

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: May 28, 2020 (Teleconference Hearing)

Panel: Mary Lee, Panel Chair;
Edgar-André Montigny and Melina Laverty, Members

Re: Joseph Boamah (Report No. 7322)
Holder of Vehicle-For-Hire Driver's Licence No. D05-3949928

Counsel for Municipal Licensing and Standards: Graham Thomson

Counsel for Applicant: Unrepresented

SUMMARY

On July 17, 2019, Municipal Licensing and Standards (MLS) sent Mr. Boamah a letter advising him that they received information that his Ontario's driver licence status is suspended. As a result, his Vehicle-For-Hire Driver's Licence was suspended.

Subsequently, on November 27, 2019, MLS sent Mr. Boamah a second letter advising him that this letter replaces the letter of July 17, 2019. The letter advises Mr. Boamah that his licence is going to be the subject of a review by the Toronto Licensing Tribunal (TLT or the Tribunal). A review of Mr. Boamah's file discloses a conviction under the Criminal Code of Canada (CCC), that poses a concern to MLS and places him in breach of the licensing screening criteria.

After hearing the evidence and submissions of the parties, the Tribunal ordered that Mr. Boamah's Vehicle-For-Hire Driver's Licence be suspended and then have conditions imposed on his licence.

INTRODUCTION

1. Given Mr. Boamah's conviction under the CCC, MLS requested that Mr. Boamah's licence be revoked or have conditions imposed on it.

ISSUE

2. The issue before the Tribunal is whether Mr. Boamah's conduct, as evidenced by his record of charges and/or convictions under the CCC, Highway Traffic Act (HTA) and the Compulsory Automobile Insurance Act (CAIA), provides reasonable grounds to believe that:
 - i. Mr. Boamah will not operate a Vehicle-For-Hire in accordance with law, and with integrity and honesty; or
 - ii. Mr. Boamah's operation of a Vehicle-For-Hire has resulted or will result in a breach of the law; or
 - iii. Mr. Boamah's operation of a Vehicle-For-Hire has infringed or would infringe the rights of other members of the public, or has endangered or would endanger public health or safety.

CITY OF TORONTO'S EVIDENCE

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Ms Andrea Di Matteo, Supervisor MLS, was the only witness for the City. Ms Di Matteo was affirmed and testified regarding Mr. Boamah's charges and convictions as set out in MLS Report No. 7322 and the update to the report dated May 26, 2020 (Exhibit 1). She testified that:

3. Mr. Boamah has held several licences over the years going as far back as 1993. Pages 4 to 7 of the report shows the history of licences held. Mr. Boamah currently has a valid Vehicle-for-Hire Driver's Licence that was issued in April 2009 and is the subject of the hearing.
4. Page 8 of the report shows a 3-year driver's record that reflects Mr. Boamah's driver's licence was suspended on July 17, 2019 until October 12, 2019 (ADLS or Administrative Driver's Licence Suspension). She stated that this is an automatic suspension when a driver has over 80 mgs of alcohol in their blood system.
5. Page 9 of the report is a copy of MLS letter dated July 17, 2019 advising Mr. Boamah that he must surrender his Vehicle-For-Hire documents due to his driver's licence suspension. Mr. Boamah surrendered all documents to MLS on July 23, 2019. Ms Di Matteo stated that Mr. Boamah's Vehicle-For-Hire Driver's Licence was returned when his driver's licence was reinstated on October 31, 2019.
6. Page 39 of the report is a copy of MLS letter dated November 27, 2019 to Mr. Boamah advising him that it replaces the letter of July 17, 2019 when they became aware of his conviction under the CCC.
7. Page 12 of the report is a chart that summarizes the charges and conviction under the CCC. The first line of the report shows a charge for impaired operation over 80 mgs on July 14, 2019 and a conviction and \$2,000 fine on July 25, 2019.
8. Lines 2 and 3 of the chart show charges of ability impaired and operate motor vehicle over 80 mgs on January 29, 2006, which were withdrawn on March 2, 2006.
9. The chart on Page 12 of the report also sets out charges and convictions under the HTA and CAIA. There are five charges and four convictions under the HTA and one charge under the CAIA, which was withdrawn.
10. The update to the report dated May 26, 2020 shows an updated chart of charges and convictions. The only change from the original chart, which had an outstanding fine of \$2,000 shows that it is now paid.
11. Page 31 of the report shows a chart of five municipal code bylaw charges and four convictions.
12. Pages 41 to 43 of the report is a copy of the arrest report for the July 14, 2019 charge and conviction of impaired over 80 mgs, showing the sentence on July 25, 2019, which included a \$2,000 fine and a 12-month prohibition from driving. In summary, it states that the Mr. Boamah was driving in Brampton on Sunday at approximately 7:29 p.m. and swerving within his lane. Police attempted to pull him over but he did not pull over until the police used the air horn and Mr. Boamah stopped in the driveway of his home. His pupils appeared dilated and blood shot. He failed the two breath tests (186 mgs in 100 ml of blood and 173 mgs and 100 ml of blood).

