

## **REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL**

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**Date of Hearing:** January 19, 2017

**Panel:** Aly N. Alibhai, Chair; (Hedy) Anna Walsh and Melina Laverty, Members

**Re:** Yahya Mohammed Ali  
Applicant for a Vehicle-For-Hire Licence (Application No. B656683)

**Counsel for Municipal Licensing and Standards:** Ms. Lauren Elliott

**Counsel for Applicant:** Mr. Tyrone Crawford

### **INTRODUCTION**

Mr. Yahya Mohammed Ali (“Mr. Ali”) requested a hearing before the Toronto Licensing Tribunal (the “Tribunal”) to determine if a Vehicle-for-Hire Licence should be issued, have conditions placed on it or if the application should be denied

### **FACTS**

A pre-hearing interview was arranged between the parties on January 10, 2017 at which time the parties agreed that the facts as set out in MLS Report No. 6709 and consisting of forty-six (46) pages, constitute an Agreed Statement of Facts for the purposes of the Hearing before the Tribunal. Accordingly, MLS Report No. 6709 was entered into the record as Exhibit 1.

### **EVIDENCE**

Mr. Ali was sworn and gave the following evidence:

- He is twenty-eight years of age, married and has two children aged two and five;
- He works full-time at Lowe’s in the warehouse distribution centre and has been employed there for four and a half years;
- His wife is the primary caregiver and he wants to get a Vehicle-for-Hire Licence in order to work as a taxi driver on week-ends to generate more revenue in order to support his family which, he noted, is struggling financially to make ends meet;
- His father and brother are both in the taxi industry and he would eventually like to be able to assume a full-time role as a taxi driver and take over his father’s responsibilities;
- His father drives a taxi which serves persons who are disabled and he would like to be able to drive his father’s taxi to be able to serve the same clientele as his father is aging;
- On January 1, 2014, he was charged with driving with more than 80 milligrams of alcohol under section 253 of the Criminal Code and was convicted of the offence on March 17, 2014 after he pleaded guilty as part of an early resolution of his case;
- He testified that at the time his alcohol reading was taken on January 1, 2014, he had between 140 and 150 milligrams of alcohol in his system;

January 19, 2017

- He was given a fine of \$1100, was not able to drive his car for six months and was then required to drive for six months with an Interlock system;
- He has stopped drinking alcohol since his brush with the law in January 2014 and he has had no brushes with the law since the impaired driving charge of January 1, 2014;
- He completed the “Back on Track” Program as part of his sentence and had to attend a one day class on the dangers of impaired driving;
- Prior to the impaired driving charge on January 1, 2014, he had been with friends at a nightclub and drank four to five beers and two shots of vodka;
- When he was stopped by the police, a small amount of open alcohol was found in a bottle in his car and some alcohol had been spilled on the driver’s side backseat; he testified that the alcohol found in his car was that of a friend and that he had himself not consumed any alcohol while in his car;
- He denied the account in the Toronto Police Service General Occurrence Report (pages 39 to 45 of Exhibit 1) concerning his failure to stop at the white line at a red light when a group of pedestrians were crossing at a cross walk and stated that he had entered an address in his GPS in order to get home but that he got lost on his way home and made a wrong turn and that is why he believes he was stopped by the police;
- There was no personal or property damage caused by the impaired driving;
- His Highway Traffic Act record includes convictions in 2015 for speeding at 65 km in a 50 km zone and colour-coat obstructing interior; he has a court date on March 28, 2017 for a charge of speeding at 93 km in 50 km zone;
- He has completed high school and college and would like to be able to return to school one day to further his education and be able to do more to support his family;
- A letter from Mr. Ali’s family doctor dated October 6, 2016 stating that he does not have any alcohol, drug or anger management problems and that, in the opinion of the doctor, he is not a danger to the public when conducting his affairs, was entered into the record as Exhibit 2 ; and
- He regrets his actions that resulted in a conviction on a charge of impaired driving and is remorseful about what happened in January 2014 and wishes now to conduct himself in accordance with the law, with honesty and integrity and would like to be a role model to his children.

## **ISSUE**

The issue before the Tribunal is whether, pursuant to Chapter 546-4 of the Toronto Municipal Code, there are reasonable grounds to believe that Mr. Ali will not carry on the business of a taxi driver in accordance with the law and with integrity and honesty or that the carrying on of the business of taxi driver by Mr. Ali would result in the breach of Chapter 546-4 of the Toronto Municipal Code or if the conduct of Mr. Ali affords reasonable grounds to believe that his carrying on of the business of a taxi driver would infringe the rights of members of the public or would endanger their health or safety. The Tribunal must also consider the requirement in Chapter 546-4 of the Toronto Municipal Code that MLS shall refuse to issue a licence where an applicant has not met the screening criteria for Vehicle-for-Hire Drivers.

