

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: June 28, 2018

Panel: Keith Cooper, Hearing Panel Chair; Gary Yee, Member

Re: Westown Masonry & Renovations Inc. (Report No. 7021)
o/a Westown Masonry & Renovations Inc.
David Da Rosa Filipe – Director
Applicant for a Building Renovator’s Licence (Application No. B816061)

Counsel for Municipal Licensing and Standards (MLS): Ms Brennagh Smith

Counsel for Applicant: Unrepresented

Portuguese Interpreter: Mr. Marcos Neme

INTRODUCTION

- [1] Mr. Filipe applied for a Building Renovator’s Licence on March 13, 2018. On April 9, 2018, as part of the application process, Mr. Filipe submitted a police background check dated March 21, 2018, which indicated convictions under the Criminal Code of Canada. It was reported that Mr. Filipe had been convicted of assault in 2005, leading to a suspended sentence and 18 months of probation. The records also indicated that he had been convicted of assault and a failure to comply with recognizance in January 2010, leading to a suspended sentence and 18 months parole concurrently for both counts. Mr. Filipe was also convicted of uttering threats and failing to comply with a probation order in November 2010, leading to a suspended sentence, three years probation, and a discretionary weapons prohibition for 10 years.
- [2] MLS reviewed the foregoing and denied issuance of a Building Renovator’s Licence. Mr. Filipe then requested a hearing before the Toronto Licensing Tribunal.
- [3] The issue before the Tribunal was whether Mr. Filipe’s company’s application for a Building Renovator’s Licence should be issued, denied, or issued with conditions placed upon it.
- [4] After the hearing, the Tribunal gave an oral decision to deny issuance of the licence. These are the written reasons for that decision.

EVIDENCE

- [5] Ms Alice Xu, Manager with MLS, was the sole witness called by MLS counsel. She was questioned on the documentary evidence found in Report No. 7021. This report was entered into the record as Exhibit #1.
- [6] The report indicated that Mr. Filipe had accumulated 20 charges of varying natures from 2004 to 2010. The record indicated that he had been charged and convicted of assault in 2004 and 2005; and charged and convicted of assault, threaten death/bodily harm, and failure to comply with bail and probation conditions in 2010. The remaining charges were either withdrawn or stayed.
- [7] Mr. Filipe declined to cross-examine Ms Xu.
- [8] Mr. Filipe then gave evidence on his own behalf. He stated that he had never held a Building Renovator's Licence before, but that he had been working in construction and renovations his whole life. He stated that he did not need the Building Renovator's Licence to be issued as he had plenty of work that did not require it.
- [9] Mr. Filipe stated that he did not see how his criminal record was related to his business, and his application for a licence. He disputed some of the contents in the report concerning his criminal charges and convictions, stating that they did not make sense to him.
- [10] The Tribunal explained the test to be met in this case, and the Mr. Filipe indicated that he understood, through the interpreter. There appeared to be some difficulties with the interpreter process. Mr. Filipe sometimes spoke at length with the interpreter without giving enough chance for what he said to be interpreted fully. In addition, he also often spoke directly to the interpreter, and he did not listen to the Tribunal's instructions to speak to the hearing panel, rather than have conversations with the interpreter. However, overall, the Tribunal was prepared to give Mr. Filipe some benefit of the doubt in these language difficulties, and it did not approach the level of a serious concern about the adequacy of the interpretation.
- [11] In MLS counsel's cross-examination, Mr. Filipe stated that he was currently employed in construction doing a bit of everything, from laying bricks and blocks to home renovations. He confirmed that he was the sole owner of Westown Masonry & Renovations Inc. and obtains his clients directly, rather than as a subcontractor.
- [12] Mr. Filipe stated that he had only been doing home renovations for a short time, and had incorporated Westown Masonry & Renovations Inc. two years earlier. He stated that he had started doing renovations five years earlier. He stated that before that he worked by himself at various construction jobs for approximately 51 years.
- [13] When MLS counsel started very detailed questioning about Mr. Filipe's training and the types of work he did in the past, the Tribunal raised concerns about MLS using the Tribunal hearing to investigate issues that were not raised in the MLS Report that led to this hearing. The MLS line of questioning started to get into details about whether Mr. Filipe was properly trained or competent to do the work of a Building Renovator, and whether Mr. Filipe had previously violated the Municipal Code by doing unlicensed work.