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13. Pages 46 to 51 of the report is a copy of the arrest report from the incident that took place on January 29, 2006 at 12:33 a.m. Mr. Boamah was charged with impaired operation of vehicle and over 80 mgs. Ms Di Matteo stated that she did not know why the charges were withdrawn. In summary, it reads that Mr. Boamah was observed weaving in and out of lanes and making very wide turns before being pulled over. The police officer noticed the odour of alcohol, blood shot eyes and that Mr. Boamah appeared confused. He was placed under arrest for impaired operation of vehicle. He was transported to nearby police station and agreed to provide two breath samples (238 mgs/100 ml of blood; 220 mgs/100 ml of blood).
14. The May 26, 2020 update to the report includes an updated driver's abstract that shows the Mr. Boamah had another suspension put in place as of July 25, 2019 and then reinstated. It also shows a mandatory ignition interlock requirement. Ms Di Matteo stated that the device is installed for one year when someone is convicted of impaired operation.
15. Page 3 to 5 of the May 26, 2020 update shows that Mr. Boamah paid the \$2,000 fine.
16. In cross-examination, Mr. Boamah had one question about his licence. MLS explained that prior to 2016, he was required to have a taxicab and limousine licence. In 2016, one licence was cancelled and his Vehicle-For-Hire Driver's Licence permits him to drive both a limousine and a taxicab.

APPLICANT'S EVIDENCE

In his oral testimony during cross-examination, and in response to questions from the Panel, Mr. Boamah provided information about his record of charges and convictions, and personal circumstances, including the following:

17. Mr. Boamah described the events that took place on July 14, 2019. He testified that he went to church and to a barbeque afterwards. He knew he was going to drive and only drank a couple of beers. He then drank coke because he wanted to stay awhile. He testified that he didn't know that someone put hard liquor in his coke until he was driving home. He stated that there were pylons near his house on the road and he was trying to avoid hitting the pylons. When he turned into his driveway, he saw that the police were following him.
18. When he got out of the car, he gave them his licence. The police asked him why his eyes were red. He told them that his eyes are always red. The police stated that it looked like he was drinking. He told the police that he only had 2 beers and they told him his blood alcohol was over 80 mgs. He knows driving is his job and is normally very careful. The police brought him to the police station. His wife also came and then they went home.
19. Mr. Boamah stated again that he was very careful but someone did something to his drink. He stated that he is suffering a lot and needs to get back on his feet. He has to pay his mortgage and has four children.
20. He further added that it has been a year and he is not denying that it happened. He knows that he has to be careful and that is why he quit drinking completely.