January 19, 2017

## **LAW**

The relevant provisions of the Toronto Municipal Code, as set out in Chapter 546-4 in respect of licences, applications and renewals, provide as follows:

### **§ 546-4. Licences, applications and renewals.**

A. 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:

- (1) 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
- (2) 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.....
- (5) 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, their health or safety.

B. In addition to the grounds set out in Subsection A, MLS shall refuse to issue or renew a licence where an applicant has not met the screening criteria.

### **Screening Criteria of Chapter 546**

- (d) Been found guilty of any offence under sections 249, 252 or 253 of the Criminal Code (Operation of Vehicles, Vessels, or Aircraft) in the preceding five years.

The law is also clear that the standard of proof required for “reasonable grounds for belief” is far lower than that required for proof “beyond a reasonable doubt” in the criminal context and indeed, also lower than the standard of proof in civil matters of proof on a “balance of probabilities”.

## **CITY'S SUBMISSIONS**

In her closing submissions, counsel for the City asked that the application by Mr. Ali for a Vehicle-for-Hire licence be denied as there are reasonable grounds to believe that Mr. Ali had not conducted himself in accordance with the law, with honesty and integrity, or with due regard to public health and safety. The City felt that not enough time had elapsed since Mr. Ali's impaired driving conviction to demonstrate his ability to fully comply with the law.

## **APPLICANT'S SUBMISSIONS**

Counsel for the Applicant requested issuance of a Vehicle-for-Hire licence, even with restrictions and maintained that Mr. Ali was remorseful for his actions in the past, has

January 19, 2017

worked hard, has demonstrated his good behaviour for the last three years and was not a danger to the public. Furthermore, counsel for Mr. Ali noted that his family doctor's medical assessment indicates that he is not suffering from any mental illness and that he is not using any illicit drugs or alcohol. Finally, counsel for Mr. Ali stated that his ability to drive a taxi is important to the financial welfare of the family.

## ANALYSIS

The above evidence, supporting the Applicant's past conviction for impaired driving raises a serious concern for the Tribunal, especially in respect of the Tribunal's mandate to protect the public. While the Tribunal noted that Mr. Ali's conduct since the impaired driving charge of January 1, 2014 indicates that he is on his way to establishing that he meets the various criteria and requirements for a Vehicle-for-Hire Licence, the Tribunal considered and noted the following important factors:

- (Only three years have elapsed since his impaired driving charge on January 1, 2014 and less than three years have elapsed since his conviction in March 2014;
- Following his impaired driving charge, Mr. Ali was not allowed to drive for six months and then his driving was restricted for another six months and, as such, it has been only two years since he has been driving a car without any restrictions imposed since the time he was charged with impaired driving;
- Mr. Ali currently has a full-time job with Lowe's and is therefore able to earn a livelihood;
- He is currently facing a charge under the Highway Traffic Act for speeding at 93 km in a 50 km zone; and
- A conviction on a charge of impaired driving is a serious matter for the Tribunal to consider when one has applied for a Vehicle-for-Hire licence taking into account the Tribunal's mandate to protect the public interest<sup>1</sup> and in this, as the City submitted that this was not a case of simply "one drink too many" and the police records note that Mr. Ali appeared quite inebriated when he was pulled over in his car by the police.

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<sup>1</sup> Chapter 546-8 of the Toronto Municipal Code sets out the mandate of the Toronto Licensing Tribunal and provides, in part, as follows:

A. Mandate of the Toronto Licensing Tribunal.

.....

- (3) This chapter sets out City Council's objectives with respect to the licensing of vehicles-for-hire, and the Toronto Licensing Tribunal shall:
- (a) Uphold the spirit and intent of the Municipal Code;
  - (b) Determine whether or to what extent an applicant or licensee meets the requirements of the Municipal Code in view of their individual circumstances and qualifications;
  - (c) Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood (emphasis added)

January 19, 2017

## **DECISION**

On the basis then of the facts and the law as set out in these reasons and taking into account the mandate of the Tribunal to protect the public interest, the Tribunal decided, at this time, to deny Mr. Ali's application for a Vehicle-for-Hire Licence.

In rendering its decision, the Tribunal remarked that should, in the future, Mr. Ali decide to make application for a Vehicle-for-Hire Licence, he would be well advised to continue on the path that he has taken since his brush with the law in January 2014 so that he is able to clearly establish to the Tribunal that he has continued to conduct himself with honesty and integrity and in accordance with the law. The Tribunal indicated that the passage of more time would be to the benefit of Mr. Ali and, in particular, that it would give him the opportunity, through his deeds and conduct, to demonstrate to the Tribunal and MLS that sufficient time has elapsed since his conviction on a charge of impaired driving in March 2014 and therefore, that the public interest grounds for the denial of his Vehicle-for-Hire licence application as set out above are no longer as relevant as they were to the Tribunal in considering his application made on August 17, 2016.

Originally Signed

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Aly N. Alibhai, Chair  
Panel Members, (Hedy) Anna Walsh and Melina Lavery concurring

[Reference: Minute No. 13]

**Date Signed:** January 26, 2017