



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 February 9, 2012 to the Mississauga Appeal Tribunal, by Amer Hawchar of 4346 Goldenrod Crescent, Mississauga, Ontario, of a Licensing Manager's Decision to revoke a City of Mississauga tow truck driver's licence issued to Amer Hawchar under the City of Mississauga By-law 521-04, as amended, the Tow Truck Licensing By-law.

AND IN THE MATTER of the Hearing of the Appeal by the Mississauga Appeal Tribunal on September 19, 2012 in accordance with the provisions of the City of Mississauga By-law 0098-2004, 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 decision of the Acting Manager of Mobile Licensing of Enforcement (Brad Parliament) dated February 9, 2012.

The reasons for this decision are as follows:

REASONS FOR DECISION:

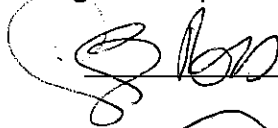
Having heard the evidence and submissions of the Appellant and on behalf of the City of Mississauga, the Tribunal was satisfied that the decision of the City to deny a tow truck licence was the correct decision. The Tribunal had lengthy deliberations following the hearing on September 19, 2012 and by conference call on September 26, 2012. The Tribunal found as a fact that the Appellant's conduct fell squarely within section 10 ss.(2) and (6) of the By-law (521-04 as amended). The Appellant did not call evidence nor did he provide testimony himself that may have persuaded the Tribunal that the accident in April 2009 was a learning opportunity for him from which to modify his behaviour. There was no acknowledgement whatsoever from the Appellant that he contributed to the accident by rushing to a call.

However, the Appellant entered a plea of guilty to "dangerous driving causing bodily harm" X2 in 2011. The Appellant consented to certain facts about the accident being read into the record when he entered a plea. The By-law contemplates the need for the Tribunal to have regard for public safety.

Therefore upon consideration all of the evidence before it the Tribunal finds that the decision of the Acting Manager, Mobile Licensing, Enforcement, not to issue a City of Mississauga Tow Truck Driver's Licence to the Appellant was reasonable and consistent with the provisions of the Tow Truck Licensing By-law. Further, the Tribunal found that it would not be in the public interest to overturn or vary that decision.

Issued by the Mississauga Appeal Tribunal on September 26, 2012. Originally executed at the City of Mississauga on September 26, 2012 by:

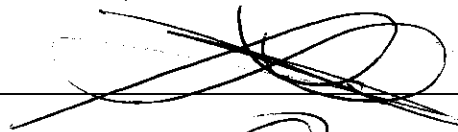
CHAIR, Lynda Ross



VICE - CHAIR, Rafiq Rokerya



Member, Luc Laverrière



Member, Leonard Lyn



Member, Roderick Chung



Enclosure: Record of Proceeding



Record of Proceeding

THE CORPORATION OF THE CITY OF MISSISSAUGA

MISSISSAUGA APPEAL TRIBUNAL

TUESDAY, MAY 29, 2012 – 9:00 A.M.

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

www.mississauga.ca

THIS IS A RECORD OF PROCEEDING of the Hearing by the Mississauga Appeal Tribunal in the matter of an appeal by Amer Hawchar, dated February 9, 2012, of a Licensing Manager's decision to revoke a City of Mississauga tow truck driver's license issued to Amer Hawchar of 4346 Goldenrod Crescent, Mississauga, Ontario, under the City of Mississauga By-law 521-04, as amended, the Tow Truck Licensing By-law.

An appeal of the Licensing Manager's decision to revoke a tow truck driver's licence was submitted by Amer Hawchar, being the recipient of the tow truck driver's licence.

CALL TO ORDER:

Lynda Ross, Chair, presided and called the Hearing to order at 9:00 a.m.

DECLARATIONS OF DIRECT OR INDIRECT PECUNIARY INTEREST:

Nil

THOSE PRESENT:

Lynda Ross, Tribunal Member (Chair)
Rafiq Rokerya, Tribunal Member (Vice-Chair)
Roderick Chung, Tribunal Member
Leonard Lyn, Tribunal Member
Luc Laverriere, Tribunal Member
Marilyn Sparrow, Legal Counsel to the Appeal Tribunal
Amer Hawchar, Appellant
Gerald Yaskin, Legal Counsel to the Appellant
Carla Mariuz, Agent for the City of Mississauga's Enforcement Division
Karen Morden, Tribunal Coordinator, Office of the City Clerk
Stephanie Smith, Tribunal Coordinator, Office of the City Clerk

INTERLOCUTORY ORDERS OF THE TRIBUNAL:9:20 a.m.

In response to a verbal motion made by Legal Counsel for the Appellant for an adjournment, the Tribunal ordered the Hearing be adjourned and continued on September 19, 2012 at 9:30 a.m.

WITNESSES:

No witnesses were called on this hearing date.

EVIDENCE ADMITTED BY THE TRIBUNAL:

No evidence was admitted on this hearing date.

ADJOURNMENT:

9:30 a.m.



Record of Proceeding - Continuance

THE CORPORATION OF THE CITY OF MISSISSAUGA

MISSISSAUGA APPEAL TRIBUNAL

WEDNESDAY, SEPTEMBER 19, 2012 – 9:51 A.M.

