

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: April 13, 2017

Panel: Moira Calderwood, Chair; Melina Laverty and Daphne Simon, Members

Re: 2028488 Ontario Inc., Operating as City Taxi (Report No. 6481)
Avtar Singh Sekhon, President
Applicant for Renewal of Taxicab Broker's Licence No. B03-3363829

Counsel for Municipal Licensing and Standards: Mr. Matthew Cornett

Counsel for Applicant: Mr. Michael Binnett

INTRODUCTION

2028488 Ontario Inc., operating as City Taxi, has held a City of Toronto Taxicab Broker's Licence since 2003. Mr. Avtar Singh Sekhon is the company's President.

Municipal Licensing and Standards (MLS) wished to determine whether the Licence should be put on probation with conditions. The Toronto Licensing Tribunal held a hearing on this matter on April 13, 2017.

ISSUES

The issues identified in this matter were:

- Had City Taxi contravened chapter 545 of the Toronto Municipal Code with respect to how it paid drivers who served charge account customers taking flat-rate trips and, if so, what penalty should result?
- Had Mr. Avtar Singh Sekhon engaged in "threats or reprisals" against taxi drivers who lodged complaints against him with MLS, in contravention of §545-5.1 of the Toronto Municipal Code?

SUMMARY OF EVIDENCE

Agreed Statement of Fact

The parties presented an Agreed Statement of Fact dated April 12, 2017, setting out the facts which were not in issue between them. The first issue above, with respect to flat-rate payment, was largely dealt with in the Agreed Statement of Fact. It was agreed that City Taxi had, at times, underpaid drivers on flat rate trips, and that City Taxi was now attempting to address the issue even though the by-law with respect to this matter had recently changed.

April 13, 2017

CITY'S EVIDENCE

Testimony of Ms Kuztelska

Ms Kuztelska is the Supervisor, Licensing Enforcement, with Municipal Licensing and Standards (MLS). Through Ms Kuztelska's testimony, the City submitted into evidence certain pages from Report No. 6481, which Ms Kuztelska and staff prepared. Page 88 of the Report (Exhibit 1) is an update dated April 1, 2016, informing the Tribunal that MLS had received a complaint from Mr. BSK on March 30, 2016, alleging that Mr. Avtar Singh Sekhon had pressured him to withdraw his complaint to MLS regarding City Taxi.

In cross-examination, Ms Kuztelska acknowledged that she did not have personal knowledge of the details (as set out in an e-mail forwarded to her) of Mr. BSK's complaint, of any efforts Mr. BSK may have made to have flat rates adjusted on his behalf, or of letters of experience respecting Mr. BSK.

Testimony of Officer Jaramillo

Officer Jaramillo, a Licensing and Enforcement Officer with MLS, also testified. Exhibit 2, pages 80-81 of the Report, was Officer Jaramillo's notes detailing his investigation of Mr. BSK's complaint. The investigation extended from September to December 2015. Officer Jaramillo testified that he attended City Taxi to discuss this matter on December 11, 2015, and Exhibit 3, pages 82 - 84 of the Report, were his notes of that visit. Officer Jaramillo testified that the complaint related to whether City Taxi was paying drivers the full meter rate for trips done on account, on a flat-rate basis. He stated he spoke to Mr. Avtar Singh Sekhon and another City Taxi official, advising them that they were contravening the by-law by paying drivers less than the meter rate. This encounter is also described in paragraph 6 of the Agreed Statement of Fact.

Exhibit 4, page 89 of the Report, was a copy of an e-mail dated March 30, 2016, which Officer Jaramillo testified he received from Mr. BSK, although the "From" line lists a third party (RK) as the sender of the e-mail. Officer Jaramillo acknowledged that he could not authenticate that Mr. BSK wrote and/or sent the e-mail. The e-mail alleges, among other things, that Mr. Avtar Singh Sekhon asked Mr. BSK to withdraw his complaint to MLS and sign a paper acknowledging he had done so before he could have use of a City Taxi cab, and that Mr. BSK had asked Mr. Avtar Singh Sekhon for a "letter of experience," but that Mr. Avtar Singh Sekhon would not provide this.

In cross-examination, Officer Jaramillo acknowledged that he last spoke to Mr. BSK in September 2015, and stated that he did not contact Mr. BSK after receiving the March 2016 e-mail, nor did Mr. BSK contact him.

Testimony of Mr. Jaswinder Singh

Mr. Jaswinder Singh testified that he is a Toronto taxi driver. He stated that he rented a cab from City Taxi for 8 or 9 years. He recalled complaining to MLS in 2014 that City Taxi was paying him less than the meter rate on certain flat-rate runs.

