

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: June 9, 2020 (Teleconference Hearing)

Panel: Daphne Simon, Panel Chair;
Anu Bakshi and Mary Lee, Members

Re: D A A B Ventures Inc. (Report No. 7334)
o/a Chesswood Transmission Driveline Specialists
David A A Brathwaite, President
Applicant for the Renewal of Public Garage Licence
No. B68-4713036

Counsel for Municipal Licensing and Standards: Graham Thomson

Counsel for Applicant: Unrepresented

INTRODUCTION

Mr. Brathwaite applied for a renewal of a Public Garage Licence. In July 2019, Municipal, Licensing and Standards (“MLS”) denied his renewal based on a 2018 charge of Criminal Harassment.

Mr. Brathwaite submitted a request for a hearing received by MLS in August 2019.

This matter was before the Tribunal on March 12, 2020 and an adjournment was granted. The hearing took place on June 9, 2020. Due to physical distancing measures caused by COVID-19, the hearing took place electronically via teleconference.

The Tribunal approved Mr. Brathwaite’s application for a renewal of his Public Garage Licence, without conditions.

MLS's EVIDENCE

MLS’s evidence was presented through Jamil Elannan, Supervisor, MLS. The relevant evidence presented is as follows:

Mr. Elannan presented MLS Report 7334 (‘Report’ marked as Exhibit 1). He oversaw the preparation of the report and could attest to its contents. Mr. Elannan stated that Mr. Brathwaite had a Public Garage Licence with the City of Toronto since 1994. During the period of 2009-2012, Mr. Brathwaite also had several Tow Truck Driver's Licences.

When Mr. Brathwaite was renewing his licence in July 2019 MLS became aware of the Criminal Harassment charge. MLS denied his renewal on that basis and issued a denial letter.

The Report included information taken from police records received by MLS and information obtained from the provincial ICON database system. Mr. Elannan testified that the Criminal

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Harassment charge referred to an incident that allegedly occurred with an ex-girlfriend of Mr. Brathwaite between August 23 and September 23, 2018.

Mr. Elannan referred to the police report which provided some details of the incident that lead to the charge. A synopsis of the relevant details, taken from the report, follows:

In September 2018, the complainant, an ex-girlfriend of Mr. Brathwaite, reported to police that Mr. Brathwaite was harassing her and had put a GPS on her black Audi SUV to monitor her whereabouts. They had been in a relationship for about two years and had recently broken up one month earlier. Mr. Brathwaite is 26 years older than the complainant. He met her through her parents who are family friends.

Two weeks after the breakup, the complainant alleged that Mr. Brathwaite followed her to a soccer game. She also alleged that when she went to his garage she saw on his computer a map with details of her whereabouts and a website on his screen that is linked to a GPS tracking device. She alleges that Mr. Brathwaite told her he paid three guys to follow her.

The police could not find any evidence of a GPS or tracking device on the SUV. The complainant did not provide a video statement, at the time. She stated that there was no physical violence or threats during their relationship. The incident was not deemed high-risk, as noted on the report. The Criminal Harassment charge was ultimately stayed on July 23, 2019.

Mr. Elannan testified that MLS was unable to determine the reason why the criminal harassment charge was stayed. No transcripts had been ordered. The province of Ontario went into lock-down on March 13, 2020 due to the COVID-19 pandemic and Mr. Elannan testified that no further efforts to order the transcripts were made.

Mr. Elannan noted that Mr. Brathwaite had several other criminal charges from 2002-2004, all of which were either withdrawn or stayed.

Mr. Elannan admitted that he did not have details of the Audi SUV's VIN number (redacted in the report); licence plate number or information that it was black. He had no independent knowledge about who owned the SUV mentioned in the police report. He stated he was relying on the information in the police report.

APPLICANT'S EVIDENCE

Mr. Brathwaite testified on his own behalf. His relevant evidence is as follows:

Mr. Brathwaite testified that he and the complainant were friends. He was never in an intimate relationship with her. He has known her since she was young; their families knew each other. He is unmarried and has two adult sons who live with their mother. One of his sons works with him in the garage.

Mr. Brathwaite disputes much the contents of the police report. He stated that complainant came to his garage frequently since they were friends. On August 27, she left a Volkswagen Passat at his garage as she needed help with her car. He stated that no work was done on

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that car and he was in the process of helping her find a new one. That car went to the scrap yard. He loaned her a car to drive. He also disputes that she owned a black SUV, as was referenced in the police report.

Three weeks before the complainant went to the police, he told her he didn't want to talk to her anymore. He told her he can't help her anymore and that he no longer wanted to be friends.

On September 23, 2018 the complainant filed a complaint with police. He disputes that he placed a GPS on her car or did something to her phone, as was alleged. He is not 'tech savvy' and wouldn't know how to do such a thing. He stated his sons help him when he needs to do something with the computer. He also disputes that he followed her to a soccer game on September 6th. He stated he went to the soccer game on his motorcycle to meet up with his friends.

Mr. Brathwaite also disputes that the complainant drove or owned a black Audi SUV, as was stated in the police report. He produced car insurance records to show that he owned an Audi with proof of VIN number; not black colour. He states that the police report was wrong.

