

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: July 14, 2020 (Teleconference Hearing)
Panel: Melina Laverty, Panel Chair;
Mary Lee and Daphne Simon, Members
Re: Mesfin Beyene Tereda (Report No. 7354)
Holder of Vehicle-For-Hire Driver's Licence No. D01-3616630

Counsel for Municipal Licensing and Standards: Graham Thomson
Counsel for Licensee: Unrepresented

INTRODUCTION

Municipal Licensing and Standards (MLS) issued a Vehicle-For-Hire Driver's Licence No. D01-3616630 to Mr. Tereda on January 10, 2007. On January 10, 2019, Mr. Tereda's licence was due to expire; however, a renewal payment was submitted on January 9, 2019, and thus his licence continues to be valid.

On November 18, 2018, MLS became aware that Mr. Tereda had been charged with sexual assault under section 271 of the Criminal Code of Canada (CCC). On August 2, 2019, the Toronto Police Services (TPS) provided MLS with information about the charge.

On May 21, 2020, MLS sent Mr. Tereda a letter advising that his licence would be subject to a hearing before the Toronto Licensing Tribunal (the Tribunal or TLT).

A hearing was scheduled on June 18, 2020. Mr. Tereda failed to attend. Tribunal staff attempted to contact Mr. Tereda at the phone number on file but were unable to reach him. Mr. Tereda did not contact the Tribunal. The matter was adjourned to July 14, 2020.

Mr. Tereda failed to attend today's hearing. Tribunal staff advised that on June 29, the notice of hearing was sent to Mr. Tereda's address on file by regular mail. As a licensee Mr. Tereda is obliged to tell MLS if he changes his address. The matter was held down while staff attempted to contact Mr. Tereda by telephone. TLT staff advised that Mr. Tereda could not be reached and had not tried to contact the Tribunal. Similarly, MLS counsel and staff have had no contact with Mr. Tereda.

Rule 17 of the Tribunal's Rules of Procedure allows for a hearing to proceed if the licensee does not attend but has been properly notified of the hearing time and place. A similar provision is set out in section 7 of the *Statutory Powers Procedure Act* (SPPA).

The Tribunal was satisfied that Mr. Tereda had been properly served with the notice of the hearing and decided to proceed with the hearing in his absence.

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ISSUE

The issue before the Tribunal was whether Mr. Tereda's licence should be suspended on an interim basis or have conditions placed on it until the criminal charges against him have been resolved.

CITY'S EVIDENCE

The City did not call any witnesses. MLS Report No. 7145, dated May 21, 2020 (29 pages) and a one-page three-year driver's abstract, obtained on June 19, 2020, was entered as Exhibit 1. Mr. Thomson identified the following portions of the Exhibit 1:

- Synopsis for a guilty plea (pages 8-9);
- Promise to Appear (Form 10) and Undertaking given to a Peace Officer (Form 11.1), which set out the conditions of Mr. Tereda's release, including that he "not be in a motor vehicle with fare paying passengers designated as cognitive" and that January 11, 2019 is the first court appearance (pages 10-12);
- MLS Chart showing that there is an outstanding bench warrant for Mr. Tereda's arrest for failure to attend court with respect to the 2018 sexual assault charge (page 16);
- History of the criminal proceedings, which indicate the matter was adjourned on January 11, 2019, and that on February 7, 2019 a bench warrant was first issued. After which, a series of bench warrants have been issued for Mr. Tereda's failure to attend, and one of these is outstanding (pages 17-19).

CITY'S SUBMISSIONS

Mr. Thomson on behalf of MLS, submitted that:

The Tribunal should adjourn the matter until after the disposition of the criminal charges against Mr. Tereda are concluded; and suspend Mr. Tereda's licence, on an interim basis, until the Tribunal can hold a full hearing on the merits.

The Tribunal does not need to determine if Mr. Tereda has committed the offence of sexual assault but rather if the allegations themselves raise reasonable and probable grounds to believe that at least one of the grounds in section 546-4 of the Code have been met.

