

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: June 15, 2020 (Teleconference Hearing)

Panel: Mary Lee, Panel Chair;
Maureen Carter-Whitney and Daphne Simon, Members

Re: George Kunadu (Report No. 7350)
Applicant for the Renewal of Vehicle-For-Hire Driver's Licence
No. D01-4656991

Counsel for Municipal Licensing and Standards: Graham Thomson

Counsel for Applicant: Unrepresented

SUMMARY

On August 16, 2019, Mr. Kunadu applied for a renewal of his Vehicle-For-Hire Driver's Licence. On August 28, 2019, Municipal Licensing and Standard ("MLS") mailed a letter to George Kunadu outlining the grounds for denial of the licence.

Mr. Kunadu requested a hearing before the Toronto Licensing Tribunal (TLT or the Tribunal). The matter proceeded to an electronic hearing on June 15, 2020.

After considering and hearing the evidence and submissions of the parties, the Tribunal denied the renewal of Mr. Kunadu's Vehicle-For-Hire Driver's Licence.

INTRODUCTION

1. Given Mr. Kunadu's conviction for Impaired Operation by Alcohol or Drug under the Criminal Code of Canada (CCC) on August 16, 2019, MLS requested that Mr. Kunadu's licence not be renewed.

ISSUE

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

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CITY OF TORONTO'S EVIDENCE

Ms Andrea Di Matteo, Supervisor MLS, was the only witness for the City. Ms Di Matteo was affirmed and testified regarding Mr. Kunadu's charges and convictions as set out in MLS Report No. 7350 (55 pages) and the update to the report dated June 1, 2020 (8 pages) (Exhibit 1).

The details of the charges are set out in the above documents and summarized as follows:

3. Page 3 of the Report shows Mr. Kunadu's licence history. He was first issued a licence on August 22, 2016 with a renewal date of August 23, 2019. Renewal payment was received and licence is deemed to continue at this time.
4. Page 4 is a 3 Year Driver Record Search dated August 16, 2019. It shows Mr. Kunadu's licence is in good standing as of that date. It also shows a requirement for a Mandatory Ignition Interlock, an ADLS suspension, a conviction under the CCC for Impaired Driving and subsequent driver's licence suspension until June 20, 2019. Ms Di Matteo explained the mechanics of an interlock ignition. Before a vehicle will operate, a person is required to blow into a device to show that their alcohol level is below the legal limit.
5. Page 5 is a copy of a letter dated August 28, 2019 sent to Mr. Kunadu that sets out the reasons for MLS's denial of his licence.
6. Page 7 is Mr. Kunadu's request for a hearing before the TLT.
7. Pages 8 and 9 summarize the charges and convictions listed against Mr. Kunadu under the CCC, HTA and CAIA. Under the CCC, it shows 2 charges of impaired operation by Alcohol or Drug and Operation over 80 mgs. On November 16, 2018, Mr. Kunadu was convicted of the first charge and the second charge was withdrawn. Under the HTA, it shows 4 pending charges dated December 6, 2018 for Speeding 70 km in 50 km zone, Driving While Under Suspension, Fail to Surrender Inspection Report and Drive Commercial Vehicle. It also shows 2 convictions for Fail to Enter Information Daily and one voluntary conviction for speeding. All other are withdrawn. Lastly, under the CAIA, it shows a conviction dated December 1, 1997 for Operate Vehicle No Insurance.
8. In the updated chart of charges and convictions dated June 1, 2020 it shows that the 4 charges laid on December 6, 2018 under the HTA were all withdrawn.
9. Pages 39 to 51 is the General Occurrence Information from Durham Regional Police from the offence date of August 18, 2018 pertaining to the charges under the CCC for Impaired Operation Motor Vehicle/Over 80 mgs. On Page 44, the officer records their observation. The officers were dispatched to a call in Pickering where it was reported that the accused was seen swerving his black Mazda all over 401 highway and exiting Northbound on Brock Road. When the officers arrived, they further observed the black Mazda travelling slowly, swerving, and driving over his left yellow lane and further decreasing his speed when approaching a green light. An officer approached the driver side and directed the accused to roll down the window. The odour of alcohol was detected immediately on the accused's breath and his eyes were blood shot and glossy, along with very slow motor skills and slow slurred speech. The accused was directed to exit the vehicle where he was arrested for impaired driving. The accused was read the breath demand and he provided two (2) suitable samples, registering 140 mgs/100 ml of blood and 140 mgs/100 ml of blood. The accused reported to police that he started drinking in Scarborough when

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he found out his uncle passed away. He was with family and friends. He started drinking because he couldn't handle the sad news.