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

www.mississauga.ca

THIS IS A RECORD OF PROCEEDING of the Hearing by the Mississauga Appeal Tribunal in the matter of an appeal by Amer Hawchar, dated February 9, 2012, of a Licensing Manager's decision to revoke a City of Mississauga tow truck driver's license issued to Amer Hawchar of 4346 Goldenrod Crescent, Mississauga, Ontario, under the City of Mississauga By-law 521-04, as amended, the Tow Truck Licensing By-law. This Hearing commenced on May 29, 2012 and continued on September 19, 2012.

An appeal of the Licensing Manager's decision to revoke a tow truck driver's licence was submitted by Amer Hawchar, being the recipient of the tow truck driver's licence.

CALL TO ORDER:

Lynda Ross, Chair, presided and called the Hearing to order at 9:51 a.m.

DECLARATIONS OF DIRECT OR INDIRECT PECUNIARY INTEREST:

Nil

THOSE PRESENT:

Lynda Ross, Tribunal Member (Chair)
Rafiq Rokerya, Tribunal Member (Vice-Chair)
Roderick Chung, Tribunal Member
Leonard Lyn, Tribunal Member
Luc Laverriere, Tribunal Member
Marilyn Sparrow, Legal Counsel to the Appeal Tribunal
Amer Hawchar, Appellant
Andrew B. Tulk, Legal Counsel to the Appellant
Carla Mariuz, Prosecutor for the City of Mississauga's Enforcement Division
Karen Morden, Tribunal Coordinator, Office of the City Clerk
Laura Wilson, Tribunal Coordinator, Office of the City Clerk

INTERLOCUTORY ORDERS OF THE TRIBUNAL9:56 a.m.

With the consent of the Prosecutor for the City of Mississauga's Enforcement Division and Legal Counsel for the Appellant, the Tribunal made an order to exclude witnesses for the Appellant until they gave testimony.

10:27 a.m.

The Tribunal made a decision to accept, as reference material, excerpts from the *Criminal Code of Canada: Motor Vehicles, Vessels and Aircraft*, from the Prosecutor for the City of Mississauga's Enforcement Division. This material was not tendered as evidence.

5:25 p.m.

The Tribunal made a decision to defer their decision in the matter of the Hearing with respect to the appeal dated February 9, 2012 to the Mississauga Appeal Tribunal, by Amer Hawchar of a Licensing Manager's decision to revoke a City of Mississauga tow truck driver's licence issued to Amer Hawchar under the City of Mississauga By-law 521-04, as amended, the Tow Truck Licensing By-law.

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's Enforcement Division:

10:19 a.m.

Brad Parliament, Mobile Licensing Officer, The City of Mississauga.

The following individuals testified on behalf of the Appellant:

12:07 p.m.

Joseph Issa, former owner of Showcase Auto Body and former employer of the Appellant.

1:27 p.m.

Amer Hawchar, Appellant.

2:56 p.m.

Riqqa Hawchar, spouse of the Appellant.

3:01 p.m.

Natalie Hawchar, daughter of the Appellant.

EVIDENCE ADMITTED BY THE TRIBUNAL**Exhibit 1:****10:09 a.m.**

A Documents Brief prepared by the Prosecutor for the City of Mississauga's Enforcement Division, submitted to the Tribunal Coordinator on May 10, 2012, containing the following documents:

Tab 1 - Copy of decision of Acting Manager, Mobile Licensing Enforcement Brad Parliament dated February 9, 2012.

Tab 2 – Copy of decision of Manager, Mobile Licensing Enforcement James Bisson dated January 5, 2011.

Tab 3 – Copy of Notice of Appeal submitted by Amer Hawchar dated February 9, 2012.

Tab 4 – Certified copies of convictions and certificates of offence pending for offences committed under City of Mississauga By-law 521-04 registered against Amer Hawchar.

Tab 5 – Ministry of Transportation Driver Record Search for Amer Hawchar.

Tab 6 – Criminal Records search for Amer Abdalah Hawchar dated January 5, 2012.

Tab 7 – The Mississauga News articles dated February 11, 2009 and January 12, 2011.

Tab 8 – Certified copy of Peacebond dated March 21, 2012.

Tab 9 – Letter of complaint prepared by Courtney Smart dated May 30, 2003.

Tab 10 – Letter of complaint prepared by Cathy Dawson dated September 24, 2003.

Tab 11 – Complaint Log Report (Scott Walker) dated June 28, 2008.

Tab 12 – Copies of Licence Renewal Applications from 2001 to 2011.

Tab 13 – Copies of Tow Truck Operating Licences from 1995 to 2011.

Tab 14 – Copy of Driver/Operator Licence Application dated January 16, 2012.

Tab 15 – Notice pursuant to Section 35 of the *Evidence Act* of Ontario.

Exhibit 2:

10:11 a.m.

Copy of a Certified Extended Driver Record Search for Criminal Code Convictions, submitted at the Hearing by the Prosecutor for the City of Mississauga's Enforcement Division.

Exhibit 3:

10:13 a.m.

Copy of a Court Synopsis with respect to the incident that took place on February 9, 2009, submitted at the Hearing by the Prosecutor for the City of Mississauga's Enforcement Division.

ADJOURNMENT

5:26 p.m.