

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: May 13, 2021 (Videoconference Hearing)

Panel:

Melina Laverty, Panel Chair;
Edgar-André Montigny and Paula Turtle, Members

Re:

Mohamad Hassan Zbib (Report No. 7581)
Applicant for the Renewal of Vehicle-For-Hire Driver's Licence
No. D01-4721230

Counsel for Municipal Licensing and Standards: David Gourlay

Counsel for Applicant: Unrepresented

SUMMARY

On January 24, 2020, Municipal Licensing and Standards (MLS) conducted a routine review of Mr. Zbib's driver's record, which revealed charges under the Highway Traffic Act (HTA).

On September 22, 2020, MLS sent Mr. Zbib a letter outlining the grounds for denial of renewing his Vehicle-For-Hire Driver's Licence. On October 20, Mr. Zbib requested a hearing before the Toronto Licensing Tribunal (the Tribunal or TLT).

After hearing the evidence and submissions of the parties, the Tribunal renewed Mr. Zbib's Vehicle-For-Hire Driver's Licence with conditions.

INTRODUCTION

Mr. Zbib has been driving a taxi in Toronto for over 30 years. He was first issued a Vehicle-For-Hire Driver's Licence in 1990, which was cancelled when he became a Taxicab Owner in 2005, and he held that licence until 2017. Mr. Zbib then obtained another Vehicle-For-Hire Driver's Licence, which is the licence before the Tribunal. He has also held licences to drive for Uber and Lyft but those licences have been cancelled.

After a routine check of Mr. Zbib's driving record, MLS did not renew his Vehicle-For-Hire Driver's Licence as records revealed concerning charges under the HTA.

ISSUE

1. The issue before the Tribunal is whether Mr. Zbib's conduct (as evidenced by his record of charges and/or convictions under the HTA) provides reasonable grounds to believe that:

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- i. Mr. Zbib will not operate a Vehicle-For-Hire in accordance with law, and with integrity and honesty; or
- ii. Mr. Zbib's operation of a Vehicle-For-Hire has resulted or will result in a breach of the law; or
- iii. Mr. Zbib'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

Mr. Jamil Elannan, Supervisor, MLS, was the only witness for the City. Mr. Elannan was affirmed and testified regarding Mr. Zbib's charges and convictions as set out in MLS Report No. 7581 (Exhibit 1 or the report), and two updates to the report dated April 12, 2021, four pages with three MLS charts with one new HTA charge noted (Exhibit 2) and a three-year driver's abstract, dated April 12, 2021 (Exhibit 3). He noted that:

2. He reviewed Mr. Zbib's licensing history, which included that he held a Vehicle-For-Hire Driver's Licence, which was cancelled when he became a Taxicab Owner in 2005, and he held that licence until 2017. Mr. Zbib then obtained another Vehicle-For-Hire Driver's Licence. He also held licences to drive for Uber for two years beginning in May 2017, and for Lyft for one year beginning in March 2018, but those licences have been cancelled.
3. There is an MLS chart (page 11 of the report) which is created from data found in the ICON (Integrated Courts Offences Network) database. This noted several charges but no convictions under the Criminal Code of Canada.
4. The MLS chart (page 21 of the report) shows 10 charges and three convictions under the HTA. No additional charges or convictions were identified when the MLS updated this chart on April 12, 2021. The four most recent charges all occurred while Mr. Zbib was driving a taxi and include:
 - a. "unsafe turn/lane change fail to signal" on August 13, 2019 (plate #2602);
 - b. "careless driving" on January 20, 2020 (plate #2602);
 - c. "speeding 79 km/h in a 50 km/h zone" on September 25, 2020 (plate #633);
 - and
 - d. "disobey sign" on November 27, 2020 (plate #323).
5. The MLS chart (page 47 of the report) shows eight charges and three convictions under the By-law, with the most recent charge in July 2014.
6. On January 20, 2020, Mr. Zbib was charged with "careless driving" and this case is still before the courts. As set out in the police report, Mr. Zbib was driving a Toyota Camry at 1:50 am westbound on Queen Street East near Bertmount Avenue when he lost control of his vehicle, hitting a parked car. The collision set off a chain reaction and the parked car hit the adjacent parked car. Mr. Zbib was charged with careless driving. Police were called to investigate. As a result of the collision, two vehicles were towed from the scene with significant damage.

