

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: July 27, 2017

Panel: Tribunal Panel Members assigned

Re: Sathiyathan Maheswaran (Report No. 6445)
Holder of Vehicle-For-Hire Driver's Licence No. D01-3356925

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett

INTRODUCTION

Mr. Maheswaran has held a Vehicle-for-Hire (formerly Taxicab) Driver's licence, first issued by Municipal Licensing and Standards (MLS) of the City of Toronto in February 2005.

In 2015, MLS reviewed Mr. Maheswaran'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 a renewal of Mr. Maheswaran's licence. Mr. Maheswaran 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. Maheswaran's Vehicle-For-Hire Driver's licence should be revoked, suspended, or have conditions placed upon it.

EVIDENCE

Ms Oglia Kuztelska, Supervisor with MLS, and her staff prepared MLS Report No. 6445. The report relates to Mr. Maheswaran's Vehicle-For-Hire Driver's Licence. This 140-page report was admitted in the hearing as Exhibit 1. An updated copy of Mr. Maheswaran's provincial driver's abstract, dated May 8, 2017, along with updates to Mr. Maheswaran's charges and convictions under the Municipal Code and the Compulsory Automobile Insurance Act was entered as Exhibit 2. A further updated copy of Mr. Maheswaran's provincial driver's abstract, this one dated July 26, 2017, was entered as Exhibit 3. A further update to Mr. Maheswaran's charges under the Highway Traffic Act was entered as Exhibit 4.

Ms Kuztelska was the first witness for MLS. She highlighted documentation in the above Exhibits showing:

- In 2012, the Tribunal renewed Mr. Maheswaran's taxi driver's licence but placed it on probation for three years.

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- Pages 8-9 of the Report list a number of Highway Traffic Act charges and convictions, all of which postdate the 2012 conditional licence. For many of these charges, Mr. Maheswaran failed to fulfill the condition requiring him to report his charges and convictions to MLS. All the offences took place while he was operating a taxi.
- Page 70 of the Report provides information about an incident in 2004 in which Mr. Maheswaran was charged under the Criminal Code with offences including fail to remain at an accident. In cross-examination, Mr. Maheswaran established that, as shown on page 72 of the Report, these charges were withdrawn in 2006.
- Pages 66 and 97 of the Report set out two separate times when Mr. Maheswaran's provincial driver's licence was suspended: in September 2015, for unpaid fines, and in April 2017, for demerit point total. Mr. Maheswaran's Vehicle-for-Hire driver's licence was simultaneously suspended in April 2017, because of the provincial suspension, but was reinstated by the time of the Tribunal hearing.
- Exhibit 3, a provincial driver's abstract dated May 8, 2015, showed three recent speeding charges for offence dates in July 2016 and February 2017, along with a "disobey traffic signal" charge, also laid in February 2017. Page 83 of the Report documents that these charges resulted in convictions, and that they took place while he was operating a taxicab.
- Exhibit 4 showed two further charges laid against Mr. Maheswaran under the Highway Traffic Act. Both date from May 31, 2017, and relate to conduct while he was operating a taxi. The charges, which are scheduled for trial in March 2018, are Proceed Contrary to Sign at Intersection, and Fail to Surrender Driver's Licence.

The second witness for MLS was provincial offences Officer Davoud Mohammadi. Through this witness, six audio files recorded by Mr. Maheswaran's former employer, Beck Taxi, were entered on a DVD, as Exhibit 5. In May 2017, Officer Mohammadi and his manager, Mr. Stones, took a voluntary statement from Mr. Maheswaran about his work relationship with Beck Taxi and the telephone calls in Exhibit 5 which Beck Taxi recorded, and which the Tribunal heard at the hearing. Mr. Maheswaran acknowledged that it was his voice on the recordings and that he made the telephone calls.

The recordings (which Mr. Maheswaran acknowledged in cross-examination were of his voice) were somewhat difficult to hear, but unmistakably contained a lot of angry statements, interspersed with a lot of swearing. Mr. Maheswaran named specific people who work for Beck and overall appeared, from the recordings, to sound angry and even threatening. Page 104 of the Report contained an email message documenting that Mr. Maheswaran had personally attended at Beck's office premises in May 2017, causing concern to staff there.

