

## REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

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Form 10

Date of Hearing:           Friday, February 22, 2019

Hearing Officer:         Paul Sommerville

Re:                         NP098348, Scott Evans, Owner

City's Representative:   None

Owner's Representative:  Scott Evans, Owner

**EXTENUATING CIRCUMSTANCES** - a special or specified circumstance, including such types of extenuating circumstances established by the City Solicitor that partially or fully exempts a person from performance of a legal obligation so as to avoid an unreasonable or disproportionate burden or obstacle.

**FINANCIAL HARDSHIP** - a significant difficulty or expense and focuses on the resources and circumstances of the person owing an administrative penalty, including administrative fees, in relationship to the cost or difficulty of paying the administrative penalty or any administrative fees.

### **SCREENING OFFICER'S DECISION**

The Screening Officer reduced the amount of the Administrative Penalty by half- from \$30.00 to \$15.00. The Screening Officer expressly reduced the Penalty as part of a general approach adopted in the early stages of the Administrative Penalty System (APS). This approach was taken in light of the fact that the APS represented a fundamental change in the way parking violations are managed and adjudicated. The reduction in Penalty was not based on Undue Hardship criteria, but rather "...as per the educational period into the new APS."

### **CITY REPRESENTATIVE'S EVIDENCE**

No City Representative appeared in the case. Pursuant to Sections 610-1.2 and 610-2.3 of Chapter 610 of the Toronto Municipal Code the Parking Violation Notice is a certified statement of the enforcement officer, and is evidence of the facts stated therein, in the absence of evidence to the contrary. In this case the

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Parking Violation Notice evidenced a violation of Chapter 915-2B of the Toronto Municipal Code-PARK ON PRIVATE PROPERTY WITHOUT CONSENT.

## **RECIPIENT'S EVIDENCE**

The Recipient, Mr. Evans, submitted a photograph of what appears to be a "Rain Check" issued by Sobeys grocery store dated March 26, 2018. The Rain check does not bear a time stamp.

At the Hearing the Recipient played a somewhat inaudible digital mobile phone recording of a conversation which he stated was between himself, his friend, and an employee of Sobeys. This recording was obtained without the knowledge of the Sobeys employee.

## **CITY REPRESENTATIVE'S SUBMISSIONS**

The City, not being present, did not make any submissions.

## **RECIPIENT'S SUBMISSIONS**

On January 24, 2019 the Tribunal issued a Decision on a request for adjournment made by Mr. Evans respecting PVN NP098348. **(see Appendix "A" to these Written Reasons for Decision)** As part of that Decision the Tribunal provided direction to the Parties respecting requests for disclosure made by the Owner, as well as a request, also made by the Owner, that the Tribunal issue a Summons to require the personal attendance of the Screening Officer. That direction consisted of requiring the Owner to stipulate a list of documents he sought by way of production and the reason for his request for the personal attendance of the Screening Officer.

In his request for information, which was filed on February 8, 2019, the Owner indicated that he seeks "complete and true documentation" respecting the Screening Officer's stated impression that Parking Enforcement personnel were contacted by someone to tag his vehicle when and where it was tagged. The Screening Office responded that all of the information the Screening Officer had access to is contained within the PVN file. The Screening Office explicitly stated in its response that the Screening Officer is not in possession of any further evidence respecting the PVN.

## **REASONS FOR DECISION**

With due respect to the Owner, whether Parking Enforcement was contacted by someone to tag his vehicle or not is irrelevant to the Hearing the Tribunal is mandated to conduct. The Parking Violation Notice presumptively evidences a violation of Chapter 915-2B of the Toronto Municipal Code- parking on Private Property without the consent of the Occupant. Pursuant to Chapter 610 of the City of Toronto Municipal Code, the Tribunal's enabling legislation, the PVN constitutes a certified statement of the enforcement officer, and is admissible as proof of the facts contained therein, subject to evidence to the contrary.