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7. MLS ordered a three-year driver record for Mr. Zbib, on April 12, 2021, which shows two demerit points and a conviction for “unsafe move” on November 22, 2019 and an offence date of August 13, 2019.

Mr. Zbib did not cross-examine Mr. Elannan.

APPLICANT'S EVIDENCE

In testimony, in cross-examination, and in response to questions from the Panel, Mr. Zbib provided information about his record of charges and convictions, and personal circumstances, including the following:

8. He has driven a taxi a long time, and it is the only income he has ever had to support himself and his family (four daughters under the age of 20). He has never had another job.
9. He has driven a cab nearly every day for 31 years and has maintained a very good record for someone who is on the road driving every day. He recounted earlier experiences with police in which he felt he was unfairly charged, and that left him traumatized. He also raised incidents in which he felt that he and other taxi drivers were targeted by police. All these years he has never had his driving licence suspended. He has had a few tickets from time to time.
10. He agreed that the list of charges and convictions in the report are accurate, and that he was charged with careless driving. He then explained why he felt the various pending charges were not valid.
11. In January 2020, around 2:00 am he was driving in the left lane on Queen Street and the parked cars were on the right. The left lane has streetcar tracks and he tries to avoid driving on top of them. There was a car in the oncoming lane and it was too close, so he moved to the right and that is when he hit black ice and lost control of the car. He tried not to hit the brakes hard, but on black ice you need to be careful, you have to drive differently, but the car kept sliding. He was so close to the parked car and did not have any options, and finally he steered to the left, and he almost made it, and then hit the parked car from the side. He is unsure if his car hit the back end of the parked car as it happened so fast. Both parked cars had to be towed from the scene. He cannot recall if he drove his taxi home or it was towed. He waited for the police officer but no one showed up. He always tries to be careful, and so he cannot say he was guilty of careless driving. The police did not see what happened. The case is still before the courts and he asks what would happen if the court finds him innocent. Because of COVID, no court date has been set yet for a trial.
12. He explained the circumstances that led to the conviction for “unsafe turn/lane change/fail to signal” in 2019. He was driving south on Dawes Road towards Danforth Avenue and the passenger directing him was unsure if the place she wanted to go to on the Danforth was east or west of Dawes Road. At the last minute, she told him to go right, and so he did not make a signal. A police officer was driving behind him, and so he got a ticket. He does not know why it says “unsafe move” on his driver’s abstract as the ticket was for failing to signal. He

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did not go to court for it. If not for COVID, he would have gone to court for it. The Tribunal noted that the incident and conviction pre-dated the start of the COVID-19 pandemic.

13. He described the September 2020 speeding charge. He was driving a taxi but had no passenger. He was going down the hill on Ellesmere Avenue between Markham Road and Neilson Road. The police officer was on the other side waiting and he did not slow down in time, and so he got a ticket.
14. In November 2020, he was charged with “disobey sign” at Fairford Avenue and Woodfield Road. He was charged at 8:52 am because he made a left turn. No left turns are allowed before 9:00 am at that intersection.
15. He usually gets one or two tickets a year no matter what, but feels that is always the case, and has not noticed any change in the number of tickets he has received in the last while.

