



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

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IN THE MATTER OF a Notice of Appeal, received on April 8, 2013, to the Mississauga Appeal Tribunal, by Eduardo Ordonia Payumo, 6 Gailgrove Court, Brampton, Ontario, L6S 2E1, of a Licensing Manager's decision to remove a name from the Taxicab Owner's Priority Waiting List under the City of Mississauga's Public Vehicle Licensing By-law 420-04, as amended (the "Appeal").

AND IN THE MATTER of the Hearing of the Notice of Appeal by the Mississauga Appeal Tribunal on August 28, 2013 in accordance with the provisions of the City of Mississauga's Public Vehicle Licensing By-law 420-04, as amended, and the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*, as amended.

**BACKGROUND:**

The Appellant, Mr. Eduardo Ordonia Payumo, has been a Taxicab driver in Mississauga since approximately 1985. He holds all qualifications as a taxi driver and entered into evidence a Ministry of Transportation 3 year Driver Record Search showing no record of any offence under the Highway Traffic Act. He gave uncontradicted evidence that he has no criminal convictions.

In 1990, Mr. Payumo's name was added to the Taxicab Owner's Licence Priority List. This list is in essence a waiting list of persons who have applied for a Taxicab Owner's Licence and who otherwise qualify for the issuance of such a licence, but cannot be issued with this licence because of the limitation on the number of licences available. It is a lengthy and slow-moving list, largely due to the significant monetary value of a Taxicab Owner's Licence, and the fact that once obtained, they can be leased or sold to others on the open market. As of now, Mr. Payumo remains 13<sup>th</sup> on this Priority List.

In late 2011 or early 2012, Mr. Payumo began to experience significant and progressively worsening health problems and began to reduce the number of hours that he was driving his Taxicab. Ultimately, he underwent quintuple heart by-pass surgery on July 23, 2012. Following his surgery, he went through a difficult period of recuperation, including re-admission to the hospital. He returned to part-time driving on or about October 29, 2012, despite post-surgical pain, fatigue, loss of appetite, depression, palpitations and intermittent gout attacks. Currently, he has returned to

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driving full-time.

In an agreed statement of facts, the Appellant and the City agree that Mr. Payumo failed, during this period, to comply with the requirements of the Public Vehicle Licencing By-Law 420-04 (the "By-Law"), to drive a Taxicab for an average of at least 40 hours per week during at least 44 weeks per year from the date of entry on the list, or to have the benefit of an exemption from this requirement. In fact, there was an exemption open to Mr. Payumo under S. 21 of Schedule 8 of the By-Law, had he simply filed with the Licence Manager, a report of a Medical Specialist detailing the nature of the illness, the date of loss of ability to operate a Taxicab and the expected date of return to work, immediately upon his failure to drive a Taxicab. However, it is an agreed fact that Mr. Payumo failed to file this report.

Pursuant to S. 28 of Schedule 8 of the By-Law, the Licence Manager is required to periodically review the Priority List and to notify any person whose name is on the list who fails to comply with the provisions of that Schedule, that his name is to be removed from the Priority List. This was done by the Licence Manager by Registered Mail on March 7, 2013.

It is the finding of this Tribunal that Mr. Bell, the Licence Manager, had no discretion to take any action other than to notify Mr. Payumo that he would be removed from the Priority List. S. 28 reads as follows:

*"The Licence Manager shall review the Priority List at regular intervals a minimum of once per calendar year, to determine that the listed persons are in compliance with the provisions of this Schedule and any person whose name is on the list who fails to comply with the provisions of this Schedule, shall be notified by the Licence Manager that his name is to be removed from the Priority List and such person may appeal this decision."*

The By-Law does not permit the Licence Manager to exercise discretion in this case. However, the Section nevertheless allows a person whose name is on the Priority List and who fails to comply with the provisions of Schedule 8 to appeal the decision of the Licence Manager. This right of appeal necessarily implies that a different decision is possible.

