

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: April 1, 2021 (Videoconference Hearing)

Panel: Daphne Simon, Panel Chair;
Mary Lee and Paula Turtle, Members

Re: Muhammad Qaher Sabery (Report No. 7441)
Applicant for a Vehicle-For-Hire Driver's Licence
(Application No. C008480)

Counsel for Municipal Licensing and Standards: Graham Thomson

Counsel for Applicant: Unrepresented

BACKGROUND

Mr. Sabery has requested a hearing before the Toronto Licensing Tribunal for a Vehicle-For-Hire Driver's Licence. He previously drove a taxi cab, in the City of Toronto, from November 29, 2007 to November 29, 2019. His licence was cancelled for not providing a criminal record and judicial matters check within the required time frame. Mr. Sabery also held a Tow Truck Driver's Licence from August 2007-2008 and from March 2010-2011 and a Public Garage Licence from January 2008-2009, in the City of Toronto.

Mr. Sabery submitted a new application on February 3, 2020. Municipal Licensing and Standards ("MLS") denied his application on February 12, 2020 based on his record of criminal charges and convictions. Mr. Sabery requested a hearing to determine if his licence should be granted.

This matter was before the Tribunal for a hearing on April 1, 2021.

SUMMARY OF DECISION

The Tribunal denied Mr. Sabery's application for a Vehicle-For-Hire Driver's Licence based on his conduct in regard to the criminal charges of Assault and Mischief Under \$5,000. The criminal charges remain before the courts, however, his conduct provides reasonable grounds to believe he would not conduct himself in a way that would protect the health and safety of the public.

MLS'S EVIDENCE

MLS presented evidence through two witnesses: Detective Constable Neil Murray (Badge #9633) and Jamil Elannan, Supervisor, Municipal Licensing and Standards.

Officer Murray of the Criminal Investigation Bureau, 11 Division in Toronto provided evidence regarding an incident that took place regarding Mr. Sabery on December 7,

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2017. Officer Murray took over the case from his partner who interviewed witnesses, the complainant and Mr. Sabery. As a result of the investigation, in July 2018, Mr. Sabery was charged with Assault and Mischief Under \$5,000. The next court date for this matter is on April 15, 2021. Officer Murray reviewed the file and is familiar with the case. He presented details of the incident which led to criminal charges against Mr. Sabery.

911 Call

Officer Murray identified an audio file which was a recording of a 911 call from the alleged victim, Matt K, on December 7, 2017. The panel listened to the recording. It described Matt K's interaction with a Beck taxi driver at the intersection of Chelsea and Dundas Street, as follows:

Matt K said that a taxi cab cut him off so he honked at him. At the intersection, the taxi driver came out of his car and smashed his passenger side window and then punched him in the face several times. His face was bleeding. However he did not need an ambulance. His car window was fully shattered and the taxi driver went southbound on Dundas. He described a Beck Taxi 357 with Licence Plate AZBX 637. There were a couple of witnesses as well. He was told by dispatch that police would come to the scene to take a report.

Officer Murray introduced photographic evidence taken by Officer Steele of the shattered window; shards of glass on the passenger seat of the driver's side, shattered glass in Matt K's shoe. He also identified a photograph of Matt K's face with a bleeding cut on his cheek that was taken by Matt K. Officer Murray testified that there were two witnesses at the scene. When police arrived to the intersection, approximately three hours after the 911 call, only the complainant, Matt K, remained at the scene. He provided a statement and the contact information for the two independent witnesses.

Officer Murray said that Mr. Sabery was contacted by telephone a few days later and gave his statement to the investigating officer. He also provided contact information about the passengers in his car at the time to verify his account of the events, who were willing to speak with police.