CITY OF TORONTO’S SUBMISSIONS

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

16. The City is asking that a condition of two years’ probation be placed on Mr. Zbib’s Vehicle-For-Hire Driver’s Licence, and MLS will monitor the situation and make sure there are no additional concerns with respect to careless driving issues.
17. The Tribunal does not need to decide if the incident in January 2020 would lead to a conviction for careless driving. There was a collision, and Mr. Zbib was charged with careless driving. The Tribunal needs to determine if there are reasonable grounds for concern about public safety and compliance with the law. Mr. Zbib described black ice and streetcar tracks to explain what happened. But he did admit that his car struck a parked car and the next car was hit too, and both cars were damaged enough to be towed away. This may not be enough to lead to a conviction of careless driving. The fact of the charge is enough to raise reasonable grounds for concern for public safety.
18. The City recognizes that Mr. Zbib supports four daughters and is the sole income earner, and thus is not asking for a suspension of his licence. The probation requested is a relatively minor condition on his licence to make sure there are no broader concerns, and ensure there is no pattern.
19. Mr. Zbib raised some other past incidents from his history that were unsettling for him. Those charges were withdrawn and/or there was an absolute discharge and the City is not relying on those. Mr. Zbib has been licensed with the City for decades, and we are not going to rely on these dated incidents. Mr. Zbib also raised concerns about unfair tickets and those details are not in the material before the Tribunal, and City is not relying on those either. Not to take away from Mr. Zbib’s difficult experiences; however, those charges are not relevant to the driving issues and traffic accident of concern to the City.

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20. The City is aware that this is not the most serious set of driving charges and convictions. There is a conviction for “unsafe turn/lane change fail to signal” and three matters are still before the court. With the speeding charge, which is still before the court, Mr. Zbib acknowledges that he was going down a hill and the police were located in such a way that he was at top speed. The disobey sign is minor, but it is another in a pattern of recent driving charges.
21. Two years’ probation with no reporting requirement is well within the range for Mr. Zbib’s driving charges and convictions before the Tribunal. Mr. Zbib supports four daughters, and the concerns do not rise to a case where we would want to affect his livelihood. We recognize he has been driving for 30 years, and the reason for the probation is to make sure there is no pattern, and that provides some assurance to MLS.

APPLICANT'S SUBMISSIONS

Mr. Zbib submitted that:

22. He is concerned about public safety and he was not happy to have an accident.
23. He only has one speeding charge. The car as he said went down the hill before he hit the brakes. He has one line on his driver’s abstract and he is not happy about it. He tries to keep his driver’s abstract clean, but it is hard not to get a ticket, when his job is driving. In his view, he drives very well, and has not accumulated demerit points.
24. He believes putting him on probation is as if he is being found guilty. He was charged three years ago. [In questions, the Tribunal confirmed that it has only been a little over one year since Mr. Zbib was charged with careless driving.] He feels as if he is being punished for an accident that he never intended to have happen. Probation to him means he has something hanging over his head and suggests he does not care about public safety. He does care about public safety and tries to drive carefully.

ANALYSIS

25. Section 546-4 A of the Toronto Municipal Code sets out the grounds for denying renewal of a licence. Having weighed the evidence, the Tribunal is satisfied that those grounds have been met, and there are reasonable grounds to believe that Mr. Zbib 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. Zbib’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.
26. The information before us raises some concerns about Mr. Zbib’s ability to follow the law and drive safely. The Tribunal may impose conditions it considers appropriate. Any concerns we have about Mr. Zbib’s ability to follow

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the law and drive safely, could be satisfied with conditions on his Vehicle-For-Hire Driver's Licence.

