

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: November 9, 2017

Panel: Moira Calderwood, Panel Chair; Aly Alibhai and (Hedy) Anna Walsh, Panel Members

Re: Agith Ranjithkumar (Report No. 6942)
Applicant for a Tow Truck Driver's Licence (Application No. B733369)

Counsel for Municipal Licensing and Standards: Ms Penelope Ma

INTRODUCTION

In August 2017, Mr. Ranjithkumar applied to Municipal Licensing and Standards (MLS) for a Tow Truck Driver's Licence.

MLS reviewed Mr. Ranjithkumar's driving record, including his history of charges and convictions under the Highway Traffic Act, as well as other statutes. MLS denied Mr. Ranjithkumar's application for a licence. Mr. Ranjithkumar appealed that denial, and the Toronto Licensing Tribunal held a hearing on this matter on November 9, 2017. After that hearing, the Tribunal delivered an oral decision to deny the application for a Tow Truck Driver's licence. These are the written reasons for that decision.

The issue before the Tribunal was whether Mr. Ranjithkumar should be issued a Tow Truck Driver's licence, given his driving record and his history of other convictions.

CITY'S EVIDENCE

Ms Olga Kuztelska, MLS Supervisor, testified on behalf of MLS. Ms Kuztelska and her staff prepared MLS Report No. 6942, which has 65 pages. The report relates to Mr. Ranjithkumar's application for a Tow Truck Driver's Licence. The Tribunal admitted the report in the hearing, and marked it as Exhibit 1. Ms Kuztelska and her staff had prepared a four-page update to the report. The Tribunal admitted this document and marked it as Exhibit 2.

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

- Mr Ranjithkumar's Ministry of Transportation three-year Driver's Abstract dated August 18, 2017, shows speeding convictions and four demerit points. The convictions include:
 - Speeding 65 kph in a 50 kph zone, offence date November 15, 2013
 - Speeding 82 kph in a 50 kph zone, offence date September 27, 2016

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- Two driver's licence suspensions for "racing, contest or stunt," August 30 – September 6, 2016, and May 26 – July 25, 2016
- Pages 9-61 of Exhibit 1, updated by Exhibit 2, show charges and convictions registered against Mr. Ranjithkumar. These include:
 - A charge for speeding 84 kph in a 50 kph zone, offence date April 18, 2017, court date scheduled for January 2018
 - A charge for "Public Garage, No Licence," offence date July 10, 2017, court date scheduled for December 2017
 - A conviction for "Open liquor in vehicle" under the Liquor Licence Act, offence date August 2015
 - A conviction for "Drive without proper lights," offence date March 2015
 - A conviction for "Passenger fail to wear seatbelt," offence date February 2015
 - A conviction for speeding 65 kph in a 50 kph zone, offence date November 2013
 - A conviction for consuming liquor in an illegal place, under the Liquor Licence Act, offence date August 2011
 - A conviction for passing a streetcar improperly, offence date August 2011
 - A conviction for "minor on licenced premises" under the Liquor Licence Act, offence date February 2011.

APPLICANT'S EVIDENCE

Mr. Ranjithkumar testified that everything set out on his record obtained by MLS is true. He acknowledged that he made mistakes when he was younger and did not know what he was doing.

Mr. Ranjithkumar stated that he opened an auto garage/detailing business in 2016. His landlord could not supply sufficient parking, so he had to move the business to different premises, on Kingston Road. He put \$30,000 into renovating the premises, then found out he could not obtain the zoning licence he needed. He closed the business. He has debts. He owns a tow truck and wants to drive it to earn enough to pay back what he owes. He acknowledges that his driving record is not good. He wants to have a chance and would be willing to accept conditions on his licence.

On cross-examination, Ms Ma elicited:

- Mr. Ranjithkumar is 25 years old. He previously had a tow truck driver's licence. This is the only job he knows. Other jobs would offer low wages. He has to support his family. His mother is ill and he takes care of her. His sister is paying back her Ontario Student Assistance Program loan. If he obtains the tow truck licence, his dad will help out in the business.
- Mr. Ranjithkumar formerly had a job at a pharmaceutical company, and then opened his own cleaning company. After he opened his garage, he closed the cleaning business. When he bought the garage business at the first location, he bought the municipal licence and had it changed into the name of his business.

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At the first location, he put \$10,000 down, and then discovered there were not enough parking spots.

- He moved the garage to the new location. His business was busy and the neighbours called the City. He was charged with running a public garage without a permit. He closed the business.
- With respect to the August 30, 2016 incident that led to the stunt driving conviction, Mr. Ranjithkumar stated he was delivering the Metro newspaper in Oshawa. It was 5:45 a.m. and he was running late making his last drop. He was charged and the vehicle was impounded with the Metro newspapers still inside. He was charged with careless driving but pleaded guilty to the lesser stunt driving charge.
- With respect to the August 2015 conviction for having open liquor in a vehicle, Mr. Ranjithkumar stated that he was the driver, his friends were drinking, and he got the ticket. He stated he poured out the alcohol at the roadside.
- With respect to the March 2015 conviction for driving without proper lights, Mr. Ranjithkumar stated he was driving to his mother's and was pulled over as one of his headlights was out. He threw his cigarette out of the car window and was also charged with littering.

