

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

**Date of
Hearing:**

November 2, 2017

Panel:

(Hedy) Anna Walsh, Chair; Aly Alibhai, Member

Re:

1405650 Ontario Ltd. (Vendor) (Report No. 6937)
o/a Five Star Health Spa, George Stamatakos, President
Holder of Body Rub Parlour Owner/Operator's Licence No. B38-4298291
And
2587019 Ontario Inc. (Purchaser) o/a Alpha Care Spa Silvano Cozzetto,
Director
Applicant for a Body Rub Parlour Owner/Operator's Licence (Application
No. B735800)

Counsel for Municipal Licensing and Standards:

Ms. Lauren Elliot

Counsel for Applicant:

Mr. Noel Gerry

INTRODUCTION

1. The Applicant for a Body Rub Parlour Owner/Operator's Licence appeared before the Toronto Licensing Tribunal (TLT) to request that a licence be issued, as part of an agreement of purchase and sale between the Applicant and 1405650 Ontario Ltd.
2. The central issue was whether the current licence belonging to 1405650 Ontario Ltd (Vendor) should be cancelled and a new licence be issued to 2587019 Ontario Inc. (Purchaser).
3. The parties agreed that MLS Report No. 6937 constituted an agreed statement of facts and the report was entered into the record as Exhibit 1.
4. Neither the City nor the Applicant called any witnesses to testify and no evidence was given during the hearing.
5. After hearing the submissions of the City and by the Applicant, the Tribunal ordered that a licence be issued to the Applicant, subject to the Vendor making payment of all outstanding fines within 30 days, as set out hereafter.

CITY'S SUBMISSIONS

6. In her submissions, Counsel for MLS expressed the view that a licence should not be issued until and unless the Vendor's fines have been paid in full. She

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submitted that a licensee cannot "simply sell a licence in order to avoid payment of outstanding fines" and that do so "would frustrate the public interest". In her view, the issuance of a licence should be approved, subject to the Vendor making payment in full of all outstanding fines within 30 days.

APPLICANT'S SUBMISSIONS

7. Counsel for the Applicant expressed the view that there was no evidence to suggest that the fines were not going to be paid by the Vendor and that an order denying the issuance of a licence would act as "a mechanism for the City to have the outstanding fines paid and therefore, fall outside the Tribunal's jurisdiction". In the view of counsel for the Applicant, the Tribunal does not have jurisdiction to use an order denying the issuance of a licence as a means of having outstanding fines paid.

DECISION

8. The Tribunal was mindful of the public interest and the fact that, in this case, the Vendor has some \$10,000 in outstanding fines. The Tribunal noted that the amount of outstanding fines was not insignificant and accepted the submissions of the City and, in particular, the City's position that a licence only be issued if the Vendor's outstanding fines are paid in full within 30 days.
9. Chapter 545-Section 545- 340 D of the *Toronto Municipal Code* states in part that:

Notwithstanding Subsections A and B hereof, the Toronto Licensing Tribunal may, in its discretion, refuse to issue a licence or licences to a purchaser, lessee or other person obtaining an interest in a body-rub parlour in a transaction under this section when the Toronto Licensing Tribunal is of the opinion that it is not in the public interest, as determined by the Toronto Licensing Tribunal, that such new licence or licences should be issued, and the Toronto Licensing Tribunal shall, upon demand from any party to the transaction, deliver written reasons for such decision.
10. The Tribunal's authority to consider the public interest provides a broad discretionary power, that includes a consideration of the public interest in very broad terms including, for example, in having unpaid fines be paid by a licensee before the licensee's business can be sold or transferred to another licensee.
11. The rules governing licensees exist for a reason; to protect the safety of the public and to ensure the performance of business and other activities by licensees with integrity and honesty. In view of the fact that the Vendor still owes a significant amount in outstanding fines, the Tribunal determined that its mandate to protect the public interest could be met, if the licence was issued upon full payment of all outstanding fines within 30 days of the hearing.
12. Accordingly, considering the submissions of Counsel for MLS and the Applicant, as outlined above and taking into account the mandate of the Tribunal to protect

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the public interest, the Tribunal ordered that the licence shall only be issued upon payment in full of all outstanding fines of the Vendor within 30 days of the hearing.

Originally Signed

(Hedy) Anna Walsh, Chair
Panel Member, Aly Alibhai concurring

Reference: Minute No. 310/17

Date Signed: January 9, 2018