

REASONS FOR INTERIM DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: October 25, 2018

Panel: Victoria Romero, Hearing Panel Chair; Anu Bakshi and Gary Yee, Members

Re: Shamim Chowdhury (Report No. 6969)
Applicant for the Renewal of Vehicle-For-Hire Driver's Licence No. D01-4430475

Counsel for Municipal Licensing and Standards: Graham Thomson

Counsel for Applicant: Marven Blaha

Bengali Interpreter: Aowrangazeb Chowdhury

SUMMARY

Municipal, Licensing and Standards (“MLS”) requested Shamim Chowdhury to appear before the Toronto Licensing Tribunal (“Tribunal”) to determine whether or not his Vehicle-For-Hire Driver’s Licence should be revoked, suspended or have conditions placed on it.

At the end of the hearing on October 25, 2018, the Tribunal decided to adjourn the hearing until December 13, 2018. Due to the lengthy history of driving charges and convictions, the Tribunal heard submissions and evidence from both parties about an interim order pending this adjournment, and the Tribunal then made an interim order to suspend the Applicant’s Licence until the Tribunal’s final decision. These are the written reasons for that interim order.

The Tribunal confirmed that as evidence on the substantial merits of the case had not been heard yet, this panel was not seized of the matter.

PRELIMINARY ISSUES – EVIDENCE

At the outset of the hearing, the Representative for the Applicant, Mr. Blaha, raised two preliminary issues related to what kind of evidence was admissible.

Mr. Blaha stated that he did not intend to call his client as a witness. He submitted that MLS is not permitted to put forth evidence to the Tribunal regarding the Applicant’s withdrawn charges, contained in MLS Report 6969. He submitted that this kind of evidence is highly prejudicial.

The Tribunal notes that s. 15 of the Statutory Powers and Procedures Act (SPPA) generally allows Tribunals to admit any evidence that is relevant, including hearsay. The fact that the Applicant may have had certain by-law or other charges withdrawn, or even

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dismissed after a trial, does not prevent the Tribunal from considering the events or conduct that those charges may have been based upon. The Tribunal's duty is different from that of the criminal or provincial offences court. The Tribunal does not decide on guilt or innocence for these charges. The Tribunal decides if the conduct of the Applicant gives reasonable grounds for belief that the Applicant "has not carried on, or will not carry on, the business in accordance with law and with integrity and honesty" (under section 546-4(A) of the Municipal Code).

After considering submissions from the parties at the hearing, the Tribunal decided to admit MLS Report 6969, including its documents related to the withdrawn charges. This does not mean that the Tribunal accepts the truth of the content of those documents. At the hearing, the Tribunal will hear further evidence and/or submissions from both parties regarding the weight of such evidence.

The Tribunal also heard some submissions from the parties about whether the Applicant should testify or could even be compelled to testify. Mr. Blaha went as far as trying to claim a constitutional right against self-incrimination, but he was unable to provide any information about which section of the Charter of Rights and Freedom would apply, or how it could protect his client in this context of a regulatory or licensing proceeding, versus being charged with an offence.

At the same time, the Tribunal noted that it would be unusual for MLS to try to compel the Applicant to be a witness. Alternatively, it may be possible for MLS to argue for an adverse inference to be drawn if the Applicant did not testify, or argue that there is no evidence opposing MLS's evidence if the Applicant did not testify. In the end, at this hearing, the Tribunal ruled that it was premature to decide on this issue. If or when the Applicant is called as a witness, the Tribunal could decide at that time.

ADJOURNMENT AND INTERIM ORDER

Due to time constraints in a full hearing day with other cases, the Tribunal informed the parties that it would appear unlikely that the hearing of this case could go ahead and finish that day. The parties agreed to an adjournment, with December 13, 2018 being the next available date for the Tribunal.

The issue of a possible interim order arose because of the long history of driving charges and convictions for the Applicant, and the three previous adjournments before the Tribunal.

MLS requested an interim suspension of the Applicant's License. The Applicant opposed this request.

LAW

The Tribunal has the authority to order interim suspensions under section 16.1 of the Statutory Powers and Procedures Act (SPPA), and more specifically, Chapter 546-9.C(3), which provides:

§ 546-9. Toronto Licensing Tribunal hearings.

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[...]

Toronto Licensing Tribunal may, for any of the reasons set out in § 546-4:

[...]

(3) Suspend a licence or continue the suspension of a licence where a hearing that has been commenced is adjourned for any reason, pending final disposition.

Pursuant to Chapter 546-9.0(1), the Tribunal also has the power to impose any conditions on licenses considered by the Tribunal to be just and authorized by law:

§ 546-4. Grounds and administrative thresholds for denial of licence.

A. An applicant for a licence or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to the licence or renewal, except where:

(1) The conduct of the applicant affords reasonable grounds to believe that the applicant has not carried on, or will not carry on, the business in accordance with law and with integrity and honesty; or

(2) There are reasonable grounds to believe that the carrying on of the business by the applicant has resulted, or will result, in a breach of this chapter or any law;
or

[...]

