

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: June 20, 2019

Panel: Verlyn Francis, Panel Chair;
Maureen Carter-Whitney and Edgar Montigny, Panel Members

Re: Asamenaw Deres Abebe (Report No. 7165)
Applicant for Renewal of Vehicle-For-Hire Driver's Licence
No. D01-4684294

Counsel for Municipal Licensing and Standards: Lauren Elliott

Counsel for Applicant: Unrepresented

Amharic Interpreter: Dereje Bafekadu

INTRODUCTION

Mr. Asamenaw Deres Abebe was first issued a Vehicle-For-Hire Driver's Licence No. D01-2001753 on July 16, 1990. He held that licence until it was cancelled on October 16, 2016 due to non-payment of the licence renewal fee. On November 9, 2016 Mr. Abebe was issued Vehicle-For-Hire Driver's Licence No. D01-4684294 which was the subject of this hearing. This licence expired on November 9, 2018 and his request for renewal was denied by the Municipal Licensing and Standards Division of Toronto (MLS) by letter dated November 5, 2018.

On December 6, 2018, Mr. Abebe submitted to MLS a Request for Hearing before this Tribunal.

The issue before the Tribunal was whether or not this Vehicle-For-Hire Driver's Licence should be renewed and, if renewed, whether conditions be placed on it.

The Tribunal decided to renew Mr. Abebe's Vehicle-For-Hire Driver's Licence with conditions. The Tribunal issued its decision orally on June 20, 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 No. 7165 (Report), provided a background of Mr. Abebe's history of charges and convictions from the Ministry of the Attorney General's Integrated Court Offences Network (ICON) under the Highway Traffic Act, Toronto Municipal Code, and the Criminal Code of Canada. ICON updates of March 5, 2019 and June 19, 2019 for charges and convictions against Mr. Abebe were also referred to by Mr. Elannan. The Report and ICON updates date-stamped March 5, 2019 and June 19, 2019 were marked as Exhibit No. 1.

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In his evidence, Mr. Elannan highlighted portions of the Report and updates indicating that on June 25, 2018, Mr. Abebe was charged under the Highway Traffic Act with careless driving as a result of a motor vehicle accident involving the taxicab he was driving. The Prosecution Summary which was submitted at page 103 of the Report as an attachment to a letter dated January 4, 2019 from Toronto Police Service, indicates that at 2:49 p.m. on June 25, 2018 while driving a taxi with a passenger in the rear seat, Mr. Abebe was involved in a motor vehicle accident at Parliament and Adelaide Street in Toronto. The passenger was taken to hospital by ambulance. The Summary indicates that the road condition was dry, and the weather was sunny and clear. The conclusion set out in the Summary is that “the defendant was inattentive and did not take into consideration the traffic conditions and the traffic control signals for his rate of speed and following distance”. The Abstract on page 21 of the Report indicates that this careless driving charge had a court date of February 1, 2019.

Mr. Elannan testified that the November 5, 2018 letter from MLS denying the renewal of Mr. Abebe’s licence was based on this careless driving charge. However, he acknowledged that the Update of March 5, 2019 shows that this charge was marked “withdrawn no officer” on February 1, 2019. He indicated that this meant that the officer did not attend on the date of the trial and the Crown withdrew the charge.

The other Criminal Code charges against Mr. Abebe were set out on page 9 of the Report and cover the period from 1996 to 2004. Of the five charges in this period, one was stayed, one was withdrawn, he received an absolute discharge on one, one was withdrawn with peace bond, and he was found guilty of fear of injury or damage and was placed on a peace bond in 2005.

The Highway Traffic Act charges are set out at page 21 of the Report showing that Mr. Abebe was convicted on: November 29, 2013, for green light – fail to proceed; March 28, 2014, improper use turn signals; and April 1, 2018, park/stand on highway – interfere. The June 19, 2019 Update shows one outstanding charge from January 10, 2019 with a court date of August 14, 2019; and five charges laid on April 9, 2019 with a court date of July 18, 2019.

Pages 47 to 49 set out 18 Municipal Code offences, but Mr. Elannan testified that Mr. Abebe was convicted of five offences between June 6, 2013 and December 14, 2014 and received fines ranging from \$3.75 to \$110.00. In the Update dated June 19, 2019, there is one charge outstanding, fail to be civil and well-behaved.

In cross-examination, Mr. Elannan explained that, even though the careless driving charge was withdrawn, MLS still had concerns about the charges and that is why they have been put before the Tribunal. He conceded that MLS had no video evidence of the accident and only had the information that was received from Toronto Police. Regarding the June 19, 2019 update, he indicated that he could not comment on why five charges were laid on April 9, 2019, but based on the information in ICON, they were laid by the same officer.

APPLICANT’S EVIDENCE

Mr. Abebe testified on his own behalf.

