the public safety concerns. In both incidents, Mr. Rashidi and his friends were the instigators. In the second incident in which Mr. Rashidi was convicted of assault, Mr. Rashidi chose to return and provoke the situation with the victim. We did not hear that the incidents were due to drinking or drugs.
28. The MLS is not satisfied given what happened in the two cases that Mr. Rashidi might have a recurrence.
29. Mr. Rashidi is already making a living in another municipality. There is not a need to make a living but rather the chance to make a better living.
30. If more time passes and Mr. Rashidi continues on the same path, it may be that he can satisfy MLS that his past conduct will not recur. Only time will confirm that.

APPLICANT'S SUBMISSIONS

Mr. Rashidi requests that the Tribunal give him a probationary licence, and that MLS could check on him regularly to make sure he is still doing the job well. He submitted that:

31. He does not deserve a licence but he is looking for the Tribunal to give him a second chance. He is known for his customer service in his current work as a tow truck driver in Durham. He wants to keep giving back to the community. Without this licence, he will continue to live from “paycheck to paycheck” and be unable to build a better future for himself and his family. He will not go back to his old ways. He has promised this to his wife.

DECISION

32. In considering whether to grant or deny a licence, or to grant a licence with conditions, the Tribunal must balance the protection of the public interest with the need for the applicant to earn a living.
33. Section 546-4 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

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- 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
 - c. 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.
34. Having weighed the evidence, the Tribunal is satisfied that MLS has shown that there are reasonable grounds to deny a Tow Truck Driver's Licence to Mr. Rashidi. Mr. Rashidi has not complied with the law in the past and has engaged in conduct, which threatened the health or safety of members of the public. Though Mr. Rashidi appears to be committed to changing his ways, this positive change was not enough to alleviate our concerns given his past conduct. At this time, there was insufficient evidence to conclude Mr. Rashidi had truly changed his ways, and the Tribunal is of the opinion that there are reasonable grounds to believe that Mr. Rashidi will not comply with the law in the future and that the issuance of a Tow Truck Driver's Licence would endanger members of the public.
35. In particular, the Tribunal notes that Mr. Rashidi's two criminal convictions were violent in nature and did not happen that long ago, with the most recent offence happening less than four years ago. Mr. Rashidi's descriptions of the incidents were somewhat vague, and while he indicated he was younger then, he was otherwise unable to point to a clear reason as to why they occurred then and will not recur. (For example, this was not a case where the incidents occurred while he was intoxicated and now he no longer drinks.)
36. Though Mr. Rashidi stated he has changed since being married and having a child, during cross-examination he revealed that one of the two criminal offences occurred after his marriage. In addition, though Mr. Rashidi stated he is no longer friends with anyone involved in the past two criminal incidents, according to Mr. Rashidi his friend falsely gave his name leading to the two April 2017 driving convictions. This suggested to the Tribunal that even though Mr. Rashidi has had no criminal charges since July 2013, there is a risk Mr. Rashidi may not have truly put his past behind him.
37. In its determination of whether a licence be issued, refused, or have conditions placed upon it, the Tribunal also considered section 546-8 (3)(c), the applicant's (Mr. Rashidi) need to earn a living. The Tribunal took note of the fact that Mr. Rashidi is currently employed full time as a tow truck driver and able to support himself and his family. Though Mr. Rashidi stated he lives from paycheck to paycheck, this was not a case in which Mr. Rashidi did not have other means to earn a livelihood but rather that he could earn a better living with the licence to be a tow truck driver in Toronto.
38. Even though the Tribunal did not issue a licence, Mr. Rashidi has shown remorse for his past conduct and told the Tribunal that he will not return to his old ways. Mr. Rashidi appears to be headed on a path in the right direction, and stated he is

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committed to his family and his one-year old daughter. We appreciate that Mr. Rashidi is ready to build a new life for himself and his family. The passage of time would be to the benefit of Mr. Rashidi as it would give him the opportunity to demonstrate to the Tribunal and MLS that he is able to abide by the law, conduct himself with honesty and integrity, and has put the past behind him.

Originally Signed

Melina Lavery, Chair
Panel Members, Aly N. Alibhai and (Hedy) Anna Walsh concurring

[Reference: Minute No. 179/17]

Date Signed: September 20, 2017