



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, dated January 4, 2010 to the Mississauga Appeal Tribunal by David Smart, on behalf of 1609975 Ontario Limited, of 1765 Shawson Drive, Mississauga, in accordance with the provisions of the City of Mississauga By-law 1-06, as amended, of the City of Mississauga's Compliance and Licensing Enforcement Manager's decision to refuse the issuance of a Business Licence for an Automobile Service Station, Class B, under the City of Mississauga By-law 1-06, as amended, A Business Licensing By-law (the "Appeal").

IN THE MATTER OF the hearing for the Appeal, heard on February 22, 2011, in accordance with the provisions for the City of Mississauga By-law 1-06 as amended, and the *Statutory Powers Procedure Act*, R.S.O. 1990. c. S.22, as amended.

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

Uphold the City of Mississauga's refusal to grant a business license to the Appellant, 1609975 Ontario Limited for an Automobile Service Station Class B requested by 1609975 Ontario Limited, under the City of Mississauga By-law 1-06, as amended, a Business Licensing By-law.

THE REASONS FOR the decision are as follows:

The Tribunal after considering the submissions and evidence presented is satisfied that the decision of the Manager of Compliance and Licensing Enforcement to refuse to issue an Automobile Service Station Class B License, applied for by 1609975 Ontario Limited, should be upheld and the appeal is denied.

The Tribunal received uncontested evidence that 1609975 Ontario Limited has outstanding fines imposed by the Ontario Court of Justice, as a sentence arising from convictions for a breach of a City of Mississauga Business Licensing By-law 1-06, as amended.

Subsection 9(5) of the By-law provides as follows:

"9. An Applicant whose application meets all the requirements of this By-law and its Schedules is entitled to a Licence or the renewal of a Licence except where:

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Appellant: 1609975 Ontario Limited, 1765 Shawson Drive
Business Licence for an Automobile Service Station, Class B
Hearing Date: February 22, 2011

- (5) The applicant has failed to pay the fines imposed by a court as a sentence arising from convictions for breach of a By-Law enacted by the City;”

In the present case, there are two outstanding fines, both of which are for substantial amounts and have been unpaid for a considerable period of time. Although the Appellant took the position that it had not received notice of the fines or the court proceedings out of which they arose, until sometime around October of 2010, there was compelling documentary evidence before the Tribunal establishing that the Appellant had received written notice of the outstanding fines at least as early as April, 2010. As such, the Tribunal concurs with the decision of the City’s Manager of Compliance and Licensing Enforcement, that 1609975 Ontario Limited does not comply with the provisions of the City of Mississauga Business Licensing By-law 1-06, as amended, and sees no reason to grant relief from the strict construction of the By-Law. The decision of the City’s Manager of Compliance and Licensing Enforcement to refuse to issue an Automobile Service Station Class B Licence, as applied for by 1609975 Ontario Limited is upheld and the appeal is denied.

Issued by the Mississauga Appeal Tribunal on March 8, 2011. Originally executed at the City of Mississauga on March 4, 2011 by:

Chair, Lynda Ross
Vice-Chair, Rafiq Rokerya
Member, David Brown
Member, Leonard Lyn
Member, Roderick Chung

Enclosure: Record of Proceeding



Record of Proceeding

THE CORPORATION OF THE CITY OF MISSISSAUGA

MISSISSAUGA APPEAL TRIBUNAL

TUESDAY, FEBRUARY 22, 2011 – 9:30 A.M.

**HEARING ROOM, CIVIC CENTRE,
300 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO**

www.mississauga.ca

THIS IS A RECORD OF PROCEEDING for a Notice of Appeal, dated January 4, 2010 to the Mississauga Appeal Tribunal by David Smart, on behalf of 1609975 Ontario Limited, of 1765 Shawson Drive, Mississauga, in accordance with the provisions of the City of Mississauga By-law 1-06, as amended, of the City of Mississauga's Licensing Manager's decision to refuse the issuance of a Business Licence for an Automobile Service Station, Class B, under the City of Mississauga By-law 1-06, as amended, the Business Licensing By-law.

An appeal of the refusal for the issuance of a Business Licence for an Automobile Service Station Class B was made by the appellant David Smart on behalf of 1609975 Ontario Limited (the "Appellant") of 1765 Shawson Drive, Mississauga.

CALL TO ORDER:

Chair Lynda Ross presided and called this Hearing to order at approximately 9:26 a.m.

