

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: September 20, 2018

Panel: Daphne Simon, Hearing Panel Chair; Melina Lavery and Victoria Romero, Members

Re: Mohammed M. Islam (Report No. 7057)
Holder of Vehicle-For-Hire Driver's Licence No. D01-4702967

Counsel for Municipal Licensing and Standards: Ms Lauren Elliott

Counsel for Applicant: Unrepresented

Bengali Interpreter: Ms Jayanti Chandra

SUMMARY

Mohammed Islam has been requested to appear before the Toronto Licensing Tribunal ("Tribunal") by Municipal, Licensing and Standards ("MLS") to determine whether or not his Vehicle-For-Hire Driver's Licence should be revoked, suspended or have conditions placed on it.

Mr. Islam chose to represent himself in this matter. The hearing proceeded on September 20, 2018 with a Bengali interpreter.

The Tribunal considered the evidence and submissions presented during the hearing and ordered that Mr. Islam's licence should be suspended for ten (10) days and should not be revoked. The Tribunal also ordered Mr. Islam's probation to remain in place until June 2, 2019.

ISSUES

The Tribunal needed to determine:

- whether Mr. Islam's history of Toronto Municipal Code bylaw charges and convictions justifies revoking, suspending or placing conditions on his licence; and
- whether Mr. Islam's past conduct provides reasonable grounds to believe that he will not act in accordance with the law and with honesty and integrity.

September 20, 2018

CITY'S EVIDENCE

MLS presented evidence through four witnesses:

Andrea DiMatteo, Acting Supervisor, Municipal Licensing and Standards
Nick Brannan, Municipal Standards Officer, Bylaw Enforcement
Hopeton Robinson, Municipal Standards Officer, Bylaw Enforcement
Davood Mohammadi, Municipal Standards Officer, Bylaw Enforcement

A summary of the relevant evidence presented by MLS follows:

Ms DiMatteo, Acting Supervisor, MLS referred to the MLS Report 7057 (Report). She confirmed that she had reviewed its preparation and can attest to its contents and accuracy. The Report was marked as Exhibit 1. The update to the Report, submitted on September 19, 2018, was marked as Exhibit 2 and copies were provided to the parties. The Tribunal waived the 10-day notice requirement.

Mr. Islam was last before the Tribunal on June 1, 2017 concerning Report no. 6826 with respect to his Vehicle-For-Hire Driver's Licence Application No. B702967 and his Taxicab Owner's Licence No. V02-4317021. At that time, the Tribunal renewed the Taxicab Owner's Licence without conditions, and issued a Vehicle-For-Hire Driver's Licence with conditions, including a two (2) day suspension. Upon the expiry of the suspension, the Vehicle-For-Hire Driver's Licence was placed on probation for a period of two (2) years (to expire on June 2, 2019).

Since June 1, 2017, Mr. Islam was charged with 5 new Toronto Municipal Code bylaw infractions and received 2 convictions:

1. October 28, 2017 – Vehicle-For-Hire Leave Taxicab or Limousine Unattended – Convicted Feb 6, 2018, \$80 fine paid;
2. October 29, 2017 – Vehicle-For-Hire Failed Civil and Well Behaved – Convicted Feb 13, 2018, \$100 fine paid;
3. November 19, 2017 – Vehicle-For-Hire Taxicab Owner – No Licence – Withdrawn, February 6, 2018;
4. June 19, 2018 – Obstruct/Encumber/Damage/Foul of any Street – Court date scheduled for November 20, 2018;
5. June 19, 2018 – Vehicle-For-Hire Operate Vehicle – No Fully Functioning Camera and Emergency Lighting System – Court date scheduled for November 20, 2018.

Mr. Islam had 2 charges from March and April, 2017 of Unauthorized Taxicab Waiting for Hire pending, as well as one charge Unauthorized Taxicab Waiting for Hire pending from November 2016. He was convicted of those 3 charges in September 2017. Since June 1, 2017, therefore, he had received a total of 5 convictions with 2 charges that remain pending. On September 5, 2017, MLS received one public complaint concerning Mr. Islam.

September 20, 2018

June 19, 2018

Nick Brannan, Municipal Standards Officer, Bylaw Enforcement presented evidence surrounding the events of June 19, 2018, which resulted in laying two charges against Mr. Islam. These charges are still before the courts. Officer Brannan testified that he was on duty, in plainclothes, at the Budweiser Stage on Lakeshore Blvd West. At around 11:20 p.m., he overheard a number of private vehicles honking their horns. Upon investigation, he determined they were honking at a line of taxicabs that were parked in a live lane of traffic on Lakeshore Blvd West. He observed Mr. Islam, who was standing 10 to 15 feet away from his parked taxi cab, Plate No 404, smoking a cigarette. When Officer Brannan approached him and advised that he would be inspecting his car, he stated that Mr. Islam was rude and replied, "Who are you?". Officer Brannan showed his photo identification and badge and asked to see Mr. Islam's documents, he claimed that Mr. Islam raised his voice and said, 'I have everything'. Mr. Islam then produced the documents he had requested.