Officer Mohammadi stated that, during Mr. Maheswaran's voluntary statement to him and Mr. Stones on May 26, 2017, Mr. Maheswaran acknowledged cocaine use while working for Beck, although he added he had not used cocaine for the past couple of months. Officer Mohammadi noted that Mr. Maheswaran specifically answered "Yes,"

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when asked, "Did you use cocaine when you were driving for Beck?" Mr. Maheswaran said, later in the interview, "I used cocaine every single day and I was driving every single day."

Mr. Maheswaran did not cross-examine Officer Mohammadi.

In testifying on his own behalf, Mr. Maheswaran acknowledged his past cocaine use. He stated that he did the drugs, hoping to get Beck to kick him out of the company.

Mr. Maheswaran informed the Tribunal that he has recently acquired an "A to Z" licence which qualifies him to drive trucks. He pointed out that he had to pass drug testing to obtain this licence, and that he is now subject to random drug testing. Mr. Maheswaran said he is currently employed driving trucks to and from the United States.

Mr. Maheswaran noted that he had paid for all his speeding tickets and had appealed some convictions, with a court date of October 5, 2017. His lawyer informed him that "half" of his speeding convictions will "disappear."

With respect to his conviction arising from the December 17, 2016 charge of "Park/Stand on a Highway," Mr. Maheswaran stated this was a "targeted ticket." He said the officer charged him with a violation for being parked in front of a building, but that he was not in the taxi at the time. Only a parking enforcement officer can issue a ticket if no-one is present in the taxi. Mr. Maheswaran added that if this officer targeted him on this occasion, other police officers could have also targeted him when laying other charges.

Turning back to his cocaine use, Mr. Maheswaran stated that he did not do cocaine before, but started when working as a dispatcher for another taxi company, and then continued his use of cocaine while working for Beck. He said he was under the influence for three years, during which time he did not have any accidents in the taxi or any complaints that he was stealing from customers. He stated that he did not come to this country to take drugs, and wanted out of the situation. He used drugs because he wanted to get kicked out of Beck.

Mr. Maheswaran assured the Tribunal, "I am now out of drugs." He noted that Beck had no reports stating he was on drugs. He commented that Beck said they did not know he was doing drugs, but that in fact they did, and he has audio evidence to prove this. He said, "Beck is lying to you guys" and he intends to take his recording to the provincial court.

In cross-examination, Mr. Maheswaran reiterated that he started drugs while dispatching with another cab company, and continued while on the job with Beck, for one to one-and-a-half years. When Beck dispatchers contacted him, they would make him repeat his location three or four times. People at Beck said he was mentally ill. They told everyone he was not normal and was a cokehead.

It has been months since he used cocaine. He is working driving a truck and has to undergo drug testing in connection with that employment.

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SUBMISSIONS

Mr. Cornett submitted for MLS that Mr. Maheswaran's licence should be revoked. Mr. Maheswaran acknowledged using cocaine at the time he was driving for Beck, as he wanted Beck to terminate him. He has, therefore, acknowledged conduct dangerous to the public. Even apart from the acknowledged cocaine use, Mr. Cornett stated, Mr. Maheswaran's Highway Traffic Act record would be sufficient to warrant revocation or, at least, conditions. Mr. Cornett argued that the Tribunal must balance the significant public safety concerns outlined in this case against the fact that Mr. Maheswaran had shown no need to make a living through his Vehicle-for-Hire driver's licence. Mr. Cornett further submitted that Mr. Maheswaran's conduct in the recorded phone calls was very concerning, as it showed extreme hostility and anger, including references to sexual violence and threats related to the "next 12 days."

