

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: January 28, 2021 (Videoconference Hearing)

Panel: Anu Bakshi, Panel Chair;
Verlyn Francis and Melina Laverty, Members

Re: Balamugunthan Sambasivam (Report No. 7431)
Applicant for the of Renewal Vehicle-For-Hire Driver's Licence
No. D05-4425343

Counsel for Municipal Licensing and Standards: Graham Thomson

Counsel for Applicant: Unrepresented

INTRODUCTION

Mr. Balamugunthan Sambasivam was licenced as a Vehicle-For-Hire taxi driver from April 12, 1996 to January 31, 1999. Since August 6, 2014, he held a Limousine Vehicle-For-Hire Driver's Licence (Limousine licence). As part of the renewal process, Mr. Sambasivam submitted to Municipal Licensing and Standards (MLS) his criminal record and fingerprints on January 24, 2020. These records revealed a criminal code fraud conviction over \$5,000 dated November 25, 2016 (Fraud Conviction).

On February 4, 2020, MLS denied the renewal of the Limousine licence because the Fraud Conviction was in breach of the screening criteria under Chapter 546 of the Toronto Municipal Code. Mr. Sambasivam requested a hearing before this Tribunal. A hearing on this matter was held on January 28, 2021.

The issue before the Tribunal was whether Mr. Sambasivam's Limousine licence should be renewed, suspended, revoked or have conditions placed upon it.

After the hearing, the Tribunal gave an oral decision to renew the Limousine licence with an immediate suspension until noon February 12, 2021 and place conditions on the licence. These are the written reasons for that decision.

MLS EVIDENCE

Mr. Jamil Elannan, Supervisor with MLS, was the sole witness for MLS. He explained that the major concern for MLS in denying the Limousine licence was the Fraud Conviction. MLS only became aware of the Fraud Conviction during the licence renewal process. At the renewal process, Mr. Sambasivam submitted his criminal record and fingerprints from the Royal Canadian Mounted Police to MLS after requesting and receiving two extensions in providing this information. Subsequently, MLS was concerned when it learned that Mr. Sambasivam had another criminal fraud conviction dated March 7, 2000.

Mr. Elannan referred to the documentary evidence found in Report No. 7431 and the update ("the Report" - Exhibit 1).

January 28, 2021

In his testimony, he highlighted Mr. Sambasivam's licensing history, driving record and his criminal code charges and convictions. In terms of licensing history, Mr. Sambasivam held a Taxicab Vehicle-For-Hire Driver's licence from April 12, 1996 to January 31, 1999. Since August 6, 2014, he held the Limousine licence in question.

Mr. Elannan explained that Mr. Sambasivam's Ontario driving licence was suspended for medical reasons in 2018. As a result of this suspension, on July 8, 2019, MLS sent Mr. Sambasivam a letter requesting that he surrender his Limousine licence and photo identification card. Mr. Sambasivam did not respond to MLS's request.

Mr. Elannan referred to a chart on pages 12 and 13 of the Report ("Chart"). The Chart outlined the convictions and charges registered against Mr. Sambasivam. With respect to criminal fraud over \$5,000, the Chart reads as follows: an offence dated November 9, 1995, a conviction dated March 7, 2000, and three charges dated June 20, 2011 that resulted in the Fraud Conviction.

Mr. Sambasivam was charged with Highway Traffic Act offences of "Driving with Handheld Device" on December 11, 2014 (withdrawn) and July 13, 2020 (pending). He was also convicted of two Toronto Municipal Code by-law offences on December 11, 2015.

Mr. Elannan testified that MLS requested the police records related to the June 20, 2011 charges of fraud over \$5,000. MLS received the police records in August 2020.

APPLICANT'S EVIDENCE

In testimony, in cross-examination, and in response to questions from this Panel, Mr. Sambasivam provided information about his criminal record and his personal circumstances.

