

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: September 23, 2021 (Videoconference Hearing)

Panel: Verlyn Francis, Panel Chair;
Melina Laverty and Daphne Simon, Members

Re: Danial Khazai (Report No. 7610)
Holder of Tow Truck Driver's Licence No. D09-5022870

Counsel for Municipal Licensing and Standards: Graham Thomson

Licensee: Failed to Attend

INTRODUCTION

Mr. Danial Khazai was issued a Tow Truck Driver's Licence on August 4, 2020 which expired on August 4, 2021.

On December 22, 2020, Municipal Licensing and Standards (MLS) conducted a routine check of Mr. Khazai's driving and criminal record. Records from the Ministry of the Attorney General's Integrated Court Offences Network (ICON) indicated multiple charges and convictions registered against Mr. Khazai. As a result, MLS informed Mr. Khazai by letter dated January 11, 2021 that his licence would be the subject of review by the Toronto Licensing Tribunal (Tribunal).

On April 21, 2021, MLS requested a hearing before the Tribunal to determine whether there are reasonable grounds to believe that Mr. Khazai has breached §545 of the City of Toronto Municipal Code.

The issue before the Tribunal was whether Mr. Khazai's Tow Truck Driver's Licence should be revoked, suspended, or have conditions placed upon it.

The hearing was first scheduled for August 5, 2021 and Mr. Khazai appeared. On consent of both parties, the matter was adjourned to August 26, 2021 at 9:30 a.m. Mr. Khazai did not appear on August 26, 2021. The Tribunal adjourned the matter to September 23, 2021 at 9:30 a.m., peremptory to Mr. Khazai. Mr. Khazai did not appear that day either. In addition, before proceeding with the hearing, the Tribunal staff telephoned Mr. Khazai and left a detailed message with the link to the video hearing and a telephone number to call into the hearing. At 10:15 a.m., the matter was called and Mr. Khazai had still not appeared.

The Tribunal is satisfied that Mr. Khazai was properly served with notice of today's hearing, His appearance on August 5, 2021 shows his awareness of how to attend virtual hearings of the Tribunal. As set out in Rule 17, the Tribunal may proceed in the absence of the

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licensee and without further notice to that person, if the licensee has been properly served notice of the hearing and does not attend.

After the hearing, the Tribunal decided that Mr. Khazai's Tow Truck Driver's Licence should be revoked with reasons to follow. These are the reasons for decision.

CITY'S EVIDENCE

At the request of Mr. Thomson, Report 7610, with updates of August 3 and 25, and September 21, 2021 were entered as Exhibit 1.

Ms. Andrea DiMatteo, supervisor at MLS, testified that Mr. Khazai was issued a Tow Truck Driver's Licence on August 4, 2020 with an expiry date of August 4, 2021. On August 5, 2021, Mr. Khazai paid the licence renewal fee online. He also submitted a criminal background check from the Royal Canadian Mounted Police (RCMP) dated August 5, 2020. This background check did not disclose any pending charges or convictions. At the time of his application, Mr. Khazai was required to advise MLS of any criminal charges and convictions, and he disclosed that he was not then charged with any criminal offence.

When it issued the licence, Ms. DiMatteo indicated that MLS was not aware Mr. Khazai had any criminal convictions and pending charges. It was not until it conducted an investigation on December 22, 2020 that MLS became aware of charges.

APPLICANT'S EVIDENCE

As set out above, Mr. Khazai did not attend the hearing and no evidence was presented on his behalf.

SUBMISSIONS

Mr. Thomson, on behalf of MLS, submits that Mr. Khazai's Tow Truck Driver's Licence should be revoked because, in accordance with §545 of the Toronto Municipal Code, MLS has shown there are reasonable grounds to believe that Mr. Khazai will not carry on his business or occupation in accordance with the law and with integrity and honesty; his carrying on the trade, business or occupation will result in breach of the law; or he has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, the health or safety of other members of the public. Mr. Khazai's record meets that test.

When he applied for the licence in 2020, Mr. Khazai indicated that he was not subject to charges. In fact, he had been charged with assault, assault causing bodily harm, and failure to comply with probation. The police report on pages 32 to 35 of the report show that on January 18, 2020, he was arrested for assault and assault causing bodily harm which took place on October 19, 2016. The police record indicates that Mr. Khazai assaulted two strangers at an Esso gas station, leaving one victim with cuts to his eyebrow which required six stitches, and the other victim complaining of a sore eye. Both victims were transported to hospital by ambulance. During the police investigation, it was found

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that he was in breach of an 18-month probation sentence he received on September 9, 2016 on conviction for possession for the purposes of trafficking in marijuana.

Mr. Thomson submits that his arrest for the assault, assault causing bodily harm, and breach of probation, was as recent as January 2020, but Mr. Khazai did not reveal that information as part of the application process. That non-disclosure highlights a problem with compliance with orders, and he also failed to appear at this hearing.

Mr. Thomson also submits that Mr. Khazai has a poor driving record with 12 charges under the Highway Traffic Act, Compulsory Automobile Insurance Act, and various Municipal Code violations – at least eight of which occurred while he was driving a tow truck. This, Mr. Thomson says, shows a failure to abide by regulatory schemes. On December 17, 2020, he was charged with stunt driving, speeding 136 km in a 60 km zone, in a tow truck. Under the Municipal Code, on April 30, 2021, it is alleged that, in a tow truck, Mr. Khazai made an unauthorized suggestion to hirer, requested fees other than accident towing, and failed to complete written authorization. He was also charged with speeding in June 2021 and passing an emergency vehicle. These are serious concerns for which Mr. Khazai has not provided any explanation.

