

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: December 7, 2020 and January 26, 2021 (Videoconference Hearing)

Panel: Mary Lee, Panel Chair;
Edgar-André Montigny, Member

Re: Golam Mustafa (Report No. 7084)
Holder of Vehicle-For-Hire Driver's Licence No. D01-3250234

Counsel for Municipal Licensing and Standards: Graham Thomson

Counsel for Licensee: Arif Hussain

Bengali Interpreter: Aparesh Chakravarty

PRELIMINARY MOTION HEARING

The City sought an order to proceed in absence of the public, pursuant to Section 9 of the Statutory Powers Procedure Act, R.S.O. 1990 c. S 22.

POSITIONS OF THE PARTIES

Municipal Licensing and Standards (MLS) Counsel outlined that the purpose of the Order was to protect the privacy of the Complainant. He noted that this Tribunal in similar circumstances has issued Orders.

The Licensee's Counsel opposed the motion. His submissions focused on the fact that as there were no criminal charges outstanding, the Tribunal should not view the video evidence relating to the Complainant.

DECISION

The Tribunal accepted that the videos and evidence to be presented in this matter contains sensitive details related to a purported sexual assault.

The Tribunal accepts that this is a situation where an Order to proceed in the absence of the public is appropriate.

ORDER

The Tribunal Orders that the hearing in the matter of Golam Mustafa (Report No. 7084) will proceed in the absence of the public.

SUMMARY

Golam Mustafa was requested to appear before the Toronto Licensing Tribunal to determine whether or not, his Vehicle-For-Hire Driver's Licence should be revoked, suspended or have conditions placed on it.

On August 28, 2018, MLS became aware of a Toronto Police Services (TPS) investigation involving Mr. Mustafa. On August 29, 2018, MLS received further information from TPS that Mr. Mustafa was arrested and charged with sexual assault, and multiple counts of fraud.

This matter was before the Tribunal on December 7, 2020 and January 26, 2021 and a hearing took place. Due to physical distancing measures caused by COVID-19, the hearing took place electronically via video conference. Due to technical issues, Mr. Mustafa participated electronically in-person at the Tribunal office at 40 Orchard View Boulevard.

After hearing the evidence and submissions of the parties, the Tribunal orders that Mr. Mustafa's Vehicle-For-Hire Driver's Licence be revoked.

INTRODUCTION

1. Given Mr. Mustafa's criminal charges under the Criminal Code of Canada (CCC), MLS requested that Mr. Mustafa's licence be revoked.

ISSUE

2. The issue before the Tribunal is whether Mr. Mustafa's conduct, as evidenced by his record of charges under the Criminal Code of Canada, Highway Traffic Act (HTA) and the Compulsory Automobile Insurance Act (CAIA), provides reasonable grounds to believe that:
 - i. Mr. Mustafa will not operate a Vehicle-For-Hire in accordance with law, and with integrity and honesty; or
 - ii. Mr. Mustafa's operation of a Vehicle-For-Hire has resulted or will result in a breach of the law; or
 - iii. Mr. Mustafa'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

MLS Counsel, Graham Thomson commenced the hearing by stating that he will rely on all the written submissions sent to the Tribunal and will not be calling on the MLS Supervisor as a witness in this matter.

Detective Kenneth Lee, TPS, was the only witness for the City. Detective Lee was affirmed and testified regarding Mr. Mustafa's charges as set out in MLS Report No. 7084.

In testimony, in response to questions from MLS Counsel and in cross-examination, Detective Lee provided information about his investigation into the criminal charges laid against Mr. Mustafa.