- [14] MLS counsel submitted that the Tribunal is not bound by the particulars in the MLS Report, and further facts can be considered if there is no prejudice to the Applicant. The Tribunal agrees with counsel that the issue is one of procedural fairness, similar to the concerns raised when there may be late disclosure. MLS counsel submitted that the Applicant should not be surprised to answer questions about his past work or his qualifications.
- [15] The Tribunal expressed its concerns that the MLS's cross-examination of applicants not turn into "fishing expeditions" that go beyond any reasonable linkage to the content of the MLS Report, especially when most applicants may be unrepresented. This appeared to be a case that arose only from a record of criminal charges and convictions, not from any concerns about the quality of the Applicant's work, or his qualifications.
- [16] In the end, the Tribunal permitted MLS counsel to ask Mr. Filipe a few more questions along these lines, including questions about his awareness of whether he needed a licence to do the kind of construction work he was doing. Mr. Filipe said that he did a few jobs without a licence "and apparently, I may have to keep doing so." While the Tribunal hesitates to rely completely on these translated words, which could be damaging to the Applicant, it could appear to be an admission of doing some kinds of construction work without a licence even when a licence may be required for some of that work.
- [17] Mr. Filipe insisted on trying to get the Tribunal to answer his question about whether he would be working illegally if he continued working without a licence, even after repeated attempts by the Tribunal to indicate that it was not the Tribunal's job to answer a question like that in the middle of the hearing.
- [18] It took several attempts by MLS counsel to ask Mr. Filipe why he applied for this Building Renovator's Licence before he finally answered yes to the question that he applied because he knew he was doing the work before without a licence and he now wanted to do it within the law.
- [19] He confirmed that his company (the Applicant) employed three people. When questioned about the kind of work that was done, he mentioned bricks, blocks, internal renovations – whatever was necessary. He also said that for some activities, they needed a licence. But none of his employees were licensed. When MLS counsel asked Mr. Filipe if he would make it a condition of his employees' employment that they be licensed, he stated that they did not perform any work that would require a licence.
- [20] Mr. Filipe stated that if awarded a licence, he would abide by the signage rules for his commercial vehicles.
- [21] Mr. Filipe answered some questions about the circumstances surrounding his convictions for assault (occurring in 2004 and 2009), as well as convictions for failing to comply with bail or probation in 2010, and threatening death or bodily harm in 2010. The victim in 2004 was his former spouse. Later, there were a number of charges in November 2005 related to unlawful entry, failing to comply with a probation order, criminal harassment and threatening – these were all withdrawn,

apparently after he had spent two months in jail and a peace bond was entered into on June 9, 2006.

- [22] When MLS counsel started to question Mr. Filipe about the April 2009 assault conviction, that involved a different woman, he stated that he was not there at the hearing to talk about that; he was there about his licence. He said he already accepted what he had done and he did not want to hear about it. After being given several chances, along with an explanation from MLS counsel about why his violent tendencies were relevant to his licence application, Mr. Filipe confirmed that he was refusing to answer questions about his 2010 charges and convictions. The police report referred to pushing the victim and raising a kitchen knife to threaten her.
- [23] At the same time, Mr. Filipe also said that the victim lied in court, and he has not seen that woman since then. He stated that he had started an anger management course as mandated by his probation order, but that he only attended two of the scheduled ten sessions as he was told he could go by the psychologist who conducted the program. Mr. Filipe said that he gets really angry if someone wants to walk over him without a motive, and he gets angry if there is injustice. He said if he makes a mistake, he must admit it, but not if he did not do it. He said he regretted what happened with his wife, in a way, but he did not regret what happened with the woman in 2009 because he did not do anything to her.

SUBMISSIONS

- [24] MLS counsel, Ms Smith, submitted that the Applicant should not be issued a licence as Mr. Filipe's conduct was in violation of the Toronto Municipal Code, Chapter 545-4, subsection C (1), and the administrative thresholds that guide the MLS in Appendix K to Chapter 545, section 2-C. She submitted that Mr. Filipe had a significant criminal history that, although the last charge had been eight years prior, was of a severity to warrant caution.
- [25] She submitted that he had spent nearly 16 months combined in pre-trial custody for his various charges, which was a lot of time, and it reinforced the concerns about his propensity for violence. She pointed out that there are possible disputes in the building renovation business, and public safety could be in question if he were to lose his temper when dealing with a customer in their home.
- [26] MLS counsel also submitted that Mr. Filipe had shown contempt and disrespect to the MLS and to the Tribunal, and particularly noted his aggressiveness to the Tribunal and its authority. She submitted that Mr. Filipe was ungovernable, and could not be expected to carry on his trade in accordance with law and with honesty and integrity. She submitted that it was unlikely the Applicant would adhere to the relevant by-laws. In support of this, Ms Smith pointed to his operating without a licence for many years, and information in the report indicating that he told the police that he was unemployed and receiving disability benefits when he may have been working for at least part of the time.
- [27] She further submitted that Mr. Filipe had indicated at the outset of the hearing that he did not require this licence to earn a living, as he had enough work to keep him busy. As such, she submitted, his application should be denied.

[28] Mr. Filipe declined to make submissions, and he said it was the Tribunal's decision to make. Indeed, he essentially refused to participate any further, and he said he would leave. When the Tribunal hearing panel returned to provide its oral decision, Mr. Filipe had already left.

