



NOTICE OF DECISION
of the
MISSISSAUGA APPEAL TRIBUNAL
established pursuant to section 23.5 of the *Municipal Act 2001*

IN THE MATTER OF a Notice of Appeal, undated, to the Mississauga Appeal Tribunal, by Wesam Mahir El-Taji of 137 Queen Mary Drive, Brampton, Ontario, L7A 2R5, of a Licensing Manager's decision to refuse issuance of a City of Mississauga tow truck license to Wesam Mahir El-Taji under the City of Mississauga's Tow Truck Licensing By-Law 521-04, as amended (the "Appeal").

AND IN THE MATTER of the Hearing of the Appeal by the Mississauga Appeal Tribunal on March 12, 2013 in accordance with the provisions of the City of Mississauga's Tow Truck Licensing By-Law 521-04, as amended, and the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*, as amended.

The Corporation of the City of Mississauga (the "City"), has moved for dismissal of the Appeal on the basis of two primary grounds:

Firstly, that the Appellant is not appealing the decision of the Licencing Manager, but rather of City Council.

Secondly, that this tribunal has no jurisdiction to grant a licence to the Appellant, Mr. El-Taji because the Licencing Manager's decision was not based upon the Tow Truck Licencing By-Law 521-04, as amended, but rather, on a moratorium on the issuance new tow truck licences, as created by the City's Resolution No. 0161-2012 and confirming By-law 0167-2012, as amended by City's Resolution No. 0200-2012 and confirming By-law 0190-2012, (collectively, "the Moratorium").

The City has raised alternative grounds as follows:

That the Appellant is a new Applicant for a Tow Truck Driver's licence;

That the Appellant did not submit a proper Application and did not pay the prescribed fees; and

That the Refusal Letter was sent in error as the Licencing Manager had no jurisdiction to consider the Appellant's verbal request as a formal Application.

In response, the Appellant, through his counsel, Mr. Tulk, has agreed with the City's position that this tribunal cannot hear an appeal of the Moratorium, but has taken the further position that the tribunal cannot even consider the existence of the Moratorium and must base its decision solely upon By-law 521-04 as it existed at the time of the Appellant's application for a licence.

The tribunal finds that the Appellant's letter of appeal, while imperfectly worded, can be interpreted as an appeal to this tribunal. In this regard, it is important to note that the letter of September 18, 2012 from the Manager, Mobile Licencing Enforcement to the Appellant did advise the Appellant that he was entitled to a hearing before this tribunal.

The tribunal finds as a matter of fact, that the Appellant did allow his previous Tow Truck Driver's Licence to expire for a period in excess of 60 days and therefore his application cannot be treated as a licence renewal under s.19 of the Tow Truck Licencing By-law.

The Appellant's position, that the tribunal must ignore the existence of the Moratorium and decide this Appeal on the basis of the Tow Truck Licencing By-law alone, would effectively remove from City Council any authority to enact broad policy decisions such as the policy codified by the Moratorium, by general By-laws or Resolution, except where it also explicitly amends related By-laws such as the Tow Truck Licencing By-law. This tribunal agrees with the City that it has no jurisdiction to act in contravention of any City By-law, including those set out in the Moratorium.

Pursuant to s. 12 of the Tow Truck Licencing By-law, the tribunal, in rendering its decision, "may uphold or vary the decision of the Licence Manager, or make any decision that the Licence Manager was entitled to make in the first instance". This section does not grant to the tribunal the authority to vary a decision in order to substitute a decision that the Licence Manager lacked the authority to make.

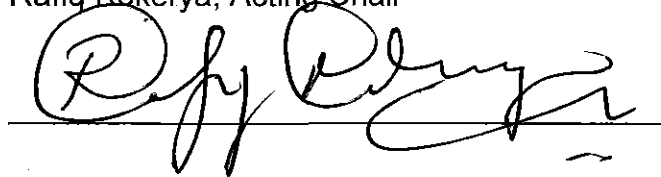
There is no dispute that the Licence Manager in fact had no jurisdiction to grant a Tow Truck Driver's Licence to Mr. El-Taji. Accordingly, because the Licence Manager lacked authority in the first instance to grant a new licence to Mr. El-Taji, this tribunal also has no jurisdiction to grant a licence to him.