(5) The conduct of the applicant or other circumstances afford reasonable grounds to believe 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, their health or safety.

[...]

Thus, to grant a suspension, the Tribunal has to be satisfied that at least one of the grounds in 546-4.A is met.

Chapter 546-8(3)(c) requires the Tribunal “have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.”

MLS EVIDENCE AND SUBMISSIONS

MLS presented evidence through Andrea DiMatteo, Acting Supervisor, Municipal Licensing and Standards. MLS Report 6969 was marked as Exhibit 1, together with its updates submitted on October 18 and 24, 2018.

The Applicant’s Driving Abstract dated 16 October 2017 shows ten Highway Traffic Act (HTA) convictions. The updated Driving Abstract dated 4 May 2018 shows two new HTA convictions. The last updated Driving Abstract dated 1 August 2018 shows two new HTA convictions again.

In total, the Applicant has accumulated:

- 46 HTA charges, including 16 convictions from June 2012 to February 2018;

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- 8 City of Toronto By-law charges, including 5 convictions from July 2015 to January 2018;
- 16 Criminal charges, including 1 assault conviction, 2 conditional discharges and 13 withdrawals from December 2009 to October 2016;
- 5 Compulsory Automobile Insurance Act charges, including 3 convictions from February 2013 to February 2017;
- 10 HTA charges pending in 2018, which include a charge for careless driving. These charges happened after the Applicant received the MLS letter dated 14 November 2017 and after a Tribunal hearing was requested on 15 December 2017.

MLS submits that these charges and convictions establish a pattern of behaviour that gives reasonable grounds to believe that the public safety is at risk. The Applicant's record has been consistently negative throughout the years.

LICENSEE'S EVIDENCE AND SUBMISSIONS

After the close of MLS's case, at first, Mr. Blaha did not call any evidence and he started to make submissions about the hardship that an interim suspension of the Licence would cause to his client. After the Tribunal did not allow Mr. Blaha to give evidence that should come from his client, the Tribunal allowed the Applicant to testify and be cross-examined on the narrow point of the financial impact an interim suspension would have on him.

The Applicant states that he earns about \$2,000 per month, working 12 hours per day, six days per week. He has family that is dependent on him. He has four dependent children. He supports his parents back home and pays \$400/month in child support to his ex-wife. He remarried three months ago. His new wife does not work. He spends about \$1,200 in food and rent per month. There is no other source of income.

Regarding alternative employment opportunities, the Applicant received his taxi licence on 30 December 2014 (nearly four years ago) and has been driving a taxi since then. When he initially came to Canada, he worked for a framing installation company for five years. He then went back to school to obtain a medical assistance certification but did not complete it. The only requirement left to do is to complete 40 hours of volunteer time. The Applicant then went on to complete his taxi licence training in 21 days with government assistance. He had worked as a Passport Officer back home in Bangladesh for 17 years.

The Applicant reiterates that he is the sole support income earner for his family. He states that he needs to drive a taxi in order to support his family and pay his bills.

The Applicant states that his Driving Record dated 24 July 2018 was sent to the Tribunal 24 October 2018, shows no Demerit Points.

ANALYSIS

The Tribunal was faced with overwhelming evidence of a consistent repetitive history of failure to comply with the law. It is especially concerning to the Tribunal that most of the charges and convictions directly relate to the business that the Applicant is doing –

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namely, driving a taxi. In addition, ten new charges happened after MLS had already notified the Applicant that it was taking action against his licence. While it is not the Tribunal's role to decide his innocence or guilt, the fact is that this many charges makes a strong case against the Applicant that there is sufficient risk to the public if he is allowed to maintain his licence as a taxi driver while waiting for a full hearing of what may be decided about his licence on a more permanent basis.

The Tribunal notes the history of this case, with three previous adjournments by this Tribunal, occurring on August 2, 2018, September 20, 2018 and October 4, 2018. At the Tribunal hearing on October 25, 2018, the Tribunal agreed again to adjourn the hearing, but the hearing panel specifically expressed its concern by stating;

"The nature of the Applicant's record of charges and convictions is serious, lengthy and recent enough to justify an interim suspension of the Applicant's Licence until the December 13, 2018 hearing. This may cause financial hardship to the Applicant during these seven weeks, but the Tribunal is not prepared to let this pattern of risky behaviour continue during this period of delay that has mostly been caused by the Applicant".

DECISION

The Tribunal made the following Interim Order at the hearing on October 25, 2018:

1. Shamim Chowdhury's Vehicle-For-Hire Driver's Licence will be temporarily suspended until the Toronto Licensing Tribunal hearing on December 13, 2018.
2. Shamim Chowdhury shall surrender his Vehicle-For-Hire Driver's Licence and photo card to Municipal Licensing and Standards today.

Originally signed

Victoria Romero, Hearing Panel Chair
Panel Members, Anu Bakshi and Gary Yee concurring.

Reference: Minute No. 194/18

Date Signed: December 7, 2018