He indicated that he has been driving since 1990 and when he was attempting to renew his Vehicle-For-Hire Driver’s Licence on time in 2016, he was asked to submit fingerprints. The

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fingerprints took from four to six months, and by the time they were ready, his licence had expired. Once he submitted his fingerprint record, MLS issued a new Vehicle-For-Hire Driver's Licence to him on November 9, 2016.

Mr. Abebe testified that he was discharged on most of the offences he was charged with or they were withdrawn. He had very few parking tickets and most of the charges were withdrawn. Apart from those, he did not see anything that he was told he did wrong. He stated that the reason he was before the Tribunal was the accident that took place on June 25, 2018, but there is no evidence at all to prove that he was wrong that day. That was why, in his view, the police officer did not appear on the court date.

Mr. Abebe stated that when the accident happened, after he checked his passenger, he called the police and the owner of the cab. Mr. Abebe testified that he was traveling in a southerly direction on a green light and the other driver came from the left on Adelaide on a red light. Mr. Abebe indicated that he could not turn to his right because a truck was coming to his right. He could not turn to his left because there was other traffic coming from the left. The car that he hit went up on the curb and hit the pole and, after he hit the pole, Mr. Abebe hit him. An ambulance came and took his passenger to hospital. When the police came to the accident scene, only he and the other driver were there, but they did not take a statement from him. There was a camera at the intersection. Mr. Abebe testified that he stayed for about 35 minutes. After the owner of the cab came and Mr. Abebe explained what happened, Mr. Abebe was taken by ambulance to the hospital where he was checked.

Mr. Abebe testified that when he was in the hospital, the female police officer came with a ticket and his driver's licence and she put it on his lap and left. That is when he saw that the ticket said careless driving. Mr. Abebe indicated that he did his best to avoid the accident and he was not at fault that day and the careless driving ticket the officer gave him is totally not true. He said that the ticket should have been given to the other person who was an Uber driver who had a telephone in his hand when the accident took place.

He indicated that he has been driving a taxi for the last 28 years with no offence, and his driver's licence is clean except for this charge. He indicated he took different courses for taxi drivers, including defensive driving. After all these years, he has no regrets because he has done nothing wrong. He is now retired. Instead of sitting in the house, Mr. Abebe testified that he would like to continue to drive.

All other parking tickets are common for everybody and can happen to anyone, Mr. Abebe testified. However, as far as driving, he did not do anything wrong.

Regarding the update dated June 19, 2019, he does not understand why the police officer issued five tickets when he was not there on the spot. He indicated that he will contest these charges in court.

Mr. Abebe completed his evidence in chief by indicating that he has never been at fault in a crime or anything related to that.

In cross-examination, Mr. Abebe was referred to Item 3 on page 21 of the Report, where he was convicted of park/stand on highway - interfere on February 15, 2018, and fined \$60. He indicated that a passenger was in the back of his taxi writing a chit and the officer came up

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behind him and wrote him a ticket. He thought he had paid all his tickets, but this fine remains outstanding.

Mr. Abebe clarified that the June 25, 2018 careless driving charge was withdrawn because the officer did not attend court. He indicated that when the cars hit, the airbag went off and scared the passenger. She asked what happened and he told her. He removed the airbag but did not touch the seat belt because the police had to see it when they came. He checked to see if the passenger was okay, and then the police and the ambulance arrived. They were doing what they were supposed to do but, at the same time, he was calling the taxicab owner. The car had to be towed away and he asked the owner to bring a tow truck. The driver was the only occupant of the other car.

Mr. Abebe confirmed his evidence in chief that he had not been convicted of a criminal offence. Referring to page 9 of the Report, he was asked about the charge and conviction in 1996, 1997 and 2004. He indicated that, as far as he knew, every time someone is found guilty, he has to pay a fine and he never had to pay anything. When referred to the two peace bonds that resolved two charges, he answered that maybe he forgot or did not realize.

He indicated that he used to live with his brother, sister and his daughter but he now lives alone. His daughter is 28 years old and has been working as a pharmacist for the past four or five months. He has been divorced for two years and does not have to pay support to his ex-wife because she receives a pension. He is receiving a pension and drives a taxi sometimes. He supports his children and grandchildren in his birth country. He drives a taxi four or five hours a day in retirement to keep himself from being idle. He has his own personal vehicle which he uses to pick up and return the taxi, to go to church, and to get around to see people.

On a question from the Tribunal, Mr. Abebe testified that the training he referred to in his evidence was every four years when he first got his Vehicle-For-Hire Driver's Licence. He used to take a refresher course until they discontinued that type of training. It included CPR, first aid, and defensive driving until they stopped it.