10. Pages 36 to 38 is a General Occurrence Report from Toronto Police Services detailing the incident that occurred on December 26, 2018. This report is related to the HTA charges set out in the chart on page 34. This incident occurred after the incident of impaired driving. Ms Di Matteo commented that at the time of this incident, Mr. Kunadu's driver's licence was suspended for his conviction of impaired and he was required to have an ignition interlock installed on his personal vehicle. The officer pulled over Mr. Kunadu for speeding 70 km in a 50 km zone. When pulled over, the officer noted that Mr. Kunadu's licence was under suspension. The officer also charged Mr. Kunadu with failure to surrender completed daily inspection report and drive motor vehicle without required inspection. The vehicle was subsequently impounded as a result of his conviction for impaired.
11. Mr. Kunadu had no questions on cross-examination.

APPLICANT'S EVIDENCE

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

12. Mr. Kunadu began his testimony by stating that he is not pleased with what he did with regards to the impaired driving and subsequent charges. He stated that he is a law-abiding citizen. It was unfortunate and he is not happy. He stated that he feels so bad and disappointed and he has not set a good example for his children. He repeated that he is not happy and ashamed of it.
13. Mr. Kunadu does not deny any part of the evidence submitted by MLS counsel. He states that the police account of what happened and the MTO reports are all correct. He asks that the Tribunal give him a second chance. Again, he stated that he is not happy and he does not know how he lost control of himself.
14. As a result of the incident, Mr. Kunadu stated that he lost his job as a truck driver and he has not worked for the last two (2) years. The charges will be on his driving record for five (5) years. He blames himself for what happened. Mr. Kunadu went on to explain that as a truck driver he is required to provide a medical record.
15. Mr. Kunadu clarified that the interlock ignition was installed last June 2019 and it is expected to come off in June 2020 and not June 2022 as stated on the MTO record. Every month he is required to pay \$20.00 to renew it. He has the records to support this, but did not have it in his possession at this time to submit to the Tribunal or MLS.

MLS Cross-examination:

16. Mr. Kunadu testified that he is 62 years old. He lives in Ajax and is married. His wife works full-time as a chef in a kitchen, however, she is not working now due to the pandemic. He

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further stated that he is the primary earner in the family, as his wife does not make good money. He has three (3) children ages 26, 29 and 32. Only the 29-year-old lives at home.

17. He confirmed that he drives a tractor-trailer. He worked as a truck driver for Fortigo for 8 years. He testified that he is not working right now due to the pandemic. It is also hard for him to get a job due to his driving record. When he was working, he drove 5 days a week.
18. Mr. Kunadu stated the he has never used his Vehicle-For-Hire Driver's Licence since it was first issued back in August 2016. He wants the licence as a back-up in case anything happens to his ability to drive a truck.
19. He confirmed again under cross-examination that all the reports are accurate and that he is ashamed of it.
20. He also attended a 5-day course in Oshawa. He cannot recall the name of the course. He does not have a certificate to show he attended but he has the number.
21. He admitted again that he drove the truck while his driver's licence was suspended. He is not pleased with himself for doing that. As a result, he was fired from Fortigo and he has not driven since December 16, 2018.
22. When asked why the HTA charges were withdrawn, Mr. Kunadu stated that when he got to court he was told he was free to go.
23. He stated that he is in dire need to have his Vehicle-For-Hire driver's licence renewed. He needs to make an income or he will lose his house. Again, he is asking the Tribunal to give him a second chance.

