

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: April 25, 2019

Panel: Anu Bakshi, Hearing Panel Chair;
Daphne Simon and Verlyn Francis, Panel Members

Re: Bahram Rajab Zadeh (Report No. 7075)
Applicant for a Drain Layer Licence (Application No. B843193)

Counsel for Municipal Licensing and Standards: David Gourlay

Counsel for Applicant: Unrepresented

Farsi Interpreter: Abdolrahman Ibrahim

INTRODUCTION

Mr. Rajab Zadeh submitted a Drain Layer Licence application on June 28, 2018. With his application, he submitted a police background check from the Royal Canadian Mounted Police dated June 18, 2018. Municipal Licensing and Standards (MLS) of the City of Toronto reviewed the application and denied Mr. Rajab Zadeh's application for a Drain Layer Licence on July 4, 2018. Mr. Rajab Zadeh appealed that denial, and the Toronto Licensing Tribunal held a hearing on the matter on April 25, 2019. Mr. Rajab Zadeh chose to represent himself in this matter.

The issue before the Tribunal was whether or not a Drain Layer Licence should be issued, denied or have conditions placed on it.

The Tribunal decided to deny Mr. Rajab Zadeh's application for a Drain Layer Licence. The Tribunal issued its decision orally on April 25, 2019. These are the written reasons for the decision.

MLS EVIDENCE

Mr. Jamil Elannan, Supervisor, Municipal Licensing and Standards, testified on behalf of MLS.

Mr. Elannan, referring to MLS Report 7075 (Report), provided a background of Mr. Rajab Zadeh's history of charges and convictions the Highway Traffic Act, Compulsory Automobile Insurance Act, and the Criminal Code of Canada. The Report was marked as Exhibit #1, and the Icon printout with updated information date stamped April 24, 2019 was marked as Exhibit #2. Mr. Rajab Zadeh previously held a private transportation company licence from February 18, 2017 to February 21, 2018.

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Mr. Elannan highlighted documentation showing that Mr. Rajab Zadeh was convicted of sexual assault on March 5, 2019. Mr. Rajab Zadeh received a conditional discharge. The synopsis for the guilty plea for sexual assault indicated that late at night on July 6, 2017, Mr. Rajab Zadeh was driving his car. A female, who was not known to him, was walking down the street. The female noticed Mr. Rajab Zadeh perform two U-turns and exit his vehicle. He approached this female three different times that night and engaged in unwanted kissing and touching. He gave the female his phone number.

APPLICANT'S EVIDENCE

Mr. Rajab Zadeh testified that he pled guilty to sexual assault because he could not afford a lawyer and he was having health issues.

With respect to his background, Mr. Rajab Zadeh testified that he is 43 years old, and he has no dependents. In his birth country, he studied law and management. He was a human rights activist. In 2013, he came to Canada because of the political situation in that country. He married in 2014. His wife arrived in Canada in 2015. In 2016, the marriage ended. Mr. Rajab Zadeh suffered from depression as a result of the circumstances of the marriage ending. He told the Tribunal that his ex-wife used and betrayed him.

Mr. Rajab Zadeh testified that, for about six years, he worked as a drain layer for different small plumbing and draining companies. During this time, he worked under his team members' licence. He stated that he has the expertise to work as a drain layer on his own. He would like to open his own company. His plan is to work on his own and eventually have a team working for him. He wants to have a better life.

With respect to the sexual assault conviction, Mr. Rajab Zadeh said it was a misunderstanding. He was interested in being the unknown female's friend. The female misunderstood his intentions and made up a big story. He wants to put this incident behind him.

On cross-examination, Mr. Rajab Zadeh denied that that he kissed and touched the unknown female. He testified that he thought that the woman was kind of scared. He felt bad because he just wanted to be her friend. He should not have given her his phone number. He would never force a woman. He became angry in his testimony. He testified that God would punish this woman for lying. He completely lost his trust in women as a result of the sexual assault allegations and his ex-wife's betrayal.

When the Tribunal asked him how he was going to be able to deal with women customers in the event he was granted a Drain Layer Licence, Mr. Rajab Zadeh responded that professional dealings are different than personal feelings. He would remain professional.

Ms Roya Rasoni testified on Mr. Rajab Zadeh's behalf. She has known Mr. Rajab Zadeh for about five years. She stated that Mr. Rajab Zadeh worked for several companies as a plumber. He is desperate to get his Drain Layer Licence. He is very interested in the field.

She described Mr. Rajab Zadeh as very nice and supportive. He went through difficulties including health issues and disappointment. She was shocked when he told her about the story about the woman accusing him of sexual assault.