1. Detective Lee has been with the TPS for 25 years. He is currently a member of the TPS Hold-Up Squad, which deals with crimes related to retail and financial institutions. Prior to that, he worked at 14 Division as a General Detective with the Criminal Investigation Bureau. Detective Lee was the lead investigator in the incident involving Mr. Mustafa and he is therefore familiar with the matter before the Tribunal.
2. On August 25, 2018, Detective Lee commenced his duties starting at 6:00 a.m. Two uniform officers briefed him that a female came to the station to report a criminal matter that involved a taxi cab operator. With his partner, Detective Lee carried out a video interview between 6:47 a.m. and 7:13 a.m. with the Complainant under oath at the TPS 14 Division.
3. In summary, the Complainant got into the Beck taxicab in the early hours of August 25, 2018. She had previously consumed some alcoholic beverages with some friends at a bar/restaurant. The complainant asked the taxi cab operator to go to a destination. During the taxi cab ride, the Complainant alleged that the taxi cab operator sexually assaulted her in the taxi cab by placing a hand on her inner thigh. There was a confrontation between the Complainant and the taxi cab operator at the time.
4. The Complainant admitted to striking the taxi cab operator due to the sexual assault committed on her. The Complainant left her purse/fanny pack that contained her personal items, which included a wallet containing a credit card, specifically PC Financial Mastercard. The interaction ended at a gas station situated at 1110 Bathurst Street, located at the intersection of Bathurst and Dupont in downtown Toronto. According to the Complainant, she exited the taxi and sought help from another taxi cab driver who did not help her. The Complainant then entered the store area and had an interaction with the clerk at the gas station. He also failed to help or assist her. The Complainant stated that she was seeking help for someone to call 911 on her behalf to report the incident. The emergency call was eventually placed and police did attend.
5. The Complainant described the taxi operator as being of South Asian descent with a short beard. She readily admitted to striking the cab driver. She also admitted to having an interaction within the gas station. The Complainant believed that Detective Lee was investigating some mischief that took place at the gas station but he advised her that was not the purpose of his interview.
6. The Complainant had consumed alcoholic beverages during the evening but she advised Detective Lee that she was not intoxicated or impaired. Detective Lee gave her the opportunity in the interview to add or change anything that she said and she did not. That would summarize generally the interview that Detective Lee had with the Complainant on that date.

7. In follow-up to MLS Counsel questions, Detective Lee testified that the sexual assault did occur in the cab in the downtown area of Toronto. The Complainant got into the cab outside a restaurant/bar called Vista Lunch. The Complainant stated that the cab driver touched her inner leg and it was unwanted. She did admit to having a conversation with the cab driver and she stated that she was trying to persuade him to get a free ride that evening. She told the cab driver that she recently had a parent pass away, her father, and she had recently paid for his funeral and to summarize she was looking for a deal/free ride in light of the bad situation she was in at the time. Detective Lee stated that he hoped the video statement would be played to get a more accurate picture because it contains more detail than his notes.
8. Detective Lee testified that he found the Complainant to be credible at the time. He added that he gave the Complainant an opportunity at the end of the interview to add or correct her statement. The interview was conducted on her own free will and she consented to a video interview. He further added that his subsequent interview confirmed that something had taken place and that criminal offences had occurred. He further confirmed that the Complainant's drinking was an issue but he did follow up with some questions about how much she had consumed and if she was a regular consumer of alcohol. The Complainant stated that she had a total of 4 drinks and 1 shot of liquor.
9. Detective Lee added that when the Complainant admitted to trying to get a free ride and hitting the taxi cab driver, it made her more credible. She was upfront about what she had done and it supported the fact that something did happen to her inside the taxi cab.
10. Detective Lee stated that during his investigation, he did obtain the electronic surveillance footage from the gas station located at Dupont St. and Bathurst St.. When reviewing the video, the Complainant did enter into the gas station and have an interaction with the clerk at the time. During that time, she went about to rearrange some equipment that was inside the premises such as the cash register, monitor and another separate monitor by dislodging them and knocking them over. The Complainant's reasoning for her conduct was that the person wouldn't help her to call the police.
11. Detective Lee reiterated that since the Complainant admitted to misconduct, it made her more credible. While she admitted to a criminal offence under oath, I told her that I was not investigating her about hitting the cab driver or the incident at the gas station because she was alleging a sexual assault. He told her that he is not aware of any allegation at that time of her hitting the taxi cab driver nor complaints about her conduct at the gas station. Detective Lee attended the gas station later that day and there was no complaint made about mischief.
12. After the video statement from the Complainant, Detective Lee attended the Esso gas station at Bathurst St. and Dupont St. and spoke to the manager of the gas station. He received video surveillance footage in regards to his investigation into this matter. When he reviewed the video the following day, August 26, 2018, he obtained a metro licence number from the taxi cab which revealed to be Plate Number 3077. As well, it uncovered a physical description of a taxi cab operator.

