

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: November 26, 2015

Panel: Lori Marzinotto, Chair; Cezary Paluch, Richard Quan, Members

Re: Muhammad Arshad Chatta
Applicant for a Taxicab Driver's Licence (Application No. B536794)

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett

Counsel for Applicant: Unrepresented

Interpreter (Urdu): Ms. Zaheda Khan

INTRODUCTION

Muhammad Arshad Chatta ("Mr. Chatta"), requested a hearing before the Toronto Licensing Tribunal ("TLT"), to determine whether or not a Taxicab Driver's Licence should be issued, have conditions place on it or if the application will be denied.

Mr. Chatta waived his right to legal counsel and acknowledged his understanding of the matter before him. Mr. Chatta was assisted by an Urdu interpreter, Ms. Zaheda Khan.

Mr. Chatta had previously been licensed by the City of Toronto as a Taxicab Driver on August 15, 2002; however, his licence was cancelled on October 23, 2014.

On May 20, 2015, Mr. Chatta applied to the City of Toronto's Municipal Licensing and Standards branch ("MLS") for a Taxicab Driver's Licence.

MLS denied the taxicab driver's licence because it had concerns in relation to the number of City of Toronto by-law convictions against Mr. Chatta when he was previously licensed.

For the reasons stated below, the Tribunal granted Mr. Chatta's application for a Taxicab Driver's Licence with conditions for a three (3) year period.

CITY'S EVIDENCE

Mr. Terry Van Elswyk ("Mr. Van Elswyk"), was duly affirmed and identified himself as the Supervisor of MLS. He testified that Report No. 6472 dated September 22, 2015 had been created by MLS staff and that he had reviewed it and could attest to its contents. The report was entered into the record as *Exhibit #1*.

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Mr. Van Elswyk testified that Mr. Chatta was first licensed by the City of Toronto as a Taxicab Driver on August 15, 2002 and that Mr. Chatta paid the renewal fee; however, the licence could not be renewed as a result of Mr. Chatta's convictions under Chapter 545 of the City of Toronto Municipal Code (the "*Code*"). A Licence Non-Recommendation Notice dated September 8, 2014 was mailed to Mr. Chatta; however, Mr. Chatta did not request a hearing before the TLT and his licence was cancelled on October 26, 2014.

On May 20, 2015, Mr. Chatta submitted Taxicab Driver's Application number B536794. Mr. Van Elswyk testified that the review of the MLS and Ministry of the Attorney General's Integrated Court Offences Network ("ICON"), revealed a list of City of Toronto By-law charges and convictions (p.8 & 50 of the Report) as well as a number of *Highway Traffic Act* ("*HTA*"), convictions. As a result of the by-law convictions, Mr. Chatta was in breach of the Business Licensing Thresholds under section 545-4 C.1 Appendix K to Chapter 545, section 1-C (xi) of the *Code*.

Mr. Van Elswyk testified that MLS received further information that on September 25, 2015, the Toronto Police Service found Mr. Chatta operating a taxicab vehicle and picking up a fare. Mr. Chatta was charged with the by-law offence of failing to produce a taxicab driver's licence and the *HTA* offence of Park/Stand on Highway – Interfere. (p.166, 174-176 of the Report).

Mr. Chatta cross-examined Mr. Van Elswyk. Mr. Chatta stated that he did not receive notice that his licence was being cancelled and asked Mr. Van Elswyk what type of letter was issued to inform him that his licence was being cancelled and the reason for cancellation. Mr. Van Elswyk testified that Mr. Chatta was sent the letter dated September 8, 2014 (p.3 of the Report) which outlined the grounds for the denial of the licence and that Mr. Chatta did not meet the Business Licensing Thresholds under the *Code*. Mr. Chatta continued to deny that he received the letter dated September 8, 2014.

Mr. Cornett, counsel for MLS, re-examined Mr. Van Elswyk to confirm Mr. Chatta's address and that the form to request a hearing before the TLT was attached to the denial letter. Mr. Van Elswyk confirmed that the letter was sent by regular mail.

The City called its second witness, Police Constable Susana Musso Duarte ("P.C. Musso Duarte"), who was duly sworn and identified herself as being employed as a Police Constable with the Toronto Police Service for seventeen (17) years.

P.C. Musso Duarte testified that she was working in full uniform on September 25, 2015, in a marked police vehicle in 52 division. P.C. Musso Duarte testified that she made computer notes on September 25, 2015, and that there have not been any alterations, deletions or additions to the notes and was allowed to refer to her notes while testifying. Mr. Chatta did not object to P.C. Musso Duarte referring to her notes.

P.C. Musso Duarte testified that she was travelling behind a taxicab on Queen Street West in the entertainment district when it suddenly stopped in the middle of an intersection in a live lane of traffic and picked up a fare. A motor vehicle travelling in the lane beside the taxicab had to stop to avoid hitting a pedestrian.

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P.C. Musso Duarte pulled over the taxicab and requested the driver's licence, ownership and taxicab driver's licence of the driver. Mr. Chatta provided P.C. Musso Duarte with his driver's licence, ownership and an expired taxicab driver's licence.

P.C. Musso Duarte testified that she requested a valid taxicab driver's licence and Mr. Chatta replied that it was at home.

