

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: October 15, 2020 (Videoconference Hearing)

Panel: Edgar-Andre Montigny, Panel Chair;
Verlyn Francis and Melina Laverty, Members

Re: Sarfraz Ahmed (Report No. 7387)
Holder of Vehicle-For-Hire Driver's Licence No. D01-4651657

Counsel for Municipal Licensing and Standards: Matthew Cornett

Counsel for Applicant: Unrepresented

SUMMARY/INTRODUCTION

Mr. Ahmed is the holder of a Vehicle-For-Hire Driver's Licence. He was first licenced on June 10, 2016. His licence came up for renewal in 2020. Mr. Ahmed paid his fees. The matter was brought before the Tribunal by Municipal Licensing and Standards (MLS) after a records check revealed a number of pending criminal charges against Mr. Ahmed that MLS indicates are reasonable grounds to believe that Mr. Ahmed's continued use of his Vehicle-For-Hire Driver's Licence would raise concerns about public safety and Mr. Ahmed's ability to conduct himself appropriately.

Mr. Ahmed was scheduled to appear before the Tribunal on September 17, 2020. He did not appear. The matter was adjourned to today's date. Mr. Ahmed failed to appear for the second time.

The matter proceeded on an **ex parte** basis.

After outlining the various charges against Mr. Ahmed, MLS sought an order that Mr. Ahmed's licence be renewed with conditions.

The Tribunal accepted the submissions of MLS and ordered that the licence be renewed with conditions.

ISSUE

The question before the Tribunal is whether the record of charges and convictions against Mr. Ahmed required or justified taking action such as revocation, suspension or the placing of conditions upon the licence.

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EX PARTE HEARING

When Mr. Ahmed did not appear for this hearing, counsel for MLS asked that the matter proceed on an **ex parte** basis.

Mr. Ahmed had been scheduled to appear before the Tribunal on September 17, 2020. He failed to appear. It was confirmed on September 17, 2020 that Mr. Ahmed had been sent notice of that hearing on August 31, 2020. Neither the electronic nor the mailed documents were returned as undeliverable. The matter was adjourned to October 15, 2020.

On October 15, 2020 Mr. Ahmed failed to appear for a second time. Tribunal staff confirmed that Mr. Ahmed was served with Report No. 7387 and Notice of the hearing by e-mail and regular mail on September 21, 2020. Attempts were made to contact Mr. Ahmed by telephone, but the number on file was no longer in service.

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).

7. (1) Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14).

The Tribunal finds that Mr. Ahmed had been properly notified of the October 15, 2020 hearing. He failed to appear. The Tribunal decided to proceed in his absence.

CITY'S EVIDENCE

Ms Andrea Di Matteo, a supervisor for MLS, was the only witness for MLS. Ms Di Matteo was affirmed and testified regarding Mr. Ahmed's licensing history and the nature of the charges against him as set out in MLS Report No. 7387 and two updates to the report dated September 14, 2020 and October 13, 2020 (the Report and updates being entered as Exhibit 1 or "the report"). Ms Di Matteo provided details of charges against Mr. Ahmed under the Highway Traffic Act and the Toronto Municipal Code. The matters ranged from "improper left turn" to "disobey stop sign" to "speeding"; the most recent charge dating from January 5, 2020. Ms Di Matteo also outlined criminal charges that were still before the Court. Aside from two older charges that were withdrawn, all the criminal charges were laid on the same date, March 1, 2019. On that date, 11 charges were filed including for "assault with weapon", "assault" and "sexual assault". Based on the details set out in the general occurrence report, the charges resulted from a dispute involving family members. These charges are still before the court.

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APPLICANT'S EVIDENCE

Mr. Ahmed did not attend the hearing. Had Mr. Ahmed attended, it would have been possible for him to present evidence and present his perspective on the issues. Without any such testimony, the Tribunal had only the testimony of MLS before it.

CITY'S SUBMISSIONS

In his closing submissions, MLS counsel acknowledged that Mr. Ahmed's driving record was not the worst of records. However, MLS counsel pointed out that collection of various charges and convictions is still sufficient to raise a serious concern about Mr. Ahmed's ability to properly and safely carry out his responsibilities as a licensee. MLS counsel also indicated that the pending criminal charges, though still before the courts, include violent offences which raise concerns about public safety given Mr. Ahmed interacts with customers while driving a taxi.

MLS counsel argued that any concerns about public safety and Mr. Ahmed's ability to follow the law could be dealt with by imposing a four (4) year probation period on Mr. Ahmed and requiring him to submit Criminal Records and Judicial Matters Check to MLS every time he seeks to renew his licence. This would allow MLS to monitor Mr. Ahmed and should any further charges or convictions arise, bring those concerns back to the Tribunal.

ANALYSIS

Section 546 (8.1) C of the Toronto Municipal Code sets out the powers of the Tribunal to renew, deny, suspend or impose conditions upon a licence.

In this instance, Mr. Ahmed is entitled to a renewal of his Vehicle-For-Hire Driver's Licence unless MLS can demonstrate that there are reasonable grounds to believe that (a) Mr. Ahmed will not operate his business in accordance with the law; (b) that the carrying on of his business has resulted, or will result in a breach of this chapter or any other law; and (c) that Mr. Ahmed's use of his Vehicle-For-Hire Driver's Licence has infringed or would infringe the rights of the public, and has or would endanger the health and safety of public.

In this case, MLS has argued that while the various charges that Mr. Ahmed has incurred raise a concern, that concern can be properly dealt with and the public interest protected by imposing a four (4) year probation period on the renewed licence.

As set out in Exhibit 1, given the current and prior charges and convictions against Mr. Ahmed, whether under the Criminal Code or with respect to his driving, there are reasonable grounds to believe that Mr. Ahmed will not or has not operated his business in accordance with the law, or that the public safety is at risk by his operating his business. Having weighed the evidence, the Tribunal is satisfied that in this case the imposition of a probation period will address the potential risk.

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DECISION

For the reasons above, the Tribunal Orders the following:

- 1) Vehicle-For-Hire Driver's Licence No. D01-4651657, held by Sarfraz Ahmed is to be renewed once all fees, documents and/or any outstanding requirements have been submitted to the satisfaction of MLS.
- 2) Immediately upon being renewed, Vehicle-For-Hire Driver's Licence No. D01-4651657 shall be placed on probation for a period of four (4) years. During this time MLS will be able to monitor Mr. Ahmed's record and conduct investigations to assess Mr. Ahmed's compliance with the requirements of Chapter 546 of the Toronto Municipal Code and other applicable laws.
- 3) Prior to the next four (4) renewals of the licence, Mr. Ahmed must provide to MLS at his own expense, an original up to date Criminal Records and Judicial Matters Check. Mr. Ahmed is required to submit a record's check each time he seeks to renew this licence.
- 4) Should any new charges or matters of concern arise during the probationary period with respect to the conduct of Mr. Ahmed, those matters and report No. 7387 and any updating materials may be brought back before the Tribunal for a full hearing.

Originally Signed

Edgar-André Montigny, Panel Chair

Panel Members: Melina Laverty and Verlyn Francis, concurring

Reference: Minute No. 114/20

Date Signed: November 3, 2020