ANALYSIS

[29] In reaching our decision, the Tribunal applied the mandate set out in part in the Toronto Municipal Code, section B(3)(c) of Chapter 545-3, which 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."

[30] The Tribunal also had regard to the Toronto Municipal Code, Chapter 545-4, subsection C(1), which states.

(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

(c) The applicant is a corporation and its conduct or the conduct of its officers, directors, employees or agents affords reasonable grounds for belief that its trade, business or occupation has not been, or will not be, carried on in accordance with law and with integrity and honesty; 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.

[31] In particular, the Tribunal finds that the conduct of the Applicant, as represented by its owner and director, Mr. Filipe, affords reasonable grounds for belief that "its trade, business or occupation has not been, or will not be, carried on in accordance with law and with integrity and honesty", under section C(1) of Chapter 545-4 of the Municipal Code.

[32] In making this finding, the Tribunal relied only partly upon Mr. Filipe's past criminal record, which, in and of itself, was not necessarily enough to bar the issuance of a licence. Although these criminal incidents do raise some concerns about Mr. Filipe's ability to control his anger, they were 8 to 13 years ago and not directly related to his work. Any positive effect from Mr. Filipe's expression of some regret for the 2005 incidents is countered by his refusal to confirm or discuss his 2010 charges and convictions.

- [33] Apart from the criminal convictions, the Tribunal finds that Mr. Filipe's testimony and conduct in the hearing provide clear evidence that he would not willingly subject his business to the laws and regulations made by the City of Toronto, and enforced by the MLS, or indeed, this Tribunal.
- [34] Mr. Filipe's licensing history shows only a Non-Motorized Refreshment Vehicle Owner's Licence for less than a year in 1994-1995. His evidence is that he has been doing construction work for over 50 years, and he has not had any licences for this kind of work. While the evidence is not clear that he actually did the kinds of work that required a licence, he also appeared to say that he may have to keep doing work without a licence. If the Tribunal were to give Mr. Filipe some benefit of doubt about the language interpretation, it's possible he only meant to say he would have to continue doing the kind of work that did not require a licence. In the end, the Tribunal does not rely on this specific interpreted statement to be proof that he was clearly or defiantly saying he would do work that required a licence even if he did not get a licence.
- [35] However, in the context of all of Mr. Filipe's statements, attitude and behaviour at the hearing, the Tribunal finds that it is likely that Mr. Filipe was doing at least some construction work that required a licence, or that he was either unaware of, or did not care to find out, what kind of work required a licence or not. He had many chances to explain more about what kind of work he or Westown Masonry & Renovations Inc. did. It is unlikely that he and his company of three employees could complete all their contracts without doing any building renovation work that required a licence. Indeed, he appeared to acknowledge that some of their activities needed a licence, although he later also said his employees did not do any work that needed a licence.
- [36] The Tribunal should be careful in using the Applicant's behaviour at the hearing to be the main reason to find that there are reasonable grounds to believe that the Applicant will not carry on their business in accordance with law and with integrity and honesty. In particular, unrepresented Applicants may be misguided about the Tribunal process. But in some cases, even with the Tribunal giving significant leeway to the Applicant at the hearing, there may be certain behaviour and testimony that become very clear to support a finding that the Applicant is unlikely to comply with or accept the regulatory requirements of being licensed.
- [37] In this case, despite the hearing panel's repeated attempts to explain the proper process and expectations, Mr. Filipe continually failed to obey the Tribunal's clear directions to stop interrupting or stop talking, or to talk to the panel and not directly converse with the interpreter. He also took the extreme step of leaving the hearing room and not staying to hear the Tribunal's decision. These actions showed disrespect for authority, and they clearly support a finding of reasonable grounds to believe he would not carry on his business in accordance with law.
- [38] To be clear, the Tribunal hearing panel is not penalizing Mr. Filipe for disobeying or disrespecting the Tribunal. The Tribunal is only assessing all the evidence and applying the legal test in section C(1) of Chapter 545-4 of the Municipal Code. That test only requires reasonable grounds for belief that Mr. Filipe will not act in accordance with law; it does not require a finding that he is more likely than not to break the law. It is clear from all of the evidence that this legal test has been met.

[39] Furthermore, in view of Mr. Filipe's attitude and behaviour showing that he would not subject himself to the regulatory scheme, the Tribunal does not believe that this is an appropriate case for granting him the licence subject to conditions.

[40] Finally, since Mr. Filipe clearly stated that he did not require this licence to earn a living, the balancing of the public interest with the Applicant's need to make a livelihood does not favour Mr. Filipe.

DECISION

[41] The Panel denies Application No. B816061 by Westown Masonry & Renovations Inc. for a Building Renovator's Licence.

Originally Signed

Keith Cooper, Hearing Panel Chair
Panel member, Gary Yee concurring

Reference: Minute No. 110/18

Date Signed: August 10, 2018