MLS Cross-examination:

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21. Mr. Boamah stated that he is 63 years old. He is married. His wife is 55 years old. She has a full-time job in accounts/payroll for a human resources company. She earns \$23 an hour.
22. He has four daughters living at home. Their ages are 25, 23, 20 and 18. His 18 year-old daughter is disabled. She has no fingers on her right hand and her speech is impaired due to issues with her teeth. She has frequent visits to The Hospital for Sick Children.
23. His 25-year-old daughter works part-time at Fortinos. His 23-year-old daughter is in school but at home at this time due to COVID-19. She works part-time at a nursing home. His 20-year-old daughter works on call at McDonalds.
24. Mr. Boamah stated that he stopped driving in July 2019 when he was arrested. Before his arrest, he was driving six days a week, 10 to 12 hours a day.
25. He currently drives his personal car. He stated that he does have an ignition interlock installed on the car. Every time he wants to drive, he has to blow into a device before it starts. The device will detect if he drank alcohol.
26. Mr. Boamah attended a one day "Back on Track" program on September 25, 2019 and that is when the ignition interlock was installed. The device is due to come off his personal vehicle on August 20, 2020. He continued to state that he spent a lot of money and he promised himself that he would not drink anymore. He continued to state that he is old now and it will be better for his health.

CITY OF TORONTO'S SUBMISSIONS

In his closing submissions, Mr. Thomson, on behalf of MLS, submitted that:

27. The Tribunal should revoke Mr. Boamah's Vehicle-For-Hire Driver's Licence or impose conditions on it, as there are reasonable grounds to believe that he will not operate his business in accordance with the law; that the carrying on of his business has resulted, or will result, in a breach of this chapter or any other law; and that Mr. Boamah's operation of his business has infringed or would infringe the rights of the public, and has or would endanger the health and safety of public.
28. His recent conviction under the CCC meets that test. There is also evidence of other convictions under the HTA and municipal code. He was issued a fine of \$2,000 and there was the installation of a 12-month ignition interlock device.
29. There is evidence in the police report that shows that he was swerving and swiping other vehicles. Mr. Boamah stated that he was trying to avoid pylons from road construction but there is nothing in the police report about the pylons. He failed the roadside breath test and two other blood alcohol tests, whose results were twice over the legal limit.
30. This was not Mr. Boamah's first time. Back in January 2006, he was caught driving and swerving. He was confused and couldn't find his documents. While his eyes may always be red, there were blood alcohol tests that showed Mr. Boamah's blood alcohol

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content was almost three times the legal limit. The charges were withdrawn.

31. The two incidents, while spread apart, shows a clear pattern. MLS has demonstrated that there is a concern for safety to public. The recent conviction, Mr. Boamah stated that he was serious about driving and knew that he was going to drive the next day. He could have made alternative plans but he chose to drive home.
32. He received a serious sentence including a \$2,000 fine, suspension, one day counseling program and an ignition interlock device installed on his personal vehicle. MLS is not satisfied that the public would be protected. There is no protection on a taxicab. It is difficult to justify allowing him to drive a taxicab if his personal vehicle has an ignition interlock device.
33. While he has a clean record since the conviction, he has not been driving and even when he does drive he has to take a breathalyzer to start his personal car.
34. The risk to public safety is too high.
35. MLS counsel concluded by submitting that Mr. Boamah has four children whom all live at home. All are adults and one child with a disability. Some of his children work part-time. His wife is currently working and resources are available for the family to provide for themselves.
36. Mr. Boamah's licence should be revoked.

APPLICANT'S SUBMISSIONS

Mr. Boamah stated the following:

37. I have committed this offence and there is nothing I can do. I promised my wife and children that this will never happen again.
38. I am not going to drink again for my health and the public. I know my job and I have to be careful.
39. I never intended to do it. My drink was spiked. I know I have to be careful because I was in trouble already in the past.
40. Help me and I promise it will never happen again.

ANALYSIS

41. Section 546-4 A of the Toronto Municipal Code sets out the grounds for denying renewal of a licence. Having weighed the evidence, the Tribunal is satisfied that those grounds have not been met, and there are not reasonable grounds to believe that Mr. Boamah will not operate his business in accordance with the law; that the carrying on of his business has resulted, or will result, in a breach of this chapter or any other law; and that Mr. Boamah's operation of his business has infringed or would infringe the rights of the public, and has or would endanger the health and safety of public.

