

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: February 15, 2018

Panel: Moira Calderwood, Chair; Aly N. Alibhai and K. Cooper, Members

Re: Muhummad Saad Madani (Report No. 6621)
Applicant for the Renewal of Tow Truck Driver's Licence No. D09-4540414

Counsel for Municipal Licensing and Standards: Ms Penelope Ma

INTRODUCTION

In October 2015, the Toronto Licensing Tribunal granted Mr. Madani a Tow Truck Driver's Licence. The Tribunal imposed conditions on the licence, including conditions requiring him to report charges and convictions to Municipal Licensing and Standards (MLS) of the City of Toronto, and to provide updated copies of both his driving and criminal records to MLS at specified times.

In May 2016, MLS became concerned about Mr. Madani's conduct, and informed him that his licence would be subject of review by the Tribunal.

The Tribunal held a hearing on this matter on February 15, 2018. This matter was previously adjourned three times. On August 17, 2017, the Tribunal imposed an interim suspension on Mr. Madani's Tow Truck Driver's Licence.

After the February 15 hearing, the Tribunal delivered an oral decision denying Mr. Madani's application for renewal of his Tow Truck Driver's licence. These are the written reasons for that decision.

The issue before the Tribunal was whether Mr. Madani's application should be granted, given his driving and criminal records, and his failure to comply with the Tribunal's October 2015 order.

Mr. Madani appeared on his own behalf. The Tribunal advised him of his right to have legal representation and he chose to proceed without such representation.

CITY'S EVIDENCE

Ms Alice Xu, Manager, Municipal Licensing and Administration Services with MLS and her MLS colleagues prepared MLS Report No. 6621. The report relates to Mr. Madani's application for renewal of his Tow Truck Driver's Licence. The Tribunal admitted this 100-page report as Exhibit 1 at the hearing.

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Ms Xu was the only witness for MLS. She highlighted documentation in the above Exhibit outlining Mr. Madani's driving and criminal history. The history includes both driving-related and criminal charges and convictions, some of which postdate Mr. Madani's October 2015 Tribunal hearing at which his current licence was granted.

APPLICANT'S EVIDENCE

Mr. Madani told the Tribunal:

- Although three criminal charges were laid on April 19, 2016, he was not convicted on all three. There were two charges of possession of a controlled substance, and he was only convicted on one. He was acquitted on the charge of theft of a motor vehicle.
- When asked if various driving offences or offences under Markham or Richmond Hill by-laws took place when he was in a tow truck, Mr. Madani stated that he could not recall. When asked about the circumstances leading to six criminal charges on January 13, 2017 (including assault with a weapon, uttering threats, forcible confinement and pointing a firearm), Mr. Madani said he would "rather not talk about it." When pressed, he acknowledged that he worked for Green Towing at the time, but denied that the incident was related to the towing industry.
- On the date of the hearing, he had no pending charges and only two new convictions on his driving record. Mr. Madani referenced his driving record at page 100 of the Report to support this statement.
- Since his Toronto tow truck driver's licence has been suspended, he has worked in Vaughan and Durham, but is not currently working in Richmond Hill or Markham. He works full-time.
- He has a one year-old child. He supports the child and the child's mother.
- When the panel Chair asked why he had not reported various charges or convictions, in contravention of an earlier Tribunal order, Mr. Madani stated that he thought there was no further requirement to do so, based on a letter he received from MLS.

SUBMISSIONS

Ms Ma submitted that the Tribunal should not renew Mr. Madani's Tow Truck Driver's licence. She outlined three reasons for her position:

1. Mr. Madani's criminal record affords reasonable grounds to believe that he has not carried on, or will not carry on, the business of operating a tow truck in accordance with law and with integrity and honesty; or that the carrying on of the business has resulted, or will result, in a breach of the By-law or any law; or that his carrying on business has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, their health or safety, all as set out in § 545-4.C.(1) of the Municipal Code.
2. Mr. Madani's driving record contains concerning evidence of speeding offences, some predating the issuance by the Tribunal of his conditional licence, and some postdating it. This also raises public safety concerns.

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3. Mr. Madani breached the conditions which the Tribunal imposed on the licence when it was granted in October 2015.

Ms Ma added that Mr. Madani had not shown a need to make a livelihood with a Toronto tow truck driver's licence, as he drives a tow truck full-time in other jurisdictions.

In his submission, Mr. Madani stated that the Tribunal should renew his tow truck driver's licence. He stated he wants to work in Toronto as the towing company he works for has relationships with towing companies in Toronto. Mr. Madani asked the Tribunal to give him another chance. He said that his driving history is "not that bad," and his last driving conviction was in 2016. He stated that he is "not any threat to society at all" and should be able to obtain a licence.