In considering whether to impose a suspension, the Tribunal must have regard to its mandate set out in 546-8 of the Code, and in particular the need to balance the protection of the public interest with the need for licensees to make a livelihood.

Mr. Tereda is alleged to have sexually assaulted a passenger with cognitive disabilities (Down syndrome), and therefore is a vulnerable member of society. The record indicates the Complainant gave a sworn statement to the police and the police obtained video footage of the incident that confirms the Complainant's allegations.

Mr. Tereda was released in November 2018 with a promise to appear on January 11, 2019. Based on the Integrated Court Offenses Network (ICON) records, he failed to appear in court and a bench warrant was issued on February 7, 2019. After that there were a series of court dates in

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which Mr. Tereda did not appear and a bench warrant was issued. There is an outstanding bench warrant. Mr. Tereda appears to be unwilling and unable to comply with the law, and in failing to attend court is frustrating the public interest in resolving his criminal matter.

MLS submits anything short of an interim suspension would be unsuitable, given that Mr. Tereda did not comply with orders of the criminal court he is unlikely to follow any conditions that the Tribunal may wish to place on his licence.

ANALYSIS

The Tribunal has the power to make interim decisions and orders according to section 16.1 of the SPPA. As set out in section 546-9 C (3) of the Code, the Tribunal may, for any of the reasons in 546-4 suspend a licence.

After reviewing the evidence and considering the submissions, the Tribunal is satisfied that the grounds in 546-4 have been met, and there are reasonable grounds to believe that Mr. Tereda will not carry on his business in accordance with the law and with honesty and integrity; that carrying on of his business may result in a breach of the law; and that carrying on his business has infringed or would infringe the rights of the public, or endanger their health or safety.

Mr. Tereda has been charged with a serious criminal offence (sexual assault). Mr. Tereda is alleged to have assaulted a passenger while they were in the front seat of his taxi. The passenger had a cognitive disability and was thus particularly vulnerable. Given the nature of the allegations, there are reasonable grounds to believe that his operation of a taxi poses a risk to the public.

There are also reasonable grounds to believe Mr. Tereda has not or will not comply with the law. Since being charged with sexual assault, Mr. Tereda has failed to attend the criminal court multiple times. As a result, there have been numerous bench warrants issued, and there is currently an outstanding bench warrant for his arrest.

Though an interim suspension is an extraordinary remedy, the Tribunal did not believe it was appropriate to impose interim conditions upon the licence as a means to protect the public, while allowing Mr. Tereda to continue to drive a taxi. The Tribunal has no assurance that if conditions were imposed on his licence that Mr. Tereda would follow them. Mr. Tereda failed to comply with orders of the criminal court and thus he is unlikely to follow any conditions that the Tribunal may wish to place on his licence. Concern about his compliance with conditions is further heightened by Mr. Tereda's failure to attend this hearing as well as the previously scheduled one.

As Mr. Tereda did not attend the hearing, the Tribunal was unable to determine the impact an interim suspension of his Vehicle-for-Hire Driver's licence may have on his livelihood.

The Tribunal also granted MLS's request for an adjournment to have a hearing of the matter on its merits until the criminal proceedings have concluded, as the Tribunal would then have the benefit of the criminal court's decision and presumably access to evidence not yet released (such as the video taken in the taxi).

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DECISION

For the reasons above, the Tribunal Orders the following:

- 1) Mr. Tereda's licence No. D01-3616630 is suspended on an interim basis, until such time as the Tribunal can hold a full hearing on the merits.
- 2) The matter concerning Mr. Tereda, Holder of Vehicle-For-Hire Driver's Licence No. D01-3616630, is hereby adjourned until such time as the criminal charges against Mr. Tereda have been resolved and the matter can be returned to the Tribunal for a full hearing.

Originally Signed

Melina Lavery, Panel Chair
Panel Members: Mary Lee and Daphne Simon concurring

Reference: Minute No. 68/20

Date Signed: July 17, 2020