DECLARATIONS OF DIRECT OR INDIRECT PECUNIARY INTEREST:

Nil

THOSE PRESENT:

Lynda Ross, Tribunal Member (Chair)
Rafiq Rokerya, Tribunal Member (Vice-Chair)
David Brown, Tribunal Member
Leonard Lyn, Tribunal Member
Roderick Chung, Tribunal Member
Marilyn Sparrow, Counsel for the Tribunal
Douglas Hancock, Counsel for the Appellant
Kristin Markoff, Assistant to the Counsel of Record
Charlene Perrotta, Agent for the Enforcement Division
Andrea Wilson-Peebles, Legal Counsel, Legal Services Division
Laura Wilson, Tribunal Coordinator, Office of the City Clerk
Jessica Reid, Legislative Coordinator, Office of the City Clerk

INTERLOCUTORY ORDERS OF THE TRIBUNAL:

9:32 a.m. – A verbal motion was made by the Appellant’s Legal Counsel requesting to adjourn the proceedings due to the Appellant’s Counsel having a scheduling conflict. The Tribunal denied the Appellant’s request for an adjournment.

WITNESSES:

Rafiq Rokerya, Tribunal Member and Vice-Chair administered the Oath or Affirmation as the case may be, to the individuals set out below at the time that individual was called to give evidence for the respective parties.

The following individual testified on behalf of the City of Mississauga Enforcement Division:

10:04 a.m. - James Hinton, Acting Director of Enforcement, The City of Mississauga

The following individual testified on behalf of the Appellant:

11:05 a.m. - David Smart, the Appellant

EVIDENCE ADMITTED BY THE TRIBUNAL:Exhibit 1

10:01 a.m.: Documents Brief prepared by the City of Mississauga filed with the Tribunal Coordinator on January 7, 2011, identified as Book 1, containing the following documents:

TAB 1: Application for a Business Licence filed by the Appellant on November 11, 2008.

TAB 2: Application file 09-4880 for Certificate of Occupancy (Zoning) filed by 2029016 Ontario Limited on May 22, 2009 for 1765 Shawson Drive, Mississauga, units 1, 2, 3 and 4.

TAB 3: Building Application Status Report printed June 2, 2009, issued by the Corporation of the City of Mississauga, Planning and Building Department, Building Division, to the Applicant under file 09-4880, 2029016 Ontario Limited.

TAB 4: Letter dated December 17, 2009, from the Manager of Compliance and Licensing Enforcement, to the Appellant stating that an Automobile Service Station Class B licence could not be issued and the grounds for refusal.

TAB 5: Letter from the Appellant, received January 4, 2009, indicating his wish to appeal the decision to revoke the tow truck owner licences and the refusal to grant an Auto Service Station Class B licence.

TAB 6: Letter dated April 6, 2010 from the Manager of Compliance and Licensing Enforcement giving notice to the Appellant of additional grounds for his refusal to grant an Automobile Service Station Class B licence to 1609975 Ontario Limited.

TAB 7: Committee of Adjustment Decision dated April 22, 2010, regarding an application made by 2029016 Ontario Inc., for Minor Variance under Zoning By-law 225-2007 as amended, for a property located at 1765 Shawson Dive, units 1, 2, 3, 4, 20 and 21.

TAB 8: Information number 001892, issued to 1609975 Ontario Limited, c/o Smart Choice Auto Body, sworn on July 17, 2009 by Municipal Law Enforcement Officer Rob Comrie, for violation under section 23 of City of Mississauga By-law 01-2006, as amended.

TAB 9: Court Order issued by the Ontario Court of Justice, Central West Region, on January 14, 2010, stating that a conviction was entered against the named defendant for own or operate an Auto Service Station Class B without being licensed, s.2(1)(c) contrary to Section 23 of Mississauga By-law 01-2006. In addition, the order prohibits the continuation or repetition of the offence.

TAB 10: Information number 003220, issued to 1609975 Ontario Limited, c/o Smart Choice Auto Body, sworn on November 19, 2009 by Municipal Law Enforcement Officer Rob Comrie, for violation under section 23 of City of Mississauga By-law 01-2006, as amended.

TAB 11: Affidavit, sworn by Deborah Salvo, Legal Assistant for the City of Mississauga, Legal Services, Prosecutions Office, dated January 11, 2011 confirming that charges 3161-999-09-003220-00 and 3161-999-09-001892-00, laid against the Appellant, 1609975 Ontario Limited, had not been appealed.

ICON statement dated January 11, 2011, specifying the particulars of 3161-999-09-003220-00 and the status of the fine.

ICON statement dated January 11, 2011, specifying the particulars of 3161-999-09-001892-00 and the status of the fine.

Exhibit 2

10:01 a.m.: ICON print out outlining the particulars of case number 3161-999-09-001892-00.

Exhibit 3

10:01 a.m.: ICON print out outlining the particulars of case number 3161-999-09-003220-00.

Exhibit 4

10:49 a.m.: Operating Licence issued March 27, 2008 to December 31, 2008 for an Auto Service Station, Class B to 1179640 Ontario Limited, operating as First Choice Auto Centre of 1765 Shawson Dr. Units 1-4 Mississauga.

Exhibit 5

11:48 a.m.: Affidavit of Service of a Prohibition Order, sworn on January 20, 2010, by Robert Comrie, Municipal By-law Officer, to David Smart, Director of 1609975 Ontario Limited.

ADJORNMENT: 12:49 p.m.