- The description was male, brown complexion, short and stocky, wearing sandals and a yellow collared shirt. The video also showed the Complainant exiting the cab and having an interaction with a separate taxi cab operator parked at the time. It also showed her interaction inside the gas station with the clerk on the date in question, August 25, 2018. Detective Lee found that the video corroborated the Complainant's version of events.
13. The video showed the Complainant exiting the cab at the rear right passenger side of the 4 door orange/green motor vehicle being a Toyota Camry. The video also showed that the Complainant was trying to get assistance from another taxi cab driver.
 14. Detective Lee stated that video showed the taxi cab operator exited his door and was holding the side of his head. It showed that he looked in the direction of another taxi cab driver and then subsequently reentered his taxi cab and drive away.
 15. Detective Lee stated that he could not provide further detail about what occurred at the gas station without seeing the video again. The video is the best evidence.
 16. After obtaining the video surveillance from the gas station, Detective Lee contacted Beck taxi to inquire about the identity of the person driving Plate Number 3077. The company provided the name of the driver and his cellular number for that driver. He also received by email a GPS map of the fare in question related to his investigation. The electronic map provided the coordinates and the travel time from 4:03 a.m. up until 4:23 a.m. on August 25, 2018 (refer to page 195, Report 7084). Detective Lee then went through the coordinates at the hearing. He stated that the map corroborated the Complainant's statement of the taxi ride taken the morning of August 25, 2018.
 17. Detective Lee contacted the day driver by phone and asked him to attend TPS Forensic Identification Services Unit (FISU) for the purposes of downloading the taxi cab video recording device for investigative purposes. Detective Lee stated that he was advised by the FISU technician that he was unable to download the surveillance device as there was an issue with the hard drive.
 18. Detective Lee stated that he then received information from another Detective that the Complainant contacted the office to report that she was missing her PC Financial Mastercard and she became aware of some unauthorized transactions. He subsequently received a list of those unauthorized transactions made on August 25, 2018 (refer to page 202 of Report 7084) from someone employed at PC Financial.
 19. Detective Lee testified that he has experience investigating credit card fraud, which is the case here. He stated that on August 25, 2018, there were 21 transactions made on the credit card starting from 5:23 a.m. and ended at 3:41 p.m. for a total amount of \$879.69 of unauthorized transactions.
 20. Based on his experience, Detective Lee testified that the transactions were suspicious in nature. Over a span of 9 hours there were 21 transactions which is

- highly unusual. On its face, the transactions were highly suspicious and made fraudulently. Detective Lee proceeded to obtain copies of the receipts from every location as well as related video surveillance for those transactions. Detective Lee testified that the person observed in the video footage making the unauthorized purchases was Mr. Mustafa.
21. At the hearing, Detective Lee then proceeded to describe all 21 transactions in detail including describing the video footage (refer to pages 194 to 202 of Report 7084). The Licensee's Counsel, Mr. Hussain, stated that Mr. Mustafa does not dispute that he made those transactions.
22. On Monday, August 27, 2018, Detective Lee was in contact with MLS to inquire about Mr. Mustafa's Vehicle-For-Hire Driver's Licence for the purpose of confirming his identity. Detective Lee then contacted Mr. Mustafa on August 29, 2018. Mr. Mustafa attended TPS, 14 Division, where he was arrested for sexual assault and fraud for the credit card transactions that took place. Mr. Mustafa was released on recognizance of bail at Old City Hall Court House until his case is dealt with in the court system.
23. In closing, Detective Lee testified that based on the evidence provided to him, he believed all the charges against Mr. Mustafa were appropriate and he had no doubt in his mind that fraud had taken place.

Cross-Examination of Detective Lee by Mr. Hussain (Hearing Day 2 – January 26, 2021):

24. Through cross-examination of Detective Lee, he confirmed that the Complainant had been drinking on the night in question. He also confirmed the Complainant's various behavior such as seeking a free taxi ride, striking Mr. Mustafa several times on the head and creating a scene inside the Esso gas station.

MR. MUSTAFA'S EVIDENCE

In his testimony, in cross-examination, and in response to questions, Mr. Mustafa provided the following information:

25. Mr. Mustafa testified that he has been driving a taxi for about 8-10 years, although he was not able to drive between 2014-2016 after he had open heart surgery. He testified that even now he cannot work full time. He only drives a taxi 3 to 4 days per week, when he feels well enough. Even when he does work, he cannot drive for more than a few hours at a time before he needs to stop. He cannot work full-time hours.
26. He testified that he lives with his wife and a 22 year old son. He is the sole support for this family. His wife has health issues and is unable to work and his son has an intellectual disability. Mr. Mustafa noted that he has two other adult sons who live on their own. At the time of the incident in 2018, he was expecting his first grandchild.

