

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: January 21, 2021 (Videoconference Hearing)

Panel: Edgar-Andre Montigny, Panel Chair;
Daphne Simon and Paula Turtle, Members

Re: Vahan Tovmasyan (Report No. 7410)
Holder of Tow Truck Driver's Licence No. D09-4314970

Counsel for Municipal Licensing and Standards: Jennifer Boyczuk

Counsel for Applicant: Unrepresented

SUMMARY

Licence D09-4314970 was issued to Mr. Vahan Tovmasyan on October 17, 2013. The licence expired on October 17, 2020. He has been provided with a "Deemed to Continue" letter.

Mr. Tovmasyan's Ontario Driver's Licence ("ODL") was temporarily suspended on November 3, 2019 after he was charged with offences under the Highway Traffic Act (HTA) and the Criminal Code of Canada (CCC).

On December 19, 2019, he was convicted of Impaired Operation Over 80 mgs under the CCC ("Impaired Operation") and his ODL was suspended until March 19, 2020.

As a consequence of those events, Municipal Licensing and Standards (MLS) advised Mr. Tovmasyan that his Tow Truck Driver's Licence would be reviewed by the Tribunal. At the January 21, 2021 hearing, MLS sought the revocation of Mr. Tovmasyan's Tow Truck Driver's Licence.

Mr. Tovmasyan was present at the hearing. At the beginning of the hearing, he was informed of his right to representation and he indicated he was willing to proceed without representation.

After hearing the evidence and submissions of the parties, the Tribunal ordered that Mr. Tovmasyan's Tow Truck Driver's Licence be placed on Probation for a period of three (3) years, commencing January 21, 2021 and in addition to the usual requirements imposed by probation, a condition was placed on Mr. Tovmasyan's licence prohibiting him from using his vehicle as a Tow Truck between the hours of 10:00 p.m. and 6:00 a.m. for a period of five months.

ISSUE

The question before the Tribunal is:

- whether Mr. Tovmasyan's driving history – in particular his convictions for "Impaired Operation" and "speeding" - establishes reasonable grounds to believe

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that he has not carried on his business in accordance with the law; or is a risk to public safety.

This panel is satisfied that the public interest is protected by renewing Mr. Tovmasyan's Tow Truck Driver's Licence, subject to conditions.

CITY'S EVIDENCE

Andrea Di Matteo, Supervisor with MLS, was the only witness for the City. Ms Di Matteo was affirmed and testified regarding Mr. Tovmasyan's licensing history and the charges and convictions against him as set out in MLS Report No. 7410 (Exhibit 1 or "the report") and an update to this report dated January 18, 2021 (Exhibit 2 or "the update"). She also described how the information in Report 7410 was obtained and how the various charts of information provided in the report were prepared.

Ms Di Matteo testified that MLS was advised by the Ministry of Transportation that Mr. Tovmasyan's ODL had been suspended after he was charged with Impaired Operation on November 3, 2019. Consequently, his Tow Truck Driver's Licence No. D09-4314970 was suspended pursuant to the Toronto Municipal Code, Chapter 545, Article VI, Section 545-69. By letter dated November 9, 2019, MLS asked Mr. Tovmasyan to surrender his Tow Truck Driver's Licence and photo identification card to the MLS Services Office, and he did.

Mr. Tovmasyan was convicted of "Impaired Operation" on December 19, 2019 and the suspension of his ODL was extended until March, 2020.

When his ODL was restored in March 2020, MLS was, due to COVID related office closures, unable to return the licence to Mr. Tovmasyan. He was given a "Deemed to Continue" letter.

Ms Di Matteo reviewed Mr. Tovmasyan's record. Of particular concern were the charges of speeding under the HTA while driving his Tow Truck (on September 22, 2018), for which Mr. Tovmasyan was convicted on July 9, 2019, and "Impaired Operation" (on November 3, 2019), for which he was convicted on December 19, 2019. Ms Di Matteo indicated Mr. Tovmasyan was charged with "stunt driving" on November 3, 2019, although that charge was withdrawn.

Ms Di Matteo outlined the events behind the charges of "stunt driving" and "Impaired Operation" as provided in the case file synopsis obtained from the Ontario Provincial Police ("OPP"). He was caught speeding on highway 401 near Pickering at about 1:30 am on November 3, 2019. When pulled over, he smelled of alcohol. The arresting officer administered roadside breath tests and tests at the OPP detachment and was then charged with Impaired Operation.

In addition to the charges and convictions described above, Mr. Tovmasyan's record shows three additional convictions under the HTA since 2014 (disobey lane light, green light – fail to proceed and improper use of turn signals, two bylaw convictions (drive unlicensed tow truck and overcharge) and one conviction under the Smoke Free Ontario Act (fail to post non smoking signs).

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Ms Di Matteo noted that Tovmasyan incurred a further charge of “Fail to have/surrender Insurance Card” on September 7, 2020 with a court date pending.

LICENCE HOLDER’S EVIDENCE

Mr. Tovmasyan was sworn in. In testimony, in cross-examination and in response to questions from the panel, Mr. Tovmasyan stated the following:

He took responsibility for his record. He apologized for his errors.

Mr. Tovmasyan noted that he was not driving his Tow Truck when he was charged with “Impaired Operation” and “stunt driving”.

After he was convicted of “Impaired Operation”, Mr. Tovmasyan paid the \$2,500.00 fine, participated in a one-day workshop and agreed to the installation of an Interlock transmission on the vehicle he uses as a Tow Truck for a period of 9 months. Mr. Tovmasyan sold the vehicle with the Interlock transmission to a friend, but he continued to use the vehicle.

