

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: January 4, 2018

Panel: Moira Calderwood, Chair; Melina Laverty, Member

Re: Piraveen Jegathesvaran (Report No. 6919)
Holder of Tow Truck Driver's Licence No. D09-4723988

Counsel for Municipal Licensing and Standards: Ms. Penelope Ma

INTRODUCTION

In June 2017, Mr. Jegathesvaran applied to Municipal Licensing and Standards (MLS) for a Tow Truck Driver's Licence. As part of that application, Mr. Jegathesvaran submitted a provincial Driver's Record Abstract, dated June 5, 2017. MLS issued Mr. Jegathesvaran Tow Truck Driver's Licence D09-4723988 on June 7, 2017.

MLS subsequently obtained a copy of Mr. Jegathesvaran's three-year driver's record, as it stood on June 5, 2017, directly from the Ministry of Transportation. The information in this record differed from the one Mr. Jegathesvaran submitted in June 2017, in that the one obtained from the Ministry listed a careless driving conviction and a lengthy driver's licence suspension.

In July 2017, MLS advised Mr. Jegathesvaran that the Toronto Licensing Tribunal would review his Tow Truck Driver's Licence. The Tribunal held a hearing on this matter on January 4, 2018. After the hearing, the Tribunal delivered an oral decision revoking Mr. Jegathesvaran's Tow Truck Driver's licence. These are the written reasons for that decision.

The issue before the Tribunal was whether Mr. Jegathesvaran's Tow Truck Driver's licence should be revoked or have conditions placed upon it, given events that occurred when Mr. Jegathesvaran applied for the licence in June 2017, and given Mr. Jegathesvaran's driving record.

Mr. Jegathesvaran appeared on his own behalf. The Tribunal advised him of his right to have legal representation and he chose to proceed without such representation. The Tribunal further advised the parties that in proceeding with a two-member Tribunal panel, there was a risk of deadlock. The parties were content to proceed.

CITY'S EVIDENCE

Ms. Alice Xu, Manager of Business Licensing and Administrative Services, testified on behalf of MLS. Ms. Xu and her staff prepared MLS Report No. 6919, which has 37 pages, along with an update consisting of 11 additional pages. The report and update relate to Mr. Jegathesvaran's application for a Tow Truck Driver's Licence, and to his

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driving record. The Tribunal admitted the report plus update in the hearing, and marked it as Exhibit 1.

Through Ms. Xu, Ms. Ma drew the Tribunal's attention to the following:

- The three-year driver's search document which Mr. Jegathesvaran submitted to MLS in June 2017 (Exhibit 1, page 8) documented that there was no public record of convictions, discharges and other actions related to Mr. Jegathesvaran's provincial driver's licence.
- The three-year driver's abstract which MLS obtained from the Ministry of Transportation, also for the date June 5, 2017 (Exhibit 1, page 35), showed the following:
 - A conviction for careless driving, offence date September 24, 2013
 - A "novice escalating suspension" from July 27, 2014 to March 24, 2016.
- A three-year driver's abstract dated July 10, 2017 (Exhibit 1, page 11) showed, in addition, a conviction for speeding 92 KPH in a 60 KPH zone, offence date April 27, 2017. The conviction for this offence occurred in June 2017, after the date on which Mr. Jegathesvaran submitted documentation to MLS.
- A three-year driver's abstract dated November 15, 2017 (Exhibit 1, page 29) showed that Mr. Jegathesvaran's provincial driver's licence was suspended, and that he had 4 demerit points.
- A three-year driver's abstract dated November 30, 2017 (Exhibit 1, page 36) showed that Mr. Jegathesvaran was once again licensed, and continued to show 4 demerit points.
- In addition to the above, Ms. Xu noted documentation in Exhibit 1 showing:
 - Charges laid under the *Highway Traffic Act* on November 14, 2017, for driving while under suspension, failure to possess daily inspection schedule and failure to surrender an inspection report, all related to a tow truck licensed by the City of Toronto. These three charges have an upcoming court date.
 - A conviction under the *Criminal Code of Canada* for failure to comply with bail conditions, offence date October 6, 2013.
 - A conviction under the *Highway Traffic Act* for failure to surrender driver's licence, offence date August 31, 2012.
 - Three charges laid under the *Highway Traffic Act* on April 6, 2012, for fail to surrender driver's licence, unsafe turn/lane change – fail to signal, use of plate not authorized for vehicle and a charge on the same day under the *Compulsory Automobile Insurance Act* for failure to have/surrender insurance card. Exhibit 1 shows convictions on the first and last of these charges and withdrawals of the other two.

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- Ms. Xu testified that when MLS obtained the driver's abstract showing that Mr. Jegathesvaran's provincial driver's licence was suspended, it sent him a letter via registered mail, dated November 15, 2017 (Exhibit 1, page 30) advising that his Tow Truck Driver's Licence was suspended and asking him to turn in that licence and his MLS photo ID card to MLS. Mr. Jegathesvaran failed to do so.

