

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: August 22, 2019

Panel: Anu Bakshi, Hearing Panel Chair;
Mary Lee and Melina Laverty, Members

Re: Nasir Inyat (Report No. 7074)
Applicant for a Vehicle-For-Hire Driver's Licence (Application No.
B842295)

Counsel for Municipal Licensing and Standards: Ms Lauren Elliott

Counsel for Applicant: Unrepresented

INTRODUCTION

Mr. Inyat applied for a Vehicle-for-Hire Driver's Licence on June 25, 2018. As part of the application process, Mr. Inyat submitted a police background check from Peel Regional Police dated June 20, 2018 and a three-year driver's record from the Ministry of Transportation dated June 25, 2018. Of particular note, Mr. Inyat was convicted of failing/refusing to provide a breath sample under the Criminal Code on December 2, 2016.

Municipal Licensing and Standards (MLS) denied issuance of a Vehicle-for-Hire Driver's Licence. Mr. Inyat requested a hearing before this Tribunal. A hearing on this matter was held on August 22, 2019.

The issue before the Tribunal was whether Mr. Inyat's Vehicle-For-Hire Driver's Licence should be issued, suspended, or have conditions placed upon it.

After the hearing, the Tribunal gave an oral decision to grant the licence with conditions. These are the written reasons for that decision.

MLS EVIDENCE

Ms Andrea DiMatteo, Supervisor with MLS, was the sole witness for MLS. She explained that MLS was concerned about Mr. Inyat's criminal and driving record when it denied Mr. Inyat's application for the Vehicle-For-Hire Driver's Licence. She was questioned on the documentary evidence found in Report No. 7074 ("the Report" - Exhibit 1).

In her testimony, she highlighted Mr. Inyat's licensing history and his driving record. This included licence suspensions stemming from an incident on January 20, 2015 which lead to a criminal conviction of failing/refusing to provide breath sample ("RBS

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Conviction”). As a result of the RBS Conviction, Mr. Inyat’s driver’s licence and Vehicle-For-Hire licence were suspended.

According to the Crown Brief Synopsis at pages 68-71, on January 20, 2015, a Toronto Police off duty officer witnessed a vehicle travelling at high rate of speed and changing lanes erratically. Called to the scene, an Ontario Provincial Police patrol officer observed the same vehicle driving at speeds up to 140 km/h, changing lanes unsafely and that the vehicle unable to stay in the lane markings. The officer conducted a vehicle stop. Once the vehicle was stopped, the officer observed through the rear window commotion within the vehicle. When the officer got to the vehicle, the officer noted that the driver had his legs in the front seat and he was moving into the back seat. There were two other passengers and three alcohol bottles in the vehicle. Mr. Inyat was arrested for impaired operation of a motor vehicle. Mr. Inyat refused to exit the vehicle and to provide a breath sample. At the scene, Mr. Inyat told the officer that he was not the driver and that he needed his driver’s license because he drives a taxi. One of the passengers told the officer that Mr. Inyat was the driver of the vehicle. Mr. Inyat was charged and convicted of failing/refusing to provide breath sample. His driver’s licence was suspended until June 6, 2017.

The Report indicated that Mr. Inyat was convicted of two highway traffic offences, namely driving a motor vehicle using a handheld device on September 15, 2014 and failing to proceed at a green light on September 12, 2013. In addition, he was convicted of five Toronto Bylaw offences that took place from 2008 to 2014, relating to such infractions as unauthorized parking of a taxicab waiting for hire and refusing to serve first person.

Referring to the Report, Ms DiMatteo highlighted a written complaint dated July 13, 2017 where a customer entered a taxi to leave a music festival. The taxi cab driver said his meter was broken and quoted a flat rate. This taxicab was associated with Mr. Inyat. The customer entered a second taxi, and the second taxi driver also quoted a flat rate. The customer did not provide a statement. The MLS officer noted that there was insufficient evidence.

Ms DiMatteo referred to the Report to outline incidents that took place over seven years ago.

She read an arrest report dated October 25, 2011 that stated that Mr. Inyat and his friends attended a female’s house. Mr. Inyat did not like her boyfriend and smashed two vehicles with steel pipes. Mr. Inyat was charged with Mischief exceed \$5000 and Fail to comply with bail conditions. These charges were withdrawn with a peace bond on January 31, 2012.

The Report contained a Crown Brief Synopsis dated December 31, 2011 at pages 73-74, wherein a young male informed police that Mr. Inyat called him and threatened him. Mr. Inyat was charged with threaten death/bodily harm, which was withdrawn after Mr. Inyat entered into a peace bond on November 6, 2012.

In the Report, there were two documented complaints. One complaint was from 2010 at page 64 where a customer complained that Mr. Inyat was rude and yelled. It was withdrawn because the customer did not return the MLS officer’s call. The second

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complaint was from 2016 where a customer complained that Mr. Inyat's taxi "smelled like weed" and that he was using his cell phone while driving. Upon later inspection, Mr. Inyat's taxi cab smelled fine and the MLS officer cautioned Mr. Inyat regarding cell phone use during driving.

