

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: February 14, 2019

Panel: Moira Calderwood, Panel Chair; Victoria Romero and Daphne Simon, Panel 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: Matthew Cornett

Representative for Applicant: Arun K. Datta

Bengali Interpreter: Jayanti Chandra

INTRODUCTION

In October 2017, Shamim Chowdhury's Vehicle-For-Hire Driver's Licence came up for renewal. Municipal, Licensing and Standards ("MLS") denied the renewal. Mr. Chowdhury requested a hearing before the Toronto Licensing Tribunal to determine if the licence should be renewed, revoked, suspended or have conditions placed on it.

On August 2 and September 20, 2018, the Tribunal adjourned the hearing of this matter.

On October 25, 2018, the Tribunal adjourned the hearing until December 13, 2018, and made an interim order to suspend the Applicant's Licence until the Tribunal's final decision. It subsequently released written reasons for its order.

The matter was adjourned again on December 13, 2018 and on January 24, 2019. On both occasions, the Tribunal ordered that the interim suspension would remain in effect until the Tribunal ordered otherwise.

The matter proceeded to hearing on February 14, 2019. The Tribunal decided not to renew Mr. Chowdhury's Vehicle-For-Hire Driver's Licence. The Tribunal issued its decision orally on February 14, 2019 and these are the written reasons for the decision.

MLS EVIDENCE

This matter proceeded on an Agreed Statement of Facts. Report 6969, prepared by MLS, along with updates and further documentation submitted by both MLS and the Licensee were marked as Exhibits 1 and 2. These exhibits collectively constituted the Agreed Statement of Facts. MLS did not call any witnesses.

LICENSEE'S EVIDENCE

The Licensee was affirmed, and testified. He confirmed that he was not disputing the contents of the Agreed Statement of Facts.

In testimony, in cross-examination, and in response to questions from the Panel, he provided information about his personal circumstances, including the following:

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- His family is experiencing financial difficulty. His mother has breast cancer and has incurred medical bills, which he helps to pay.
- His former wife divorced him, causing him mental stress.
- He has children from a previous marriage and must pay \$400 monthly in support for them.
- He recently remarried and his current wife, who lives in their home country, had a baby earlier this month. The birth was by Caesarian section and both the wife and the new baby have incurred medical bills, which he must contribute to. He hopes to sponsor his wife to Canada.
- He does not have much education. He took some night classes to upgrade his education by completing Grade 6 and Grade 7. He took some ESL classes. He completed some months of a course at a private college to be a Medical Assistant but did not pass the examination. He ran out of money to continue that course.
- He came to Canada in 2009. He worked as a general labourer for an employer and later, once he obtained his Ontario driver's licence in 2012 or 2013, he worked as a driver for that employer, driving a pickup truck.
- He took the 2-month taxi training course, wrote the exam twice, and obtained his taxi driving licence in 2014.

SUBMISSIONS

MLS submitted that the Tribunal should not renew the Licensee's licence. MLS summarized the Licensee's history of charges and convictions under the Highway Traffic Act (HTA), the Municipal Code, the Criminal Code, and the Compulsory Automobile Insurance Act (CAIA). MLS submitted that given the Licensee's history of charges and convictions, the Tribunal had reasonable grounds to believe that the Licensee's carrying on the licensed activity would endanger public safety.

MLS stated that conditions would not be effective in this case given the consistently poor nature of Licensee's driving history and particularly given that he recently breached the Tribunal's order suspending his Vehicle-For-Hire Driver's Licence.

MLS submitted that the Licensee has previous job experience that would allow him to find work other than taxi driving. MLS added that the Licensee has a valid provincial driver's licence and could engage in driving work that does not involve transporting passengers or members of the public.

MLS stated that while it has great sympathy for the Licensee's personal circumstances, that sympathy does not outweigh the evidence that he will not operate a taxi in a matter conducive to public safety, or that he will fail to obey conditions.