The presumption that a violation has occurred can be displaced, but only where the recipient/owner, that is Mr. Evans, can convince the Hearing Officer that on the balance of probabilities, the offence did not occur. The burden of persuasion lies with the owner/recipient once a PVN has been issued. In this case that burden consists of providing credible evidence that Mr. Evans did, in fact, have the consent of the property owner to park where and when he did. The Screening Office has no further role, and nothing would be gained by making an order consistent with Mr. Evans' request. The proposition that someone may or may not have contacted Parking Enforcement to tag his vehicle is irrelevant to the Tribunal's consideration of the PVN.

The same is true with respect to Mr. Evans' request for a summons to require the personal attendance of the Screening Officer. Section 610-2.3.O precludes the adjournment of a matter to have an individual attend the hearing unless the Hearing Officer is satisfied that the oral evidence of the individual is necessary to achieve a fair hearing. The Tribunal is not convinced that the fairness of Mr. Evans' hearing will in any way be compromised by the absence of the Screening Officer. The issue Mr. Evans wants to raise - whether someone contacted parking enforcement to tag his vehicle - is simply not relevant to the Tribunal's hearing.

To succeed, what Mr. Evans needed to do is provide evidence that he did in fact have consent from the Occupant of the location, where and when he was tagged.

Accordingly, the Tribunal made no order requiring the Screening Office to provide any information in addition to that forming part of the record, and declined to issue a summons for the personal attendance of the Screening Officer.

With respect to the evidence provided by Mr. Evans, it falls short of meeting the burden of persuasion required by the legislation.

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The "Rain Check" is not time stamped, and in any event does not contain any language related to consent for parking. In his testimony Mr. Evans suggested that the Rain Check was issued late March 26, 2019, and that issuance of a "Rain Check" automatically carried with it permission to park in the Sobeys lot for two hours, but there is no evidence of that on the Rain Check, or otherwise. It should have been straightforward to provide evidence of that policy to the Tribunal, but none was provided.

Mr. Evans testified that his friend had told Mr. Evans that while Sobeys had indicated that overnight parking was prohibited, he, Mr. Evans' friend, had secured permission for himself, "and his friends" to park where and when they did. Mr. Evans' friend did not testify to corroborate Mr. Evans' version of events, and in any event, it was not clear that Mr. Evans was included in any permission that may or may not have been given to his friend. The surreptitiously recorded conversation with the presumed, but not proven, Sobeys employee, also did not seem to corroborate Mr. Evans' position. It is not clear from the recording that any permission was given, or, more to the point, that any permission was given to Mr. Evans to park where and when he did. There was also no evidence with respect to the status of the Sobeys employee and his authority to grant permission to park. In fact, the employee seems to distance himself from that authority.

Put simply, Mr. Evans has failed to meet the burden of persuasion that Chapter 610 of the Toronto Municipal Code places on him. There are numerous ways that burden could have been met, but ultimately Mr. Evans had to demonstrate, on the balance of probabilities, that he had consent from the owner of the property to park where and when he did. This he did not do.

## **DECISION**

Accordingly, in the result, the Hearing Officer affirms the Decision of the Screening Officer, and the Administrative Penalty of \$15.00 stands.

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Paul Sommerville

Chair

**Date Signed: Tuesday, March 19, 2019**

Attachments: Appendix A

## APPENDIX A

1. The Hearing will be held on February 15, 2019 at the Tribunal's offices at 40 Orchard View Blvd in the City of Toronto at 9:00 am.
2. Prior to the Hearing, and in any event no later than 4:00 pm on February 8, 2019, the Vehicle Owner will file with the Tribunal and the Screening Office a list of the documents and information he seeks from the Screening Officer including a description of each item on the list and his reason for seeking the personal attendance of the Screening Officer. The items on the list and reason for seeking the personal attendance of the Screening Officer must be relevant to the review of the penalty notice.
3. Prior to the Hearing, and in any event no later than February 11, 2019, the Screening Office will file with the Tribunal, with a copy to the Vehicle Owner, its response to the Vehicle Owner's request for documents and information, and his request for the personal attendance of the Screening Officer.
4. Prior to the Hearing the Tribunal will make a determination as to which documents and information it will require the Screening Office to provide. It will also make a determination respecting the Vehicle Owner's request for the personal attendance of the Screening Officer.