Mr. Inyat did not cross-examine Ms. DiMatteo.

APPLICANT'S EVIDENCE

In testimony, in cross-examination, and in response to questions from the Panel, Mr. Inyat provided information about his driving record and his personal circumstances.

Mr. Inyat was a licensed taxicab driver in the City of Toronto since 2008. He left high school in Grade 11 to work as a taxicab driver. This was his only employment since leaving high school. At the time of the hearing, he was 31 years of age and he lived with his parents. He has a two year old son and a wife who was still in his home country. He was waiting for her to come to Canada.

He stated that taxi driving was the only thing he knew. He had been through a lot since losing his licence. Since his suspended driver's licence, Mr. Inyat attended the Back on Track Program in about 2016, where he learned how alcohol affects a person. He no longer drinks alcohol. Once his driving licence was reinstated in June 2017, his vehicle had an ignition interlock device for 12 months. In January 2019, Mr. Inyat obtained his AZ licence, which allows him to drive large trucks and tractor trailers ("AZ Licence"). To obtain the AZ Licence, he passed a written test and a road test. Since obtaining his AZ Licence, he applied for over ten jobs to drive a truck, but he was told to come back when his driving record was clear. He testified that he works part-time helping out in a truck shop. He is in debt, owing about \$9,000 to credit cards.

RBS Conviction

On January 20, 2015, Mr. Inyat drank heavily with friends. He described himself as "out of his mind". He testified that he was not the driver of the vehicle. He was sitting in the back seat behind the driver, and the real driver jumped into the back seat behind the passenger. He disagreed that the officer saw his legs in the front driver's side. His two friends wrongly told the police that he was the driver. These people were not his friends anymore. He hired a lawyer to contest the charges, but the case dragged on and he did not have money to continue. He decided to plead guilty to the RBS Conviction. He accepted the punishment for refusing to provide a breath sample and lost his taxi and driver's licence.

Mr. Inyat explained that in his late teens and early twenties, he hung out with a bad crowd. Because of his poor choices, he was in the wrong place at the wrong time. He was doing things that he should have not been doing. Mr. Inyat testified that for about the past five years, he had no new charges or convictions. Many of these incidents, MLS was referring to in their evidence were withdrawn and took place in 2011 (over seven years ago) when he was in his early twenties. He testified that these incidents

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should not be held against him for the rest of his future. He is not a threat to public safety.

Mr. Inyat testified that he was at a house party on October 24, 2011. As part of his bail conditions, he should not have been outside of the home. His friend had a crush on a girl. At the house party, Mr. Inyat was drinking. A group fight broke out. He participated, but he was not the main person involved. With others, he was charged with Mischief exceed \$5000. He was also charged with failing to comply with bail conditions. These charges were withdrawn with a peace bond on January 31, 2012 because the victim and the victim's family said they had nothing against him.

Mr. Inyat agreed that he was charged with threaten death/bodily harm in December 2011. The charge was withdrawn after he entered into a peace bond on November 6, 2012. He and his friend got into a heated argument. He admitted that he called his friend and they exchanged words, but he disagreed that he actually threatened to kill him. The charge was withdrawn and they no longer spoke to each other after that.

Mr. Inyat explained in 2017, he got a call from MLS referring to a customer complaint. He told MLS officer that he was not driving a taxi anymore, and there was some mistake that his name was associated with the taxi. He never got a call back from anyone after that call. He did not remember any of the other customer complaints.

SUBMISSIONS

Ms. Elliot submitted that the Applicant should not be issued a licence as his conduct was a violation of Toronto Municipal Code Chapter 545 sections 545-4. The January 20, 2015 incident was serious and dangerous. During that incident, police officers observed the vehicle at a high speed and weaving in and out of traffic on a highway. It was not credible or open to Mr. Inyat to contend that he was not the driver at the time. The RBS Conviction assumed that he was operating the motor vehicle.

She argued that in 2011, Mr. Inyat participated in damaging two vehicles and uttered threats. This was consistent with the customer complaints received in the past of his behavior such as in 2010 for yelling at a customer. She contended that Mr. Inyat has difficulty managing his anger.

In her submissions, Ms. Elliot indicated that Mr. Inyat did not take responsibility for his actions at any point. For example, he indicated that he was not the driver, despite the RBS Conviction. He disagreed that he uttered threats and blamed alcohol consumption for his actions, instead of taking full responsibility.

Given the seriousness of the convictions and Mr. Inyat's lack of ownership for his actions, Mr. Inyat should not hold a Vehicle-for-Hire Driver's licence as there are reasonable grounds to believe that he would not conduct himself in accordance with the law, and with honesty and integrity.