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27. Mr. Mustafa stated more than once that the lady passenger was lying. He also insisted that he was not a thief.
28. Mr. Mustafa testified that he did not sexually assault the Complainant. He pointed out that if he was sitting in the driver's seat with a seat belt on and it would be impossible for him to reach behind to where the passenger was sitting to touch her leg while he was driving. He explained that his left hand has been impaired since he had his heart attack in 2014.
29. On video, Mr. Mustafa tried to demonstrate that he is only 5 feet, 1 inch tall and that he has short arms and legs. Combined with the fact that his left hand does not work well, he could not drive with his right hand and reach his right hand behind him to touch someone while he was driving.
30. On cross-examination, Mr. Thomson pointed out that no medical evidence was provided to support this testimony.
31. Mr. Mustafa stated that the Complainant asked him for a free ride, telling him she had no money and no credit card with which to pay her fare. At that moment, the cab was approaching the intersection of Bathurst and Dupont where there is an Esso station. Mr. Mustafa told the Complainant that he would not drive her to North York if she had no money and that he would let her out at the Esso station where she could find another cab. At that point, he testified that the Complainant started to hit him on the head. He then drove into the Esso station parking lot and stopped. The Complainant ran out of the cab.
32. Mr. Mustafa testified that after the Complaint left his cab, he was 'startled' and he said that his "brain was not working".
33. He testified that he got out of his cab and tried to signal to another cab driver he saw in the parking lot for help; no one came. He said he was bleeding. When asked to identify from where he was bleeding he said the inside of his mouth had been cut.
34. Mr. Mustafa testified that once the Complainant got out, he looked in the back seat of his taxi cab. He found a dirty and empty black bag on the floor. He placed the bag on the front seat of the car. He said he planned to throw it away but he could not find a garbage can nearby. He waited until he found a garbage can elsewhere and threw it out.
35. Mr. Mustafa testified that he found a PC Financial Mastercard on the floor in the back of his taxi cab. He stated that he assumed it was his own PC Financial Mastercard that had fallen out of his shirt pocket when he picked up the black bag from the floor. Since the Complainant told him she had no credit card he did not think it could be hers. Assuming it was his card he put it in his shirt pocket. He claims that he never noticed that he already had his own PC Financial Mastercard in his pocket. It must have been in another pocket. He could not remember.
36. On cross examination Mr. Thomson pointed out that the video shown at the hearing from the Esso station shows Mr. Mustafa's cab stopping and the

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- Complainant running out the back door while he exits the vehicle from the front driver's seat. Mr. Thomson also noted that the video shows Mr. Mustafa getting back into the driver's seat of his cab without looking in the back seat, contrary to his testimony.
37. Mr. Mustafa testified that once the Complainant was gone, he felt ill and he just wanted to go home. He said this was why he did not seek help or report the incident to the cab company. He stated that he went straight home. He said he was unable to work for the rest of the day.
 38. On cross-examination, however, Mr. Thomson pointed out that in his written statement submitted to the Tribunal, Mr. Mustafa acknowledged that he did not go straight home. Mr. Mustafa confirmed that he picked up passengers on his way home. He also acknowledged making several purchases at numerous locations between the time he left the Esso station and later that afternoon. He also accepted that these purchases were made using the Complainant's PC Financial Mastercard.
 39. On cross-examination, Mr. Thomson examined the purchases Mr. Mustafa made using the Complainant's PC Financial Mastercard. He characterized them as unusual. For instance, Mr. Thomson questioned why Mr. Mustafa made a number of stops to purchase small amounts of gas.
 40. Mr. Thomson also challenged Mr. Mustafa's statement that he never noticed that the PC Financial Mastercard he was using was not his own. He asked how Mr. Mustafa could have made so many purchases and not once accidentally used his own card. Mr. Mustafa responded that despite all those purchases, he never took his own card instead of the Complainant's card because at no time did he reach into his other pocket.
 41. On cross-examination, Mr. Thomson showed a video of Mr. Mustafa arriving at a cash register and dropping some cards on the floor and then looking at each one as he picked them up. Mr. Thomson questioned how Mr. Mustafa could have looked at the cards but not see that the PC Financial Mastercard was not his. Mr. Mustafa responded that he was looking only to see what type of card it was, he could not see the name on the card because he was not wearing his glasses.
 42. Mr. Mustafa testified that it was only later at home that he realized that he had two PC Financial Mastercards and one of them had a name he did not recognize. Mr. Mustafa acknowledged that even once he noticed he had two cards he did not report this to anyone. Only after he was arrested, did he make any inquiries to confirm that he made purchases with a card other than his own. Mr. Mustafa testified that he destroyed the card that was not his without notifying anyone.
 43. Mr. Mustafa testified that the charges of sexual assault and fraud were withdrawn but only after he made restitution, paying back the amount he had spent on the Complainant's PC Financial Mastercard.

