

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: March 22, 2018

Panel: Gary Yee, Hearing Panel Chair; Aly N. Alibhai and Moira Calderwood, Members

Re: Jenny Del Carme Nunez Almonte (Report No. 6941)
Applicant for Entertainer's Licence (Application No. B731065)

Counsel for Municipal Licensing and Standards: Mr. David Gourlay

Counsel for Applicant: Unrepresented

INTRODUCTION

- [1] The Applicant requested a hearing before the Toronto Licensing Tribunal ("Tribunal") after the Municipal Licensing and Standards Division ("MLS") of the City of Toronto denied her application for an Entertainer's Licence.
- [2] The Applicant is Jenny Del Carme Nunez Almonte ("Ms. Nunez Almonte"). She has gone through a difficult life, involving abuse and losing custody of her child, as well as being homeless. She wants a licence to be an adult entertainer because she wants to make more money, try to get her child back, support her parents in her country of origin, and do better in her life. But she has a long record of criminal charges and convictions starting in 2009, involving assaults, mischief and failing to comply with bail or probation orders. The last incident was in November 28, 2015, leading to a conviction on February 2, 2016, for assaulting a peace officer.
- [3] Ms. Nunez Almonte previously came before this Tribunal on November 17, 2016, after MLS denied her previous application for an Entertainer's Licence. The Tribunal conducted a hearing and decided against Ms. Nunez Almonte, with Reasons for Decision dated December 15, 2016. Ms. Nunez Almonte then re-applied for her licence on July 31, 2017, and MLS again refused her on August 21, 2017.
- [4] The issues in this hearing were not much different from the issues in the Tribunal's November 2016 hearing – do Ms. Nunez Almonte's criminal charges and convictions provide reasonable grounds to believe that she will not carry on her occupation in accordance with the law, or with honesty and integrity, or that she would endanger the health or safety of other members of the public?
- [5] After this hearing, the Tribunal gave an oral decision to deny the application. These are the written reasons for that decision.
- [6] In summary, the Tribunal was not satisfied that Ms. Nunez Almonte has changed her ways enough to support this application being granted. Although Ms. Nunez

March 22, 2018

Almonte has not had any further criminal charges for over two years, and she is now living a very difficult life, her past pattern of criminal conduct continues to cause serious concerns for the Tribunal. The Tribunal decided that Ms. Nunez Almonte has not shown any new or changed behaviour or understanding that would reduce the risk of further violations of the law or danger to customers and the public.

LAW

[7] The Tribunal must apply the following provisions in the Municipal Code, under Chapter 545-4 C. The parts that are the most relevant to this hearing are as follows – under paragraph (1), an applicant for a licence is entitled to that licence 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.

[8] Also, section B(3)(c) of Chapter 545-3 of the Municipal Code states that the Tribunal shall “have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.”

EVIDENCE

[9] The evidence in MLS’s 123-page Report included the records and some details about the charges and convictions. The Chart at pages 17-20 of the Report listed 17 criminal convictions for various offences that occurred on 11 separate days between 2009 and 2015. These included seven convictions for failing to comply with a probation order or bail condition, two convictions for mischief under \$5,000, three convictions for assaulting peace officers, one conviction for assault while resisting arrest, and four other assault convictions.

[10] Ms. Nunez Almonte’s testimony showed that she was someone who has faced many difficulties in her life. This included coming to Canada and not being able to

March 22, 2018

use her former education, being in an abusive relationship, losing custody of her child, being assaulted many times, being unemployed for many years, working only in a few temporary jobs, moving to different cities such as Belleville and Ottawa, returning to Toronto, but becoming homeless and moving to different shelters, and unsuccessfully applying for housing 15 times.

- [11] Ms. Nunez Almonte is on social assistance. She wants an Entertainer's Licence to be able to work at a job where she can make better money than minimum wage. She has worked in the occupation in Belleville, where she said she was able to get her licence despite her criminal record. She also worked in Mississauga last year, where she said strippers are not licensed, but that it was too expensive to go back and forth to work. She mentioned she had been licensed for three years in Toronto many years ago, but that had expired.
- [12] Ms. Nunez Almonte mentioned different courses she has taken to try to improve herself and her life. But it appears that these courses were not recent ones, and she had mentioned these during the November 2016 Tribunal hearing, except for a CPR course that she didn't previously mention. The other courses included money management, tax preparation, controlling anxiety and anger management. Some of these courses were court-ordered and more than several years ago.
- [13] MLS counsel asked Ms. Nunez Almonte about some of her criminal offences. Her answers were consistent with what appeared to cause concern to the Tribunal panel that heard her case in November 2016.
- [14] For example, in the beer store incident on September 28, 2012, she was convicted for throwing a beer can at an employee who had denied her service (see page 110 of the MLS Report). Ms. Nunez Almonte explained that a mentally ill and rude customer behind her was pushing her, and she was responding to that, and then by the time she went to the counter to buy a can of beer, the employee refused to serve her. She recalled that she only threw the beer can at the wall, but she could not remember how close or far away that was from the employee.
- [15] In another more recent incident, Ms. Nunez Almonte was convicted for assaulting a guard at Quinte Detention Centre by throwing a cup of hot water at the guard (see the Case file synopsis on page 109 of the MLS Report). Ms. Nunez Almonte's explanation was that the guard gave her a cup of water that was boiling and she threw the cup away but some of the water got onto the guard's pants. She said she never touched the guard and the water did not get on the guard's face.