Mr. Jegathesvaran did not cross-examine Ms. Xu, and her evidence was therefore unchallenged.

APPLICANT'S EVIDENCE

Mr. Jegathesvaran affirmed that he would tell the truth. In testifying and under cross-examination, he stated:

- He is 22 years old. He went through a bad time in 2012 to 2013, when his life went downhill. Since then, he has cleaned up, and has found a solid job by becoming a tow truck driver, which has allowed him to gain financial stability. Tow truck driving is his passion. He likes to work hard. He finds this to be an easy job that pays well.
- He helps to support his mother, who lives in Sri Lanka, by sending money to her. He has a sister whom their father supports. He has no dependents.
- *With respect to his failure to surrender his Tow Truck Driver's Licence and photo card to MLS when asked to do so in November 2017* – He has lost these documents, so could not turn them in to MLS. The towing company that he worked for had about 65 trucks. He left the documents in one of the tow trucks, and no-one turned them in to the company's office.
- *With respect to the November 2017 charges of driving while under suspension, failure to possess daily inspection schedule and failure to surrender an inspection report, all related to a tow truck* – He was driving a tow truck for his employer. He had no idea that his provincial driver's licence had been suspended. His landlord brings the mail to his house once a month. He does not usually look at the mail right away. He was out of Canada in the spring of 2017. The April 2017 speeding ticket went to court in June 2017. He was not aware of the court date or that he was convicted. In November 2017, the tow truck company had not supplied the daily inspection schedule or report, so he could not produce those when asked.
- *With respect to the driver's abstract that he submitted to MLS in June 2017, when he applied for his Tow Truck Driver's licence* – He knew that his driver's abstract should show the conviction for careless driving. He hoped its absence on the record was a system error. He submitted it to MLS knowing that it was inaccurate.
- *With respect to the April 2017 speeding incident* – He was driving on Markham Road, with one passenger. He drove up a hill, then picked up speed going down the hill, without realizing his speed.

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- *With respect to the October 2013 failure to comply with bail conditions* – He was to drive only to or from school or work. He drove to Cobourg to sell a car. This was related to work. He received a conditional discharge.
- *With respect to the September 2013 careless driving incident* – He was driving on Highway 7 near Woodbine Avenue. He was “zoned out” listening to his music. He ran a red light going eastbound and his vehicle collided with a southbound vehicle. The driver of the other vehicle hit their head on the steering wheel. Both he and someone from the other vehicle had to go to the hospital. He had some cuts on his leg. His vehicle, which was old, was a write-off.
- *With respect to the August 2012 failure to surrender driver’s licence* – He could not remember details related to this incident.

With respect to the four April 2012 charges – He had just got a new car and had not yet arranged insurance on it. He had equipped the car with an old plate that he already had, which did not belong to the car, so he could move from the car from one street to another. While driving the car, he saw “a cop” and got nervous. He turned left quickly, hoping to avoid the cop.

SUBMISSIONS

Ms. Ma submitted, for MLS, that the Tribunal should revoke Mr. Jegathesvaran’s Tow Truck Driver’s Licence.

Ms. Ma asserted that Mr. Jegathesvaran’s knowingly providing an inaccurate driver’s abstract to MLS raises concerns about his honesty and integrity. Further, his driving record raises concerns about public safety and his ability to operate a tow truck within the confines of the law. Other aspects of his conduct also raise concerns about his ability to operate a business in compliance with the law.

Ms. Ma highlighted Mr. Jegathesvaran’s actions in submitting to MLS a driving record that he knew to be inaccurate. She noted that the application for a Tow Truck Driver’s licence requires applicants to initial beside the sentence, “The information set forth in this application is true, accurate and in all material respects complete” and that Mr. Jegathesvaran did initial beside this statement, even though he was aware the abstract should have shown his careless driving conviction. Ms. Ma submitted that this behaviour showed that Mr. Jegathesvaran had not carried on or would not carry on his business with honesty and integrity.

Ms. Ma summarized the incidents on Mr. Jegathesvaran’s driving record. She noted that in the 2014 careless driving incident he stated he was “zoned out” and that this incident led to personal injury and property damage. She noted that for the 2012 charges, he knew the plate was not linked to the car but used it anyway, then made a sharp turn to avoid a cop. She noted he has incurred charges very recently.

Further, Ms. Ma reviewed Mr. Jegathesvaran’s excuses for various lapses – his employer, the tow truck company, did not provide required documentation; his landlord

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brought the mail infrequently; he did not check the mail even when the landlord brought it; he stated he was out of the country when convicted of speeding and did not have notice of the court date, although the dates in question do not line up; he did not realize his provincial licence was suspended; he lost his MLS documentation – and she stated that these, taken together, provided grounds to question Mr. Jegathesvaran’s ability to carry on his business in a responsible and organized fashion, in accordance with the law.

