

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: April 20, 2017

Panel: (Hedy) Anna Walsh, Chair: Moira Calderwood and Aly Alibhai, Members

Re: Edmund Xi (Report No. 6799)
Holder of Driving Instructor's Licence No. V11-4066881; Plate No. 5205

Counsel for Municipal Licensing and Standards: Ms. Lauren Elliott

Mandarin Interpreter: Ms. Chang Zhang

INTRODUCTION

1. The Licensee was requested to appear before the Toronto Licensing Tribunal (TLT) to determine whether or not his Driving Instructor's Licence should be revoked, suspended, or have conditions placed on it.
2. The central issue related to whether the Licensee held a valid Provincial Driving Instructor's licence, as required by the Toronto Municipal Code.
3. After hearing the evidence submitted by the City and the Licensee, as well as the submissions of both parties, the Tribunal ordered the Driving Instructor's Licence be renewed, with a condition of immediate suspension up to one year and reinstatement upon proof by the licensee of a valid Provincial Driving Instructor's licence, for reasons as set out hereafter.

CITY'S EVIDENCE

4. The City called one witness to testify on its behalf. Ms. Olga Kuztelska, Supervisor of Municipal Licensing and Standards (MLS) Bylaw Enforcement, testified after being affirmed. She reported that Report No. 6799, ("the report") dated January 25, 2017 was created by her 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. Olga Kuztelska referred to:
 - a copy of an e-mail message from Ms. Dianne Hultay of the Ontario Ministry of Transportation to Mr. Terry Van Elswyk dated December 1, 2016 in response to a request of licensing history for Mr. Xi (pages 4-5);
 - a copy of a letter from the Ontario Ministry of Transportation, dated July 6, 2016, indicating that Mr. Xi's Driving Instructor's Licence had been revoked due to serious violations of Ontario Regulation 473/07, Licences for Driving Instructors and Driving Schools, including making inaccurate in vehicle training record and failing to sign classroom training records.

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Furthermore, a response to a proposal dated December 14, 2015 had not been received within 30 days as requested (page 6);

- a copy of a letter from MLS to Mr. Xi, dated December 14, 2016, advising him that his Municipal Licence was to be the subject of review by TLT because his Ontario Provincial Driving Instructor's licence had been revoked by the Ontario Ministry of Transportation in July, 2016 (page 7).
- an abstract from the Ontario Ministry of the Attorney General's Integrated Court Offences Network ("ICON"), dated January 20, 2017 related to Mr. Xi's driving record, revealing two (2) Highway Traffic Act charges and two (2) convictions (pages 9-17).

6. Mr. Xi did not cross-examine Ms. Olga Kuztelska and her evidence was therefore unchallenged.

APPLICANT'S EVIDENCE

7. The Licensee appeared on his own behalf, without legal representation, was duly sworn and testified to the contents of the report. The Licensee was advised of his right to have legal representation and indicated that he wanted to proceed without legal representation.
8. The Licensee testified that he had responded to the letter from the Ontario Ministry of Transportation dated July 6, 2016 and had sent his reply by registered mail. He referred to a document dated November 10, 2016 from the Ontario Ministry of Transportation, which was entered into evidence and marked as Exhibit #2.
9. The Licensee referred to a document bearing the inscription "Kingsway Driving School", which was entered into evidence and marked as Exhibit #3. He reported that Kingsway Driving School had stolen his identity. He reported that this document bears his forged signature and that students received marks for their driving performance which were submitted to the Ontario Ministry of Transportation, even though he was never affiliated with this driving school.
10. The Licensee also referred to the Information Sheet, outlining the procedures that the Tribunal adheres to in conducting its hearings, which was entered into evidence and marked as Exhibit #4.
11. The Licensee did not call any witnesses to testify on his behalf.

SUBMISSIONS

12. In her closing submissions, Counsel for MLS, expressed the view that Mr. Xi's licence should be renewed, with a condition of immediate suspension up to one year and reinstatement, upon proof by Mr. Xi of a valid Provincial Driving Instructor's Licence, after which time the licence should be revoked, if no proof of a valid Provincial Driving Instructor's Licence is provided to MLS.

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13. The Licensee claimed to be extremely frustrated in his inability to currently work as a driving instructor.

DECISION

14. In its determination of whether a licence should be revoked, suspended, or have conditions placed on it, the Tribunal was mindful of the undisputed fact that the Licensee does not currently hold a valid Provincial Driving Instructor's Licence, as required by the Toronto Municipal Code. Chapter 545-Section 545-12 A (2) of the Toronto Municipal Code requires that every instructor shall:
Be the holder of an instructor's licence issued pursuant to the Highway Traffic Act.
15. Accordingly, considering all the evidence and the submissions of Counsel for MLS and the Licensee, as outlined above, the Tribunal ordered that the Driving Instructor's Licence be renewed, with a condition of immediate suspension up to one year and reinstatement upon proof of a valid Provincial Driving Instructor's Licence, after which time, the licence shall be revoked.
16. The Tribunal also ordered that the vehicle plates and photo ID card be surrendered to MLS by April 21, 2017 at 4 PM, or in the alternative for the Licensee to complete a Declaration Form, confirming his inability to locate them.

Originally Signed

(Hedy) Anna Walsh, Chair
Panel Members, Moira Calderwood and Aly Alibhai concurring.

[Reference: Minute No.118/17]

Date Signed: June 15, 2017