

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: July 27, 2017

Panel: Moira Calderwood, Chair; Aly N. Alibhai and Keith Cooper, Members

Re: Mr. Asif Aziz (Report No. 6624)
Holder of Vehicle-for-Hire Driver's Licence No. D01-3604475

Counsel for Municipal Licensing and Standards: Mr. David Gourlay

INTRODUCTION

Mr. Aziz has held a Vehicle-for-Hire (formerly Taxi) Driver's licence, issued by Municipal Licensing and Standards (MLS) of the City of Toronto, for approximately ten years.

In April 2016, when Mr. Aziz applied for renewal of his (then) taxi driver's licence, MLS reviewed Mr. Aziz's history of charges and convictions under the Municipal Code, the Highway Traffic Act and the Compulsory Automobile Insurance Act, along with his driving record. MLS denied renewal of Mr. Aziz's licence. Mr. Aziz appealed that denial and the Toronto Licensing Tribunal held a hearing on this matter on July 27, 2017.

The issue before the Tribunal was whether Mr. Aziz's Vehicle-For-Hire Driver's licence should be renewed, suspended, or have conditions placed upon it.

EVIDENCE

Ms. Olga Kuztelska, Supervisor with MLS, and her staff prepared Report No. 6624, which has 68 pages, including an update. The report relates to Mr. Aziz's Vehicle-For-Hire Driver's Licence. This report was admitted in the hearing as an agreed statement of facts, and marked as Exhibit 1. A chart outlining further offences by Mr. Aziz, plus four pages of supporting material, was marked as Exhibit 2. These two Exhibits constituted MLS's case.

Mr. Aziz testified that while he has encountered some problems, he is trying to make positive changes in his life. He has recently taken alcohol abuse counseling. He did not have any documentation relating to this with him; he stated it was with his probation officer.

On cross-examination, Mr. Gourlay elicited:

- Mr. Aziz has convictions under the Liquor Licence Act, dating from 2012, for being intoxicated in public. He stated that these convictions related to drinking on a park bench across from his house.

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- Mr. Aziz was charged under the Liquor Licence Act in August 2014 with consuming liquor in an illegal place, which he acknowledged was a taxi cab. This charge was withdrawn.
- Mr. Aziz was convicted of careless driving under the Highway Traffic Act, arising from an incident in April 2014 when he passed a streetcar on McCaul Street, and collided with a car which was turning left across the path of the stopped streetcar. He was also convicted of having no provincial driver's licence, arising from the same incident, as his licence was suspended due to non-payment of fines. Although his provincial driver's licence was suspended, Mr. Aziz was driving a taxi.
- In May 2015, Mr. Aziz was charged under the Criminal Code with assault and with threatening death/bodily harm. These charges arose out of a domestic situation. He has since separated from his wife. He was drinking on this occasion. Mr. Aziz received a conditional discharge on these charges. His discharge conditions included a requirement that he complete a 12-session alcohol counseling course, which he did. He will be on probation until 2019.
- On June 12, 2017, Mr. Aziz was charged under the Criminal Code with possession of weapons dangerous, threatening death/bodily harm, and failing to comply with a probation order. These charges have yet to go to trial. Mr. Aziz said he was preparing food at home when he realized he had to go to the store for some ingredients. He acknowledged that he was drinking that day. He does not remember what happened. He believes he accidentally put the kitchen knife he was using in food preparation into his pocket.
- He encountered some people outside. He was in the "wrong place at the wrong time." He doesn't remember anything. Part of his bail conditions related to these charges requires him to do the PAR (Partner Assault Response) Program, which he is currently doing. When he completes the PAR program, he intends to start alcohol counseling. Completion of alcohol counseling is also a bail condition arising out of the recent (June 2017) charges.
- Mr. Aziz stated both that he has "stopped drinking" and that he "drinks sometimes." He stated that he does not have an alcohol problem. He is "not an addict" but he "needs counseling for sure." He acknowledged that the last time he took a drink was two weeks ago.

In response to questioning from the panel, Mr. Aziz stated that he has four children, aged between 19 and 13 years. He contributes to their support. He has a master's degree in pharmacy and worked as a pharmacist in Lahore. Canadian pharmacist authorities have evaluated his documentation, but he would need to take examinations to be able to work as a pharmacist in Ontario. He has also done some part-time work in a kitchen, doing dishes, and has worked with a vegetable and fruit supplier.

SUBMISSIONS

Mr. Gourlay submitted, for MLS, that Mr. Aziz's licence should not be renewed. He acknowledged that there were some positive aspects to Mr. Aziz's case: Mr. Aziz was very forthright in providing information to the Tribunal, and he has done, and is still doing, counseling.

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Mr. Gourlay asserted that Mr. Aziz's behaviour, when using alcohol, has shown an escalating pattern, from drinking on a park bench, to drinking in a parked cab, to domestic assault, to the very recent incident, much of which Mr. Aziz cannot remember, but which led to serious criminal charges, laid only a month and a half ago.