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SUBMISSIONS

Mr. Gourlay submitted that it is not open for this Tribunal to accept any facts that would undermine the finding of guilt with respect to the sexual assault. Mr. Rajab Zadeh pleaded guilty. The criminal court made a finding of guilt beyond a reasonable doubt that a sexual assault took place. The sexual assault happened recently (July 6, 2017). The guilty plea for the conditional discharge was issued on March 5, 2019. Sufficient time has not passed to warrant issuing a licence at this time.

Mr. Gourlay argued that sexual assault is never minor. It must be taken seriously. In this case, it gave cause for concern for public safety. If Mr. Rajab Zadeh was granted a licence, he would be in customer's homes, perhaps with a woman alone in her basement, giving estimates or completing work. The fact that Mr. Rajab Zadeh may be alone in a woman's home raised concerns about public safety.

Mr. Gourlay submitted that when asked about the sexual assault, Mr. Rajab Zadeh became angry, demonstrating that his emotions are still very much at the surface and he does not take responsibility for the sexual assault.

In terms of Mr. Rajab Zadeh's need to make living, Mr. Gourlay argued that Mr. Rajab Zadeh can continue to work for a plumbing and drainage company under a teammate's licence.

Mr. Rajab Zadeh became angry during his own submissions. He yelled and jumped to his feet. He indicated that he was insulted at what was being said about him at the hearing. The laws in his birth country were better than Canadian laws. He was embarrassed at the suggestion that he was going to attack a woman. For the past three years, he lived with these allegations; he was not guilty of sexual assault. He indicated he was going to walk out of the hearing. He talked over the Chair. He was agitated.

After a short break, Mr. Rajab Zadeh had calmed down and indicated that he wanted the Tribunal to render its decision, rather than withdraw his application. He decided not to walk out of the hearing.

DECISION

The Tribunal denied Mr. Rajab Zadeh's application for a Drain Layer Licence.

In reaching our decision, the Tribunal considered our mandate, set out in part in the Toronto Municipal Code, § 546-8.A(3)(c) :

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

We were not satisfied that Mr. Rajab Zadeh established his need to make a livelihood. He does have options. He may continue to work for a plumbing and drainage company under a teammate's licence. He had no dependents. He did not provide any evidence regarding his financial need.

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Turning to the other part of the test, the Tribunal considered the protection of the public interest, if the Tribunal were to issue Mr. Rajab Zadeh a Drain Layer Licence. We considered the grounds for denial of a licence set out in section 545- 4.C (1) (e) of the Municipal Code. We based our decision on our reasonable grounds for belief that Mr. Rajab Zadeh carrying on a drain layer business would infringe the rights of the public and would endanger public health and safety.

The Tribunal was not satisfied that public interest would be protected if we granted a licence, given Mr. Rajab Zadeh's very recent sexual assault conviction coupled with the nature and intended use of the Drain Layer Licence at issue. In this case, Mr. Rajab Zadeh would be the supervisor/boss (with or without a team) in his own drainage company. As part of his own company, he would be meeting with potential customers to give quotes. Potentially, Mr. Rajab Zadeh would have to meet women and be alone in their homes. This scenario gave rise to a public safety concern.

The Tribunal noted that the sentence on the sexual assault conviction was a conditional discharge; perhaps implying that the trial judge concluded this was an offence on the less serious end of the spectrum. Still, we had concerns because the sexual assault conviction of March 5, 2019 was recent. Mr. Rajab Zadeh did not take responsibility for the incident. He denied the sexual assault took place, despite the recent guilty plea. His evidence on what actually took place that night was hard to follow. He called the victim a liar. He admitted that he knew she was scared. He displayed a great amount of anger regarding the circumstances surrounding the sexual assault, but also women in general and his life in Canada. He showed that he was unable to control his emotions in a professional formal setting.

Given the recent conviction of sexual assault, his refusal to take responsibility for the incident, and his display of anger and outburst with respect to women, in particular, the Tribunal felt compelled to place greater emphasis on the need to protect the public interest by not granting a Drain Layer Licence at this time.

In the future, Mr. Rajab Zadeh may decide to make an application for a Drain Layer Licence in the City of Toronto. Mr. Rajab Zadeh received a conditional discharge with respect to the sexual assault. He may be able to put the sexual assault conviction behind him. This is Mr. Rajab Zadeh's first application for a Drain Layer Licence. With the passage of time and with proof of an unblemished criminal record, Mr. Rajab Zadeh may re-apply for a Drain Layer Licence if he can show that that he has conducted himself with honesty and integrity and in accordance with the law, and that he has completed concrete steps to rehabilitate himself.

Originally Signed

Anu Bakshi, Hearing Panel Chair
Panel Members, Daphne Simon and Verlyn Francis concurring

Reference: Minute No. 79/19

Date Signed: May 15, 2019