CITY OF TORONTO'S SUBMISSIONS

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

24. The Tribunal should not renew Mr. Kunadu's Vehicle-For-Hire Driver's Licence, as 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. Kunadu's operation of his business has infringed or would infringe on the rights of the public, and has or would endanger the health and safety of the public.
25. There is clear evidence that his conduct shows that he has not met the requirements under Chapter 546 of the Toronto Municipal Code.
26. The conviction is too recent. Mr. Kunadu knew what he did was wrong and he admirably has not taken issue with that today. The report is accurate, he doesn't deny it and he is remorseful.
27. However, there is serious risk to public safety. His driver's licence was suspended immediately for three (3) months up until the trial. It was then further suspended for another seven (7) months. The records show that the interlock ignition is due to come off June 2022. Mr. Kunadu believes it is June 2020 but he has no records to confirm that.

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28. This sentence is indicative of the severity of the offence. Despite that, Mr. Kunadu was caught a few weeks after the conviction driving a commercial vehicle when he knew his driver's licence was suspended. He was caught speeding and he failed to pass the inspection of the vehicle he was driving. While the charges under the HTA were withdrawn, his choice to drive the truck raises significant risk to public safety.
29. Even if Mr. Kunadu were to show us that the interlock ignition will come off his personal vehicle in a week's time, we don't see how we could recommend to renew his licence at this time. He also testified that he attended a one-week program, but has not provided documents to support this.
30. There is nothing to stop Mr. Kunadu from reapplying again for a Vehicle-For-Hire driver's licence in the future when he is able to provide the sufficient documentation to show that he has mitigated the risks to public safety.
31. With regards to balancing public safety and his right to make a livelihood, he primarily worked as a truck driver. His Vehicle-For-Hire Driver's Licence would be an alternative income stream. While he has a number of independents, all of his children are of adult age and can financially support themselves.
32. He stated that he wanted to make money and that is why he drove his truck. He put his interest in front of public safety. That is not an acceptable reason having regard to the mandate of this Tribunal. Lastly, he has not used his Vehicle-For-Hire Driver's Licence since it was issued in 2016.
33. In these circumstances, his desire to make a living cannot justify risk to public safety at this time. Mr. Kunadu's licence should not be renewed.

APPLICANT'S SUBMISSIONS

Mr. Kunadu stated the following:

34. He is ashamed of himself for what he did. It is not excusable. He is a man and he is supposed to set a good example for his family. He was not trying to put his ability to make money at the expense of the public. The reason he drove was to make money to pay his mortgage. He knows it is unacceptable and wrong for him to do that. He is ashamed and asks the Tribunal to understand.
35. He stated that he is a law-abiding citizen. He has lived in the country for 40 years and there is nothing on his records.
36. He cannot justify what he did, but he is asking the Tribunal to understand his circumstances and deeply regrets what he did.

REASONS FOR THE DECISION

37. 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 the grounds have

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been met, and there are reasonable grounds to believe that Mr. Kunadu will not operate his business in accordance with the law; and that Mr. Kunadu'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.

38. The Tribunal found Mr. Kunadu's testimony genuine. He accepts and takes full accountability for his actions and is deeply remorseful. However, the Hearing Panel does have concerns about his most recent conviction of impaired operation of motor vehicle and his subsequent charges under the HTA for speeding and driving while his driver's licence was under suspension. Mr. Kunadu's actions demonstrate a disregard for the law and unwillingness to abide by the penalties imposed on him. As such, the Hearing Panel is not convinced that Mr. Kunadu would follow the law and drive safely should his licence be renewed at this time.
39. In considering whether to renew, grant or revoke 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.
40. The Tribunal accepts MLS's submission that Mr. Kunadu's primary source of income is from his main role as a truck driver. He has never relied on his Vehicle-For-Hire Driver's Licence to make an income since it was issued back in August 2016. His dependents are all of adult age and can financially support themselves.
41. As MLS pointed out, Mr. Kunadu is free to re-apply for his Vehicle-For-Hire Driver's Licence with the passage of time when he can provide sufficient documentation to show that the interlock ignition has been taken off his vehicle; proof that he has attended a "Back on Track" course and demonstrate that he will be able to meet the requirements in the Municipal Code.

DECISION

For the reasons set out above:

Mr. Kunadu's Vehicle-For-Hire Driver's Licence will not be renewed at this time.

Originally Signed

Mary Lee, Panel Chair

Panel Members: Maureen Carter-Whitney and Daphne Simon, concurring

Reference: Minute No. 53/20

Date Signed: June 29, 2020