

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of
Hearing: January 10, 2019

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

Re: Ghermai Habtezion (Report No. 7094)
Applicant for the Renewal of Vehicle-For-Hire Driver's Licence No. D01-
4731386

Counsel for Municipal Licensing and Standards: Mr. Graham Thomson
Counsel for Applicant: Unrepresented

INTRODUCTION

On May 8, 2018, as part of the licence renewal process, Municipal Licensing and Standards (MLS) obtained Mr. Habtezion's three year Driver's Record from the Ministry of Transportation. The record indicated that Mr. Habtezion's Ontario Driver's Licence was administratively suspended for 90 days. On August 15, 2018, MLS denied the renewal of Mr. Habtezion's Vehicle-For-Hire Driver's Licence (Licence) in a letter and set out the grounds for its refusal to renew. On November 9, 2018, Mr. Habtezion was convicted of Impaired Driving and his Ontario Driver's Licence was suspended until November 9, 2019. Mr. Habtezion requested a hearing before the Toronto Licensing Tribunal. A hearing on this matter was held on January 10, 2019. Mr. Habtezion appeared on this own behalf.

The issue before the Tribunal is whether Mr. Habtezion's Licence should be renewed, suspended, or have conditions placed on it.

After the hearing, the Tribunal gave an oral decision to deny the renewal of Mr. Habtezion's Licence. These are the written reasons for that decision.

CITY'S EVIDENCE

Ms Andrea DiMatteo, Supervisor, Municipal Licensing and Standards, testified on behalf of MLS.

Ms DiMatteo, referring to MLS Report 7094 (Report), provided a background of Mr. Habtezion's history of charges and convictions under the Municipal Code, the Highway Traffic Act, and the Criminal Code of Canada. The Report and updates were marked as Exhibit #1.

During her testimony, she referred to the Crown Brief in the Report which outlined that on April 21, 2018, Mr. Habtezion was charged with Impaired Driving, Operator over 80 mg and Dangerous Operation of Motor Vehicle under the Criminal Code of Canada. He was involved in a three car collision while he was driving his taxi. The Crown Brief

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said that the police officer noted that when she tried to speak to Mr. Habtezion, there was a delayed response, inaudible mumbling and that his eyes were blood shot red. The police officer detected the odour of alcohol. Later, breath samples indicated a reading of 118mg and 116mg of alcohol in 100ml of blood. Ultimately, on November 9, 2018, Mr. Habtezion was convicted of Impaired Driving and his Ontario Driver's Licence was suspended until November 9, 2019.

Ms DiMatteo highlighted documentation in the Report showing that Mr. Habtezion had three Highway Traffic Act convictions and two Toronto Municipal Code convictions since 2013.

Ms Di Matteo testified that MLS records indicated that Mr. Habtezion did not notify MLS promptly when his Ontario Driver's Licence was suspended, both in April 2018 when there was a 90-day administrative driver's licence suspension arising from the police investigation of his accident, and in November 2018 after his impaired driving conviction.

APPLICANT'S EVIDENCE

Mr. Habtezion testified that he has been driving a taxi cab for about 35 years. It was his first and only job in Canada. He acknowledged the recent Impaired Driving conviction. He explained that he does not drink often, and on the night of the accident, he drank one large whisky. Later, at the time of the accident, he was driving his taxi home, but he did not have any clients and he did not have his taxi light on. He admitted that he was involved in a three car accident. He explained the accident was not his fault. The car on his left hit his car, causing him to rear-end the car on his right. He also said that no one was seriously injured. For the criminal charges, he said that he should have fought the charges, but did not have the \$20,000 he said would be needed for a lawyer. Therefore, he pled guilty to the Impaired Driving charge. His Ontario Driver's Licence was suspended. He is not sure when and how it will be reinstated.

Mr. Habtezion testified that he is currently enrolled in a Back on Track program, and will complete this program on January 26, 2019. His Back on Track Workshop Appointment Sheet was marked as Exhibit 2. To complete the program, he must fully participate and demonstrate that he has learned about separating drinking and driving. He paid for the program himself. It is his understanding that if he is successful in the program, he may be able to reinstate his Ontario Driver's Licence in a reduced time.

Mr. Habtezion testified that he did tell MLS about his accident, which he also said was on April 4 and not April 21. He said he had gone to MLS three or four times, and had already given them his Licence in August 2018.

Mr. Habtezion is a widow. He lives with his two adult children and he is responsible for the mortgage and all other housing costs and bills. His adult children work sporadically. He sends money to family back in his country of origin.