ANALYSIS

- [16] The main evidence against Ms. Nunez Almonte is in the documents in the MLS Report, regarding the record of criminal convictions. The Tribunal did not need to hear testimony or explanations from Ms. Nunez Almonte about every incident or offence. It was not helpful to her case when she tried to deny or minimize the offences that she did talk about. This seems to be what also happened at the November 17, 2016 Tribunal hearing. The December 15, 2016 Reasons for Decision of the Tribunal, at para. 19, referred to Ms. Nunez Almonte (then called

March 22, 2018

Ms. Nunez) not taking any responsibility for her actions, and showing no remorse whatsoever.

- [17] In this case, the Tribunal has the same concerns that were set out in these previous reasons. The current panel for this hearing is not bound by that previous decision. But there has been very little evidence or argument presented to us that would support any different approach to analysing the facts and law for this case. The same reasoning and conclusions appear to be very relevant now as they were before.
- [18] Ms. Nunez Almonte feels strongly that she has been treated unfairly with respect to these past charges and offences. The Tribunal is not punishing or penalizing her for not showing that she is sorry. But to help her case, she needs to show an understanding of what caused her behaviour and what actions she has taken, in the time since, that will reduce the chances of more problems happening again in the future. The Tribunal did not perceive that Ms. Nunez Almonte had developed this kind of understanding.
- [19] The record of offences in this case shows a pattern of behaviour that cannot be overcome by just two or three years of no additional charges. Even if some of the earlier charges or convictions possibly arose out of self-defence as Ms. Nunez Almonte stated, and even if the more recent offences caused no serious injuries, the complete picture is a troubling one. It involves responding to situations with physical violence, even when it's against a person in a position of authority, and it involves not obeying probation or bail orders. There is also some evidence of alcohol playing a role in some of these situations. Ms. Nunez Almonte testified that she no longer drinks except socially now and then. She denied that she was or is an alcoholic, and the Tribunal does not have evidence of alcoholism.
- [20] Ms. Nunez Almonte did not help her case when she behaved in a way during the hearing that showed disrespect for the Tribunal's authority and perhaps an inability to control herself. The Tribunal had to leave the hearing room in the middle of the hearing and at the end when Ms. Nunez Almonte either refused or was unable to stop talking after repeated directions from the panel chair to stop or to wait until he had finished talking. In the end, these two incidents did not make a difference in the decision that the Tribunal reached. The Tribunal tries to be sensitive to how emotional and pressure-filled a hearing situation can be for the applicant, especially when they are representing themselves. It is rare for the Tribunal to have to leave the hearing due to a party's behavior. These two instances in the hearing did show a consistent pattern of being unable to respect rules and authority.
- [21] Ms. Nunez Almonte is in a difficult living situation, with her homelessness, lack of recognition of her foreign education, some lack of English, and not being able to find a good job. It may be unrealistic to impose on her a requirement or expectation to take certain self-improvement courses as some kind of proof of rehabilitation or proof that she is now at a lower risk to offend again. But at the same time, with a record of convictions like this, and very little evidence of any reduced risk of more offences or incidents in the future, keeping in mind the protection of the public, the

March 22, 2018

Tribunal is simply not able to find in Ms. Nunez Almonte's favour, even though an Entertainer's Licence could help her financial and work situation.

- [22] Ms. Nunez Almonte expressed frustration and puzzlement at why she could get her licence approved in Belleville (as she said) but still could not get her licence in Toronto after serving her time for her offences. The Tribunal notes that it can only apply the facts and law under the Municipal Code in Toronto after hearing the evidence in this file. Also, the fact that she may have completed her criminal sentencing has very little relevance to the test that the Tribunal must apply to grant or deny a licence. The Tribunal is not in any way trying to punish an applicant for past criminal offences. Instead, the Tribunal's duty is to consider whether the fact of those past offences may lead to concerns about the future.
- [23] The legal test that the Tribunal must apply is based on reasonable grounds to believe what will happen in the future. It is not a test that says that the Tribunal (or MLS) thinks that there is more than a 50% chance that the applicant will actually break the law or will endanger the safety of the public. It is only about reasonable grounds for believing that this will happen.
- [24] In this case, the Tribunal finds that the evidence clearly shows that there are reasonable grounds to deny the application for a licence under sections (a), (b) and (e) of section C.1 of Chapter 545-4 of the Municipal Code.
- [25] In addition, when applying section B(3)(c) of Chapter 545-3, the Tribunal also finds that the evidence in this case does not show that Ms. Nunez Almonte's need to make a living outweighs the protection of the public interest. Even though she wants this licence to become an adult entertainer and make more money than minimum wage, it appears that she has some possibilities to do manual labour or other work that pays just minimum wage, even if it may not be steady employment.
- [26] The Tribunal supports the same reasoning and concerns from the previous December 15, 2016 decision, particularly paragraphs 17 to 21. Also, in its last paragraph (para. 23), the Tribunal's December 2016 reasons tried to inform Ms. Nunez Almonte that it would help her case to "demonstrate to MLS that she has taken responsibility for her past behaviour and effectively put her troubled past behind her with no further criminal charges or convictions."
- [27] It was just 7.5 months later when Ms. Nunez Almonte reapplied for her licence. By the time of this hearing in March 2018, she has not had any further criminal charges for over two years. However, she also has not shown any actions or understanding that would help her case. Her pattern of criminal conduct and her reactions to conflict are serious enough and recent enough to find that there is still an unacceptable level of risk of further violations of the law or danger to the public, which would include her customers.
- [28] This is not a situation where any conditions can be attached to the licence to take care of these concerns in any meaningful way.

March 22, 2018

DECISION

[29] The Tribunal denies Ms. Nunez Almonte's Application No. B731065 for an Entertainer's Licence in the City of Toronto.

Originally Signed

Gary Yee, Hearing Panel Chair
Panel Members, Aly N. Alibhai and Moira Calderwood concurring

Reference: Minute No. 54/18

Date Signed: April 16, 2018