

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: October 22, 2015

Panel: Nicole Treksler, Chair; Lori Marzinotto and Richard Quan, Members

Re: Mistre-Tegegn Gebre-Kidan
Applicant for a Taxicab Driver's Licence (Application No. B537223)

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett

INTRODUCTION:

1. Mr. Mistre-Tegegn Gebre-Kidan has applied for a taxicab driver's licence.
2. The key issue is whether Mr. Gebre-Kidan's record of driving offences and convictions demonstrates that permitting him to carry on a business as a taxicab driver will endanger the safety of the public.
3. The secondary issue is whether Mr. Gebre-Kidan acted against the public interest by driving a taxi without a licence after the Tribunal had revoked his licence on April 17, 2014.
4. Mr. Gebre-Kidan was first licensed as a taxi driver on December 5, 2007.
5. The Tribunal informed Mr. Gebre-Kidan of his right to legal counsel and that he may be at a disadvantage, if he is not represented. Mr. Gebre-Kidan stated that he understood his rights and wished to continue the hearing unrepresented.
6. The Tribunal denied Mr. Gebre-Kidan's application for a licence and upheld the Tribunal's April 17, 2014 revocation order.

Analysis:

Mr. Gebre-Kidan's driving history from 2010 to 2014

1. Mr. Gebre-Kidan's driving records demonstrate serious breaches of the *Highway Traffic Act (HTA)* and the *City of Toronto Municipal Code* (the "Code"), most while driving his taxicab, which provides reasonable grounds that granting him a licence will endanger the public safety.
2. Mr. Terry Van Elswyk, Supervisor, Municipal Licensing and Standards (MLS), City of Toronto, identified Report #6422 dated July 24, 2015. Mr. Cornett, Counsel for the City, submitted this report as evidence, without objections from Mr. Gebre-Kidan. It became Exhibit #1.
3. Mr. Van Elswyk testified that Mr. Gebre-Kidan has been before the Tribunal on two (2) occasions (July 26, 2012 and April 17, 2014) because of his driving

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- record and breaches of his conditions on his licence, specifically failing to report new offences and convictions.
4. Mr. Van Elswyk identified four (4) of Mr. Gebre-Kidan's driving records in Report #6422:
 - Driving record dated December 24, 2010 (p. 6);
 - Driving record dated November 23, 2011 (p. 10);
 - Driving record dated December 4, 2013 (p. 72 and 73); and
 - Driving record dated May 29, 2014 (p. 108)
 5. Mr. Van Elswyk's testimony was that Mr. Gebre-Kidan's driving records showed a consistent and continuous disregard for the *HTA*. His convictions included, but were not limited to, "Careless Driving, "Failing to Remain or Return to a Scene of an Accident," "Speeding" and "Failing to Proceed as Directed at a Green Light." Mr. Gebre-Kidan incurred several new *HTA* offences and/or convictions with every new driving record that was obtained by MLS.
 6. Mr. Gebre-Kidan cross-examined Mr. Van Elswyk regarding his driving history, stating that his past driving records should not be entered into evidence as the Tribunal had already deliberated on these matters at previous hearings and that they were dealt with in other legal proceedings before the Courts.
 7. Mr. Gebre-Kidan indicated that the Tribunal should only consider his most recent offences on April 17, 2014 and April 13, 2015 (p. 112).
 8. Mr. Van Elswyk stated that Mr. Gebre-Kidan's past driving records and offences demonstrate his pattern of driving behaviour and are important for the Tribunal to consider. Mr. Van Elswyk further indicated that it is common practice to present past records of offences and convictions of licensees and applicants at hearings.
 9. The Tribunal did not accept Mr. Gebre-Kidan's argument that only his most recent offences were relevant in this matter.
 10. The Tribunal concluded that Mr. Gebre-Kidan's driving records and the breach of conditions on his licence were sufficient grounds to deny his application for a taxicab licence.
 11. However, the Tribunal believes that it is important to comment on Mr. Gebre-Kidan's most recent offences on April 17, 2014 and April 13, 2015, which would have provided further grounds to deny him a licence.

Mr. Gebre-Kidan's offences dated April 17, 2014 and April 13, 2015

April 17, 2014 Offence

1. On April 17, 2014, the same day that the Tribunal had revoked his licence. Mr. Gebre-Kidan was driving a taxi and was charged with "Failing to Stop /Proceed Before the Green." Given Mr. Gebre-Kidan's driving history, the Tribunal is of the

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- view that Kidan likely disobeyed the Tribunal's revocation order and once again breached the *HTA*.
2. Police Constable Lindsay Ryan (PC Ryan), testified that on April 17, 2014, she had charged Mr. Gebre-Kidan with "Failing to Stop/Proceed Before the Green" around 6:35 pm. PC Ryan indicated that Mr. Gebre-Kidan was in a Beck taxi and the light was on, which indicated that he was for hire.
 3. PC Ryan indicated that she could not attend the Court date and, as such, the matter was withdrawn.
 4. Mr. Gebre-Kidan did not cross-examine PC Ryan and in response to her testimony, Mr. Gebre-Kidan stated that he did not remember what had happened on April 17, 2014.
 5. The Tribunal agrees with the City's position that although the matter had been withdrawn, it does not prevent it from noting that Mr. Gebre-Kidan's continued pattern of incurring *HTA* offences and likely disregard of the Tribunal's revocation order on April 17, 2014.

