

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: April 8, 2021 (Videoconference Hearing)

Panel: Edgar-André Montigny, Panel Chair;
Mary Lee and Daphne Simon, Members

Re: Khaled Gamal Hegazy (Report No. 7447)
Applicant for the Renewal of Tow Truck Driver's Licence
No. D09-4808825

Counsel for Municipal Licensing and Standards: Matthew Cornett

Counsel for Applicant: Frank Alfano

SUMMARY

Licence D09-4808825 was issued to Mr. Khaled Gamal Hegazy (Mr. Hegazy) on February 12, 2018. The licence expired on February 12, 2020. The renewal fee was submitted on January 29, 2020.

When conducting a routine review of Mr. Hegazy's driving record on December 30, 2019, Municipal Licensing and Standards (MLS) became aware of nine demerit points and a variety of charges and convictions against Mr. Hegazy.

On February 20, 2020 MLS mailed Mr. Hegazy a letter indicating that his request for renewal of his licence was denied. Mr. Hegazy's Request for a Hearing was received by MLS on March 13, 2020. His licence was "deemed to continue" until the matter could be brought before the Tribunal.

The hearing was held on April 8, 2021. MLS sought the revocation of Mr. Hegazy's Tow Truck Driver's Licence.

After hearing the evidence and submissions of the parties, the Tribunal confirmed the decision of MLS to deny Mr. Hegazy's request for the renewal of his licence. Consequently the licence was cancelled/revoked.

ISSUE

The question before the Tribunal was whether the denial of Mr. Hegazy's request for the renewal of his licence by MLS was justified based upon:

- (a) whether Mr. Hegazy's record of charges and convictions provide reasonable grounds to believe that he has breached the Toronto Municipal Code, Chapter 545, Section 545, 4A (1)(2) and (5). And particularly that Mr. Hegazy'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 public.

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- (b) If a breach occurred, whether the concerns raised by the breach could be dealt with by the imposition of conditions upon the licence.

CITY'S EVIDENCE

Once sworn in, Andrea Di Matteo, MLS Supervisor and MLS's sole witness testified as to how the information presented in Report No. 7447 was obtained.

Report No. 7447 and updates dated April 6, 2021 were entered together as Exhibit #1.

In response to questions from counsel, the panel and on cross-examination, Ms Di Matteo outlined that Mr. Hegazy's record includes 37 Charges filed against him under the Highway Traffic Act and Compulsory Automobile Insurance Act, since 2013. A number of charges related to issues such as "coated windshields" and "improper or no mudguards". Other charges were more serious, relating to "Speeding", "Careless Driving", "Fail to Surrender Driver's Licence" or "Drive motor vehicle while using hand held device". Mr. Hegazy was driving a tow truck when at least 11 of these charges were incurred.

The 9 most recent charges are still before the courts. One 2019 conviction for "Careless Driving" and 3 related charges have been re-opened. Otherwise, there are 10 convictions on the record since 2013. Mr. Hegazy's Ontario Driver's Licence was placed under administrative suspension at least 3 times during this period. He has accumulated a total of 9 demerit points.

Similarly, Ms Di Matteo testified that Mr. Hegazy has accumulated 27 charges under the Toronto Municipal Code since 2017. 17 of those charges are still before the Court. 9 charges so far have result in convictions.

Ms Di Matteo also noted that Mr. Hegazy had 2 convictions under the Trespass to Property Act from 2017.

LICENCE HOLDER'S EVIDENCE

Mr. Alfano, a paralegal, represented Mr. Hegazy. After Mr. Hegazy was sworn in and in response to examination by counsel, questions from the panel and during cross-examination. Mr. Hegazy presented the following evidence.

Mr. Hegazy is 25 years old. He has been driving a tow truck since 2018. He noted that he had been employed as a security guard before that, but as he has a wife and daughter to support, he found his income as a security guard was too low. Mr. Hegazy indicated that his current income from driving a tow truck is not high.

Mr. Hegazy clarified that since he was licensed by MLS, he has had 3 convictions in three years. The bulk of his most recent charges are still before the courts. He also noted that one conviction for "Careless Driving" was re-opened.