He is not currently working, and he is having financial difficulty.

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SUBMISSIONS

Mr. Thomson submitted that the Tribunal should not renew Mr. Habtezion's Licence. Mr. Habtezion's conduct affords reasonable grounds to believe that he has not carried on, or will not carry on, the business of a taxi cab driver 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 of 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 § 546-4.A.(1) of the Municipal Code.

Mr. Thomson submitted that the circumstances of the Driving While Impaired conviction are serious and put the public at risk. The conviction is recent (November 9, 2018), and Mr. Habtezion is not taking full responsibility for his actions. Mr. Habtezion's Ontario Driver's Licence is currently suspended. While Mr. Habtezion is taking steps such as the Back on Track program to rehabilitate himself, there is no clear indication that he will be successful.

With respect to financial impact, Mr. Thomson stated that his Ontario Driver's Licence is currently suspended in any event. Mr. Habtezion's children are adults and are not dependant's. He is also a taxi cab owner.

Mr. Thomson also noted his concerns about Mr. Habtezion not reporting his Ontario Driver's Licence status to MLS and not surrendering his Licence. He said this showed confusion and that the Applicant was not taking his responsibilities seriously. Mr. Thomson suggested there was not enough assurance that the Applicant would comply with the licensing scheme.

Mr. Habtezion submitted that he does not really drink. The circumstances regarding the Driving While Impaired happened on one occasion. He is not dangerous to the public. Driving a cab is the only work he has done in Canada for over 35 years. He is not working. He is taking steps to get his Ontario Driver's Licence back, and he is enrolled in the Back on Track program.

DECISION

The Tribunal denied Mr. Habtezion's application for the renewal of the Licence. The Tribunal's mandate, set out in part in the Toronto Municipal Code, § 546-8.A.(3)(c) sets out that Tribunal must balance the protection of the public interest with the need for licensees to make a livelihood.

Mr. Habtezion was convicted on November 9, 2018 of Driving While Impaired. As a result, his Ontario Driver's Licence was suspended and remains suspended. At this time, any financial impact Mr. Habtezion is enduring is as a result of the suspension of his Ontario Driver's Licence. The impaired driving conviction resulted in a one-year suspension. It is unclear from the evidence whether this time period could be reduced later.

The protection of the public interest was the key issue in this hearing. Where an MLS licence involves driving, convictions for offences relating to driving a vehicle while under the influence of alcohol are of serious concern for the Tribunal and go directly to the

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question of public safety. In this case, the conviction is very recent (November 9, 2018), for an offence that occurred in April 2018.

As for factors favourable to Mr. Habtezion, the Tribunal notes that there have been no other serious driving offences or by-law convictions in his driving career of 35 years. This also appears to be his first alcohol-related incident. Mr. Habtezion is taking some steps to rehabilitation by enrolling in the Back on Track program, which he has not completed yet. The Tribunal accepts that the loss of his ability to earn a living as a taxi driver is having a serious effect on his financial situation.

The evidence about when and whether Mr. Habtezion met his obligations to report his Ontario Driver's Licence status or to surrender his MLS Licence documents is unclear. In any event, these points, along with his other more minor charges or convictions, do not have much weight when compared to the serious and recent impaired driving conviction.

Taking into account the Tribunal's mandate to protect the public interest and Mr. Habtezion's need to earn a livelihood, we are satisfied, considering the seriousness and short lapse in time of the Driving While Impaired conviction, that the public interest outweighs Mr. Habtezion's need to earn a livelihood. The Tribunal notes that even if there was a stronger case for Mr. Habtezion to renew his MLS Licence, he would still not be able to start earning a living as a taxi driver for many more months because of the suspension of his Ontario Driver's Licence until November 2019.

The Tribunal noted that Mr. Habtezion expressed his intention to re-apply for his Licence after his Ontario Driver's Licence is re-instated. That will be a better time for MLS or the Tribunal to decide about his Licence to drive a taxi. More time will allow Mr. Habtezion to show that he has taken responsibility for this offence, and to give more proof and reassurance that nothing like that will happen again. Enrolling in the Back on Track program is a good start. Mr. Habtezion should use this time until his Ontario Driver's Licence is reinstated to continue taking steps to show that he can conduct himself as a taxi driver in accordance with the law, and with integrity and honesty.

Originally Signed

Anu Bakshi, Hearing Panel Chair

Panel Members, Gary Yee and Victoria Romero concurring

Reference: Minute No. 11/19

Date Signed: January 29, 2019