April 13, 2015 Offences

6. On April 13, 2015, Mr. Gebre-Kidan was charged with operating a taxi without a licence and driving with a licence under suspension, once again demonstrating Mr. Gebre-Kidan's disregard of the Tribunal's revocation order and public safety.
7. Mr. Vincent Szatu, an MLS officer, testified that on April 13, 2015, he approached Mr. Gebre-Kidan's taxi at a taxicab stand at the Exhibition Place. Mr. Szatu stated that he examined Mr. Gebre-Kidan's driver's licence and confirmed his identity. Mr. Szatu indicated that when he took Mr. Gebre-Kidan's licence to his car to do a search, Mr. Gebre-Kidan drove off, leaving his licence with him.
8. Mr. Szatu stated that on April 13, 2015, he issued two (2) tickets to Mr. Gebre-Kidan for operating a taxicab without a licence and driving with a licence under suspension.
9. In response to Mr. Szatu's testimony, Mr. Gebre-Kidan indicated that it was his 28-year-old son, a taxicab driver as well, and not he, who was driving the taxicab that day. Mr. Gebre-Kidan stated that Mr. Szatu had mistaken him for his son. He further explained that he had placed his driver's licence in his son's wallet so that his son could run an errand for him regarding his taxes. Mr. Gebre-Kidan admitted that it was a mistake to do this. He stated that his son had driven off because he was nervous that he had been stopped.
10. Regarding the suspended licence, Mr. Gebre-Kidan indicated that he had failed to show up for a Court hearing and for that reason his licence had been suspended.

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11. In the City's closing submissions, Mr. Cornett indicated that Mr. Gebre-Kidan is 52 years old and his son is 28 years old. Given the difference in age, it would be difficult for Mr. Szatu to confuse these two men. Further, Mr. Cornett questioned why Mr. Gebre-Kidan's son would provide his father's licence to the MLS officer. Even if Mr. Gebre-Kidan's son had provided it by mistake, why would he flee, if he had a valid taxicab driver's licence. Further, Mr. Gebre-Kidan was convicted of failing to remain at the scene of an accident. He has a history of fleeing when found in a difficult situation, which is consistent with what happened on April 13, 2015.
12. Mr. Gebre-Kidan's son was not present at the hearing and therefore could not provide evidence to support Mr. Gebre-Kidan's version of events.
13. The Tribunal did not rely on this evidence provided regarding these offences in its decision, as the April 17, 2014 matter that was withdrawn and the April 13, 2015 offences are still before the courts.
14. However, the Tribunal believes that it is important to note the following:
 - The Tribunal did not believe Mr. Gebre-Kidan's version of events:
 - Mr. Gebre-Kidan had used the same explanation of mistaken identity at a previous hearing to explain the April 13, 2015 offence.
 - It is unlikely Mr. Gebre-Kidan would have forgotten what had happened on April 17, 2014, the same day that his licence had been revoked.
 - The offences are consistent with Mr. Gebre-Kidan's pattern of driving behavior; and
 - The witnesses' testimonies for the City were credible.
15. In consideration of the above, the Tribunal is of the view that is reasonable to believe that Mr. Gebre-Kidan was driving a taxicab without a license.

Conclusion:

1. The Tribunal recognizes that Mr. Gebre-Kidan passed a 17-day taxicab course, as required for new applicants, on June 1, 2015. The Tribunal notes that Mr. Gebre-Kidan was remorseful about most of his past actions and requested that he be given another chance.
2. While the Tribunal appreciates that Mr. Gebre-Kidan understands that his past driving behaviour was unsafe for the public, it has serious concerns about Mr. Gebre-Kidan's history of continuous driving offences and convictions. The Tribunal must balance the public interest with individuals' need to make a living. Mr. Gebre-Kidan indicated that he is currently working, from time to time, as a parking attendant.
3. The Tribunal considered Mr. Gebre-Kidan's driving record and his current employment. It is of the view that the public interest would be at risk if the Tribunal were to grant Mr. Gebre-Kidan a licence at this time.

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4. Further, the Tribunal is not confident that Mr. Gebre-Kidan's driving behaviour will change. When the Tribunal gave Mr. Gebre-Kidan an opportunity to continue to operate a taxicab with conditions, Mr. Gebre-Kidan continued to incur *HTA* offences and failed to report new charges and convictions, as required during his probationary period. Mr. Gebre-Kidan has not complied with the law in the past and there is no evidence that he will comply in the future, particularly noting his most recent offences on April 13, 2014 and April 17, 2015.
5. Although the Tribunal did not consider Mr. Gebre-Kidan's most recent offences in its decision, it is of the view that Mr. Gebre-Kidan's driving record and breaches of the *Code* are adequate and reasonable grounds to conclude that the issuing of a licence will likely endanger the public and that he will not operate his business in accordance with the law.
6. For these reasons, the Tribunal denied Mr. Gebre-Kidan's application for a taxicab driver's licence.

Originally Signed

Nicole Treksler, Chair

Panel Members, Lori Marzinotto and Richard Quan concurring

[Reference: Minute No. 163/15]

Date Signed: November 12, 2015