Mr. Maheswaran submitted that he had shown that one officer targeted him, and therefore that the Tribunal could not conclude that all the tickets on his record are legitimate. Mr. Maheswaran recalled that Beck said he was mentally ill, yet chose to keep him as an employee for a period of time. He stated, with respect to the phone calls and the conduct of sitting outside Beck's office, that he was mad and was telling them. He pointed out that he does not have a criminal record. With respect to his need for the Vehicle-for-Hire driver's licence, Mr. Maheswaran stated that although he now drives a truck, he comes back to Toronto for periods between truck-driving assignments, and could drive taxi as a part-time job, as he is not the type of person just to stay home. Mr. Maheswaran acknowledged his past cocaine use but pointed out that he was not involved in any accidents and submitted that he is "not close to" being a danger to the public.

ANALYSIS AND CONCLUSIONS

The Tribunal decided that Mr. Maheswaran's Vehicle-for-Hire Driver's Licence should be revoked.

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.

Mr. Maheswaran had not established his need to make a livelihood by driving a taxi, as he testified that he has qualified for, and is engaged in, another job, driving trucks to and from the United States.

We were, further, unable to conclude that the public interest would be protected if we granted the licence, given Mr. Maheswaran's acknowledged and prolonged cocaine use while he was working as a licensed taxi driver employed by Beck. The current period of abstinence which Mr. Maheswaran refers to is very short, too short to assure us that it is permanent.

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The Tribunal has the power to revoke a licence and while the Municipal Code does not specifically set out the grounds for revocation, we are confident that those grounds are analogous to the grounds for refusing to issue a licence, which are set out in § 546-4. A. of the Municipal Code:

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 believe 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.

In the present case, we are satisfied that Mr. Maheswaran's cocaine-related conduct affords reasonable grounds to believe that he has not carried on, or will not carry on, his business in accordance with law and with integrity and honesty, and that his carrying on his business as a taxi driver has resulted, or will result, in a breach of the Municipal Code or any law. Mr. Maheswaran pointed out that his driving while using cocaine did not result in any accidents or complaints. That, however, is far from assurance that his having a Vehicle-For-Hire driver's licence would not endanger the rights, health or safety of the public.

Further, we had concerns about Mr. Maheswaran's conduct in phoning Beck's offices repeatedly and leaving profanity-laced messages, then attending and sitting outside Beck's business premises. Mr. Maheswaran did not really provide an explanation for this behaviour, or show any remorse for it. These events, too, raised concerns about public safety.

While we are of the view that public protection alone would be a sufficient ground to justify revocation in this case, we note that Mr. Maheswaran's past and continuing Highway Traffic Act record is also very concerning. We had before us strong documentary evidence that Mr. Maheswaran has many driving-related convictions, and has incurred very recent charges. Countering this, we had Mr. Maheswaran's unsupported testimony that certain of his convictions may, at some future point, be reopened, and that his lawyer believes some will be overturned. This was not a strong enough foundation for us to be assured that Mr. Maheswaran's driving habits have significantly and permanently improved. Even if Mr. Maheswaran successfully appeals some convictions, he would still have a serious record of driving offences. His record, and the fact that he has continued to incur charges up until very recently, even in the face of an upcoming Tribunal hearing, is extremely concerning. Again, this record would raise concerns under each of the sections of the Municipal Code quoted above.

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We did not find very convincing Mr. Maheswaran's argument that police were issuing him "targeted tickets." He was duly convicted of the December 2016 "Park/Stand on a Highway" charge, and although he asserted before the Tribunal that he was not in the taxi when the police officer laid the charge, he provided no supporting evidence respecting his position, while the documentary evidence before us shows his conviction. And even if we had been convinced that that conviction was suspect, there was really nothing to support Mr. Maheswaran's leap of logic in suggesting that many of his other convictions could therefore also be suspect.

We very briefly considered whether the public could adequately be protected in this case by the imposition of conditions. We concluded that it could not, given that Mr. Maheswaran repeatedly breached conditions which the Tribunal has imposed in the past.

ORDER

The Tribunal orders that Mr. Maheswaran's Vehicle-for-Hire Driver's licence be revoked.

Originally Signed

Chair and Panel Members, concurring

Reference: Minute No. 219/17

Date Signed: December 7, 2017