

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: January 18, 2018

Panel: Aly N. Alibhai, Chair; Melina Laverty, Member

Re: Issadin Islao Nur (Report No. 6772)
Applicant for a Vehicle-For-Hire Driver's Licence (Application No. B682481)

Counsel for Municipal Licensing and Standards: Mr. David Gourlay

Counsel for Applicant: Mr. Tyrone D. Crawford

INTRODUCTION

On October 28, Mr. Issadin Islao Nur ("Mr. Nur") submitted to Municipal Licensing and Standards (MLS) an application for a Vehicle-For-Hire Driver's Licence. As part of that application, Mr. Nur submitted a Criminal Background Check from the York Regional Police dated October 5, 2016, and a Driver's Record Abstract from the Ontario Ministry of Transportation dated October 28, 2016.

On October 31, 2016, MLS sent a letter to Mr. Nur setting out the grounds for the denial of his application for a Vehicle-For-Hire Driver's Licence. On November 29, 2016, MLS received a Request for Hearing from Mr. Nur.

On April 10, 2017, the Toronto Police Service provided MLS with a copy of the Occurrence Report concerning criminal charges of 'Assault with a Weapon' and 'Assault Causing Bodily Harm' registered against Mr. Nur. Records of MLS and the Ontario Attorney General's Integrated Court Offences Network (ICON) indicate multiple criminal, Trespass Property Act, by-law, Smoke Free Ontario Act, Liquor Licence Act and Ontario Highway Traffic Act charges and convictions registered against Mr. Nur. Mr. Nur's three-year driver's record dated July 7, 2017 indicates one (1) conviction and one (1) suspension of Mr. Nur's provincial driver's licence under the Ontario Highway Traffic Act.

Further to Mr. Nur's request for a hearing following the decision of MLS to deny his application for a Vehicle-For-Hire Driver's Licence, on January 18, 2018 the Toronto Licensing Tribunal held a hearing. After that hearing, the Tribunal delivered an oral decision upholding the decision of MLS to deny Mr. Nur's application for a Vehicle-For-Hire Driver's Licence. These are the written reasons for that decision.

The issue before the Tribunal was whether Mr. Nur's application for a Vehicle-For-Hire Driver's Licence should be granted, given his criminal record and, in particular, his convictions under the Criminal Code of Canada for driving with more than 80 mgs of alcohol in his blood on January 29, 2015, assault on November 6, 2001, driving while his ability was impaired on August 27, 1993, and two charges of assault with a weapon and

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assault causing bodily harm laid against him on June 30, 2016 which resulted in the entering into of a peace bond.

At the outset of the hearing, both MLS and Mr. Nur, through his counsel, Mr. Crawford, were advised that because the panel was comprised of two persons, there was a risk of a deadlocked decision at the conclusion of the hearing.

Mr. Nur was assisted at the hearing by a Somali Interpreter, Ms Suada Omar. Ms Omar was affirmed.

CITY'S EVIDENCE

Mr. Gourlay advised the Tribunal that the case on behalf of MLS would be put forward by way of an Agreed Statement of Facts and, in this regard, the following documents were entered into the record as exhibits without any objection from Mr. Crawford:

- Exhibit 1 – MLS Report Number 6772 including pages 1 through to 134 inclusive; and
- Exhibit 2 – Two (2) pages of additional documents filed by Mr. Crawford being a letter dated January 5, 2018 from Ms Leslie Nguyen of York Regional Police addressed to Mr. Nur and the attached Police Criminal Records Check of Mr. Nur retrieved on January 5, 2018.

Mr. Gourlay also noted and Mr. Crawford agreed that, as a matter of fact, the information set out at page 134 of Exhibit 1, namely an Ontario Ministry of Transportation three-year Driver Record of Mr. Nur, remains unchanged as of today (January 18, 2018). Mr. Gourlay also noted that an MLS update indicates that the fine of \$105 noted on p. 128 of Exhibit 1 has been paid.

APPLICANT'S EVIDENCE

Mr. Nur was affirmed.