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42. That said, the Hearing Panel does have concerns about Mr. Boamah's most recent conviction of impaired over 80 mgs and his ability to follow the law and drive safely, but not enough to justify revoking his licence. The Tribunal may impose conditions it considers appropriate. Any concerns we have about Mr. Boamah's ability to follow the law and drive safely, could be satisfied with conditions imposed on his taxicab licence.
43. The Hearing Panel found Mr. Boamah's testimony straightforward and credible. He takes full accountability for his actions and we accept his submission that he has paid the consequences for his most recent conviction of impaired driving over 80 mgs. Mr. Boamah has paid the \$2,000 fine, he has attended a one day "Back on Track" program and he currently has an ignition interlock device on his personal vehicle up until August 20, 2020.
44. We disagreed with MLS submission that the previous charge of impaired operation of vehicle back in 2006, which was ultimately withdrawn, and his most recent conviction of impaired over 80 mgs constitute a pattern of behaviour. The two incidents are 13 years apart. The Tribunal also noted that both incidents took place in Mr. Boamah's personal vehicle and not while he was driving his taxicab. In the second incident, Mr. Boamah also had no passengers in the vehicle. Furthermore, the Tribunal noted that aside from these two charges, Mr. Boamah has no other serious driving charges, and very few charges and convictions under the HTA, CAIA, or the bylaw in a long history of driving a taxi, approximately six days a week and 10-12 hours a day.
45. The Hearing Panel was persuaded by Mr. Boamah's testimony that he takes his job as a taxicab driver very seriously. He testified that he has promised his wife and family that he will never drink again. After the first incident, Mr. Boamah did not decide to quit drinking alcohol again. The commitment to never drink again following the second incident, gives the Hearing Panel confidence that he will live up to his commitment. Mr. Boamah recognizes the mistakes he has made and the impact they have had on his life.
46. Under s. 546-9 (C)(2), the Tribunal may impose such conditions upon a licence as it considers appropriate and as are authorized by law. Although Mr. Boamah is making amends for the mistakes he has made and taking steps in the right direction, the Hearing Panel wants to be certain that Mr. Boamah will never drink and drive again – either in his personal vehicle or a taxicab. We also note that an ignition interlock device remains on his personal vehicle until August 20, 2020. To alleviate the Tribunal's concerns, reduce the risk and protect the public, it is prudent to impose conditions on his licence.
47. In considering whether to renew, grant or revoke a licence, and whether to do so with or without conditions, the Tribunal must also balance the protection of the public interest with the need of the applicant or licensee to earn a living, as set out in section 546-8(A)(3)(c) of the Toronto Municipal Code.
48. Overall, the Tribunal concluded that Mr. Boamah's livelihood needs further tipped the balance in this case. Mr. Boamah lives at home with his wife and four adult children. His youngest daughter has a disability and requires ongoing medical attention. While his wife works full-time, his adult children only work on a part-time basis. Mr. Boamah has not worked since the incident occurred back in July 2019. His only occupation for the past 27 years has been driving a limousine or taxicab. He has only ever did factory work in the past and feels he would be unable to find or do such a job at his age.

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DECISION

For the reasons set out above:

Mr. Boamah's Vehicle-For-Hire Driver's Licence will continue to be suspended until August 21, 2020. At that time, he must submit the required documentation to MLS to show that the ignition interlock device has been removed from his personal vehicle. Once this condition has been satisfied, his licence is subject to the following conditions:

- 1) All fees, documents and/or any outstanding requirements must be submitted to the satisfaction of MLS within 30 days, failing which the licence may be cancelled.
- 2) Immediately upon being issued, the licence will be placed on probation for a period of three (3) years to commence on the date after he has satisfied the suspension period. Mr. Boamah is advised that during the probationary period, MLS may make additional checks of any driving, criminal, and by-law charges and convictions against Mr. Boamah, and conduct other investigations as appropriate to assess Mr. Boamah's compliance with the requirements of Chapter 546 of the Municipal Code and other applicable laws.
- 3) During the probationary period, if MLS has concerns with any new charges or convictions against Mr. Boamah, or any other concerns with respect to the conduct of the licensee, those matters and Report No. 7322, and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Mary Lee, Chair

Panel Members: Melina Laverty and Edgar-André Montigny concurring

Reference: Minute No. 46/20

Date Signed: June 12, 2020