Mr. Tovmasyan testified that he was charged with “Fail to have/surrender Insurance Card” in September 2020 while driving the vehicle he had sold to his friend.

Mr. Tovmasyan explained that he is the sole support for his family; a wife and 2 children, aged 8 and 10. He noted that since the suspension of his ODL and the impact of conviction on his ability to obtain insurance, combined with the impacts of COVID, he has been unable to earn an income as a Tow Truck Driver. He has worked for friends on construction projects and other odd jobs but had earned little income from these activities. He noted that although his company 416 Retrieval still exists, he was forced to sell all but one of the vehicles owned by the company.

CITY’S SUBMISSIONS

In her closing submissions, Ms Boyczuk, on behalf of MLS, submitted that:

The Tribunal should revoke Mr. Tovmasyan’s Tow Truck Driver’s Licence because his record of charges and convictions, particularly, charges of “stunt driving” and convictions for “speeding” and “Impaired Operation” establish reasonable grounds to believe that Mr. Tovmasyan’s continued use of his Tow Truck Driver’s Licence would pose a risk of harm to the public. The risk of harm is sufficiently serious to override concerns about Mr. Tovmasyan’s right to earn a living.

LICENCE HOLDER’S SUBMISSIONS

Mr. Tovmasyan admitted he made a mistake by driving while impaired, but his “Impaired Operation” conviction on December 19, 2019 was his first such conviction. He argued he was not working or driving his Tow Truck when he was charged, and he pointed out that he needed his licence to earn a living. He expressed his regret for his previous errors. He invited the Tribunal to place any conditions it felt appropriate on his licence, by which he would abide.

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ANALYSIS

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

Mr. Tovmasyan is entitled to a renewal of his Tow Truck Driver's Licence unless MLS can demonstrate that there are reasonable grounds to believe that Mr. Tovmasyan 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. Tovmasyan'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 the public.

Some of the charges and convictions against Mr. Tovmasyan are serious.

However:

- Mr. Tovmasyan was not operating his Tow Truck when he was charged with "Impaired Operation", and "stunt driving".
- Mr. Tovmasyan's overall record does not suggest a pattern of conduct that would endanger the health and safety of the public.
- Mr. Tovmasyan took responsibility for his errors. He invited the panel to impose terms on the renewal of his licence. He insists that he has learned his lesson and if given a second chance, he would not make any similar mistakes in the future.
- Mr. Tovmasyan has clearly been impacted by the conviction for "Impaired Operation". His business has been negatively impacted and his income has been greatly reduced.

While not minimizing Mr. Tovmasyan's history, the Tribunal does not agree that revocation of his licence is necessary to protect the public. Given there is no evidence of a history of charges for impaired operation or speeding, revocation seems a serious penalty to impose, especially given the impact this would have on Mr. Tovmasyan's ability to earn a living and support his family. Furthermore, the fact that Mr. Tovmasyan invited the tribunal to impose conditions reinforces our belief that he is serious about ensuring his previous misconduct does not reoccur.

The Tribunal finds that the concerns raised by Mr. Tovmasyan's record of charges and convictions can be dealt with by the imposition of probation and conditions on his licence.

The Tribunal Orders that the Tow Truck Driver's Licence of Mr. Tovmasyan be renewed immediately and immediately placed on probation for a period of three (3) years. The normal conditions related to probation apply.

The conduct that led to the charges of "stunt driving" and "Impaired Operation" occurred in the early morning hours. Therefore, the Tribunal imposed the following additional condition on the Licence of Mr. Tovmasyan, namely: he shall not carry on the business driving a Tow Truck between the hours of 10:00 p.m. and 6:00 a.m. for a period of five months from today's date.

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This disposition balances the interests of the licence holder with the interest of public safety. Mr. Tovmasyan will retain the means to earn a living and support his family, while also allowing him to demonstrate his ability to operate his business in a manner that accords with the obligations related to his licence and protect public safety. At the same time, the probation period will allow MLS to monitor Mr. Tovmasyan's conduct and intervene should any new problems arise.

DECISION

For the reasons above, the Tribunal Orders the following:

- 1) Mr. Vahan Tovmasyan's Tow Truck Driver's Licence D09-4314970 is to be renewed immediately subject to the following conditions:
 - All fees, documents and/or outstanding requirements must be submitted to the satisfaction of MLS within 30 days of this hearing, failing which the licence may be cancelled;
 - The Tow Truck Driver's Licence shall be placed on probation for a period of three (3) years. During this probation period MLS may make additional checks on any driving, criminal and by-law charges and convictions against Mr. Tovmasyan and conduct other investigations as appropriate to assess Mr. Tovmasyan's compliance with the requirements of Chapter 545 of the Municipal Code and other applicable laws;
 - Mr. Tovmasyan shall not use his Tow Truck Driver's Licence between the hours of 10:00 p.m. and 6:00 a.m. for the first five months of the Probation period (January 21, 2021 to June 21, 2021);
 - Prior to each of the next 3 renewals of the licence, Mr. Tovmasyan must provide to MLS at his own expense, an original up-to-date abstract of his criminal record and judicial matters check;
 - During the probation period if MLS has any concerns with any new chargers or convictions against Mr. Tovmasyan or any other concerns with respect to the conduct of the licensee, those matters and report No. 7410 and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Edgar-André Montigny, Panel Chair

Panel Members: Daphne Simon and Paula Turtle, concurring

Reference: Minute No. 13/21

Date Signed: February 12, 2021