CITY OF TORONTO'S CLOSING SUBMISSIONS

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

44. MLS is asking that the Tribunal revoke Mr. Mustafa's Vehicle-For-Hire Driver's Licence.
45. To do so, Chapter 546(4)(a) requires the Tribunal to consider whether Mr. Mustafa's conduct raises reasonable grounds to believe that:
 - i) he will not carry on the business in accordance with lawful integrity and honesty;
 - ii) that his carrying on of the business has resulted, or will result in a breach of Chapter 546, or any other law; and
 - iii) he has, or would infringe the rights of other members of the public, or has endangered or would endanger their health and safety.
46. From MLS's perspective the evidence about Mr. Mustafa's conduct easily meets the test set out in Part 2 above. He took advantage of a very vulnerable member of the public who was a passenger in his taxi, and put their physical and financial safety at risk.
47. Mr. Mustafa was charged with sexual assault of a passenger that he was driving in his taxi cab in the early morning hours of August 25, 2018. He was also charged with nine (9) counts each of fraud – use of credit card obtained by crime and possession of property obtained by crime related to the almost \$900.00 shopping spree that he went on after the assault using the Complainant's credit card.
48. The charges were withdrawn, but not because the underlying conduct didn't occur. Rather, because Mr. Mustafa paid restitution for the purchases he made on the Complainant's credit card. In addition, the Complainant had moved to the west coast and did not want to travel back to Ontario to relive this traumatic experience by testifying at a criminal trial. For clarity, this matter never actually came before a criminal court for a determination or any findings of fact or law with respect to the allegations. The withdrawal is not an indication as to whether the conduct occurred or not, but is simply part of the prosecutorial discretion of the crown as a result of the factors we have highlighted.
49. With respect to the sexual assault the Complainant alleged that Mr. Mustafa touched her on the inside of her left thigh without consent while he was driving her in a taxicab on August 25, 2018. Unfortunately, we do not have the in-car camera video recording from Mr. Mustafa's taxicab as it couldn't be downloaded. We don't know why. We do have the Complainant's sworn video statement detailing the sexual assault. The statement is hearsay, but it is admissible under Section 15 of the Statutory Powers and Procedures Act. It is extremely relevant to the matter before the Tribunal, and it is reliable. It was made at 14 Division Police Station shortly after the alleged assault by way of video recording and before two Officers who took notes at the time. The Complainant was also cautioned with respect to the criminal consequences of making a false statement to the Police. The Complainant was clearly on an emotional roller coaster at the time but she was