DECISION

The Tribunal denied Mr. Madani's application for renewal of his 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 not of the view that Mr. Madani had established a strong enough case for his need to make a livelihood through the licensed activity. Mr. Madani works full time as a tow truck driver in areas outside of Toronto. While we understand that it would be convenient for him to be able to cross into Toronto while engaged in towing work, nevertheless, Mr. Madani has found full time employment without the ability to work as a tow truck driver in Toronto.

The protection of the public interest was the key issue in this hearing. Mr. Madani's driving and criminal records raised serious concerns for us. We noted in particular:

Driving record

- Mr. Madani had a record of driving charges and convictions at the time of the Tribunal hearing in October 2015. The record included several speeding convictions.
- Since October 2015, he has twice been convicted of speeding, and once of "colour coat obscuring interior" although this latter conviction has been re-opened. When Ms Ma asked for the details of the May 2016 incident that led to a conviction for speeding 120 in an 80 zone, Mr. Madani said, "I don't recall." When she asked for the details of the December 2015 incident that led to a conviction for speeding 129 in a 100 zone, Mr. Madani again stated, "I don't recall." He asserted he has never been charged with speeding while driving a tow truck.

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We were struck that when Ms Ma asked Mr. Madani for an explanation of the speeding convictions, he said he did not recall. Mr. Madani did not appear to have any insight into why there might be public safety concerns if a tow truck driver has a tendency to speed.

Criminal record

- Mr. Madani had a record of criminal charges at the time of the Tribunal hearing in October 2015, but no convictions on the record at that time.
- Since October 2015, Mr. Madani has incurred criminal charges in April 2016 and in January 2017.
- The April 2016 incident, according to documentation in the Report, involved Mr. Madani towing a vehicle but refusing to release it until he was paid, even after the police demanded that he do so. He was charged with theft of a motor vehicle, although that charge has since been withdrawn. He was also charged with possession of marijuana and Oxycodone. One charge was dismissed and he was convicted on the other, although he stated he could not recall which substance he was convicted of possessing.
- The January 2017 incident, according to documentation in the Report, involved Mr. Madani and a co-accused, who both worked for Green Towing, attending at the office of a Toronto towing company where they became involved in an altercation with employees of the Toronto business. Mr. Madani was charged with assault with a weapon related to hitting a victim with a metal baseball bat, and with assault with a weapon related to hitting a victim on the top of the head with a handgun. Mr. Madani was convicted on one count of assault with a weapon. He stated at the hearing that the conviction related to the baseball bat, not the handgun.

The criminal convictions are of concern to the Tribunal. Both the April 2016 and the January 2017 incidents were related to Mr. Madani's employment as a tow truck driver. The substance was discovered in April 2016 when police attended due to a dispute about payment for towing a vehicle. Regarding the January 2017 assault, while Mr. Madani asserted that the assault was not related to his work as a tow truck driver, it involved him and a work colleague attending at the offices of another towing company, which is where the assault took place. A recent conviction of assault with a weapon would be very concerning in any municipal licensee; the concern is increased when the assault takes place in the context of the licensed activity (in this case, towing). At no point did Mr. Madani appear to show insight into why his conduct was problematic; rather, he said in submissions that he is "not any threat to society at all." He expressed no remorse over the two criminal convictions, or the conduct that led to them. While the lack of remorse is not necessarily an aggravating factor, some evidence of remorse could have helped to show rehabilitation and much less likelihood of reoffending.

When the Tribunal granted Mr. Madani's Tow Truck Driver's Licence in October 2015, it imposed a four year period of probation. Mr. Madani incurred both driving and criminal charges and convictions while under probation. The Tribunal is therefore not confident that a further probationary period and/or conditions would adequately protect the public in this case.

Further, Mr. Madani contravened the Tribunal's requirement that he report charges and/or convictions during the four year probationary period, at times reporting neither

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and at times reporting a charge but not a conviction. Although Mr. Madani asserted that a letter from MLS indicated that he no longer had to report these matters, he did not produce any such letter. The Report contains letters from MLS to Mr. Madani from December 2015 and May 2016. Neither letter indicates that he is no longer required to report charges or convictions to MLS. Again, this leads us to believe that Mr. Madani is unlikely to comply with probation or conditions, if we imposed those on his licence.

We are satisfied then that there are reasonable grounds for the belief that public safety may be endangered if Mr. Madani continues to be licensed to drive a Tow Truck, that he has not or will not act in accordance with the law and with honesty and integrity, and that that the carrying on of the business has resulted, or will result, in a breach of the By-law or any law. For these reasons, we denied his application for renewal of his Tow Truck Driver's Licence.

Originally Signed

Moira Calderwood, Chair
Panel Members, Aly N. Alibhai and Keith Cooper concurring

Reference: Minute No. 37/18

Date Signed: March 11, 2018