BE ADVISED THAT it is the decision of the Mississauga Appeal Tribunal to:

Dismiss the Appeal on the grounds that the tribunal lacks jurisdiction to grant the relief sought by the Appellant. The tribunal has no jurisdiction to make any order as to costs, however, the tribunal does note the inherent unfairness in advising the Appellant in writing of his right to an appeal and accepting a fee from him for obtaining one, despite the fact that the City now agrees that he in fact had no such right.

Issued by the Mississauga Appeal Tribunal on March 12, 2013. Originally executed at the City of Mississauga on March 12, 2013 by:

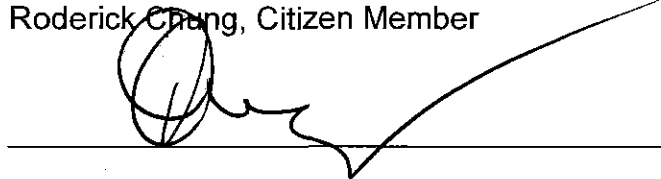
Rafiq Rokerya, Acting Chair



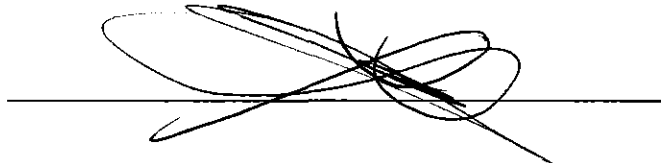
Leonard Lyn, Acting Vice-Chair, Citizen Member



Roderick Chung, Citizen Member



Luc Laverrière, Citizen Member



Encl.: Record of Proceeding dated March 12, 2013



RECORD OF PROCEEDING

THE CORPORATION OF THE CITY OF MISSISSAUGA

MISSISSAUGA APPEAL TRIBUNAL

TUESDAY, MARCH 12, 2013 – 9:59 A.M.

HEARING ROOM, CIVIC CENTRE
300 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO, L5B 3C1

www.mississauga.ca

MEMBERS PRESENT:

Rafiq Rokerya, Acting Chair and Citizen Member
Leonard Lyn, Acting Vice-Chair and Citizen Member
Roderick Chung, Citizen Member
Luc Laverrière, Citizen Member

MEMBER ABSENT :

Lynda Ross, Chair and Citizen Member

APPELLANT:

Wesam Mahir El-Taji, Appellant

APPELLANT'S
REPRESENTATIVE:

Andrew B. Tulk, Barrister & Solicitor

AGENT FOR THE THE
CITY OF MISSISSAUGA'S
ENFORCEMENT DIVISION:

Charlene Perrotta, Manager of Prosecutions

STAFF AND OTHERS:

Daryl Bell, Manager of Mobile Licencing Enforcement
Marilyn Sparrow, Legal Counsel for the Mississauga
Appeal Tribunal
Carmela Radice, Mississauga Appeal Tribunal
Coordinator

This is a Record of Proceeding of the Hearing by the Mississauga Appeal Tribunal in the matter of a Notice of Appeal by Wesam Mahir El-Taji, undated, of a Licensing Manager's decision to refuse issuance of a City of Mississauga tow truck licence to Wesam Mahir El-Taji, 137 Queen Mary Drive, Brampton, Ontario, L7A 2R5, under the City of Mississauga's Tow Truck Licensing By-Law 521-04, as amended.

A Notice of Appeal of a Licensing Manager's decision to refuse issuance of a City of Mississauga tow truck driver license was submitted by Wesam Mahir El-Taji, being the recipient of the tow truck licence.

CALL TO ORDER - 9:59 a.m.

DECLARATIONS OF DIRECT OR INDIRECT PECUNIARY INTEREST – Nil

INTERLOCUTORY ORDERS OF THE TRIBUNAL - Nil

WITNESSES - Nil

EVIDENCE ADMITTED BY THE TRIBUNAL

10:01 a.m.

Agent for the City of Mississauga's Enforcement Division spoke to the Notice of Motion requesting a dismissal of the appeal.

10:03 a.m.

Counsel for the appellant responded to the Notice of Motion by indicating that the Tribunal should only consider the Tow Truck Licensing By-law 521-04 and not the moratorium on issuing new tow truck licenses.

10:06 a.m.

Exhibit #1 – Notice of Motion brief prepared by the Agent for the City of Mississauga's Enforcement Division.

EVIDENCE NOT ADMITTED BY THE TRIBUNAL - Nil

ADJOURNMENT - 12:15 p.m.