Mr. Nur's testimony, through the Somali Interpreter, Ms Omar, included the following information:

- He is fifty-seven years of age, he was previously married, he is presently divorced and he has two adult children, aged twenty and twenty-five, who live in Somalia.
- His two adult children do not currently work and he tries, as much as possible, to assist them financially by sending them money when he is able to do so.
- He has not been able to provide any financial assistance to his two adult children for about three years now.
- He receives social assistance and, in this regard, an Ontario Ministry of Health and Long-Term Care Drug Benefit Card marked VOID and a City of Toronto Statement of Assistance, dated December 21, 2017, for a total granted amount of \$684.95 was entered into the record as Exhibit 3, without any objection from MLS.

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- Social assistance is currently his only source of income and he has no other employment at this time.
- He has taken steps to find employment but has not been successful in finding work, other than a job for a day or two here and there, which he has secured through a job placement agency.
- He was, at one time, previously qualified as a taxi driver in the City of Toronto and he had to take and pass a number of courses in order to become a taxi driver. He therefore considers himself to have been a professional taxi driver in the past and he paid the sums required to maintain this status in the past.
- He does not have a taxi driver's licence today but he previously had a City of Toronto Vehicle-For-Hire Driver's Licence from September 2009 to September 2012.
- He stopped driving a taxi in Toronto in early 2012 when he moved to Edmonton to take a better job working in a factory and he now wishes to work again as taxi driver in Toronto and believes that he is qualified to drive a taxi.
- He has not been working since 2012, other than the very limited work he has secured through an agency, which has not been anything substantive.
- When he was convicted in 1993 of driving while impaired, he was fined \$600 and required to use an interlock device in his car for fifteen days. At the time of this offence, he rear-ended another vehicle but no one was injured. At that time, he was not driving a taxi and was in a rental car.
- His conviction for assault in 2001 related to a personal situation.
- His conviction for driving with more than 80 mgs of alcohol in his blood on January 29, 2015 occurred in Edmonton and did not involve an accident. He was given a fine of \$1700 and prohibited from driving for one (1) year.
- He has attended Alcoholics Anonymous ("AA") meetings and produced some of the silver chips that he has received for his attendance at meetings of AA.
- He attended at the doctor's office recently and received a note from the doctor dated January 2, 2018 indicating that, based on results of lab tests, there was no evidence of alcohol abuse and that his urine drug screen was negative. A doctor's note (one page) from Dr. A. Moran of the Trillium Doctor's Office, dated January 2, 2018 and two (2) pages of lab test results in support of the doctor's note from LifeLabs were entered into the record as Exhibit 4, with no objection from MLS.
- He does not own a house or condominium and lives in rental accommodation.
- At the time that his application for a Vehicle-For-Hire Driver's Licence was denied by MLS, he was advised that he required "a clean abstract", but he did not have a clear understanding what, exactly, this meant and he understood that it meant that he had to go to court.
- Alcohol was involved in two of the three incidents, which resulted in criminal convictions and which appear on his criminal record.
- He has since "quit drinking altogether" because it was causing him problems in his life and it was not good for him. He has not been drinking alcohol for "a while" and for somewhere between approximately eighteen months and two years.
- He quit drinking alcohol because he realized that it was causing him a lot of problems and he wanted to improve his life and start looking for employment.
- He has never used drugs and he does not use prescription medication.
- He has a valid driver's licence and is able to drive a vehicle.

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- He does not have any anger management problems and although he received a sentence of one day in jail for his assault conviction in 2001 (including thirty days pre-sentence custody), he is now “100% fine”.

During cross-examination of by Mr. Gourlay, Mr. Nur testified as follows:

- He did not renew his previous City of Toronto Vehicle-For-Hire Driver’s Licence, which expired in September 2012, because he left Toronto for a better job working in a factory in Edmonton in early 2012 before his licence expired.
- He worked as a taxi driver in Toronto before moving to Edmonton for approximately two and a half years and has not otherwise worked as taxi driver at any other time.
- He has previously worked in a factory and is currently not able to get regular and consistent work as a labourer in a factory and gets some work for a day here and there through a job placement agency. The last time he had a full-time job was when he worked in a factory in Edmonton.
- He has been on social assistance and receiving benefits for “a while” now.
- He moved from Edmonton back to Toronto in February or March of 2015 and it was after he was charged with driving with more than 80 mgs of alcohol in his blood in Edmonton that he moved back to Toronto.
- He has encountered difficulties securing work through the job placement agency and has not worked very much at all and in the last three months, he has worked perhaps one day in total. He does not consider working one day in three months to be “real work.”
- He acknowledges that when he was charged with driving with more than 80 mgs of alcohol in his blood in Edmonton in December 2014, his two breathalyzer readings were 220 mgs and 210 mgs, the latter having been taken twenty-two minutes after the first reading.
- At the time of the charge in Edmonton in December 2014, he was stopped at a checkpoint in his own personal vehicle and had consumed four beers, and his conviction resulted in a fine of \$1700, having to use an interlock device in his vehicle for twenty days and a one year suspension of his driver’s licence.
- He does not and has never had a drinking problem and he has quit drinking alcohol completely about eighteen months to two years ago.
- He quit drinking alcohol because he discovered after attending AA that alcohol was “ruining” his life; however, he drank just like others drink alcohol and alcohol was not “controlling” his life, and instead simply ruining his life. He was never a “drunk person” who ends up on the floor at the end of the night.
- When he stopped drinking for a period of one week or so, he realized that he was not missing it.
- Since he first started drinking alcohol, there have been several periods of time when he has not consumed alcohol for several months; he has not always been a drinker.
- Although he had consumed alcohol when he was charged with assault in 2001, alcohol was not a factor in the incident.
- He does not recall the name of the person who he assaulted at the time of the incident in 2001. He was living in a rooming house, but recalls that the incident involved a problem with the victim using his personal belongings, and that the problem that resulted in the charge of assault had been an ongoing problem.

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- Both he and the victim were arrested, and they were both injured at the time of the incident in 2001 and he sustained most of the injuries at the time and the victim only sustained very minor scratches to his face.
- With respect to the June 2016 incident that resulted in charges of assault with a weapon and assault causing bodily harm (see Toronto Police Service General Occurrence Report at page 16 of Exhibit 1) and the entering into of a peace bond, his friend had come to his house where he had alcohol and at the time, his friend was drunk and so he asked his friend to leave his house, because his friend wanted him to make false allegations against someone else and give false evidence. He asked his friend to leave but he wouldn't, and he called the police, but the incident occurred before the police arrived.
- At the time of June 2016 incident, it was his friend that first had the knife and he attempted to take the knife away from his friend as he was afraid and, in the process, ended up hurting his friend with the knife.
- He went to AA after the June 2016 incident and so it was around this time that he quit drinking alcohol altogether.
- He also went to AA and attended meetings of AA previously after his conviction for driving with more than 80 mgs of alcohol in his blood in Edmonton in January 2015 and, as such, when he went to AA after the June 2016 incident, this was not the first time that he had gone to AA.
- With respect to a traffic violation of disobey traffic sign on July 25, 2017 at King and Bay Streets (which resulted in a conviction on September 11, 2017), he was driving a friend's taxi cab because he was helping his friend by taking the vehicle to a garage at College and Brock Streets. He was not driving the vehicle as a taxi driver and there were no passengers.
- He has not received any treatment or counselling for anger management. He is not in any ongoing therapy.
- His adult children who live in Somalia live with his sister and not with their mother, his ex-spouse, who is now remarried, and the two adult children are not currently working in Somalia as it is very difficult to find a job there.

SUBMISSIONS

Mr. Gourlay submitted, for MLS, that the Tribunal should deny Mr. Nur's application for a Vehicle-For-Hire Driver's Licence.

Ms Gourlay asserted that Mr. Nur's criminal record raises significant concerns about public safety and his ability to operate a vehicle for hire within the confines of the law. In particular, Mr. Gourlay submitted that although there is a significant gap between Mr. Nur's two criminal convictions for driving under the influence of alcohol, with one taking place in 1993 and the second one in 2015, one would expect that Mr. Nur would not repeat the same behaviour and that it would appear that Mr. Nur's second conviction was in fact more serious than the first involving as it did two breathalyzer readings of 220 and 210 mgs of alcohol in his blood, which are significantly above the legal limit.

Mr. Gourlay further noted that Mr. Nur's conviction for a violent offence in 2001 coupled with the violence related criminal charges in 2016 (in which a knife was used as a weapon) all involved the consumption of alcohol and while the incidents did not involve driving, they are nonetheless serious incidents involving violence.