Mr. Ranjithkumar provided no further details regarding some of the older offences.

SUBMISSIONS

Ms Ma submitted, for MLS, that the Tribunal should deny Mr. Ranjithkumar's application for a Tow Truck Driver's Licence.

Ms Ma asserted that Mr. Ranjithkumar's driving record raises significant concerns about public safety and his ability to operate a Tow Truck within the confines of the law.

Ms Ma highlighted that some of Mr. Ranjithkumar's charges and convictions are quite recent, and we cannot be certain that enough time has elapsed to demonstrate that he has changed his behaviour.

Ms Ma pointed out that three of Mr. Ranjithkumar's convictions are under the Liquor Licence Act, adding that liquor-related offences are of particular concern when a person is seeking a municipal licence that involves driving.

Ms Ma noted that the 2016 driver's licence suspension did not appear to deter Mr. Ranjithkumar from going on to incur further speeding and stunt driving charges in 2017. She argued that there is no reason to believe that conditions would be an effective measure to ensure his compliance with the law.

Ms Ma stated that MLS has concerns about Mr. Ranjithkumar's ability to carry on a business in accordance with the law and without infringing the health and safety of

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members of the public. Mr. Ranjithkumar acknowledged that he had operated a garage without the appropriate municipal licence.

In his submissions, Mr. Ranjithkumar reiterated that he is willing to work under a conditional licence. He stated that people make mistakes and he now realizes that he made some as a younger man. Mr. Ranjithkumar stated that, if possible, he needs a chance.

DECISION

The Tribunal denied Mr. Ranjithkumar's application for a 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 were satisfied that Mr. Ranjithkumar established his need to make a livelihood, given his family circumstances, although we did note that Mr. Ranjithkumar had succeeded in occupations in the past that did not require a municipal licence, including running a cleaning business, and working in newspaper delivery.

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

In Mr. Ranjithkumar's favour, we noted that he has no criminal record.

Mr. Ranjithkumar's need to make a livelihood, and this factor in his favour, however, could not outweigh the Tribunal's serious concerns about protection of the public interest.

Section 545-4.C. of the Municipal Code provides:

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

(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.

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We are of the view that the ground in subsection 1(a) – a belief that Mr. Ranjithkumar has not carried on his business in accordance with the law and with integrity and honesty – is made out. Mr. Ranjithkumar acknowledged that he operated another municipally-licensed activity, his garage, while at the second location, without the requisite municipal licence. This occurred very recently and he did not provide an explanation. This led the Tribunal to form the belief mentioned in the Code.

We are also of the view that the ground in subsection 1(b) is made out. Mr. Ranjithkumar has in the past carried on another municipally-licensed activity (garage) in breach of the Municipal Code, again, without a good explanation. Mr. Ranjithkumar provided no evidence or submissions that he understood the need to comply with the municipal licensing scheme and intended to ensure he complies in future. All of this gave us enough reason to believe that Mr. Ranjithkumar may not carry on a licensed activity in compliance with the law.

The most compelling reason for denial of this licence application, however, lies in the grounds mentioned in subsection 1(e). Taking into account Mr. Ranjithkumar's speeding and stunt driving convictions, two of which carry offence dates of just over one year ago, and his further speeding charge, incurred only seven months ago, in April 2017, we have reasonable grounds for belief that Mr. Ranjithkumar's carrying on a tow truck business would infringe the rights of the public and would endanger public health and safety.

Mr. Ranjithkumar took responsibility, at the hearing, for his past actions, and that is an encouraging first step. We agree with Ms Ma, however, that not enough time has elapsed since the time of Mr. Ranjithkumar's most recent charges and convictions to allow us to be confident that he has changed his driving patterns for the better. This is particularly relevant in an applicant for a municipally-licensed activity that involves driving, as does a tow truck driver's licence.

We also found concerning the existence of several convictions for offences under the Liquor Licence Act. Again, these are relevant in an application for a licence that involves driving, and heightened our concerns about public health and safety.

We were not convinced that conditions would suffice to protect public safety in this case. Mr. Ranjithkumar's history includes ignoring municipal licensing requirements (with respect to his garage), leading us to think that he may well ignore any conditions on the licence.

We make this order without prejudice to Mr. Ranjithkumar's right to apply anew for a Tow Truck Driver's licence. It may be that if Mr. Ranjithkumar applies for a licence at some point in the future, and is able to demonstrate that a period of time has elapsed in which he has not incurred any further driving or liquor related charges or convictions, or any other serious charges, or violated other municipal business licensing requirements, that application might succeed (although this Tribunal panel cannot predict with certainty what MLS or a future Tribunal panel may decide). Mr. Ranjithkumar was not able to demonstrate any such factors today and therefore, we deny his application for a Tow Truck Driver's licence.

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Originally Signed

Moira Calderwood, Chair
Panel Members, Aly N. Alibhai and (Hedy) Anna Walsh concurring

[Reference: Minute No. 316/17]

Date Signed: November 17, 2017