Officer Brannan noted that the taxicab operator log was completed incorrectly and that the times did not note a.m. or p.m. beside them. As such, Officer Brannan was unable to determine if Mr. Islam had been driving for more than 12 hours. When Officer Brannan enquired about the times, he stated that Mr. Islam was rude in his reply to him. He was able to conclude that Mr. Islam had not been driving for more than 12 hours. Officer Brannan then inspected the vehicle and found the front emergency lighting bulb not functioning. He issued two infractions to Mr. Islam. He testified that when he attempted to try to explain what Mr. Islam's options were with regard to the tickets, Mr. Islam interrupted him; stated, 'I don't need an explanation', took the tickets and drove off.

November 19, 2017

Davood Mohammadi, Municipal Standards Officer, Bylaw Enforcement testified that he was on duty in the late evening of November 18, 2017 outside the Rebel Nightclub, on Polson Street, when he noticed taxicab #404 with the roof light on. He testified that he ran the plate number in his database. It was tagged as being suspended due to an outstanding Safety Standard Certificate ('SSC'). He approached the vehicle, identified himself, as he was in plainclothes, and asked the driver, Mr. Islam, to produce his taxi driver operator log, Provincial Driver's Licence and Vehicle-For-Hire Driver's Licence.

Officer Mohammadi stated that Mr. Islam produced the requested documents but was unable to provide a hard copy of the SSC. He charged him with a Toronto Municipal Code bylaw offence of Vehicle-For-Hire Taxicab Owner - No Licence. The charge was ultimately withdrawn on February 6, 2018. Officer Mohammadi did not appear in court and stated that he was on a 9-week medical leave at the time. He also stated that Mr. Islam provided a copy of the SSC to the MLS office on or about November 20, 2018. He speculated that both of these factors could have led to the charge being withdrawn.

October 28 and 29, 2017

Hopeton Robinson, Municipal Standards Officer, Bylaw Enforcement gave evidence surrounding the charges laid on October 28 and 29, 2017, respectively. On October 28, 2017, Officer Robinson was doing general patrol, in plainclothes, with James Philip,

September 20, 2018

Municipal Standards Officer, Bylaw Enforcement, at the Air Canada Centre (as it was then called). At approximately 10:45 p.m., Mr. Islam was observed soliciting customers on the sidewalk to see if they needed a taxicab. Officer Philip approached Mr. Islam and issued a ticket for Vehicle-For-Hire Leave Taxicab or Limousine Unattended.

Later, in the early morning hours of Sunday October 29, 2017, Officers Robinson and Philip went to the Rebel Nightclub to conduct inspections. Officer Robinson observed taxicab #404 enter the taxi stand with the roof light off. He recognized Mr. Islam from earlier that evening at the Air Canada Centre. Mr. Islam was engaging in a conversation with four individuals. Officer Robinson approached them and overheard Mr. Islam negotiating a flat rate to their destination. Officer Robinson testified that as the passengers were entering the taxicab, he told them that flat fares are illegal in Toronto and if the driver does not turn on the meter than the ride is free. At this point, Mr. Islam yelled at him and said, 'Who the heck are you?' He showed his badge and identified himself.

According to Officer Robinson, Mr. Islam, having recognized Officer Robinson from earlier in the evening, sped off before the last passenger was able to fully close the door of the taxi. According to Officer Robinson, Officer Philip was standing at the end of the taxi lane and Mr. Islam was speeding towards him (about 50 feet away). Officer Robinson stated the Officer Philip had to jump out of the way. Mr. Islam only stopped when two Toronto police officers stepped in front of his moving vehicle, after having witnessed the events. There were no injuries from this incident; however, the passengers were upset and exited the taxi. Officer Robinson then walked over to Mr. Islam and issued Mr. Islam a ticket for Vehicle-For-Hire, Fail to Be Civil and Well Behaved.

Officer Robinson testified that Mr. Islam was rude and asked what the ticket was for. Officer Robinson said he walked away in an attempt to de-escalate the situation and did not interact further with him.

Mr. Islam, in cross-examination, asked Officer Robinson why the police did not charge him with any offence, if they witnessed the events as described by Officer Robinson. Officer Robinson did not know the reason why the police did not intervene and speculated that perhaps it was because he was handling the matter.