27. The Tribunal noted that Mr. Zbib has been charged with "careless driving" following an incident in January 2020. Mr. Zbib testified in a straightforward matter and his testimony was consistent with the police report. He told the Tribunal that he had been driving to avoid the streetcar tracks on Queen Street when a vehicle in the oncoming lane came too close, he then swerved, hit black ice, and then side-swiped a parked car. This set off a chain reaction and so another parked car was hit. Mr. Zbib testified that he was not speeding, that both cars were damaged and needed to be towed. He could not recall if his taxi was towed or not. Mr. Zbib told the Tribunal that he was not driving carelessly, rather it was an accident, and he did his best to avoid it.
28. The Tribunal is unable to know exactly what happened that day, or if Mr. Zbib will be convicted of "careless driving." It could be as Mr. Zbib described an accident due to black ice and that otherwise he was driving at the speed limit and with care. However, with the information before us today, there were reasonable grounds to lay a charge of careless driving, which is a more serious driving offence, and we are sufficiently concerned about public safety given Mr. Zbib hit two parked cars and they were so damaged that they needed to be towed.
29. Aside from the January 2020 "careless driving" charge, the Tribunal was concerned that Mr. Zbib was charged with two other driving offences in 2020 (speeding 29 km/h over the posted limit and "disobey sign") and convicted in late 2019 of "unsafe turn/lane change fail to signal." Compared to prior years in which Mr. Zbib had only one or two charges a year, Mr. Zbib has had four charges between August 2019 and November 2020. According to the April 2021 three-year driver's abstract, Mr. Zbib has two demerit points. This contrasts with his testimony in which he said he had no demerit points and keeps his driving abstract clear.
30. In addition, the Tribunal was somewhat concerned that when Mr. Zbib testified he seemed to fail to take full responsibility for his driving. For example, in explaining the 2019 conviction of "unsafe turn/lane change fail to signal", he seemed to blame his passenger's indecision on which way to turn, rather than accept that he should have signaled properly anyway that it is his responsibility to follow the rules of the road. Similarly, he seemed to suggest that the speeding on Ellesmere was justified by the hill, even though he was found to be 29 km/h over the limit. With the November 2020 disobey sign charge, his excuse was that it was only five minutes before 9:00 am, when a left turn would be allowed, rather than accepting he should not have turned given the time.
31. Under s. 546-9 (C)(2), the Tribunal may impose such conditions upon a licence as it considers appropriate and as are authorized by law. Mr. Zbib's recent driving charges and conviction raises concern about his ability to drive in a safe manner and follow the law. In our view, a condition of a one-year probation on his licence would help alleviate the Tribunal's concerns, reduce the risk to and protect the public, and assure us that no concerning pattern is emerging. The

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Tribunal considered a two-year probation as proposed by MLS; however, Mr. Zbib's long history of driving a taxi and reasonably good driving record over the years was a mitigating factor. One year of probation with the usual conditions should be sufficient to determine if there has been a change in his driving that is cause for concern.

32. In considering whether to renew, grant or deny a licence, and whether to do so with or without conditions, the Tribunal must also balance the protection of the public interest with the need of the applicant or licensee to earn a living, as set out in section 546-8(A)(3)(c) of the Toronto Municipal Code.

33. Overall the Tribunal concluded that Mr. Zbib's livelihood needs further tipped the balance in this case. Mr. Zbib's sole source of income is driving a taxi and this has been his only job for over 30 years. He relies on it to support himself and his four daughters.

DECISION

For the reasons set out above:

Mr. Zbib's Vehicle-For-Hire Driver's Licence will be renewed, subject to the following conditions:

- 1) All fees, documents and/or any outstanding requirements must be submitted to the satisfaction of MLS within 30 days of the Tribunal hearing, failing which the licence may be cancelled;
- 2) Upon being renewed, the licence will be placed on probation for a period of one (1) year to commence on the date of issuance. Mr. Zbib is advised that during the probationary period, MLS may make additional checks of any driving, criminal, and by-law charges and convictions against Mr. Zbib, and conduct other investigations as appropriate to assess Mr. Zbib's compliance with the requirements of Chapter 546 of the Municipal Code and other applicable laws;
- 3) During the probationary period, if MLS has concerns with any new charges or convictions against Mr. Zbib, or any other concerns with respect to the conduct of the licensee, those matters and Report No. 7581, and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Melina Laverty, Panel Chair

Panel Members: Edgar-André Montigny and Paula Turtle, concurring

Reference: Minute No. 82/21

Date Signed: May 28, 2021