MLS SUBMISSIONS

Ms Elliott submits on behalf of MLS that, pursuant to section 546.4 of the Municipal Code, an applicant for renewal of a licence is entitled to be issued the licence, except where the applicant's conduct affords reasonable grounds for the belief that the applicant will not carry on his or her trade with honesty and integrity; there are reasonable grounds for the belief 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 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.

She argues that the reasonable grounds for belief standard is lower than balance of probabilities and it is certainly lower than the criminal standard of beyond a reasonable doubt. Furthermore, the bylaw contemplates that the conduct of the applicant is what is relevant. This entitles the Tribunal to look behind any charges and convictions to see what actually happened. Using this standard, Ms Elliott submits there is cause for concern with Mr. Abebe's conduct and such

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concern justifies the Tribunal imposing a penalty of six days' suspension of the licence and probation of two years.

Ms Elliott submits that since the last renewal of July 16, 2016, Mr. Abebe has had five traffic charges resulting in one conviction; two municipal charges -- one of these was withdrawn and one remains pending. While these new charges might not seem particularly relevant, they demonstrate a continuation of a pattern of conduct. Pages 21 and 47 indicate that Mr. Abebe has been charged 10 times under the Highway Traffic Act since 2013, and this has resulted in three convictions; 18 times under the Municipal Code since 2013 and those resulted in five convictions. Several charges that were withdrawn were by reason of an officer failing to attend court.

Regarding the circumstances around the careless driving charge laid on June 25, 2018, there was a passenger in the rear of Mr. Abebe's taxicab who was transported to the hospital. The position of MLS is that, while this charge was withdrawn, the conduct remains. Such conduct was sufficient for an officer to lay a charge. Given what is known, Ms Elliott submits that Mr. Abebe requires further supervision to mitigate against any possible risk he may pose, and a two-year probation will assist in achieving this goal.

Ms Elliott submits on behalf of the MLS that the suggested penalty is more than reasonable given the seriousness of the charge on June 25, 2018, the various other charges in the past few years, and that Mr. Abebe has been a taxicab driver for quite some time and has done so largely without incident.

Finally, with respect to the Tribunal's mandate to balance the protection of the public with the need of a licensee to earn a livelihood, Ms Elliott notes that Mr. Abebe is retired, collects a pension, and only drives a few hours per day. While he gave some evidence that he supports children, at least one of these is grown and is a pharmacist. He does not appear to have any financial support obligation to his ex-spouse, and he gave evidence that driving a taxicab is to keep busy during retirement.

APPLICANT'S SUBMISSIONS

Mr. Abebe submits that his driving history tells what kind of driver he is. He does not deny that he was given a parking ticket, but those tickets cannot be brought up to the level of an offence or criminal charge. He believes driving a car, he is mindful of his own safety and the safety of others and that is why he drives defensively.

With regard to the parking ticket, he submits that it is very obvious and common for taxi drivers to be given a ticket when they pick up or drop off passengers. Most of the charges mentioned on page 21 and page 47 were withdrawn.

As any driver, he understands that when he causes an accident against others, he also will get the consequence. He submits that he has been driving for many years and it is very difficult to assume that for all of those years he has been a careless driver. Mr. Abebe argues that the officer charged him with careless driving, and he has to respect this position, but he does not agree. The officer did not take a statement from both sides. The officer could have gathered information from people who were around the accident, but he did not do any information

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gathering. Mr. Abebe submits that he does not believe he made a mistake, because if he drove carelessly, he would have killed the other driver. He indicated he tried very hard to avoid the accident and the car was damaged too. He was driving in the right direction and the other driver made the mistake but nobody investigated his action, even though it would not have been difficult to discover what happened because there is a camera at that intersection. Mr. Abebe submits that the officer went to the hospital, the officer did not talk to him; he just threw the ticket on him. As to why the officer did not show up in the court, Mr. Abebe indicates that was because the officer did not have anything to say. So, Mr. Abebe submits, there is no reason that his driver's licence has to be suspended. He explains that he does not agree with most of the other things that MLS mentioned. Aside from the parking ticket, there is no more clarification he can give. He did not take part in any criminal activity and even though it is written in the Report, nobody explained what happened.

Mr. Abebe submits that he has served the public for many years, and he continues to drive very carefully. He respectfully requests the return of his driver's licence.

DECISION

In arriving at a decision in this matter, the Tribunal has carefully considered all the evidence before it, along with the submissions of MLS and the Applicant. It was also guided by its mandate set out in part in the Toronto Municipal Code § 545-3.B(3)(c):

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

In this case, the evidence is that Mr. Abebe has been a taxicab driver since 1990 with relatively few charges and three minor convictions in November 2013, March 2014 and April 2019 under the Highway Traffic Act and the Municipal Code. This record lends credence to Mr. Abebe's testimony that he has been a safe driver during that time. However, the updated record of charges and convictions date-stamped June 19, 2019 shows seven new charges for offences which took place while driving a taxicab. Mr. Abebe correctly points out that it appears that five of those outstanding charges arise from one traffic incident on April 9, 2019 and they are all before the court.

