

# REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

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Form 10

Date of Hearing: Monday, June 7, 2021

Hearing Officer: Paul Sommerville

Re: PB638514

City's Representative: None in Attendance

Owner's Representative: Oliver Rey

## **INTRODUCTION**

On September 27, 2019, at 23:57, at a location near 161 Isaac Devins Boulevard in the City of Toronto, Parking Violation Notice (PVN) PB 638514 was issued to plate number BZYA160 citing that the vehicle was parked on a boulevard contrary to the Toronto Municipal Code, Chapter 918-2.B. Oliver Rey, the Owner appeared on his own behalf. The penalty levied at first instance was in the amount of \$50.00.

**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 decision dated July 26, 2021, varied the original penalty by reducing it by 50%, to \$25.00. The reason cited for this reduction was "education".

## **CITY REPRESENTATIVE'S EVIDENCE**

No City Representative appeared in the case. Pursuant to the Toronto Municipal Code, Chapter 610, sections 1.2 and 2.3, the PVN is a certified statement of the

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parking enforcement officer, thereby being evidence of the facts stated therein, in the absence of evidence to the contrary. As such, the PVN evidenced a contravention of the Owner's vehicle of the Toronto Municipal Code, Chapter 918 2.B. In addition, the Enforcement Officer submitted a series of four photographs, taken at the time the PVN was issued.

## **RECIPIENT'S EVIDENCE**

The Owner submitted a series of six photographs taken of the location where the offence occurred. The Owner also gave oral evidence.

## **CITY REPRESENTATIVE'S SUBMISSIONS**

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

## **RECIPIENT'S SUBMISSIONS**

The Owner gave oral evidence at the hearing. The Owner was the driver of the vehicle at the relevant time.

The Owner's submissions were essentially directed to urging me to consider that the area in which he was parked was not part of the boulevard. He also urged me to consider that other vehicles have been parked in a similar location, and did not receive PVNs.

## **REASONS FOR DECISION**

The Tribunal's jurisdiction is governed by Chapter 610 of the Toronto Municipal Code, Chapter 610. Pursuant to sections 1.2 and 2.3, the PVN constitutes a certified statement of the parking enforcement officer, thereby being evidence of the facts as stated therein, in the absence of evidence to the contrary. The presumption that a violation occurred can be displaced, but only where the Owner is able to convince the Hearing Officer that on a balance of probabilities the offence did not occur. The governing legislation also stipulates the the Decision of a Hearing Officer is final.

The Hearing Officer considered the applicable legislation, the documentary and photographic evidence of the Parking Enforcement Officer, the decision of the Screening Officer and the evidence of the Owner and determined that the Owner's evidence failed to meet the burden of persuasion.

Specifically, so far from convincing me that the area the Owner had parked in was not a boulevard, the Owner's photographic evidence demonstrated that he was in fact parked on the area forming part of the boulevard.

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Further, the assertion that others did not receive PVNs while parking in the same location was not supported by his evidence. While one photograph showed a vehicle very marginally within the area of the boulevard, there is no reason to believe that even this very marginal incursion did not attract a PVN at some point. The Owner's own photographs show his vehicle very substantially within the area of the boulevard.

After considering the applicable legislation, the Screening Officer's Decision, all of the evidence and the Owner's submissions, I decided to Affirm the Screening Officer's Decision.

## **DECISION**

In the result, the Hearing Officer Affirmed the Screening Officer's Decision

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Paul Sommerville

Hearing Officer

**Date Signed: 16/07/2021**