Appendix A to the Agreed Statement of Facts contains Mr. Jaswinder Singh's Witness Will Say statement in which he outlines the details of his complaint.

April 13, 2017

Mr. Jaswinder Singh testified that an MLS officer attended City Taxi in June 2014 to discuss the complaint. Mr. Jaswinder Singh said that, on that same day, when he returned the cab to the fleet garage, Mr. Avtar Singh Sekhon's brother Mr. Teja Singh Sekhon took the keys and told him that "Avtar" said that he was no longer allowed to rent a cab.

In cross-examination, Mr. Jaswinder Singh stated that Mr. Avtar Singh Sekhon owns a taxi fleet at a garage near Weston and Steeles, which is where he rented the cab in question, and where Mr. Teja Singh Sekhon took the keys from him. Mr. Jaswinder Singh agreed that Mr. Avtar Singh Sekhon also owns the City Taxi brokerage, which has its offices near Highway 27 and Finch. Mr. Jaswinder Singh stated he rented from the fleet, not the brokerage.

Mr. Jaswinder Singh stated that he never spoke to Mr. Avtar Singh Sekhon directly about the key removal incident, but that Mr. Teja Singh Sekhon said that "Avtar" told him to take the keys. He understood he could no longer rent from them and never tried to again.

Mr. Jaswinder Singh acknowledged that he routinely filled in trip vouchers in connection with his taxi driving. He initially stated he could not remember whether he had ever filled in a voucher for a trip he had not actually driven. Counsel for City Taxi put a voucher (Exhibit 5) to Mr. Jaswinder Singh respecting a certain trip in May 2013, and Mr. Jaswinder Singh eventually acknowledged that he had filled in the voucher although he did not complete the trip. Mr. Jaswinder Singh explained that another driver had "scooped" his fare for that trip. He filled in the voucher, submitted it, and was paid \$59, knowing that eventually City Taxi would investigate why two drivers had billed for the same job number, and he would be able to find out who had scooped the fare. He said that about a month later, City Taxi charged back the money.

LICENSEE'S EVIDENCE

Testimony of Mr. Avtar Singh Sekhon

Mr. Avtar Singh Sekhon testified that he owns the City Taxi brokerage with offices near Highway 27 and Finch, and also owns a taxi fleet housed in a garage near Weston and Steeles, at 420 Ormont Drive. They are separate corporations. The garage fleet business is part of 1680380 Ontario Ltd. and operates under the name R & S Auto Service. The garage services taxis and also cars owned by members of the public.

Mr. Avtar Singh Sekhon stated that Mr. Jaswinder Singh was a taxi driver who rented a taxi from his fleet. He stated that he was aware of Mr. Jaswinder Singh's complaints to MLS about the flat rate versus meter rate issue, but that he never discussed the complaints with Mr. Jaswinder Singh.

Mr. Avtar Singh Sekhon acknowledged that his brother, Mr. Teja Singh Sekhon, took keys from Mr. Jaswinder Singh, but testified he did not know why and he never discussed it with his brother. He is busy with four businesses and did not look into this. Mr. Teja Singh Sekhon is currently in India.

April 13, 2017

Mr. Avtar Singh Sekhon stated he has 52 cars in his fleet and that City Taxi handles customers and dispatching for 450 taxis. Thus, most drivers for City Taxi do not use cars from his fleet.

Mr. Avtar Singh Sekhon stated that Mr. BSK drove for City Taxi, left, then came back three to four months later in March 2016. Mr. BSK wanted to rent one of his cabs. Mr. Avtar Singh Sekhon asked Mr. BSK, "Do you have a problem with me, because you complained to MLS?" Mr. BSK said he did not have a problem with him. Mr. Avtar Singh Sekhon asked him, would he then tell MLS in writing that he did not have a problem with him? Mr. BSK refused to sign such a paper. Mr. Avtar Singh Sekhon stated that he did not trust Mr. BSK as he thought he was lying to him, and decided not to rent a taxi to him.

Mr. Avtar Singh Sekhon stated that Mr. BSK then asked for a "letter of experience" from him. From his years in the taxi industry, he understands that drivers need such letters, from the brokerage's insurer, if they want to seek work elsewhere, so he contacted the insurer to get them. Exhibit 6 was two letters dated April 5, 2016, both from insurance companies, both addressed to Mr. Avtar Singh Sekhon, and both setting out the Driver Experience of Mr. BSK. Mr. Avtar Singh Sekhon stated that Mr. BSK never came to pick up these letters.