- forthright and honest, even about the details that might have painted her in an unflattering light. For example, that she had been drinking; that she was looking to see if she could possibly get a free ride from Mr. Mustafa; that she hit Mr. Mustafa after he touched her and; that she had an emotional reaction at the gas station afterwards when no one would call 911 for her.
50. Testimony was provided by the lead investigator, Officer Lee, who took the statement. He found the Complainant credible. He also indicated that he was able to corroborate elements of her statement with video surveillance from the Esso gas station at Bathurst and Dupont, as well as through GPS records of the cab, credit card transaction records, and further video surveillance at various businesses. He had no reason to disbelieve her.
51. In contrast, Mr. Mustafa's version of events is at odds with the available video surveillance and is simply not credible. In his letter to the Tribunal, Mr. Mustafa insisted that he did not reach the Complainant's leg. He insisted the same thing today before the Tribunal because she was seated directly behind him in the driver's seat. In fact, the video surveillance shows that she was not sitting behind the driver's seat. She was likely in the middle of the back seat, which corresponds with her statement, and also well within his reach.
52. Mr. Mustafa explained that the Complainant attacked him without real provocation. Allegedly, just on the basis that he said he would not drive her if she did not pay him. He says he feared for his life and was trying to protect himself from the Complainant's attack, and she attacked him so severely he was bleeding. He said he immediately exited the vehicle and was crying for help when he pulled into the gas station. A taxi driver nearby didn't help him and there was no one else there. After the Complainant left the taxi he got out of the taxi, opened the rear driver's side door, found the Complainant's purse, through it in the front seat and then drove off. However, the surveillance video does not support any of that. As he pulls into the Esso station the video clearly shows Mr. Mustafa turning towards the Complainant in the middle of the back seat and reaching toward her with both hands while she appears to be trying to exit the vehicle. He is not guarding himself or trying to escape from her. Rather it is she who escapes from him. Contrary to his explanation, Mr. Mustafa did not seek any assistance at the gas station. He is not crying for help. He did not seek help from anyone, even though there are obviously people there. He does not open the back door, find the purse and throw it in the front seat. Instead, when the Complainant escapes his taxi and gets into the other taxi, Mr. Mustafa waves to the other taxi driver, gets back in his own taxi, and drives off. He then says he picked up another fare and kept working and never reported an assault to the Police or anyone else.
53. It is hardly surprising that the Complainant did not want to return to Ontario to relive this experience by testifying in a criminal trial as it was clear in her video statement that she was particularly vulnerable at the time. She was alone, it was about 4:00 a.m., she was grieving the recent death of her father and she had been drinking. She was on the way to help her brother when she discovered him using intravenous drugs. During her ride with Mr. Mustafa she discovered that she didn't have the money to pay. Mr. Mustafa knew all of this. She told him. She was looking for his charity and he took advantage of it.

54. Mr. Mustafa has testified that after the assault he immediately went home but that is clearly contradicted by both his written statement and the financial records.
55. Mr. Mustafa is not disputing that he used the Complainant's credit card to make almost \$900.00 in purchases on August 25, 2018. In order to have the credit card fraud related charges withdrawn he agreed to, and did pay, full restitution of that amount.
56. Mr. Mustafa however says it was an innocent mistake. He was making purchases in preparation for hosting a celebration for his granddaughter's birth, and for his son who had particular needs. He says he didn't know he was using the Complainant's credit card.
57. That explanation is unsupported by any account statements or receipts from his credit card that would demonstrate a comparable spending habit. The only statement that we do have from Mr. Mustafa for his account does not indicate similar spending at all.
58. The video surveillance clearly shows Mr. Mustafa checking both the front and back of the credit card prior to making the purchases. His explanation that he wasn't aware, or ought not to have been aware that it was the Complainant's credit card, is simply not credible.
59. We have heard from Officer Lee who is experienced at investigating credit card fraud who testified that the pattern of purchasing was highly unusual and carried the hallmarks of small-time credit card fraud.
60. In the less than twelve (12) hours between 5:00 a.m. and 4:00 p.m. on August 25, 2018, Mr. Mustafa made twenty-one (21) purchases of gas, groceries and take-out food totaling \$879.69 using the Complainant's credit card each time. He would make a small purchase to confirm that the card was working and then make larger purchases, but carefully kept each purchase under \$100.00, and the daily total under \$1,000.00. From MLS's perspective, that is a deliberate choice to avoid having to use the PIN for the credit card and to avoid raising red flags with the credit card company.
61. MLS presented an overview of individual credit card transactions in support of Part 15 of their submission as set out above.
62. Mr. Mustafa has provided a scan of his own credit card which is a PC Financial Mastercard like the Complainant's in an effort to explain that because the cards look the same he had no way to know that they were different. Sure they look similar potentially, but it is not credible that it never occurred to him that the card may have belonged to the Complainant, or any other customer he drove that day. That he never checked the name and number on the card after finding it in the back of his cab, or before he started using it. Particularly, given his encounter with the Complainant, and already having found her belongings in the same area of the back seat.