Section 19 of the By-Law allows this Tribunal, in making its decision, to uphold or vary the decision of the Licence Manager, or make any decision that the Licence Manager

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was entitled to make in the first instance. The Licence Manager was not entitled to decide otherwise than how he did under the circumstances, however the use of the word "or" in S. 19 is crucial in that it permits the Tribunal to make a decision that the Licence Manager could not.

The Appellant did fail to abide by the requirements of Schedule 8 of the By-Law. However, this Tribunal believes that he is worthy of the exercise of discretion in his favour due to the following mitigating circumstances:

- His failure to drive for the requisite number of hours was a matter of necessity caused solely by his serious health challenges. This failure in no way reflects upon his level of commitment to the Taxicab industry.
- Despite his failure to drive for the requisite number of hours during the period of his illness, he could have been exempted from this requirement simply by submitting a report from his doctor. It is the finding of this Tribunal that this failure was inadvertent in nature.
- The full facts regarding his illness were not before Mobile Enforcement at the time that Mr. Payumo was interviewed, February 20, 2013.
- Mr. Payumo is an exemplary Taxicab driver and is a credit to the Taxicab industry in Mississauga. Simply put, the vast majority of taxi passengers would be delighted to see a driver of his calibre behind the wheel of a taxi.
- Mr. Payumo has maintained his position on the Priority List without previous breaches of the By-Law, for 23 years. It is fair and just that he not lose the opportunity to obtain a Taxi Owner's Licence under the circumstances of this matter.
- He has not sought to deny his failure to abide by the provisions of the By-Law and has, in fact, formally agreed to his failures, saving the Tribunal considerable time during this hearing.

**DECISION:**

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

The Appellant shall remain on the Priority List, subject to his position on the Priority List being frozen for four months from the date hereof.

The Tribunal wishes to thank both Mr. Capizzano, Agent for the City, and Mr. Crawford, Counsel for the Appellant, for their cooperation in reaching an agreed set of facts, and

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for their professionalism and courtesy during the hearing.

Issued by the Mississauga Appeal Tribunal on August 28, 2013.

Originally executed at the City of Mississauga on August 28, 2013 by:

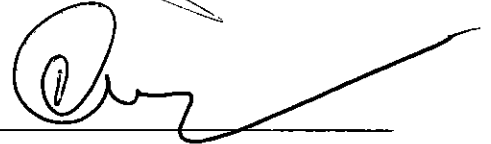
Leonard Lyn,  
Chair and Citizen Member



Luc Laverrière,  
Acting Vice-Chair and Citizen Member



Roderick Chung,  
Citizen Member



Encl.: Record of Proceeding dated August 28, 2013



## RECORD OF PROCEEDING

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THE CORPORATION OF THE CITY OF MISSISSAUGA

### MISSISSAUGA APPEAL TRIBUNAL

WEDNESDAY, AUGUST 28, 2013 – 9:30 A.M.

COMMITTEE ROOM A, CIVIC CENTRE  
300 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO, L5B 3C1  
[www.mississauga.ca](http://www.mississauga.ca)

MEMBERS PRESENT: Leonard Lyn, Chair and Citizen Member  
Luc Laverrière, Acting Vice-Chair and Citizen Member  
Roderick Chung, Citizen Member

MEMBERS ABSENT: Rafiq Rokerya, Vice-Chair and Citizen Member  
Jewel Amoah, Citizen Member

APPELLANT: Eduardo Ordonia Payumo

APPELLANT'S  
LEGAL COUNSEL: Tyrone D. Crawford, LL.B.