SUBMISSIONS

Mr. Cornett for MLS

Mr. Cornett stated that the Tribunal should place City Taxi's brokerage licence on probation for two years.

Mr. Cornett noted that City Taxi admits that at times it underpaid drivers on flat rate trips, contrary to the Municipal Code. He argued that the corrective system City Taxi instituted in 2012 still did not ensure that drivers received the metered rate. Over the years, City Taxi continued to underpay its drivers. MLS visited City Taxi multiple times and spoke to Mr. Avtar Singh Sekhon and other managers. They were fully aware they could not pay drivers less than the metered rate for flat-rate trips, yet continued to do so. Mr. Cornett acknowledged that the requirement regarding payment for flat rate trips is no longer in the by-law.

With respect to the reprisal issue, Mr. Cornett stated that two taxi drivers (Mr. Jaswinder Singh and Mr. BSK) faced reprisals when City Taxi became aware of their complaints to MLS. He noted that Mr. Jaswinder Singh believed that Mr. Teja Singh Sekhon took the keys away in retaliation for his (Mr. Jaswinder Singh's) complaint to MLS. Mr. Cornett noted that Mr. Teja Singh Sekhon and Mr. Avtar Singh Sekhon are brothers and he speculated that they would have discussed what happened, given that they worked in interconnected businesses, and that Mr. Teja Singh Sekhon could have provided an explanation as to why he took the keys away from Mr. Jaswinder Singh, but failed to do so. Mr. Cornett noted that the by-law officer's visit and the key removal took place on the same day. The logical explanation as to why Mr. Teja Singh Sekhon took away Mr. Jaswinder Singh's keys, according to Mr. Cornett, was that Mr. Avtar Singh Sekhon was

April 13, 2017

upset about Mr. Jaswinder Singh's complaint to MLS. No one has provided an alternative reason as to why the keys were taken away, he stated.

Mr. Cornett observed that Mr. Jaswinder Singh had a reasonable explanation for having filled in a payment receipt slip for a trip that he did not undertake. There is no evidence that City Taxi disciplined Mr. Jaswinder Singh because of this incident, and only this one incident was put forward. He noted that the incident took place in May 2013, about one year prior to Mr. Teja Singh Sekhon's taking the keys away.

With respect to Mr. BSK, Mr. Cornett argued that Mr. Avtar Singh Sekhon's stated reason for not renting him a cab was a "lie," and that the actual reason was that Mr. BSK's retraction of his complaint was a prerequisite for renting a taxi from the fleet.

Mr. Cornett asserted that the word "proceedings instituted under this chapter" in §545-5.1 of the Toronto Municipal Code should be interpreted broadly to include a complaint to MLS and not just a formal legal proceeding. Mr. Avtar Singh Sekhon demanded that Mr. BSK retract his complaint and when he did not, City Taxi terminated his permission to rent a taxi, and this action fits squarely within the section.

Mr. Cornett referred to provisions under §545-4.C of the Municipal Code in arguing that Mr. Avtar Singh Sekhon's honesty and integrity were sufficiently compromised to justify imposing a period of probation on the licence. Mr. Avtar Singh Sekhon did not behave in accordance with the law or reasonably.

Mr. Binnetti for City Taxi

Mr. Binnetti submitted that City Taxi's license should be renewed without probation.

With respect to the flat rate issue, Mr. Binnetti acknowledged that there were problems in the past, but submitted that City Taxi had made a bona fide attempt to comply with the bylaw, as shown in Appendix B to the Agreed Statement of Facts. He noted that, with 2000 voucher trips a day, City Taxi incurred only a handful of complaints with regard to underpayment. Mr. Binnetti submitted that a probationary term could not address this issue, as the law no longer exists.

On the reprisal issue, Mr. Binnetti argued that the word "proceedings" cannot be interpreted so broadly as to include complaints to MLS or an investigation, but means a formal proceeding, such as before the Tribunal. Further, he argued that the City had not shown that any retaliation which may have taken place was "by reason only" of participation in proceedings.