Mr. Inyat told the Tribunal that these charges and problems happened a long time ago. At that time, he was living a wrong lifestyle and did not have good friends. He matured with time. He is now 31 years old with a wife and a child.

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He did not admit to driving the vehicle in the January 20, 2015 incident because he was not going to admit to something he did not do. It was true that he refused to provide a breath sample. He found it embarrassing to hear that he was seen to be a threat to public safety. He made some mistakes in the past, but some of those are mistakes from over 7 years ago. He took courses to be better, and he would be open to taking more courses, if necessary. He learned his lesson, and needs his licence.

He submitted that there have been no new charges since 2015. He has no other way to make money except to drive a taxi. He is willing ~~to accept~~ to take courses and accept any conditions the tribunal wishes to place on his licence.

DECISION

Section 546-4 of the Toronto Municipal Code sets out the reasons for denying a licence, including the following:

- a. The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or
- b. There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
- c. The conduct of the applicant or other circumstances afford reasonable grounds for belief 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, the health or safety of other members of the public.

With respect to Mr. Inyat's honesty or integrity, the Tribunal did not have reasonable grounds to believe that Mr. Inyat had breached the Code. Mr. Inyat testified in an overall candid manner. It was understandable that he did not remember a customer complaint from 2010. The Panel accepted his evidence that he was not driving a taxi in 2017 and the registered complaint had nothing to do with him.

Mr. Inyat admitted to drinking heavily in the past and that he was hanging out with the wrong crowd. With respect to the January 20, 2015 incident, Mr. Inyat agreed that he failed to provide a breath sample and that the RBS Conviction was a serious matter. Although the Panel did have some concerns that his testimony with respect to the January 20, 2015 incident may not be reliable, the Panel was persuaded that Mr. Inyat was credible in that he told the Tribunal that he was "completely out of his mind" at the time due to his alcohol consumption. Overall, he testified to the incident the best that he could from his recollection of events. Losing his driver's and taxi licence as a result of the RBS Conviction served as a wake-up call for Mr. Inyat.

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The mandate of this Tribunal is set out in part in the Toronto Municipal Code, § 546-8 (A)(3)(c). The Tribunal must balance the protection of the public interest with the need for licensees to make a livelihood.

Mr. Inyat's alcohol consumption and driving history raise serious public safety concerns. The Panel was persuaded by Mr. Inyat's testimony that he learned his lesson and matured. Since the last incident in 2015 (over 4 years ago), Mr. Inyat completed the Back on Track program and the Ministry requirements to obtain his driving licence. He completed the written and driving test to obtain his AZ Licence. He said that he no longer drinks alcohol. He was open to taking any other courses to obtain his licence. His testimony and his actions since that BAC Conviction convinced the Panel that Mr. Inyat would not breach the law or endanger public safety in the future if granted a licence. There were no highway traffic charges or criminal charges since January 2015. The Tribunal considered the charges from 2011 and 2012, but they occurred over seven years ago, and we were not persuaded that there was evidence of a continuing pattern.

The Panel considered the submissions of Ms Elliot regarding balancing the protection of the public interest with the need for Mr. Inyat to make a livelihood. Mr. Inyat established his need to make a living. He left school in Grade 11 to work as taxicab driver. It was basically the only job he had since 2008 except working at a garage. He had to financially support his wife and a child. He was in debt and unable to secure a job driving a truck (despite obtaining his AZ Licence) because of his driving record.

The Panel noted that Mr. Inyat's record was clear for more than four years. He matured with the responsibility of providing for his wife and child. He took driving courses to rehabilitate himself such as the Back on Track Program and the written and road side test to obtain his AZ Licence. In these circumstances, the Panel determined that Mr. Inyat's need to earn a livelihood outweighed any perceived risk to the public. As such, the application for a Vehicle-for-Hire Driver's Licence should be granted.

We recognized that while Mr. Inyat seems to be on the right track, there are still risks that he might make the same mistakes again. In our view, the public interest would be protected with the imposition of a two-year probationary period.

The Tribunal ordered the Vehicle-For-Hire Driver's Licence to be issued, 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 application may be cancelled;
- (2) Immediately upon being issued, Vehicle-For-Hire Driver's Licence will be placed on probation for a period of two (2) years. Mr. Inyat is advised that during the probationary period, Municipal Licensing and Standards may make additional checks of any driving, criminal, and by-law charges and convictions against Mr. Inyat and conduct other investigations, as appropriate, to assess Mr. Inyat's compliance with the requirements of Chapter 546 of the Municipal Code and other applicable laws; and

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- (3) During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions against Mr. Inyat or any other concerns with respect to the conduct of the licensee, those matters and Report No. 7074 and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Anu Bakshi, Hearing Panel Chair
Panel Members, Mary Lee and Melina Lavery concurring

Reference: Minute No. 147/19

Date Signed: October 11, 2019