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63. Chapter 546(94)(C) of the Municipal Code clearly requires Mr. Mustafa to search the taxi for any of the Complainant's belongings after the incident and promptly deliver them to the nearest police station. He obviously never did. He doesn't appear to have reported the altercation to anyone until he was arrested by the Police, and he never surrendered the property to the police.
64. In his written statement on August 27, 2018, Mr. Mustafa states that when he finally looked at the Complainant's credit card and realized it didn't belong to him he then destroyed it and disposed of it without trying to find out who it belonged to or how he might return it, or whether any purchases were made using it. He didn't contact the Complainant, the credit card company, the bank, the taxi cab company or the Police. He only contacted his own bank after he was arrested, charged and released.
65. Mr. Mustafa did re-pay the amounts he charged on the Complainant's credit card, but he only did that a year later when trying to avoid going to trial for credit card fraud.
66. Mr. Mustafa appears to still deny any responsibility for his actions. To MLS, those are not the actions of someone who has made an innocent mistake. The evidence makes it clear that Mr. Mustafa knew, or ought to have known what he did and what he was doing, and that he tried to cover his tracks. Even if it was an innocent mistake, the conduct is still a clear and serious breach of his obligations as a Vehicle-For-Hire Driver. MLS believes it justifies revocation.
67. The Tribunal also needs to consider its mandate to balance the protection of the public interest with the need for Mr. Mustafa to make a livelihood, but in this case MLS submits that the public interest is clearly paramount. Mr. Mustafa's desire to make a living as a Vehicle-For-Hire Driver does not justify the extreme risks to the physical and financial safety of vulnerable passengers, particularly since he is only driving part-time anyway when he feels up to it.

MR. MUSTAFA'S CLOSING SUBMISSIONS

68. On behalf of Mr. Mustafa, Mr. Hussain noted that Mr. Mustafa is 65 years old. He has physical limitations related to his health. Mr. Hussain also argued that Mr. Mustafa has certain functional or intellectual limitations, reminding the Tribunal that Mr. Mustafa could not easily calculate the number of months between August and June.
69. Mr. Hussain reminded the hearing panel that Mr. Mustafa had been driving a taxi for some 8-10 years and that until the incident in August 2018, his record was unremarkable. Mr. Hussain argued that it would be very unusual for a person to start assaulting women, in their 60s.
70. Mr. Hussain argued that it was the Complainant who asked for a free ride and then attacked Mr. Mustafa when he refused and told her he would take her no further.

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71. Mr. Hussain reminded the Tribunal that he was unable to cross-examine the Complainant. He was also unable to access the video from inside the taxi cab, a video he argued was the best evidence of what happened.
72. He also argued that Mr. Mustafa's behaviour after the incident may have been affected by the fact that he had been hit in the head.
73. Mr. Hussain stated that Mr. Mustafa's licence should be allowed to continue. He invited the Tribunal to impose whatever conditions upon the licence the Tribunal considered appropriate. He suggested that Mr. Mustafa could benefit from some form of counselling.

DECISION

74. The charges of sexual assault and fraud laid against Mr. Mustafa are serious and do create a concern about Mr. Mustafa's ability to operate his business in a manner that is consistent with his obligations pursuant to Sec 546 etc. of the Municipal Code and that protects public safety.
75. Mr. Mustafa insists that no sexual assault occurred. It was in fact the Complainant who assaulted him. There is no dispute that the Complainant had been drinking before she entered the taxi cab. She acknowledged being intoxicated. She also acknowledged asking Mr. Mustafa for a free ride. She admits that she hit him several times on the head.
76. The key issue is what occurred between the time the Complainant asked Mr. Mustafa for a free ride and time the Complainant struck him in the head. The Complainant stated that Mr. Mustafa reached his arm back and touched her thigh and that this is what prompted her to hit him. Mr. Mustafa claims that it is impossible for him to have reached his hand behind him to touch the Complainant's thigh. It was his refusal to give the Complainant a free ride, which triggered her assault on him.
77. As noted by Mr. Hussain, the Tribunal does not have access to the best evidence, the video from inside Mr. Mustafa's cab. The only evidence we have of what happened inside the cab is the testimony of the two parties. The Tribunal also acknowledges that Mr. Hussain was not able to cross-examine the Complainant. He was only able to cross-examine Detective Lee and he could not respond to any questions concerning what the Complainant actually meant or intended.
78. Despite these evidentiary challenges, the Tribunal finds that Mr. Mustafa's response to the incident raises a concern about his ability to deal appropriately with conflict or questionable behaviour on the part of passengers. There are protocols in place for taxi drivers to report incidents of violence, theft or threats to their safety. Mr. Mustafa did not abide by any of these protocols, either at the time of the incident, or later after he had had time to tend to his injuries and compose himself. The fact that Mr. Mustafa did not report the incident raises a concern for the Tribunal.