Mr. Binnetti stated there was no evidence to show that Mr. Avtar Singh Sekhon orchestrated the key removal, or that he did so as a means of reprisal against Mr. Jaswinder Singh. Mr. Jaswinder Singh did not communicate with Mr. Avtar Singh Sekhon after the keys were removed. There is nothing in the bylaw that requires a fleet owner to rent to anyone in particular. Mr. Avtar Singh Sekhon controls only 52 of the 450 cars that are part of the brokerage. In other words, most of the drivers obtain their cars elsewhere. Mr. Binnetti submitted that Mr. Jaswinder Singh's information was unreliable, given that he acknowledged submitting a voucher for a trip he did not make,

April 13, 2017

and said he had done so many times when other drivers “scooped” fares. Mr. Binnetti argued that this went to Mr. Jaswinder Singh’s credibility.

Mr. Binnetti noted that Mr. BSK, although summonsed, did not appear to testify in person. MLS could offer only hearsay evidence on this issue central to their case, the issue of whether Mr. Avtar Singh Sekhon retaliated against Mr. BSK by preventing him from renting a taxi or driving for City Taxi. Ms Kuzstelska and Officer Jaramillo did not have any direct evidence on this point. The only testimony as to why Mr. Avtar Singh Sekhon chose not to rent to Mr. BSK was that of Mr. Avtar Singh Sekhon, who stated that he did not trust Mr. BSK so did not want to do business with him, and that is why he did not rent him a cab. Even if it were shown that the decision not to rent was in reprisal for Mr. BSK’s complaint to MLS, there was no evidence that the “only” reason for the refusal was Mr. BSK’s participation in the proceeding. Mr. BSK asserted in his e-mail that Mr. Avtar Singh Sekhon refused to supply letters of experience, but Exhibit 6 consists of those letters dated about a week after Mr. BSK requested them (although Mr. BSK never picked them up).

ANALYSIS AND CONCLUSIONS

The Tribunal decided to renew City Taxi’s taxicab broker’s license, without probation or conditions.

Flat rate vs meter rate issue

The Tribunal noted the following facts:

- Chapter 545 formerly included a provision prohibiting a taxicab broker from paying drivers who serviced charge account customers a flat rate any less or significantly more than the meter rate for the same call (Agreed Statement of Fact, paragraph 2).
- Taxicab drivers complained to MLS that City Taxi had paid them less than the meter rate, and thus had not complied with the bylaw. In 2012, an MLS officer spoke to Mr. Avtar Singh Sekhon about it (Agreed Statement of Fact, paragraphs 3 and 4).
- In 2012, City Taxi developed a system to track and adjust its flat rates, based on feedback from its drivers and clients (Agreed Statement of Fact, paragraph 9 and Appendix B).
- City Taxi acknowledges that there were instances when the flat rate it paid to drivers was lower than the meter rate for that trip, and that this contravened the Municipal Code (Agreed Statement of Fact, paragraph 12).
- The City of Toronto has repealed these provisions and under the current Chapter 546, taxicab brokers may pay drivers discounted rates if certain conditions are met (Agreed Statement of Fact, paragraph 11).

Thus, while City Taxi did contravene the former provision at times, it also instituted a system to correct this, as documented in Appendix B. MLS never laid any charges against City Taxi with respect to its compliance with this section of the Municipal Code, nor was City Taxi ever convicted under this section.

April 13, 2017

Although City Taxi acknowledged a past breach, the Tribunal could think of no probationary condition to impose going forward that would address a failure to comply with a now-repealed section of the Municipal Code. And while at times, the Tribunal will impose a period of suspension on a licensee to express its displeasure at past lapses, we are aware in this case that suspending the licence of the taxicab broker would in fact impose hardship on the many taxi drivers who work for the brokerage.

Under the circumstances, we did not take any action respecting this breach.

Threats or Reprisals issue

§545-5.1 of the Toronto Municipal Code provides:

I. Threats or reprisals.

(1) For the purposes of this section, “any action by way of threat or reprisal” means:

(a) Terminating or purporting to terminate any employment or other business relationship governed by the provisions of this chapter; and

(b) Causing or purporting to cause pecuniary harm in respect of any business governed by the provisions of this chapter.

(2) No person licensed under this chapter shall, by any means whatsoever in respect of the licensed business carried on by such person, take any action by way of threat or reprisal against any other person licensed under this chapter by reason only of such person’s participation in proceedings instituted under this chapter.