Mr. Sambasivam, age 48, is married and has a young son. Mr. Sambasivam has not worked since he received MLS denial to renew his Limousine licence. His wife worked part-time as a Montessori teacher, but she stopped in March 2020 because of the pandemic. Her income was the major source of income for the family until the pandemic.

At this time, Mr. Sambasivam has no source of income except the odd referral fee/gift card he receives when he refers his previous clients to a mortgage broker. Prior to 2014, he worked as a mortgage broker. He cannot work as a mortgage broker because of the Fraud Conviction. He has a young family to support. He needs his Limousine licence to work and support his family.

With respect to criminal fraud charges and convictions, Mr. Sambasivam testified that the November 1999 fraud charge happened when he was a young man. It was related to his brother's store and a bad cheque. He returned the money and there was no trial. He was not sure if it was a conviction.

Prior to 2014, Mr. Sambasivam had a jewelry and gold business. The subsequent criminal fraud charges and convictions arose out of this business. He admitted that the 2000 and 2016 fraud convictions arose when a third party transferred fraudulent funds into his account to buy gold bullions for them. He transferred the funds into his corporate account.

January 28, 2021

He purchased the gold bullions for the third party. He earned a commission from buying the gold bullions for this third party.

In cross-examination, Mr. Sambasivam was referred to the police records at pages 36 to 45 of the Report. He basically agreed that in 2011 he transferred a substantial amount of fraudulent money from a business account to his company account as directed by a third party. He attended three different business bank branches to purchase gold bullions because no bank had enough gold on site. He picked up the gold bullions and provided them to a third party. He earned a substantial commission from the sale. There were other persons charged for fraud as well, including the third party who paid his commission fee. He got caught up in the fraud because people knew he was in the business of buying and selling gold.

Days after the fraudulent transaction, Mr. Sambasivam relocated to his home country. There was a warrant outstanding for his arrest. He explained that the reasons he left to his home country was to pursue fertility treatment with his wife. The couple had a number of setbacks while pursuing fertility treatment in his home country, including a high risk pregnancy and loss of a baby.

In 2012, he intended to return to Canada and turn himself in to police. Mr. Sambasivam contacted his criminal lawyer in Canada to assist him in this process. However his mental health deteriorated after the loss of a baby and his wife's high risk pregnancy. He delayed returning to Canada to turn himself in for other reasons, including poor finances; his criminal lawyer died and challenges in finding a surety.

In June 2014, he arranged his affairs with a new lawyer, and he turned himself in to the police at the Pearson airport. He was convicted of one count of criminal fraud over \$5,000 on November 25, 2016. The other two charges were withdrawn. Mr. Sambasivam received a fifteen month conditional sentence. He served his sentence in the community, followed all imposed restrictions and met regularly with a probation officer. He did not go to any counselling or take any other steps to rehabilitate himself.

Mr. Sambasivam testified that he is no longer in the gold business and does not associate with his old customers that resulted in the Fraud Conviction. He would never take advantage of his limousine customers. He was very careful dealing with his limousine customers since 2014. In the future, he would continue to be careful in his dealings with his limousine customers.

In 2018, his Ontario driver's licence was suspended for medical reasons. After a few months, he was medically cleared to drive. His Ontario driver's licence was reinstated. Mr. Sambasivam stated that the July 8, 2019 letter from MLS, requesting him to surrender his licence, did not come to his attention because his address changed around that time.

SUBMISSIONS

MLS Submissions:

Mr. Thomson submitted that Mr. Sambasivam's Limousine licence should be revoked because his conduct was a violation of Toronto Municipal Code Chapter 545-4. The events of the 2011 criminal fraud were serious and involved a large sum of money. Mr.

January 28, 2021

Sambasivam's criminal conduct goes to the core issue of honesty in dealing with members of the public.

Mr. Thomson stated that there is a long pattern of criminal fraud, namely: charges in 1995, a conviction in 2000 and the 2011 charges that resulted in the Fraud Conviction. Mr. Sambasivam did not take responsibility for his participation in criminal fraud, or any steps to rehabilitate besides meeting his probation officer.