All three independent witnesses were contacted by telephone on April 28, 2018. One witness, Suzie, provided an email statement and photos that verified the account of Matt K. Her statement said that she witnessed a Beck Taxi stop quickly at the intersection. The taxi driver walked over to Matt K's car, punched the window and punched Matt K in the head about three times; he then walked back to his taxi and drove away. Matt K provided a statement to police on August 14, 2018. The other witnesses did not provide any information to the police. Mr. Sabery was arrested on July 9, 2018 and charged with Assault and Mischief Under \$5,000. This matter is still before the court at the time of writing this decision; the next court date is April 15, 2021.

Mr. Elannan referred to the MLS Report and provided information to the panel about Mr. Sabery's licensing history with the City of Toronto. Mr. Sabery also held a Tow Truck Driver's Licence from August 2007-August 2008; March 15, 2010-March 15, 2011 and a Public Garage Licence from January 2008-January 2009. Mr. Sabery appeared before the Toronto Licensing Tribunal in August 2007 for his Tow Truck Driver's Licence application. At that time, his licence was denied due to two criminal harassment charges

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in 2003. He was granted a Tow Truck Driver's Licence with a two year probationary period.

Mr. Elannan referred to the criminal charges and convictions against Mr. Sabery, and Highway Traffic Act charges and convictions obtained from the Ministry's ICON database, including 2 Criminal Code of Canada charges that were withdrawn:

Threaten Death Bodily Harm, January 19, 2011 – Withdrawn

Possession of Substance, Controlled Drug and Substance Act, April 17, 2014 – Withdrawn

MR. SABERY'S EVIDENCE

Mr. Sabery testified on his own behalf. He explained what occurred on December 7, 2017. He picked up a fare and was driving two older ladies and a baby to St. Joseph's Hospital. When he reached Annette and Dundas, he noticed a grey car driving behind him and honking. The car was unable to pass him as there is only one lane of traffic in that area. The car came very close to the back of his car. The car honked at him for about 1 km.

When they reached the intersection of Dundas and Chelsea and the light was red, Mr. Sabery got out of his vehicle and approached the passenger side door of the grey car. He stated he was concerned that the driver was drunk. He wanted to know why he was honking at him. Mr. Sabery stated that the driver tried to push him away from the car by opening his door quickly. Mr. Sabery, in trying to dodge the door, pushed back against the driver's side window and it shattered. Mr. Sabery said he had his keys in his hand and that caused the glass window to shatter. Mr. Sabery then returned to his car and drove away. He didn't know what else to do. He continued to St. Joseph's Hospital to drop off his fare.

Mr. Sabery said that the witnesses in his car saw everything. He provided the officer a statement and his witnesses contact information after the incident happened. He doesn't understand why the police didn't interview his witnesses. He said that he could not possibly smash a window with this hand. He denied punching the complainant. He didn't see that his face was bleeding. Mr. Sabery said he heard nothing from police until he was arrested in July 2018.

Mr. Sabery stated that he has not been working. He is supporting himself and his family through pandemic relief government assistance. In 2016, Mr. Sabery was married. He has two children, ages two and four years old.

In response to questioning from MLS counsel, Mr. Sabery explained that the 2003 criminal harassment charges happened when he was very young, 19 or 20 years old. He was jealous of a girlfriend and acted out. In another occasion, he called the family of another girlfriend who did not approve of him. He took an anger management class and has tried, unsuccessfully, to obtain a pardon for those two charges.

SUBMISSIONS

MLS submitted that Mr. Sabery's application for a licence should be denied because his conduct in the incident of December 7, 2017 was a risk to the health and safety of the

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public. Mr. Thomson submitted that even if the panel accepts Mr. Sabery's version of events, this conduct is not acceptable. Exiting one's vehicle in the middle of an intersection to confront another driver, even based on a belief that the other driver is breaking the law, is conduct that endangers the public. In this instance it also endangered his passengers' safety as well as that of the complainant. MLS submitted that Mr. Sabery has a record of criminal charges that shows he has bad judgment and anger management issues. He submitted that Mr. Sabery admitted he is tired of driving a taxi and could find other employment. As such this is not a case where the applicant has a need to earn a livelihood as a taxi driver. MLS's position is that this is also not a case for probation or placing conditions on the licence and the licence should be denied.