Mr. Hegazy explained that at his last job, the employer failed to maintain his vehicles, so he was frequently stopped by police and charged with various offences related to the

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condition of the vehicles. He stated that he finally realized that this was not a good situation and he changed employer last fall.

In cross-examination, Mr. Hegazy was rather vague in his responses to questions about charges incurred since he started working for his new employer or charges that were clearly related to his own actions while driving rather than the condition of his vehicle.

Mr. Hegazy acknowledged that a tow truck driver has an obligation to verify a vehicle is in proper condition to be taken on the road.

CITY'S SUBMISSIONS

In closing submissions, Mr. Cornett, on behalf of MLS, submitted that the Tribunal should cancel/revoke the Tow Truck Driver's Licence of Mr. Hegazy.

He submitted that:

- a) Mr. Hegazy's record of charges and convictions, particularly, charges of "Stunt" or "Careless Driving" and convictions for "Speeding";
- b) The fact that so many charges were incurred in such a short time offers reasonable grounds to believe that Mr. Hegazy's continued use of his Tow Truck Driver's Licence would pose a risk of harm to the public. The risk of harm was sufficiently serious to override concerns about balancing the public interest with Mr. Hegazy's right to earn a living.

LICENCE HOLDER'S SUBMISSIONS

On behalf of Mr. Hegazy, Mr. Alfano submitted that Mr. Hegazy has been truthful about his past errors and that he took responsibility for his actions. Mr. Alfano pointed out that despite the long list of charges, Mr. Hegazy had only 3 convictions on his record since he was licensed by MLS.

Mr. Alfano argued that any concerns the Tribunal had about Mr. Hegazy's conduct could be dealt with by the imposition of conditions on his licence. He noted that Mr. Hegazy was prepared to accept any conditions the Tribunal might think appropriate.

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.

In this instance, Mr. Hegazy is entitled to a renewal of his Tow Truck Driver's Licence unless MLS can demonstrate that there are reasonable grounds to believe that he 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. Hegazy'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 public.

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The charges and convictions against Mr. Hegazy are indeed serious and troubling. The mere number and variety of charges accumulated by Mr. Hegazy over a relatively brief period certainly raise a serious concern. The Tribunal also found that there was no practical way to eliminate the concern for public safety through the imposition of conditions on the licence.

Although Mr. Alfano claimed that Mr. Hegazy took responsibility for his actions, the Tribunal did not find this was the case. Mr. Hegazy's key tactic was to blame his numerous charges on his former employer's failure to maintain his vehicles. He also claimed that once he came to the attention of the police, he was stopped on a regular basis. Nothing in his testimony indicated Mr. Hegazy took any personal responsibility for his driving record.

Mr. Hegazy did not have a satisfactory explanation about the variety of charges related to his actual driving, such as "Disobey Sign" or "Drive Motor vehicle while using hand held device", rather than the condition of his vehicle. It was not clear that Mr. Hegazy's situation has changed since he moved to a new employer. It appears he continues to accumulate new charges at the same pace.

While it is true that many recent charges are still before the courts, in the Tribunal's opinion, the mere fact that such a number of charges was accumulated in a short time is sufficient to raise a serious public safety concerns in relation Mr. Hegazy's continued use of his licence.

While the Tribunal is aware that Mr. Hegazy has a wife and child to support, in this instance, the Tribunal is of the view that the risks to public safety represented by Mr. Hegazy's continued use of his Tow Truck Driver's Licence outweighs his need to earn a living.

DECISION

For the reasons above, the Tribunal Orders the following:

- 1) The Application for Renewal of Tow Truck Licence No. D09-4808825, held by Khaled Gamal Hegazy is denied.
- 2) Licence No. D09-4808825 is therefore, cancelled/revoked.

Originally Signed

Edgar-André Montigny, Panel Chair
Panel Members: Mary Lee and Daphne Simon, concurring

Reference: Minute No. 58/21

Date Signed: April 23, 2021