On September 14, 2018 he had a break-in at his garage. He reported it to the police. His work tools, cash, a motorcycle and his passport were stolen. Mr. Brathwaite does not know who the perpetrator was. He stated that he thought the complainant might be involved as he noticed her gloves left on his desk, which had not been there before. His view is that she filed the complaint to get back on him.

In April 2019, his lawyer advised him that the prosecutor was going to stay the criminal charge and that it could be brought back within a year. To date, the matter has not been brought back and one year has now passed.

Mr. Brathwaite stated that he has never had a complaint against him in the 30 plus years he's been working at the garage. He said that his garage is his 'first love'. He loves what he does and has been in this business since he was 19 years old. He's not in it for the money. He loves helping people and he does good quality work. He explained there are always going to be customers that are unhappy with his prices but that something can always be worked out.

SUBMISSIONS

In opening submissions, MLS's counsel was not able to provide the Tribunal with its position on what it was seeking to do with Mr. Brathwaite's licence. Mr. Thomson stated that based on Mr. Brathwaite's oral evidence, it would be better able to determine whether it was seeking a denial of the licence or approval with conditions. This made it difficult for the panel to understand MLS's 'theory of the case' as the hearing proceeded.

In closing submissions, MLS submitted that it was recommending that the licence be renewed with conditions. The conditions included 2 years of probation, submitting a judicial matters check upon each yearly renewal and the ability to bring the matter back before the Tribunal should any new charges or convictions arise.

MLS submitted that the issue of the ownership of the SUV doesn't address the serious allegations in the criminal harassment charge. If the allegations are true, Mr. Brathwaite poses a risk to the public. The conditions MLS is requesting, while allowing his licence to be renewed,

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would allow some monitoring of Mr. Brathwaite and provide reassurance in protecting the public.

In closing submissions, Mr. Brathwaite said that MLS did not prove the case against him. He did nothing wrong and they have no evidence to show otherwise. The evidence the police had was not solid enough to go to court and that is why the matter was stayed.

He claimed that the dispute between he and the complainant was a personal issue that had nothing to do with his business. He disagreed with any conditions, such as probation, to be placed on his licence. He has no charges against him currently. He said he would like to be left alone now to run his business.

REASONS FOR DECISION

Issue: Does the Criminal Harassment charge and related allegations against Mr. Brathwaite provide reasonable grounds to believe that he will not carry on his business in accordance with the law; with integrity and honesty or be a risk to public safety?

Decision: There are no reasonable grounds to believe that Mr. Brathwaite will not carry on his business in accordance with the law; with integrity and honesty or be a risk to public safety if his Public Garage Licence is renewed.

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

(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 Municipal Code requires that MLS demonstrate that there are reasonable grounds to believe that Mr. Brathwaite's conduct will be a risk to public safety if allowed a renewal of his Public Garage Licence. If MLS cannot demonstrate this, Mr. Brathwaite is entitled to a renewal of his licence.

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The Municipal Code requires that MLS must demonstrate that there are reasonable grounds to believe that Mr. Brathwaite's conduct will not carry on his business in accordance with the law or with honesty and integrity if allowed a renewal of his Public Garage Licence. If MLS cannot demonstrate this, Mr. Brathwaite is entitled to a renewal of his licence.

In presenting evidence of Mr. Brathwaite's conduct, MLS relied on the details in the police report leading up to the Criminal Harassment charge. This evidence was presented in order to determine how Mr. Brathwaite may reasonably act in the future.

Mr. Brathwaite disputed much of what was written in the police report. And there were no independent witnesses such as a police officer or the complainant to support the report. Moreover, Mr. Brathwaite never went to court for this charge and MLS was unable to explain why the matter was stayed. Mr. Brathwaite's reason on why it was stayed is that the evidence in the police report was not solid.

Mr. Brathwaite's explanation of the details in the report were sound and consistent. For example, he stated that he was not 'tech savvy' and need his sons to help him with anything related to the computer. How then could he figure out how to use a GPS tracking device through a website? Or that he had his own plans to meet friends at a soccer game and it was a mere coincidence that the complainant was there at the same. He also stated that she dropped off a Passat Volkswagen to be repaired which directly contradicts the police report claiming that she drove an Audi SUV. Finally, his account of the break-in and suspicion that she was involved matches his account that the criminal harassment complaint was retribution.

The Tribunal preferred Mr. Brathwaite's account over the evidence contained in the police report which could not be supported or verified by another witness and which contradicted much of Mr. Brathwaite's oral evidence.

Mr. Brathwaite loves and is dedicated to his work. He has trained his son to work with him in his business. He stated that he's never had any complaints from customers nor does he have any outstanding charges against him. The Tribunal found him to be compelling and forthright in his evidence.

In the Tribunal's view, there was no evidence to support MLS's position to place conditions on Mr. Brathwaite's licence.

We therefore allow Mr. Brathwaite's application for the renewal of his Public Garage Licence, without conditions.

Originally Signed

Daphne Simon, Panel Chair
Panel Members: Anu Bakshi and Mary Lee, concurring

Reference: Minute No. 49/20

Date Signed: June 25, 2020