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79. Mr. Mustafa made no attempt to report that he had found a passenger's property in his cab. The fact that he simply tossed the property in the garbage suggests poor judgement.
80. Further concerns are raised by the numerous inconsistencies in Mr. Mustafa's testimony. Mr. Mustafa testified that before he left the Esso gas station, he checked the backseat of his taxi cab. He found both the black bag and the PC Financial Mastercard on the floor of the back seat. Video of his cab arriving at the Esso gas station shows both the Complainant and Mr. Mustafa exiting the cab. However, it also shows that he returned to the front seat without checking the back seat as he claimed he did.
81. Mr. Mustafa testified that after the incident, he felt too bad to continue working. He went straight home. On cross-examination, Mr. Mustafa acknowledged that he, in fact, stopped to pick up a passenger and also stopped at several locations to make a total of 21 purchases.
82. Mr. Mustafa's explanation as to how he ended up with the Complainant's PC Financial Mastercard in his possession and how he accidentally used that card instead of his own to make several purchases in a number of locations also raises a concern.
83. The number of purchases, the nature of the purchases and the pattern of the purchases are all odd. The Tribunal accepts Detective Lee's assessment that the pattern of purchases was consistent with fraud. Mr. Mustafa argued that he was making purchases for the party he was planning to have when his granddaughter was born. However, he was unable to identify which if any of the purchases he made that day were related to party preparation. Given the party was several weeks away, there did not seem to be any urgent need to make purchases for the party. Especially at a time when Mr. Mustafa claimed that he was not feeling well and needed to go home.
84. Even if the Tribunal believes that the purchases made with the Complainant's PC Financial Mastercard were made by accident, Mr. Mustafa's response to the situation raises a serious concern. Mr. Mustafa claims that he did not realize that he had someone else's PC Financial Mastercard until he arrived at home after making the purchases. At that point however, he made no attempt to report that he had this credit card. He did nothing until after he was arrested. In fact, he destroyed the credit card. This creates a concern for the Tribunal. Destroying the PC Financial Mastercard was either an attempt to destroy evidence of a crime or, at a minimum, it is an example of extremely poor judgement on the part of Mr. Mustafa. The fact that he responded in such an inappropriate manner raises a concern for the Tribunal.
85. Mr. Mustafa also refused to take any responsibility for his actions or poor judgement. He did not acknowledge that he failed to follow proper protocol in response to being attacked in his cab or in response to finding lost property or finding the Complainant's PC Financial Mastercard in his possession. When confronted with evidence that contradicted his testimony, Mr. Mustafa had no

- response. His only response when asked to explain contradictions in his own testimony and evidence was that he was confused.
86. In summary, the Tribunal is concerned about Mr. Mustafa's actions in response to the circumstances he encountered with this passenger, his actions after the incident, specifically the charges placed on the Complainant's credit card, and his destruction of the PC Financial Mastercard. These actions are all evidence of Mr. Mustafa's poor judgement and inability to deal with conflict or difficult passengers. Given that taxi drivers must deal with the public they must be able to manage conflict and difficult passengers. They have to know when to report an incident and how to respond when faced with questionable behaviour from a passenger. Mr. Mustafa's actions raise serious concerns that he cannot and will not respond reasonably and properly to situations of conflict, stress or questionable behavior of passengers. In such cases, the inability of a taxi driver to respond reasonably could create serious risks to public safety.
87. Balancing the protection of the public interest with the need of the licensee to make a livelihood, the Tribunal is not satisfied that Mr. Mustafa established his need to make a livelihood from driving as a Vehicle-For-Hire Driver. He testified that he only drives on a part-time basis due to health reasons. The Tribunal finds that in the circumstances of this case, the need to protect the public interest outweighs Mr. Mustafa's need to make a living as a Vehicle-For-Hire Driver.
88. Taking into consideration all of the evidence and the submissions above, the Tribunal orders that Vehicle-For-Hire Driver's Licence No. D01-3250234 be revoked on the grounds that:
- i) Mr. Mustafa will not carry on the business in accordance with lawful integrity and honesty;
 - ii) that his carrying on of the business has resulted, or will result in a breach of Chapter 546, or any other law; and
 - iii) he has, or would infringe the rights of other members of the public, or has endangered or would endanger their health and safety.

Originally Signed

Mary Lee, Panel Chair
Panel Member: Edgar-André Montigny, concurring

Reference: Minute Nos. 147/20, 148/20 and 14/21

Date Signed: February 18, 2021