Mr. Gourlay highlighted that the June 2017 incident occurred after Mr. Aziz completed the alcohol counseling ordered after the domestic assault charges. Mr. Aziz was still on probation when arrested in June 2017. Mr. Gourlay noted that Mr. Aziz does not intend to re-enroll for further alcohol counseling until after he finishes the anger management course he is currently taking.

Mr. Gourlay submitted that the Tribunal cannot be certain that the public will be adequately protected, if Mr. Aziz holds a Vehicle-For-Hire Driver's licence.

In his submissions, Mr. Aziz stated that he has been driving a cab for 8-9 years and has never had a customer complaint, or any issue with any dispatcher or taxi company. He stated he would never drink and drive. He is addressing his alcohol issues with meditation and counseling. While he still drinks from time to time, he is not an addict. He has had financial problems since leaving his work as a pharmacist and coming to Canada. He wishes to help out his kids, including a daughter in university. He hopes for better days.

ANALYSIS AND CONCLUSIONS

The Tribunal denied renewal of Mr. Aziz's Vehicle-For-Hire Driver's licence.

In reaching our decision, we applied the Tribunal's mandate, set out in part in the Toronto Municipal Code, § 546-8.A (3) (c):

Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.

We were satisfied that Mr. Aziz established his need to make a livelihood, given that he is contributing to the support of his four children, one in university, and that he has not yet obtained qualifications that would allow him to practice as a pharmacist in Canada.

Turning to the other part of the test, we considered the protection of the public interest, if the Tribunal were to renew Mr. Aziz's Vehicle-for-Hire Driver's Licence.

In Mr. Aziz's favour, we noted that he was very straightforward in giving evidence to the Tribunal; he acknowledged his drinking and the associated behaviours, and did not try to minimize them. Further, he has completed alcohol counseling, is currently completing anger management counseling, and intends to undertake further alcohol counseling. We are not aware of any information that would cause us to doubt Mr. Aziz's statement that in his years as a taxi driver he has got along well with customers and employers/dispatchers. These factors are all very much to Mr. Aziz's credit.

Mr. Aziz's need to make a livelihood, and the factors in his favour, however, could not outweigh the Tribunal's serious concerns about protection of the public interest. We had

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some concern about the 2014 careless driving offence, which took place in a taxi. The information in Report 6624 showed that Mr. Aziz has further driving convictions, some also for offences committed in a taxi. All of these are troubling convictions for a professional driver.

But the most concerning factor, in our view, is the pattern of offences that occurred while Mr. Aziz was using alcohol. We agree with Mr. Gourlay's submission that Mr. Aziz's use of alcohol has led to increasingly serious and concerning behaviour. We are very concerned to see that the July 2017 events, fueled by alcohol, took place after Mr. Aziz had already completed alcohol counseling. We thought that Mr. Aziz's own perception of the seriousness of his alcohol problem was, at best, muddled – he stated he did not have a problem and was not an addict, yet also that he definitely needs further alcohol counseling and intends to engage in this. It is not apparent to us why Mr. Aziz would have to finish his current anger-management course before seeking treatment for his alcohol problem. We are not able to conclude that Mr. Aziz has come to grips with his alcohol problem and has a viable plan to deal with it. On the contrary, it appears to us that Mr. Aziz is a taxi driver with an as yet unresolved drinking problem. We have no doubt that Mr. Aziz is sincere when he says that he would never drink and drive. But his own sincere belief is not enough, in our view, to ensure the protection of the public.

Section § 546-4. A. of the Municipal Code provides:

An applicant for a licence or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to the licence or renewal, except where:

- (1) The conduct of the applicant affords reasonable grounds to believe that the applicant has not carried on, or will not carry on, the business in accordance with law and with integrity and honesty; or
- (2) There are reasonable grounds to belief that the carrying on of the business by the applicant has resulted, or will result, in a breach of this chapter or any law; or
- ...
- (5) The conduct of the applicant or other circumstances afford reasonable grounds to believe 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, their health or safety.

The Tribunal has concerns about all three of the grounds for non-renewal listed above. In particular, we cannot conclude, under current circumstances, that the public interest would be protected if we renewed Mr. Aziz's licence.

We make this order without prejudice to Mr. Aziz's right to apply anew for a Vehicle-For-Hire Driver's licence. It may be that if Mr. Aziz applies for a licence at some point in the future, and is able to show concrete evidence of successful completion of an alcohol treatment programme, and demonstrate that a period of time has elapsed in which he has not incurred any criminal, liquor-related, driving or Municipal Code charges, that application might succeed (although this Tribunal cannot predict with certainty what MLS or a future Tribunal panel may decide). Mr. Aziz was not able to demonstrate such

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factors today and therefore, we deny his application for renewal of his Vehicle-For-Hire Driver's licence.

Originally Signed

Moira Calderwood, Chair
Panel Members, Aly N. Alibhai and Keith Cooper concurring

[Reference: Minute No. 216/17]

Date Signed: September 7, 2017