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Mr. Gourlay highlighted that Mr. Nur did not take responsibility for his conduct and that, in his testimony during the hearing, he blamed others for his actions. Mr. Gourlay noted that although Mr. Nur had gone to AA, other indications of his willingness to take responsibility for his actions including, for example, a genuine desire to make a life change and the demonstration of remorse, were absent from his testimony during the hearing.

Mr. Gourlay further observed that Mr. Nur's lack of remorse was important and that it indicated that he had not sufficiently demonstrated a willingness and desire to move on with his life. While it is great that Mr. Nur has stopped drinking, he has not indicated he is in any kind of treatment program.

Mr. Gourlay pointed out that although Mr. Nur had testified that the criminal charges in December 2014 involved him drinking four beers, it is the fact that he had consumed alcohol that is problematic and indeed, his consumption of alcohol at that time resulted in serious penalties including a prohibition from driving a vehicle for one year.

Mr. Gourlay went on to state that it is the two distinct patterns of behaviour surrounding Mr. Nur's history of criminal conduct, namely the consumption of alcohol and violence, that pose a serious concern for MLS in respect of public safety and that a Vehicle-For-Hire licence should not be issued because of Mr. Nur's lack of willingness to take responsibility for his actions and because he had not demonstrated remorse for his actions.

With respect to Mr. Nur's need to earn a livelihood, Mr. Gourlay took the position that Mr. Nur is in fact able to earn a livelihood through his jobs as a labourer working in factory and that although he has encountered difficulties finding work, there is no evidence to suggest that he cannot earn a livelihood working as a labourer. Mr. Gourlay emphasized that Mr. Nur had only previously worked as a taxi driver for some two and a half years and therefore that he had spent most of his life earning a living through other means.

Mr. Gourlay asserted that Mr. Nur's children are adults and that while he may be providing them with some financial assistance, they are not young children and that they are therefore capable of supporting themselves independently.

Mr. Gourlay finally submitted that not even two full years had elapsed between Mr. Nur's criminal conviction in January 2015 for driving with more than 80 mgs of alcohol in his blood and his recent brushes with the law in June 2016 for violent conduct. In Mr. Gourlay's submission therefore not enough time had passed between these two occurrences and this is problematic.

In his submissions, Mr. Crawford argued that Mr. Nur's age of fifty-seven years should be taken into account by the Tribunal and that the Tribunal ought to consider the fact that Mr. Nur has not been able to find gainful employment for a long period of time. He has not had regular employment for one and a half to two years.

Mr. Crawford submitted that Mr. Nur needs to earn a living to support himself and his two adult children living in Somalia and that Mr. Nur has a right to work and that he in fact wants to work. Mr. Crawford took the position that Mr. Nur has special qualifications to

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work as taxi driver, as he completed all the relevant courses when he was last licensed, and that the Tribunal should take into consideration that Mr. Nur has never had any issues or problems in his past work as a taxi driver.

Mr. Crawford indicated that Mr. Nur had in fact shown remorse by virtue of the fact that he had pleaded guilty to all of his three Criminal Code charges, which resulted in convictions and that none of the matters had gone to a trial because Mr. Nur had pleaded guilty. In Mr. Crawford's submission, the fact that Mr. Nur had pleaded guilty was sufficient to demonstrate remorse for his actions. When Mr. Nur pleaded guilty to these offences, he also admitted to the facts and that shows he took responsibility.

With respect to the incident in June 2016, which resulted in Mr. Nur entering into a peace bond, Mr. Crawford observed that the incident involved another individual who had also entered into a peace bond and that it was Mr. Nur's evidence during the hearing that it was in fact the other individual involved who had been intoxicated. Mr. Crawford submitted that the incident of June 2016 could not be relied upon by the Tribunal as the basis for making a determination that Mr. Nur has problems related to anger management.

Mr. Crawford noted that Mr. Nur has not worked for eighteen months to two years, that he is on social assistance and that a period of twelve years had elapsed between Mr. Nur's first conviction for driving under the influence of alcohol and his subsequent conviction in 2015. In this regard, Mr. Crawford observed that Mr. Nur's physician had written a note to say that he does not have a drug or alcohol abuse problem and further that the two breathalyzer readings taken at the time of offence in December 2014 were not at the high range for blood alcohol level. In Mr. Crawford's submission a reading of 250 to 300 mgs would be considered to be in the high range.

