

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: August 3, 2017

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

Re: Sharujan Loganathan (Report No. 6880)
Applicant for a Tow Truck Driver's Licence (Application No. B710482)

Counsel for Municipal Licensing and Standards: Ms. Penelope Ma

INTRODUCTION

1. The Applicant, Mr. Sharujan Loganathan, 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, 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. 6880, ("the report") dated May 12, 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 a letter of refusal from Mr. Richard Mucha, Manager Licensing Services, Municipal Licensing and Standards, to Mr. Loganathan dated October 11, 2016 in response to a request for a tow truck driver's licence (pages 6 - 7);
 - a copy of a letter from Ms. Marcia Stoltz, Manager Licensing Services Municipal Licensing and Standards, dated March 14, 2017, indicating that Mr. Loganathan's application for a tow truck driver's licence had been

August 3, 2017

- denied due to convictions under the Highway Traffic Act that pose a concern to Municipal Licensing and Standards (pages 11-12);
- a copy of a Request for Hearing received by MLS from Mr. Loganathan, dated March 23, 2017 (page 13);
 - an abstract from the Ontario Ministry of the Attorney General's Integrated Court Offences Network ("ICON"), dated April 13, 2017 related to Mr. Loganathan's driving record from December 2011 to December 2016, revealing ten (10) Highway Traffic Act charges and five (5) convictions (pages 15-33);
 - A copy of an Occurrence Report from the Toronto Police Service, dated May 12, 2017, concerning criminal charges registered against Mr. Loganathan, including a charge and conviction for careless driving while operating a tow truck (pages 37-46); and
 - A copy of Mr. Loganathan's three-year driver's record, dated April 19, 2017, revealing six (6) demerit points (page 34).
6. Mr. Loganathan 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 had accumulated charges and convictions under the Highway Traffic Act as a result of the nature of his work as a tow truck driver "chaser", which required him to "chase" accidents.
9. Under cross examination, the Applicant admitted to speeding 154 km/h in a 100 km/h zone on February 04, 2016 while operating a tow truck and "chasing" an accident but said that he was unaware of his speed at the time. He confirmed that his licence had been subsequently suspended for seven (7) days.
10. The Applicant admitted to the charge and conviction of careless driving while operating a tow truck on January 03, 2016, arising from a collision with a vehicle that had previously been involved in an accident. There was a passenger in the other vehicle involved, as well as a passenger in his vehicle.
11. He confirmed that he was charged on December 19, 2012 under the Liquor License Act for having an open can of beer in his vehicle, while it was parked in front of his mother's home, as he did not want to drink in her presence.
12. He reported that he is 26 years of age, unmarried and has no dependents and resides with his mother, whom he is supporting. He claimed that he had been living in Ottawa for the past 2 1/2 years, where he was "fixing cars" and working as a tow truck driver, where he did not require a licence to operate a tow truck

August 3, 2017

- and that he recently moved back to Toronto and is now working full time as a tow truck driver in Markham. He reported that he still visits Ottawa every weekend.
13. He reported that he has a brother that operates a garage and fixes cars and that a tow truck driver's licence in Toronto would enable him to make referrals from accidents to his brother's shop. He also reported that he would be able to build up a clientele in Toronto that would enable him to respond to customer calls, rather than working as a "chaser".
 14. He reported that in the past, he has worked as a security guard and as a courier driver.
 15. The Applicant did not call any witnesses to testify on his behalf.

CITY'S SUBMISSIONS

16. In her closing submissions, Counsel for MLS, stated that Mr. Loganathan's application for a tow truck driver's licence be denied, as there were reasonable grounds to believe that he had not carried on the business of a tow truck driver in accordance with the law and with integrity and honesty and had endangered public safety. Although the applicant asserts that he will "change his behaviour", there is currently no evidence to support that claim, especially given a clear record of a pattern of non-compliance with the law over an extended period of time consistent with a pattern of behavior that poses serious concerns for MLS. Furthermore, he is employed full-time and has had previous work experience, such as that of a security guard and a courier driver.

Counsel for MLS also referred to Chapter 545-Section 545- 21, which provides that a tow truck driver is not permitted to refer or recommend a body shop or vehicle repair facility. Accordingly, based on the totality of all the evidence, counsel for MLS submitted that the application for a tow truck driver's licence should be denied.

APPLICANT'S SUBMISSIONS

17. The Applicant claimed that he requires a tow truck driver's licence in Toronto to supplement his current income and to be able to better support himself and his mother.

DECISION

18. 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.

August 3, 2017

- (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.
19. The Tribunal, in its deliberations also considered the Applicant's need to make a livelihood. The Tribunal took into account that the applicant is currently working full time as a tow truck driver in Markham, as well as his previous work experience as a security guard and courier driver which indicate and support his ability to make a living, outside of being a tow truck driver in the City of Toronto.
20. The clear evidence that the Tribunal heard, supporting the Applicant's record of disobedience and disregard for the law, was very convincing and compelling to provide reasonable 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.
21. As a result and based on the totality of all of the evidence as outlined above, 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. 222/17]

Date Signed: August 17, 2017