

REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

Form 10

Date of Hearing: Monday, February 24, 2020

Hearing Officer: Cheryl Gaster

Re: PA955129

City's Representative: None in Attendance

Owner's Representative: Samantha Huong Quach

INTRODUCTION

On May 27, 2019, at 7:12 p.m., a Parking Violation Notice (PVN) was issued to plate number BNZE388 citing that the vehicle was parked at a machine which required a fee which was not paid, in contravention of the *Toronto Municipal Code Chapter 910-4A(1)*. Ms. Samantha Huong Quach is the Recipient/Plate Owner (Recipient). The penalty levied at first instance was in the amount of \$30.00.

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, in their written decision dated January 23, 2020, affirmed the original penalty of \$30.00 citing the following reasons in their decision, "Contrary to what the recipient indicated, the permit was not clearly displayed at the time of the violation as shown in the officer's photographs. Permit was moved prior to the recipient taking her photograph. A valid permit must be clearly displayed in order to receive an exemption."

CITY REPRESENTATIVE'S EVIDENCE

Date Issued: March 3, 2020

No City Representative appeared at the hearing. Pursuant to the *Toronto Municipal Code, Chapter 610, Sections 1.2 and 2.3*, the PVN is considered to be the certified statement of the parking enforcement officer, thereby being the evidence of the facts as stated therein, in absence of evidence to the contrary. The relevant PVN evidenced a contravention of the *Toronto Municipal Code Chapter 910-4A(1)*, that is the vehicle was parked at a machine which required a fee which was not paid. In addition, the parking enforcement officer submitted three photographs taken at the material time which include one of the plate owner's vehicle with the PVN pinned under the window wiper and one of the accessible parking permit only partially visible with the expiry date not visible.

RECIPIENT'S EVIDENCE

On June 3, 2019, the Recipient, Ms. Quach, submitted to the APS Screening Office a photograph of the accessible parking permit fully visible, on a vehicle's dashboard in a different spot on the dashboard than the location in the photograph of the parking enforcement officer dated May 27, 2019, i.e., the date of the infraction. Then again, on February 18, 2020, the Recipient submitted yet a different photograph of the full accessible parking permit.

CITY REPRESENTATIVE'S SUBMISSIONS

There was no City representative in attendance at the hearing and no written submissions were provided.

RECIPIENT'S SUBMISSIONS

The Recipient, Ms. Quach, gave oral evidence at the hearing, stating in part that the accessible parking permit had slipped down into the dashboard rendering the "registration, serial number" not visible to the parking enforcement officer. Further stating that the fact that she is presenting the accessible parking permit at the hearing verifying its validity is reason the penalty should be cancelled.

The Recipient made no reference to the two photographs she submitted of the fully visible accessible parking permit.

REASONS FOR DECISION

Pursuant to the *Toronto Municipal Code, Chapter 610, Sections 1.2 and 2.3*, the PVN is to be considered to be the certified statement of the parking enforcement officer, thereby being the evidence of the facts as stated therein, in absence of evidence to the contrary. The relevant PVN evidenced a contravention of the *Toronto Municipal Code Chapter 910-4A(1)*, that is the vehicle was parked at a machine which required a fee which was not paid. In addition, the parking enforcement officer submitted three photographs which include one of the plate

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owner's vehicle with the PVN pinned under the window wiper and one of the accessible parking permit only partially visible with the expiry date not visible. The presumption that a violation occurred can be displaced, but only where the Recipient, Ms. Quach, is able to convince the Hearing Officer that on a balance of probabilities the offence did not occur. The burden of persuasion rests with the Recipient once the PVN has been issued.

In this case, the burden rests with Ms. Quach to provide credible evidence that the accessible parking permit was displayed in accordance with the *Highway Traffic Act, R.R.O. 1990, Regulation 581 Accessible Parking for Persons with Disabilities, Section 7(1)*, which states in part that, "...an accessible parking permit *shall* (emphasis added) be displayed on the sun visor or on the dashboard of a vehicle so that the international symbol of access for persons with a disability, the permit number and *the expiry date of the permit are clearly visible from the outside of the vehicle* (emphasis added)."

The Hearing Officer considered the documentary evidence of the parking enforcement officer, the *Toronto Municipal Code, Chapter 903 Parking for Persons with Disabilities*, and the *Highway Traffic Act, R.R.O. 1990, Regulation 581 Accessible Parking for Persons with Disabilities, Section 7(1)*, the decision of the Screening Officer, as well as the oral and documentary evidence of the Recipient and determined that the Recipient's evidence failed to meet the burden of persuasion. Specifically, the Recipient did not provide evidence that in fact the accessible parking permit was properly placed on the dashboard to be fully visible from outside the vehicle.

After considering all the evidence and the applicable legislation, the Hearing Officer exercised her discretion and varied the penalty, reducing it from \$30.00 to \$15.00. The Recipient indicated her dissatisfaction and was informed by the Hearing Officer of her right to file a complaint with the Chair of the Tribunal and provided the Tribunal's email address to the Recipient.

The Recipient requested ninety days in order to pay the penalty. In answer to the Hearing Officer's inquiring into her reasons for requesting ninety days to pay the penalty of \$15.00, the Recipient responded that due to the slowness at which the City operates ninety days is required for her complaint to be processed. The Hearing Officer assured the Recipient that forty-five days is adequate time for the complaint process to be completed. The Recipient did not introduce any evidence, either expressly or implicitly, that her request for ninety days to pay the \$15.00 penalty was based on, or in any way related to, undue hardship and extenuating circumstances.

DECISION

Accordingly, the Hearing Officer varies the penalty to \$15.00 and provides an extended period of time within which to pay, specifically, forty-five days.

[SIGNED]

Cheryl Gaster

Hearing Officer

Date Signed: 03/03/2020