When asked by the panel what the flat fare was that was allegedly being charged by Mr. Islam, Officer Robinson answered that it was \$25.00. When asked why he didn't issue a ticket for charging a flat fare, Officer Robinson replied that he thought that issuing a second ticket would really upset Mr. Islam and he feared for his own safety during his interactions with him. He feared that Mr. Islam would assault him. So he only charged him with one offence, related to failing to be civil and well behaved.

LICENSEE'S EVIDENCE

Mr. Islam testified that he received his taxi licence in 2002 and has been driving a taxi full time ever since. He stated that he has no experience doing anything else. All he knows how to do is drive a taxi. He has family that is dependent on him. He supports his wife, 4 children (who are all under the age of 12) and his parents.

He testified that often when he gets tickets for unauthorized parking, it is because he is waiting to pick up a customer or that is where his customers ask to be dropped off.

September 20, 2018

Regarding the night of June 19, 2018 on Lakeshore Blvd. West, he testified that he was not the only taxi parked in the taxi cab line. He was at the end of the line and the officer came and gave him a ticket because his light was not working.

In regard to the expired SSC, and the ticket he received on November 19, 2017 he testified that he had moved and was not receiving mail; so he did not get a notice that his certificate had expired. He stated that shortly after he got the ticket, he got his vehicle checked and brought in the certificate right away in order to get his licence back.

Regarding the events that took place outside the Rebel Nightclub on October 28 and 29, 2017, Mr. Islam stated that Officer Robinson was just giving him a hard time and was not telling the truth. Mr. Islam was very frustrated by the events from this evening and did not wish to testify about it any further.

Mr. Islam stated that he knows he has made mistakes in the past and going forward he will not repeat those mistakes. He said that his wife, children and parents will suffer if his licence is revoked.

In answering questions from Ms Elliott and the panel members, Mr. Islam gave the following additional evidence:

He stated that he admits to losing his temper from time to time. He also stated that sometimes it is the customers that are rude to him. He doesn't remember the events of the customer complaint too clearly, but remembers being cautioned by MLS for refusing a customer. He stated that they were saying rude things to him. It is tough to compete for customers in the taxi industry and he does all that he can to earn an income to support his family.

When asked by MLS counsel about the events of October 28 and 29, he testified that the customers approached him and wanted to go to Yonge and Finch. He said the customer made a joke to Officer Robinson when she replied they were getting a flat fare of \$25 since it is a \$60 metered fare to Yonge and Finch. He admitted being upset with Officer Robinson as he initially did not know why this person (as Officer Robinson was in plainclothes) was interfering in his work, and later he didn't know why he was being charged with a ticket. He denied he drove away as fast as was stated and said there were so many people around, he would have surely hit someone if he had sped off the way it was described.

He testified that he tried to rent his taxi but it is not easy and that he would only make \$1200/month versus the \$3000/month he could earn by driving his cab.

CITY'S SUBMISSIONS

Ms Elliott submitted that the MLS brought this matter forward under its power in section 546-7 of the Toronto Municipal Code. MLS is relying on section 546-4 which sets out the grounds for revoking a licence. MLS submitted that there is a reasonable ground to believe that Mr. Islam will not conduct himself with honesty and integrity and would endanger the public safety, unless his licence was revoked.

September 20, 2018

Ms Elliott submitted that there is a pattern of disrespectful conduct towards MLS staff and to the public. She submitted that the incident that took place on October 29, 2017 where he allegedly sped off when Officer Robinson approached, while a passenger was not fully in the cab, falls below the threshold of the bylaw. Further, MLS submitted that Mr. Islam had an opportunity to correct his behaviour and pattern of bylaw convictions when he was before the Tribunal 15 months ago. In Ms Elliott's submission, his pattern of conduct has not changed as evidenced by the charges and convictions in the intervening months.

MLS submitted that the Tribunal should revoke Mr. Islam's licence on based on three grounds as set out in section 546-4 (1) (2) and (5) of the Municipal Code. MLS also submitted that Mr. Islam's conduct meets the standard of "reasonable grounds for belief", which is a much lower standard than 'balance of probabilities' (civil context) or 'beyond a reasonable doubt' (criminal context).

Ms Elliott also submitted Mr. Islam's Taxicab Owner's Licence permits him to continue to earn an income by renting out his taxi without putting the public at risk. This satisfies the Tribunal's mandate of balancing the public interest against a licensee's right to earn a livelihood.

LICENSEE'S SUBMISSIONS

Mr. Islam reiterated that he is the sole support income earner for seven dependants. He stated that he needs to drive a taxi in order to support his family and pay his bills. He stated that in the future he will not be rude with the MLS Officers and just accept whatever ticket they give him. He humbly requested that his taxi cab driver's licence not be revoked.

ANALYSIS

MLS brought this matter before the Tribunal pursuant to section 546-7 of the Municipal Code, which states:

546-7. ML&S authority to refer matters to the Toronto Licensing Tribunal.