Typically, the Tribunal would be required to balance the public interest with Mr. Khazai's need to earn a livelihood but, since he has not appeared for the hearing, there is no information on his background and his need for the licence. In any event, he only had the licence for a year, and he received it on the basis of fraudulent information.

DECISION

Section 545-4 A. of the Toronto Municipal Code sets out the reasons for granting a licence, including the following:

- (1) The conduct of the applicant affords reasonable grounds to believe that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or
- (2) There are reasonable grounds to believe that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other 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, the health or safety of other members of the public.

The Municipal Code requires that MLS prove the reasons to deny a licence based on “reasonable grounds to believe” that the applicant has acted or will act in a manner that is contrary to the requirements set out in the Municipal Code. Reasonable grounds to believe is a lower standard of proof than “balance of probabilities”.

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As part of the application for a tow truck driver's licence, the applicant is required to indicate whether they have been charged with or convicted of criminal offences. In this case, MLS has placed uncontested evidence before the Tribunal that Mr. Khazai responded to this requirement by submitting an RCMP criminal background check indicating that he had no pending charges or convictions. As a result, Mr. Khazai was issued a Tow Truck Driver's Licence dated August 4, 2020. The information on charges and convictions provided by Mr. Khazai was not correct.

Further investigation by MLS in December 2020 revealed that Mr. Khazai did have charges and convictions registered against him in the ICON system. A report from the Toronto Police Service disclosed that Mr. Khazai was convicted on August 9, 2016 of assault causing bodily harm and was placed on 18-months probation with a term to keep the peace and be of good behaviour. On October 19, 2016, Mr. Khazai assaulted two strangers at a gas station and fled the scene. One victim suffered a sore eye and the other required six stitches to two lacerations on his left eyebrow. Both victims were transported to hospital by ambulance. As a result, on January 18, 2020, Mr. Khazai was arrested and charged with assault and assault causing bodily harm. During the police investigation of the gas station matter, the August 2016 probation came to light and Mr. Khazai was charged with fail to comply with a probation order.

What is clear from this recitation of the events is that in August 2020 when Mr. Khazai submitted his application to MLS indicating he had no criminal convictions or charges, he had been arrested seven months earlier in January 2020 and charged with assault and assault causing bodily harm. With no explanation from Mr. Khazai as to this glaring discrepancy, the Tribunal has no alternative but to find that he deliberately attempted to mislead MLS on this issue.

With regard to his current criminal record status, the September 22, 2021 update of charges and convictions under the Criminal Code of Canada and the Controlled Drugs and Substances Act indicates that on June 7, 2021, Mr. Khazai was convicted of assault bodily harm for the offence which occurred on October 19, 2016. Five charge of fail to comply with probation order and one charge of assault were withdrawn on June 7, 2021. On September 9, 2016, he was given a conditional discharge on a charge of possession for purpose of trafficking.

The September 22, 2021 update indicates that under the Highway Traffic Act and Compulsory Automobile Insurance Act Mr. Khazai has accumulated 12 charges between February 2, 2020 and June 3, 2021. Two charges on June 3, 2021 of pass off roadway and fail to stop / right emergency vehicle occurred while he was driving a tow truck. There is one charge of operate motor vehicle while perform stunt on December 17, 2020 where Mr. Khazai is alleged to have been travelling at 136 km in a 60 kmh zone. This resulted in a seven-day administrative suspension of his provincial driver's licence. He was also charged in the same series of events with "proceed contrary to sign at intersection" where it is alleged he disobeyed signs and turned right on two red signals. He also has two other speeding offences outstanding: speeding 90 kmh in a 60 km zone on February 2, 2020; and speeding 72 kmh in a 50 km zone on May 11, 2021. In addition, Mr. Khazai has one charge of fail to surrender vehicle permit and one charge of fail to surrender driver's licence.

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The cumulative effect of Mr. Khazai's conduct as evidenced by the charges and convictions gives the Tribunal reasonable grounds to believe that, if granted a Tow Truck Driver's Licence, he will not carry on his occupation with integrity and honesty; and that he has endangered, or would endanger, the health or safety of other members of the public.

That is not the end of the matter, however. The Tribunal is mandated by the Toronto Municipal Code, § 546-8.A.(3)(c) to have regard for the need to balance the protection of the public interest with the need for Licensee's to make a livelihood.

Mr. Khazai is 26 years old and there is no evidence before the Tribunal on how he earns a living. There was no evidence before us that Mr. Khazai's livelihood depends on his having a Tow Truck Driver's Licence. The only evidence before the Tribunal is that the licence was issued to Mr. Khazai on August 4, 2020 and, by January 7, 2021, he was advised that it would be subject to review for the reasons set out above. In short, he relied on the licence for about four months before he was aware that there would be hearing regarding it, and held the licence for just over a year since he has not appeared at this hearing to explain otherwise, the Tribunal finds that Mr. Khazai's livelihood does not depend on his having a Tow Truck Driver's Licence.

In all these circumstances and balancing the Tribunal's mandate to protect the public interest and Mr. Khazai's need to earn a livelihood, we are satisfied that, in this case, the interest of the public outweighs Mr. Khazai's need to earn a livelihood.

The Tribunal orders that the Tow Truck Driver's Licence No. D09-5022870 be revoked.

Originally Signed

Verlyn Francis, Panel Chair
Panel Members: Melina Laverty and Daphne Simon, concurring

Reference: Minute No. 164/21

Date Signed: October 15, 2021