Mr. Thomson argued that this is not a case for conditions because Mr. Sambasivam was unresponsive to the licensing regime. He immediately fled the country after the fraudulent transaction. He continues to have a problematic driving record with two serious charges of driving a vehicle with a handheld device. He did not respond to MLS's request to turn in his Limousine licence when his Ontario driver's licence was suspended for medical reasons. Mr. Thomson submitted there are no conditions that could be imposed to ensure Mr. Sambasivam would adhere to his duty to act with honesty and integrity.

In terms of public safety, Mr. Thomson submitted that Mr. Sambasivam posed a safety risk when dealing with customers' money. Given the seriousness of the convictions and Mr. Sambasivam's lack of ownership for his actions, Mr. Sambasivam should not hold a Limousine 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. Thomson argued that Mr. Sambasivam's Limousine licence is not important for him to earn a living. He is able to earn money through referrals from mortgage brokers. His Limousine licence has been suspended and lapsed many times.

Mr. Sambasivam's Submissions:

Mr. Sambasivam stated that he was not hiding from the law in his home country after the fraudulent transaction, but left to pursue fertility treatment with his wife. He had poor mental health during that time due to his wife's high risk pregnancies and losing a baby. He also did not come back earlier because his criminal lawyer passed away, his financial circumstances and his need to arrange for surety. He testified that he turned himself in at the airport in 2014 with the aid of a new lawyer and complied with everything the Court required.

Mr. Sambasivam submitted that he needs his Limousine licence to earn a living to support his wife and son. He has no other source of income. He is no longer mortgage broker. The odd commission that he receives as a result of referrals is not enough to maintain a living.

He feels lucky that his friend gave him a chance to drive a limousine and work. His sister provided him funds to take a course to obtain his Limousine licence. The fraud conviction was a bad experience, and he has learned his lesson. He wants to continue in the profession of driving a limousine.

DECISION

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

January 28, 2021

- 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.

The Municipal Code requires that MLS prove these reasons to deny based on the standard that there exists reasonable grounds to believe that the applicant has or will act in a certain way in order to deny a licence or a renewal of a licence. Reasonable grounds for belief is a lower standard of proof than “balance of probabilities.”

In most cases, past conduct of the applicant is presented in order to determine how the applicant may reasonably conduct him or herself in the future. When the past conduct is dated, we must also look at the conduct that has occurred since the incident in question as well.

There is no question that Mr. Sambasivam committed serious criminal fraud involving a substantial amount of money. This serious criminal conduct took place in 2011, almost ten years ago, and before Mr. Sambasivam held a Limousine licence. It is the passage of time, his clean criminal history since the Fraud Conviction and his need to make a living that weigh in Mr. Sambasivam’s favour to renew his Limousine licence (with conditions) when balanced with public safety.

In 2011, Mr. Sambasivam committed serious criminal fraud. He testified in an overall manner that was consistent with the police records, but at times he was hard to follow. He was focused on his struggles with his mental health, grieving for the loss of his baby and setbacks that he has undergone while in his home country. While not an excuse in any way for his criminal behaviour, there are some extenuating circumstances that aid in explaining, in whole or in part, the reason he did not turn himself in immediately following the fraud in 2011

The Tribunal finds that Mr. Sambasivam has taken responsibility for the criminal fraud in 2011. We do not accept that he delayed in returning with the intention to obstruct justice. He testified that he was contemplating returning to Canada in June 2012. This testimony is consistent with page 41 of the Report. The Report notes that Mr. Sambasivam’s lawyer contacted police to facilitate his return to Canada to turn himself in. We accept that Mr. Sambasivam did not return to Canada in 2012 because of his poor mental health, the need to arrange for a new criminal lawyer and his wife’s high risk pregnancy.

In the end Mr. Sambasivam turned himself in to police at the airport in June 2014. As a result of the Fraud Conviction, he served his conditional sentence in the community, met

January 28, 2021

regularly with his probation officer and has no further criminal record since 2016. These steps demonstrate that he took responsibility for his actions.