The Licensee's representative again acknowledged that the information contained in the Agreed Statement of Facts is accurate and that the Licensee regrets and apologizes for these past mistakes. He reiterated that the Licensee is facing family difficulties and has been in a poor mental condition. The Licensee is a valuable member of his religious and charitable community, as set out in the letter submitted from The Sunatul Jamaat of Ontario. The Licensee's representative asked the Tribunal to give the Licensee one more chance to prove himself. The Licensee will accept "stiff conditions" because he needs the licence to survive. If the licence is not renewed, and the Licensee does not find work, he will be miserable and that will constitute great hardship.

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DECISION

This was a case where the facts were not in dispute, but the parties differed as to what the effect of those facts should be.

In total, the Licensee has accumulated:

- 49 HTA charges, including 17 convictions from 2013 to date, with two charges pending disposition
- 10 City of Toronto By-law charges, including 5 convictions
- 16 criminal charges, including 2 conditional discharges
- 5 CAIA charges, including 3 convictions from February 2013 to February 2017.

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 Licensee's licensed activity – namely, driving a taxi. Further, a number of the charges were incurred after the date (November 14, 2017) on which MLS advised the Licensee that his licence would be subject to review. It is concerning that even the knowledge that his licence may be in jeopardy did not inspire the Licensee to ensure his driving complied with the law. For example, he incurred a charge of careless driving in January 2018, and was recently convicted on the lesser offence of unsafe turn. A speeding charge from February 2018 (72 kph in a 50 kph zone) remains outstanding. A January 2018 by-law charge of operating a vehicle (in this case, a taxicab) in a designated bicycle lane resulted in a conviction in January 2019. While the Licensee expressed remorse and apology for his past actions, he did not provide any reassuring information as to actual steps he might take to ensure his driving might be safer in future, or how he intended to ensure compliance with the by-law and other laws. His vows to do better in future rang hollow.

At the February 14, 2019 hearing, the Licensee acknowledged that he had been driving a taxi with passengers just one week earlier, on February 7, 2019. This occurred while the Licensee's Vehicle-For-Hire Driver's Licence was under suspension by the Tribunal, a fact which had been reiterated at three previous Tribunal hearings, including one on January 24, 2019, and could not possibly have been unknown to the Licensee. A passenger complaint brought this infraction to the attention of MLS. This latest incident raised concerns both about the safety of the Licensee's driving and about his non-compliance with an order of the Tribunal.

The Municipal Code provides in part:

§ 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

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(2) There are reasonable grounds to belief [sic] 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.
[...]

The Tribunal was entirely satisfied on the evidence at the hearing that it has reasonable grounds to believe that the Licensee has not carried on and will not carry on his business in accordance with the law and with honesty and integrity, that his carrying on the business has resulted and will result in a breach of this chapter or any law, and that his carrying on the business has infringed or would infringe the rights of members of the public and has endangered or would endanger their health or safety.

In making its decision, the Tribunal relied on the Licensee's substantial record of charges and convictions in a short period of time, and specifically that one of the Licensee's criminal conditional discharges related to failure to comply with bail conditions, coupled with the very recent incident of driving a taxi while under suspension. This gave us reasonable grounds to believe that the Licensee will not carry on his business in accordance with the law. These circumstances also led us to conclude that this was not a case where conditions would likely help to ensure the Licensee's compliance with the law.

Like MLS, the Tribunal was not without sympathy for the Licensee's personal circumstances.

We were in no doubt that the Licensee in this case was in great need of making a livelihood. The Tribunal's mandate, however, requires us to consider not only the Licensee, but also to consider members of the walking, cycling, driving and taxi-taking public. The Licensee's very unfortunate personal and financial circumstances did not, in our view, outweigh the protection of the public interest in this case.

Originally Signed

Moira Calderwood, Panel Chair

Panel Members, Victoria Romero and Daphne Simon, concurring

Reference: **Minute No. 30 /19**

Date Signed: March 1, 2019