The Tribunal determined that the conduct of Mr. Avtar Singh Sekhon (or, by extension, the numbered company which holds the broker’s licence) as described in this hearing did not fall under this section, for the following reasons:

1. With respect to Mr. BSK:

Mr. BSK did not attend the Tribunal and therefore did not testify to the contents of the e-mail (Exhibit 4) he purportedly sent to MLS. As hearsay, the e-mail is presumptively unreliable. That said, in the end we did not have to rely on the e-mail, as we were able to determine from Mr. Avtar Singh Sekhon’s own uncontradicted testimony that:

- Mr. BSK drove for City Taxi, left for some months, and then returned wishing to rent a taxi
- the two of them met in March 2016
- they discussed Mr. BSK’s complaint to MLS
- Mr. Avtar Singh Sekhon asked Mr. BSK if he had a problem with him, and when Mr. BSK said he didn’t, asked him to sign a paper to that effect, which Mr. BSK refused to sign.

(All of these details accord with those set out in Exhibit 4.)

April 13, 2017

Mr. Avtar Singh Sekhon testified that he chose not to rent a taxicab to Mr. BSK because he did not trust him.

In the Tribunal's view, even if we found (and we did not) that Mr. Avtar Singh Sekhon's decision constituted a "reprisal," it was not proven that any reprisal was by reason only of Mr. BSK's participation in the proceedings. Mr. BSK was not present to testify (although he had been subpoenaed) and there was therefore no information to contradict Mr. Avtar Singh Sekhon's testimony that his reason for deciding not to rent a taxi to Mr. BSK to drive for City Taxi was because he lied to him and therefore, Mr. Avtar Singh Sekhon could not trust Mr. BSK.

2. With respect to Mr. Jaswinder Singh:

The Tribunal heard competing versions of why Mr. Teja Singh Sekhon took Mr. Jaswinder Singh's keys on the same day in 2014 that an MLS officer attended City Taxi to investigate Mr. Jaswinder Singh's complaint to MLS. Mr. Jaswinder Singh's credibility was impugned by his initial testimony that he had no recollection of falsifying a trip sheet, which he had to retract when presented with evidence that he had in fact done so. Thus, we were not able to prefer his testimony over that of Mr. Avtar Singh Sekhon, whose evidence did not suffer from any such flaw. According to Mr. Avtar Singh Sekhon, it was his brother Mr. Teja Singh Sekhon who took Mr. Jaswinder Singh's keys, and he was not consulted about this. Mr. Jaswinder Singh never spoke to Mr. Avtar Singh Sekhon after that. Rather, Mr. Jaswinder Singh testified that he understood that "Avtar" had ordered the key be taken and that he could not rent from him again.

The Tribunal was struck by the timing of the MLS officer's visit and the removal of Mr. Jaswinder Singh's keys, which certainly made us wonder if one might be related to the other. That said, all of this took place in 2014 which is not a time period when Mr. Jaswinder Singh was, within the words of the statute, "participating" in proceedings instituted under this chapter." We could not see in the legislation any clear wording showing an intention to protect people who complain to MLS about a licensee, unless and until such complainants become participants in proceedings before the Tribunal under Chapter 545. Simply filing a complaint with MLS did not, in our view, constitute instituting proceedings. And while we would be very troubled to think that a licensee would retaliate against a person who complained against him, such behavior is not caught by a plain reading of the relevant statutory section.

3. We considered whether such behavior, if proven, could fall within the provisions of §545-4.C(1) of the Code, which sets out reasons to deny renewal of a licence, including where there are concerns about the licensee's honesty and integrity, and whether he acted in accordance with the law.

No evidence was presented to show that Mr. Avtar Singh Sekhon's taxicab broker business was implicated in any conduct lacking honesty or integrity. In fact, Mr. Jaswinder Singh's interactions regarding removal of his keys were with the fleet business and Mr. Teja Singh Sekhon, who operated the garage, not with Mr. Avtar Singh Sekhon. Both Mr. Jaswinder Singh and Mr. Avtar Singh Sekhon

April 13, 2017

testified that they never discussed what happened with the keys, or the reason for Mr. Teja Singh Sekhon's taking them away.

Counsel for MLS argued that City Taxi showed an ongoing inability to comply with the bylaw by underpaying its drivers when they drove customers on flat-rate accounts, which again might raise questions of honesty, integrity, or compliance with the law. The Tribunal, however, was satisfied that City Taxi made bona fide efforts to modify its practices to comply with this requirement (since repealed).

In all of the circumstances, the Tribunal could see no grounds upon which to impose a probationary period on City Taxi's brokerage licence.

DECISION

The Tribunal ordered that 2028488 Ontario Inc.'s Taxicab Brokerage Licence be renewed.

Originally Signed

Maira Calderwood, Chair
Panel Members, Melina Laverty and Daphne Simon concurring

Reference: Minute No. 114/17

Date Signed: November 23, 2017