Mr. Sabery stated that he is not a criminal and he is not a violent person. He doesn't know why the police did not contact his witnesses. He doesn't know why he is being judged for something that he has not been proven guilty of. He admitted he took an anger management course after he was convicted of criminal harassment, but testified that he had not taken any such courses since then, including after the incident with Matt K on December 7, 2017.

He would like to continue to work as a taxi driver. He deserves his licence and won't be a problem to anyone. But if his licence is denied, he will be fine will and God will provide for him and his family. He said he could find another job, in a grocery store or elsewhere. He said that he did not punch the window. He did not know the complainant's face was cut. He just wanted to find out why the car was honking at him and whether or not the driver was 'ok'. He stated that he had 20-30 seconds before the light turned green again. He was concerned for the driver and for his passengers and that is why he approached the car at the intersection. He said we are all human and we all make mistakes but that doesn't mean we are a bad person.

DECISION

Issue: The Tribunal must determine whether Mr. Sabery's conduct has endangered the health and safety of members of the public and would endanger members of the public in the future, if granted a Vehicle-For-Hire Driver's Licence?

Summary of Decision: The Tribunal determined that it had reasonable grounds to believe that Mr. Sabery's conduct will endanger the health and safety of members of the public if granted Vehicle-For-Hire Driver's Licence. Therefore, his application for a licence was denied.

The Municipal Code provides in part:

§ 546-4. Grounds and administrative thresholds for denial of licence.

A. An applicant for a licence or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to the licence or renewal, except where:

(1) The conduct of the applicant affords reasonable grounds to believe that the applicant has not carried on, or will not carry on, the business in accordance with law and with integrity and honesty; or

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(2) There are reasonable grounds to belief [sic] that the carrying on of the business by the applicant has resulted, or will result, in a breach of this chapter or any law;
or

[...]

(5) The conduct of the applicant or other circumstances afford reasonable grounds to believe 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, their health or safety.

[...]

The Municipal Code requires that MLS demonstrate that there are reasonable grounds to believe that Mr. Sabery's conduct will endanger members of the public or put their health and safety at risk if he is allowed a taxi driver's licence. If MLS cannot demonstrate this, Mr. Sabery is entitled to a licence.

In carefully considering the evidence in this matter, the Tribunal had to decide whether MLS could show that Mr. Sabery's conduct would endanger the health and safety of the public. The Tribunal was not required to determine whether Mr. Sabery was guilty of the offenses he was charged with on December 7, 2017.

MLS presented evidence of the circumstances that led police to charge Mr. Sabery with Assault and Mischief Under \$5,000. The 911 audio call by Matt K was very persuasive. The 911 call was made shortly after the incident took place and therefore the complainant's memory was fresh and details he provided were specific. The witness statement, provided by Suzie, was consistent with Matt K's evidence about how the window was shattered. Suzie described the taxi was stopped behind Matt K's car whereas Matt K stated the taxi was stopped in front of the car. This discrepancy was minor and did not affect our determination. Both described similar details of Mr. Sabery's actions at the intersection on December 7, 2017.

Mr. Sabery denied breaking the car window. He said it was an accident. However, by his own evidence, he admitted that he left his car at a red light intersection to go and talk to the driver of the car behind him. He testified that the driver of the car, Matt K, tried to use the car door to shove him. It was keys in his hand that accidentally broke the glass window. He said he was concerned about the driver and his honking. His passengers were also concerned. He also denied punching the complainant.

As stated, it is not for this Tribunal to determine whether Mr. Sabery is guilty of the charges. However, this Tribunal is very concerned with Mr. Sabery's admitted conduct in this matter. It is never a good idea to exit a vehicle in the middle the road, whether at a red light intersection when traffic is stopped or not. This is basic safety driving protocol and it puts the public, other drivers and pedestrians, at risk.