PROSECUTOR: Frank Capizzano, Prosecution Office

STAFF PRESENT: Daryl Bell, Manager, Mobile Licensing Enforcement  
Julie Lavertu, Mississauga Appeal Tribunal Coordinator  
Brad Parliament, Mobile Licensing Inspector

OTHERS PRESENT: Marilyn Sparrow, Legal Counsel, Mississauga Appeal  
Tribunal

CONTACT PERSON: Julie Lavertu, Mississauga Appeal Tribunal Coordinator  
Office of the City Clerk, Telephone: 905-615-3200, ext. 5471; Fax: 905-615-4181  
[Julie.Lavertu@mississauga.ca](mailto:Julie.Lavertu@mississauga.ca)

This is a Record of Proceeding of the Mississauga Appeal Tribunal's Hearing regarding a Notice of Appeal by Eduardo Ordonia Payumo (6 Gailgrove Court, Brampton, Ontario, L6S 2E1), received on April 8, 2013, of a Licensing Manager's decision to remove a name from the Taxicab Owner's Priority Waiting List, under the the City of Mississauga's Public Vehicle Licensing By-Law 420-04, as amended.

CALL TO ORDER – 10:07 a.m.

DECLARATIONS OF DIRECT OR INDIRECT PECUNIARY INTEREST

INTERLOCUTORY ORDERS OF THE TRIBUNAL

WITNESSES

Luc Laverrière, Acting Vice-Chair and Citizen Member, administered the Oath or Affirmation as the case may be, to the individuals set out below at the time that the individuals were called to give evidence for the respective parties.

- The following individual testified on behalf of the Appellant:

**10:20 a.m.** Eduardo Ordonia Payumo, Appellant

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

**11:32 a.m.** Daryl Bell, Manager, Mobile Licensing Enforcement

EVIDENCE ADMITTED BY THE TRIBUNAL

**10:32 a.m.** **Exhibit 1:** Letter dated April 22, 2013 from F.B.T. Forbes, M.D., F.B.T. Forbes Medicine Professional Corporation, regarding Mr. Eduardo Payumo, DOB: November 25, 1944.

**10:56 a.m.** **Exhibit 2:** Letter dated April 9, 2013 from Mrs. M. Huber for Dr. Shafqat Ahmed, M.D., F.R.C.S. (C)., regarding Mr. Eduardo Ordonia Payumo.

**10:57 a.m.** **Exhibit 3:** 3 Year Driver Record Search dated August 6, 2013 for Eduardo Payumo from the Ministry of Transportation, Road User Safety Division.

**10:58 a.m.** **Exhibit 4:** Brampton Civic Hospital Patient's Data dated May 7, 2013 for Eduardo Payumo.

- 11:11 a.m. Exhibit 5:** Documents Brief prepared by Frank Capizzano, Prosecutor, Prosecution Office, served to the Appellant via courier on July 19, 2013 and containing the following documents:
- TAB 1 Copy of the Initial date of Application for entrance onto the City of Mississauga Taxicab Owner's Priority Waiting list dated August 2, 1990.
- TAB 2 Copy of the Applicant's Statutory Declaration Taxi Industry Involvement indicating full time operation of Mississauga Taxicab number 118, dated February 20, 2013.
- TAB 3 Copy of a letter from Dr. Shafqat Ahmed, regarding cardiac surgery recovery time for appellant dated July 23, 2012.
- TAB 4 Copy of a Doctor's note supplied by the appellant dated, June 6, 2012.
- TAB 5 Copy of a letter sent to appellant dated January 23, 2013 from the Manager of Mobile Licensing, requesting his attendance for a review of Taxicab Owner's License issuance.
- TAB 6 Copies of Trip Sheets provided by the appellant for the Taxicab operating year 2012.
- TAB 7 Copy of a Will Say statement from Brad Parliament.
- TAB 8 Copy of a letter dated March 7, 2013 from the Manager of Mobile, informing the appellant that his name has been removed from the Taxicab Owners Priority List.
- TAB 9 Copy of a letter from the Appellant requesting an appeal from the removal of his name from the Taxicab Owners Priority List, dated March 19, 2013.
- TAB 10 Notice pursuant to Section 35 and 55 of the Evidence Act of Ontario.

ADJOURNMENT – 1:14 p.m. (L. Laverrière)