In his submissions, Mr. Jegathesvaran repeated that he needed the job for financial reasons. He said he was given the abstract by the tow truck company but he “takes the fall” for the inaccurate driver’s abstract he provided to MLS. He is now aware of his responsibility to check mail and take things seriously. Losing the Tow Truck Driver’s Licence would have a serious impact on him. He acknowledges he made mistakes in the past. He would appreciate if the Tribunal would grant a licence, even one with conditions.

DECISION

The Tribunal revoked Mr. Jegathesvaran’s Tow Truck Driver’s Licence.

In reaching our decision, we applied the Tribunal’s mandate, set out in part in the *Toronto Municipal Code*, § 545-3.B. (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 heard nothing to contradict Mr. Jegathesvaran’s statements that working as a tow truck driver allows him to make a good living, and that he remits money to his mother overseas, but has no other dependents. The Tribunal noted that Mr. Jegathesvaran began driving a tow truck only in June 2017, and has held other jobs before, including working at a car dealership, and doing occasional work for a catering company. This suggests that he has found ways to support himself in the past other than tow truck driving, although he did state that previous work did not provide him a good living wage.

Turning to the other part of the test, we considered the protection of the public interest, if the Tribunal were to issue Mr. Jegathesvaran a Tow Truck Driver’s Licence.

We reviewed the grounds for denial of a licence, set out in section 545-4.C. of the *Municipal Code*:

Grounds for denial of licence.

(1) 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:

(a) 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

(b) 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

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...
(e) 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, the health or safety of other members of the public.

We are of the view that all three grounds in the subsections above are established in this case.

Grounds for a belief under subsection (a), above, that Mr. Jegathesvaran has not carried on his business in accordance with the law and with integrity and honesty are strongly apparent to us, in this case. Mr. Jegathesvaran acknowledged that he knowingly provided an inaccurate driver's abstract to MLS when he applied for his current Tow Truck Driver's Licence. Ms. Ma is correct that in spite of this, Mr. Jegathesvaran initialled beside the sentence stating that his application was true, accurate and complete. These facts raised very grave doubts for us about Mr. Jegathesvaran's honesty and integrity connected to his work as a tow truck operator and complying with conditions in his municipal licence.

With respect to subsection (e), above, we noted that Mr. Jegathesvaran has convictions and pending charges under the *Highway Traffic Act*, the most recent incurred in November 2017. Mr. Jegathesvaran is a young person who has been driving for a relatively short period (further shortened by a period of suspension for approximately 21 months) and has incurred some serious charges and convictions in that short time. The nature of the convictions on Mr. Jegathesvaran's driving record did raise for us some concerns about public safety. We note that he was convicted for careless driving after running a red light at a busy intersection, and both he and an occupant of the other vehicle had to go to the hospital, after that incident. In the 2017 speeding incident, he was traveling 30 KPH over the posted limit, on a city street. In 2012, he was convicted for driving a vehicle without having proper insurance.

Regarding subsection (b) above, we agreed with Ms. Ma that Mr. Jegathesvaran's disorganized and irresponsible approach to business documentation suggested that he may breach requirements under the *Municipal Code*. For example, he stated that when he received the MLS letter asking him to surrender his tow truck licence and photo identification card, he did not do so as he had lost them, yet he did not appear to have taken any steps to contact MLS to discuss the lost documentation, and find out how to proceed. He simply ignored the situation, in a similar manner to how he failed to deal with mail advising that his provincial driver's licence had been suspended.

To Mr. Jegathesvaran's credit, he testified in a very straightforward manner. He did not try to minimize his responsibility for providing the inaccurate driver's abstract. He was forthright about past mistakes. That said, he did not comment on or appear to be aware of the potential public safety aspect of obtaining a tow truck driver's licence using documentation that fails to show a past careless driving conviction and licence suspension.

We considered Mr. Jegathesvaran's request that we put conditions on the licence, but rejected that option. Perhaps conditions could have helped, had Mr. Jegathesvaran's driving record been the only concern. But, Mr. Jegathesvaran's admission of flouting the

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MLS licensing application process, coupled with his lack of insight into how such actions could impact MLS's ability to regulate licensed activities so as to protect residents of the city, raised concerns for us about his ability to carry on the business with honesty and integrity, without breaching the law, and without affecting public safety. We are aware of no conditions which could address this concern.

Upon hearing the Tribunal's decision, Mr. Jegathesvaran asked if he could obtain a Tow Truck Driver's Licence in the future. This order does not affect Mr. Jegathesvaran's ability to apply anew for a Tow Truck Driver's Licence. It may be that if Mr. Jegathesvaran applies for a licence at some point in the future, provides the appropriate documentation in an honest fashion, and is able to demonstrate that he has put his past driving behaviour behind him and his driving record is free of serious or concerning incidents, that application might succeed (although this Tribunal cannot predict with certainty what MLS or a future Tribunal panel may decide). Mr. Jegathesvaran was not able to demonstrate such factors today and therefore we revoked his Tow Truck Driver's licence.

Originally Signed

Moira Calderwood, Chair
Panel Member, Melina Laverty concurring

Reference: Minute No. 2/18

Date Signed: January 11, 2018