Mr. Crawford emphasized that Mr. Nur had testified that alcohol was "ruining" his life and not that it was "controlling" his life and, in any event, Mr. Nur no longer drinks alcohol and has not consumed any alcohol for eighteen months to two years. A person can have a problem with alcohol without being an alcoholic.

Mr. Crawford took the position that Mr. Nur should be entitled to a Vehicle-For-Hire Driver's Licence and that the public could be adequately protected through the imposition of conditions on a Vehicle-For-Hire Driver's Licence. Mr. Crawford noted that such conditions could include having Mr. Nur participate in counselling for alcohol consumption and taking a monthly test to determine if he has consumed alcohol. Mr. Crawford questioned how much time needed to pass before Mr. Nur could demonstrate that he is not a risk to public safety and that Mr. Nur's plan to deal with his issues related to alcohol consumption, included not consuming alcohol and "keeping on track".

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DECISION

The Tribunal denied Mr. Nur's application for a Vehicle-For-Hire Driver's Licence.

In reaching our decision, we applied the Tribunal's mandate 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
 - ...
 - 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.

In any application for a vehicle for a Vehicle-For-Hire Driver's Licence, convictions for offences related to driving a vehicle while under the influence of alcohol pose a serious concern for the Tribunal and go directly to the question of public safety. In this case, Mr. Nur was convicted in January 2015 for driving with more than 80 mgs of alcohol in his blood, a mere three years ago.

Although there may not be a strong pattern, it is also clear that Mr. Nur was convicted of impaired driving in 1993 and furthermore, there have been two separate and additional violent incidents resulting in criminal charges against Mr. Nur, one in 2001 which resulted in a conviction and another more recently in June 2016, which resulted in Mr. Nur entering into a peace bond. Both of these incidents involved the consumption of alcohol and in fact, with respect to the recent incident on June 30, 2016, the Toronto Police Service General Occurrence Report makes clear that Mr. Nur was "intoxicated". Though the drinking and driving offences are far apart in time, there is an overall pattern of criminal convictions linked to alcohol and poor and impulsive judgment.

We turn then to § 545-3.B.(3)(c) of the Municipal Code, which requires the Tribunal to: "Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood."

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In this regard, we note that Mr. Nur is fifty-seven years of age and has only previously worked as taxi driver for some two and half years between late 2009 and early 2012 and, as such, has had other types of employment for most of his life even if, as the evidence suggests, he is currently experiencing difficulties and challenges finding stable gainful employment.

While Mr. Nur has two adult children who live in Somalia and he tries to provide financial assistance to his two children, Mr. Nur testified that he has not been able to provide them with any financial assistance for some three years now and accordingly, we are satisfied that Mr. Nur's two adult children have not been and are not presently truly dependent on him for their well-being. In this regard, we would observe that the evidence before the Tribunal was that Mr. Nur's children are both able bodied adults who are twenty and twenty-five years of age. There was no evidence before the Tribunal to indicate or suggest that Mr. Nur's two adult children are in school or are otherwise unable to work and independently earn a livelihood. Moreover, the evidence before the Tribunal did not show that Mr. Nur's children are fully dependent on him but rather we heard testimony that Mr. Nur financially helped his children to the extent that he is able.

In all the circumstances then and taking into account the Tribunal's mandate to protect the public interest and Mr. Nur's need to earn a livelihood, we are satisfied, in this case, that the public interest greatly outweighs Mr. Nur's need to earn a livelihood, and indeed, that the public interest here is paramount.

Although the Tribunal therefore orders that Mr. Nur's application for a Vehicle-For-Hire Driver's licence is denied, we note that Mr. Nur appears to be taking some of the steps that are required to be able to establish that he can conduct himself with honesty, integrity and in accordance with the law. The Tribunal believes, however, that Mr. Nur must do more in this regard and that the passage of time will therefore be to his benefit should he wish, at some future date to submit another application to MLS for a Vehicle-For-Hire Driver's licence.

Originally Signed

Aly N. Alibhai, Chair
Panel Member, Melina Laverty concurring

Reference: Minute No. 17/18

Date Signed: January 25, 2018