It is true that there are many annoyances when driving in a densely populated city like Toronto. Much of these annoyances come from other drivers themselves, such as driving too close or honking or cutting in front without signaling and so on. When only a single lane is available on a street, as was the case on Dundas West on December 7, 2017, all cars must cooperate and share the road. Defensive driving strategies are needed. This means that one must always be on guard for other drivers and the annoyances they present. And one must act and drive accordingly with calmness and presence of mind. In

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the circumstance Mr. Sabery described the car behind him was honking for 1 km. Mr. Sabery could have and should have taken other measures to avoid any interaction with this driver. He could have pulled into a parking lot or driveway to let the car pass. He could have safely reported his concerns that the driver was impaired by reporting his concerns to his dispatcher. Or he could have ignored it. There were many opportunities for Mr. Sabery to have de-escalated this situation. Instead, he confronted the driver at a red light, with passengers in the back of his car. This does not show calm thinking. It is the action of someone who is impulsive, impatient and possibly may not be able to control their emotions, such as anger.

The panel did not accept Mr. Sabery's evidence that he left his car out of concern for the driver. It seemed more likely that he was annoyed with the honking behind him, which he say continued for 1 km, and wanted to confront the driver. One can only imagine how fearful his passengers must have been when they were left in the back seat with a baby while Mr. Sabery exited his vehicle in the middle of the road to speak to the driver behind him. The Tribunal finds this behaviour to be reckless. It is not appropriate behaviour for any driver let alone for a taxi driver who spends many hours on the road and will certainly be presented with many aggravating situations.

Mr. Sabery said that he is not guilty of the offense. He stated that he is human and makes mistakes. The Tribunal is not deciding the guilt or innocence of Mr. Sabery. We are considering his actions and his explanation for such actions. Unfortunately, Mr. Sabery's explanation did not put our concerns to rest. He believed his actions were justified. He stated that he had at least 30 seconds until the light turned green again and that he was not endangering anyone or stopping traffic. He did not describe any steps he has taken to ensure this does not happen again. This does not show an understanding of his unsafe behaviour or how it puts other members of the public in harm's way.

The Tribunal also has a mandate to balance the protection of the public interest versus an individual's need to earn a living, as set out in part in the Toronto Municipal Code, § 546-8.A.(3)(c):

Have regard for the need to balance the protection of the public interest with the need for Licensee's to make a livelihood.

The Tribunal considered Mr. Sabery's need to earn an income. We had to balance this against the risk to public safety should Mr. Sabery be granted a licence. Mr. Sabery admitted that he would be fine if he did not obtain his taxi licence as he believed it is God's plan. He said he would like to drive a taxi but that he could find another job working in a grocery store, if he needed to. The Tribunal determined that there were other means for Mr. Sabery to earn an income. We decided that the risk to public safety outweighed the need to earn a livelihood in these circumstances.

The actions that Mr. Sabery undertook at the intersection were of serious concern to the Tribunal and endangered the health and safety of members of the public. Mr. Sabery did not appreciate what part he played in this. Importantly, there was no evidence before us that Mr. Sabery took steps after December 7, 2017 to address his reckless behaviour.

The Tribunal issued an oral decision with reasons to follow at the hearing of this matter on April 1, 2021. In response, Mr. Sabery asked the Tribunal when he may apply for a taxi

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licence in the future. It is impossible (and inappropriate) for this panel to comment on how a future application might be dealt with by MLS. However, with the passage of time, Mr. Sabery may consider applying for a taxi licence in the future if he can show that his behaviour has changed. He should consider the Tribunal's comments in this decision and its concerns about his conduct very seriously, if he appears before the Tribunal again.

At this time, we deny Mr. Sabery's application for a Vehicle-For-Hire Driver's Licence.

Originally Signed

Daphne Simon, Panel Chair
Panel Members: Mary Lee and Paula Turtle, concurring

Reference: Minute No. 52/21

Date Signed: April 15, 2021