Mr. Sambasivam's return to society after his Fraud Conviction was difficult. He testified about his appreciation for his friend who helped him to find a job driving a limousine and his sister who provided financial assistance to obtain his Limousine licence. We accept that he has learned from these events, and he does not want to make any further mistakes.

In terms of Mr. Sambasivam's ability to adhere to the licensing regime, Mr. Sambasivam was not forthcoming to MLS about the 2011 charges when he applied for his Limousine licence. He did not report the Fraud Conviction to MLS (although no evidence was presented regarding the reporting requirements in 2016). He may have purposely delayed revealing the Fraud Conviction to MLS in the renewal process. He requested and was granted extensions to provide his criminal record in 2018 and 2019. While Mr. Sambasivam has stayed clear from subsequent criminal actions since 2011, he is required to run his business with integrity and honesty, which includes his dealings with MLS and his obligation to make frank and fair disclosure. It is important for licensees to cooperate and promptly provide information to MLS.

The passage of time coupled with his clean criminal history since 2016 weighs in Mr. Sambasivam's favour.

In deciding the appropriate penalty, we may consider the factors such as the seriousness of incident and non-compliance, public confidence in the regulatory system, specific and general deterrence, likelihood of future compliance, fairness, proportionality, and so forth. The penalty should be proportionate to the misconduct.

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 to earn a living.

In this case, the Tribunal finds that suspension and probation are sufficient to serve the aims of specific deterrence, general deterrence and protect public safety. Given the circumstances of this case, there is not enough evidence to suggest that Mr. Sambasivam should not be given a chance to show that he can comply with the requirements of his licence – namely, to operate his business with honesty and integrity and to cooperate with MLS in his reporting requirements.

There is evidence that this period of suspension will have financial impact, given Mr. Sambasivam and his family basically have no source of stable income at this time.

Furthermore, a suspension and a lengthy probation that requires original up-to-date criminal records and judicial matters checks allows Mr. Sambasivam to cooperate with MLS in its continued monitoring to ensure public safety.

We recognized that while Mr. Sambasivam seems to be on the right track with a clean criminal history since 2016, there are still risks that he may make mistakes again. We have taken into account the highway traffic charges for driving with a handheld device. However, we put little weight on these charges. Besides the Chart, there was no evidence

January 28, 2021

before us about what actually transpired. Mr. Sambasivam was not questioned about these charges, and there were no police records.

In our view, the real serious concern is the events leading up to the 2016 Fraud Conviction, and the fact this was at least the second time Mr. Sambasivam had been convicted of fraud over \$5,000. This suggests a concerning pattern of behaviour. The public interest would be protected with the imposition of a four-year probationary period with the requirement that Mr. Sambasivam must provide an original up to date Criminal Records and Judicial Matters Check at his own expenses. It is Mr. Sambasivam's responsibility to organize these documents in advance of the renewals.

The Tribunal ordered the Vehicle-For-Hire Driver's Licence to be renewed, 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 licence may be cancelled;
- (2) The Vehicle-For-Hire Driver's Licence shall be suspended immediately until noon. February 12, 2021;
- (3) Immediately upon being renewed, Vehicle-For-Hire Driver's Licence will be placed on probation for a period of four (4) years. Mr. Sambasivam 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. Sambasivam and conduct other investigations, as appropriate, to assess Mr. Sambasivam's compliance with the requirements of Chapter 546 of the Municipal Code and other applicable laws;
- (4) Prior to each of the next four (4) renewals of the licence, Mr. Sambasivam must provide to Municipal Licensing and Standards, at his own expense, an original up-to-date abstract of his Criminal Record and Judicial Matters Check; and
- (5) During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions against Mr. Sambasivam or any other concerns with respect to the conduct of the licensee, those matters and report no. 7431 and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Anu Bakshi, Panel Chair

Panel Members: Verlyn Francis and Melina Laverty, concurring

Reference: Minute No. 18/21

Date Signed: February 10, 2021