At any time, ML&S may refer to the Toronto Licensing Tribunal for a hearing any matter in respect of which a licence may be refused, suspended, revoked, or have conditions imposed on it under this chapter, including the failure by a licensee, or where the licensee is a corporation or partnership, any officer, director, employee, or agent of the corporation or partner in the partnership, to comply with the screening criteria.

The Tribunal considered the evidence as presented in the MLS Report, the testimony of the MLS witnesses, and Mr. Islam's testimony.

In considering the matter of Mr. Islam's Vehicle-For-Hire Driver's Licence, the panel had to consider section 546-4 of the Municipal Code. Briefly paraphrased, this section states that a person is entitled to a licence except where there are "reasonable grounds for belief":

September 20, 2018

- (a) That the applicant has not, or will not, carry on their business in accordance with the law and “with integrity and honesty”;
- (b) That the applicant has breached or will breach the Code or any other law; or
- (c) That the applicant has endangered or will endanger “the health or safety” of the public.

The panel observed Mr. Islam to be genuine and candid. He was polite and calm, and it was hard to reconcile his demeanour on the day of the hearing with the demeanour described by the MLS Officers who gave evidence. Mr. Islam’s explanation of the events in front of the Rebel Nightclub on October 29, 2017 was believable. If he drove as fast or as dangerously as Officer Robinson suggested then the police, who were on-site, would have laid a careless driving or some other charge against Mr. Islam, and yet no charges were laid by the police officers that evening.

Also, if Mr. Islam was negotiating a flat fare with customers contrary to the bylaw, then it was questionable why Officer Robinson chose not to lay a bylaw charge for doing so. His explanation that he feared for his personal safety and therefore chose to only lay one charge was questionable, given the circumstances and the fact there were many people present as well as police officers. The panel did not have the opportunity to hear from Officer Philip who could have provided additional evidence of the events of October 29, 2017.

Mr. Islam was not without remorse. He admitted to making some mistakes and claimed that he didn’t truly appreciate the consequences of his actions while under probation. He clearly appreciated the consequences of his actions on the day of the hearing and assured the panel that he will pay more attention to the way he interacts with MLS Bylaw Officers in the future if allowed to keep his licence.

The panel considered the five new charges and two convictions since Mr. Islam was last before the Tribunal. The panel found there were reasonable grounds to believe that Mr. Islam had breached the Code. However, the panel did not find that Mr. Islam’s conduct poses or posed a risk to public safety.

The nature of the conduct that lead to the charges was not sufficiently concerning to justify a revocation of Mr. Islam’s Vehicle-For-Hire Driver’s Licence, as MLS submitted. The Tribunal also took note of certain mitigating factors. The Tribunal noted that Mr. Islam has paid all his bylaw fines and has an otherwise clean driving record with no criminal charges or convictions. The panel felt it was more appropriate to order a condition on the licence in the form of a ten (10) day suspension his licence.

The Tribunal wanted to be assured that Mr. Islam will appreciate the responsibility that comes with having a Vehicle-For-Hire Driver’s Licence; that having a licence to serve the public as a taxi cab driver in the City of Toronto is a privilege. The panel also wanted to ensure that Mr. Islam realizes that it is not ever appropriate to break the law for the sake of obtaining a fare.

For these reasons, the panel ordered a ten (10) day suspension and not a revocation of Mr. Islam’s licence.

September 20, 2018

In reaching our decision, we also applied the Tribunal's mandate, as set out in the Toronto Municipal Code, § 546-8(A) (3) (c), which requires that the Tribunal to:

Have regard for the need to balance the protection of the public interest with the need for licensee to make a livelihood.

The panel formed the view that there was no risk to the public in allowing Mr. Islam to maintain his licence as a taxi driver. Mr. Islam has driven a taxi for 16 years, and told the Tribunal he has no other skills. His need to earn a livelihood in order to support his large family further tipped the balance in favour of not revoking his licence.

DECISION

The Tribunal ordered Mr. Islam's Vehicle-For-Hire Driver's Licence be suspended for ten (10) days, effective September 21, 2018 at 9:00 a.m. and ending on October 2, 2018 at 9:00 a.m.

The Tribunal ordered Mr. Islam to surrender his Vehicle-For-Hire Driver's Licence and photo identification to Municipal Licensing and Standards by September 21, 2018 at 9:00 a.m. and he can retrieve it on October 2, 2018 at 9:00 a.m.

The Tribunal ordered Mr. Islam's probation from the June 1, 2017 Tribunal hearing, to remain in place until June 2, 2019.

Originally Signed

Daphne Simon, Hearing Panel Chair

Panel Members, Victoria Romero and Melina Laverty concurring.

Reference: Minute No. 167/18

Date Signed: October 19, 2018