As MLS submitted, the most serious issue that brings Mr. Abebe before the Tribunal is a careless driving charge on June 25, 2018 which caused them to refuse to renew his Vehicle-For-Hire Driver's licence. The Tribunal only heard direct evidence about this accident from Mr. Abebe. The charge arose from a motor vehicle accident at the corner of Parliament and Adelaide Streets in Toronto. Mr. Abebe was driving a taxicab south on Parliament with a passenger in the back seat when he collided with another vehicle on Adelaide. The Tribunal accepts Mr. Abebe's evidence that the vehicles collided because the other driver was distracted and ended mounting the sidewalk and hitting a pole. Mr. Abebe testified that he was unable to avoid hitting the other vehicle. As a result of the collision, the passenger's airbag discharged, and she was scared. Both his passenger and Mr. Abebe were taken to hospital by ambulance, but there is no evidence before the Tribunal as to the injuries suffered by the passenger. Mr. Abebe was given a ticket for careless driving by a police officer in hospital, but he indicates that none of the officers took a statement from him as to how the accident occurred. The court date

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for the hearing of this charge was February 1, 2019 and it was withdrawn on that date because no officer appeared.

The standard of review for the administrative threshold for denial of a licence is “reasonable grounds to believe” which is not as high an onus as “beyond a reasonable doubt” required for a criminal conviction. We accept Mr. Abebe’s evidence that he has taken defensive driving courses and is usually a safe driver. However, on June 25, 2018, he was not sufficiently defensive in his driving to avoid the accident. While Mr. Abebe was not convicted of careless driving, we accept his evidence that, as a result of the accident that involved the taxicab he was driving, his passenger was scared and had to be taken to hospital by ambulance.

In accordance with the provisions of §546.9.C (2), the Tribunal considers the circumstances surrounding the accident on June 25, 2018 to be sufficient grounds to impose conditions on the licence of Mr. Abebe on the basis that, pursuant to §546.4.A (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.

In making this finding, the Tribunal specifically rejects the MLS ground for refusing to renew Mr. Abebe’s licence on the basis of Screening Criteria (k) of Chapter 546 that he was convicted of careless driving. Mr. Abebe was not convicted of this charge. However, the Tribunal is concerned that the accident took place and that additional charges were laid against Mr. Abebe in the subsequent traffic incident on April 9, 2019.

The Tribunal finds that it is in the public interest to place some conditions on the renewal of Mr. Abebe’s licence. While MLS suggested a six-day suspension of Mr. Abebe’s licence along with a probation of two years, the Tribunal finds six days to be excessive and has determined that a suspension of four days to be appropriate, along with a two-year probation.

Balancing the protection of the public interest with the need of the licensee to make a livelihood, the Tribunal is not satisfied that Mr. Abebe established his need to make a livelihood during the period of suspension. He receives a pension and only drives a taxicab four or five hours a day in retirement to keep himself from being idle. He is divorced and does not pay spousal support. His daughter is 28 years old and has recently started working as a pharmacist. While Mr. Abebe testified that he supports his children and grandchildren in his birth country, the period of suspension should not affect his ability to continue to do so.

The Tribunal’s decision is that Asamenaw Deres Abebe’s Vehicle-For-Hire Driver’s Licence No. D01-4684294 will be renewed, subject to the following conditions:

- (1) All fees, documents and/or any outstanding requirements must be submitted to the satisfaction of Municipal Licensing and Standards within 30 days of the Tribunal hearing, failing which the licence may be cancelled;
- (2) Vehicle-For-Hire Driver’s Licence No. D01-4684294 will be suspended for four (4) days commencing on Friday, June 21, 2019. Mr. Abebe must surrender his photo

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card and license documents to Municipal Licensing and Standards on Friday, June 21, 2019;

- (3) Immediately upon being renewed, Vehicle-For-Hire Driver's Licence No. D01-4684294 will be placed on probation for a period of two (2) years. Mr. Abebe is advised that during the probationary period, MLS may make additional checks of any driving, criminal, and by-law charges and convictions against him, and conduct other investigations, as appropriate, to assess his compliance with the requirements of Chapter 546 of the Municipal Code and other applicable laws; and
- (4) During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions against Mr. Abebe or any other concerns with respect to the conduct of the licensee, those matters and Report No. 7165 and any updating material, may be brought back before the Tribunal for a hearing.

Originally Signed

Verlyn Francis, Panel Chair

Panel Members, Maureen Carter-Whitney and Edgar Montigny concurring

Reference: Minute No. 110/19

Date Signed: **July 29, 2019**