Mr. Chatta cross-examined P.C. Musso Duarte who was questioned on what was on the roof of the vehicle Mr. Chatta was driving. P.C. Musso Duarte explained that she could see the light on the roof illuminated but did not have notes on the shape of what was on the roof. P.C. Musso Duarte reiterated that the taxicab light was on meaning it was for hire and that the vehicle came to a sudden stop.

Mr. Cornett re-examined P.C. Musso Duarte who indicated that Mr. Chatta did not tell her he was off duty and not driving a taxicab on September 25, 2015.

APPLICANT'S EVIDENCE

Mr. Chatta was duly sworn and identified himself.

Mr. Chatta testified that he has been without a taxicab licence for approximately one (1) year and it was his only job. Mr. Chatta is the sole supporter for his family. His wife does not work and one of his two older children lives with them. Mr. Chatta testified that he has been driving a taxicab for 13-14 years and there have been no complaints about his customer service.

Mr. Chatta testified that the by-law convictions for unauthorized parking of a taxicab are minor and that he did not know that the light on the taxicab had to be off when he was parking.

Mr. Chatta testified that he did not receive the letter dated September 8, 2014 because he was in Pakistan from August 2014 until February 2015. Mr. Chatta explained that he paid the renewal fee in July 2014 before he left for Pakistan. He admitted that he did not receive the renewal and only found out that his licence was cancelled after he received the renewal fee cheque returned to him from MLS. His friend told him that if MLS sent the cheque back to him then his licence had been cancelled. Mr. Chatta then made inquiries at MLS who confirmed his licence had been cancelled.

Mr. Chatta was cross-examined by Mr. Cornett. Mr. Chatta testified that he had been driving as a taxicab driver but that when he learned that his licence was cancelled, which he said was in May 2015, he stopped. When asked what he had been doing for a living since May 2015, Mr. Chatta responded "nothing" and that he has been asking for money from his children and friends. Mr. Chatta explained that he also wants to take the test to be a truck driver but that he cannot afford it.

Mr. Chatta testified that he was using his friend's vehicle on September 25, 2015, for personal use and had driven to visit relatives in Brampton to borrow money and returned the car to the owner at 3:00 or 4:00 a.m. the following morning.

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CITY'S SUBMISSIONS

Mr. Cornett asked that Mr. Chatta's taxicab driver's licence be denied. It was the City's position that Mr. Chatta will not operate his business with honesty and integrity, that Mr. Chatta has a record of by-law and *HTA* convictions and does not meet the Business Licensing Thresholds under the *Code*. Mr. Cornett pointed out that six (6) of the seven (7) convictions from September 2011 to February 2013 are for the same offence, that is, unauthorized parking of a Taxicab.

Mr. Cornett further submitted that although the charges from September 25, 2015 are still pending, he believes that P.C. Musso Duarte's evidence was clear and conclusive, that Mr. Chatta was driving that night as a taxicab without the required licence.

Mr. Cornett submitted that Mr. Chatta's explanation for using the vehicle was not credible and the fact that he was driving a taxicab at 10:30 p.m. on a Friday night through the entertainment district supports P.C. Musso Duarte's position that he was operating as a taxicab driver.

APPLICANT'S SUBMISSIONS

Mr. Chatta indicated that he is challenging the charges from September 25, 2015 and that he does not have a court date. He further submitted that he has been driving for a long time without accidents or complaints.

DECISION

Having weighed all of the evidence, the TLT grants Mr. Chatta a taxicab driver's licence with conditions.

The TLT must balance the protection of the public interest with the need for the applicant to earn a living. Mr. Chatta testified that he is his family's sole supporter and that he has been borrowing money from friends and family since learning that his taxicab driver's licence had been cancelled.

Mr. Chatta testified that he had driven as a taxicab driver for 13-14 years and has not been in an accident nor have there been customer service complaints. No contradictory evidence was presented on this fact.

The protection of the public interest is addressed by having conditions place in Mr. Chatta's licence.

Mr. Chatta's taxicab driver's licence will be issued, subject to the following conditions:

1. Immediately upon being issued, the licence will be placed on probation for a period of three (3) years to commence on November 26, 2015;
2. Prior to each of the next three renewals of the licence, Mr. Chatta must provide to MLS, at his own expense, an updated driver's abstract and

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criminal record check;

3. During the probationary period, if Mr. Chatta incurs any new charges or convictions under the *Toronto Municipal Code*, the *Criminal Code* or the *Highway Traffic Act*, he must notify MLS, in writing, within three (3) business days. The notification shall include his MLS licence number and the ticket number(s). Mr. Chatta can notify MLS in one of the following ways:
 - in person at 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
 - via regular mail to: 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
 - via email to mlsconditionreporting@toronto.ca; or
 - via fax at 416-392-3102
4. During the probationary period, if MLS has concerns with any new charges or convictions, those matters and report No. 6472, and any updating material, shall be brought back before the Tribunal for a full hearing.

Originally Signed

Lori Marzinotto, Chair
Panel Members, Cezary Paluch, Richard Quan concurring

[Reference: Minute No. 182/15]

Date Signed: January 13, 2016