

# REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

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Form 10

Date of Hearing: Tuesday, October 26, 2021

Hearing Officer: Cheryl Gaster

Re: PD181094

City's Representative: None in Attendance

Owner's Representative: Jacqueline Alexis Graham

## INTRODUCTION

On November 10, 2021, at 17:19, a Parking Violation Notice (PVN) was issued to plate number BKNY076 citing that the vehicle was stopped at the road side of a stopped/parked vehicle, in contravention of the *Toronto Municipal Code Chapter 950-400B(6)*. Ms. Jacqueline Alexis Graham is the Recipient/Plate Owner (Recipient). The penalty levied at first instance was in the amount of \$150.00.

**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 February 16, 2021, affirmed the original penalty of \$150.00 citing the following reasons in their decision, "We have reviewed your dispute as well as evidence submitted by the issuing officer. The ticket was not issued in error. We are unable to cancel or reduce the penalty however we have provided time for payment."

## CITY REPRESENTATIVE'S EVIDENCE

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 as being the certified statement of the Parking Enforcement Officer (PEO), 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 950-400B(6)*, that is the vehicle was stopped at the road side of a stopped/parked vehicle. In addition, the PEO 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, one the vehicle's license plate, and one of the plate owner's vehicle parked beside and parallel to a parked vehicle.

## **RECIPIENT'S EVIDENCE**

On **November 12, 2020**, the Recipient, Ms. Graham, submitted to the APS Screening Office two photographs of her vehicle shown to be in the same location as in the photographs of the PEO dated November 10, 2020, i.e., the date of the infraction. On an unknown date, the Recipient provided the following written submissions: *"i had submitted my reason in my screening application. I believe i was parked correctly as instructed by the establishment i was given and parking signage. I had submitted pictures of my parked car to the screening office which they may have possibly forwarded to the tribunal. I try to be mindful of wherein am parking to avoid infractions as i am on a fixed income and not in a position to be paying for and getting parking tickets."* On February 16, 2021, the Recipient submitted a screen shot of Google street view onto which the location of her vehicle was drawn in, which depicted her vehicle to be, again, in the same location as shown in the PEO's photographs.

## **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. Graham, gave oral evidence at the hearing, stating in part that she inquired of the owner of the establishment that she intended to visit where she could park her car and the owner gave her permission to park where she did. She described the spot where she parked as a "broad open street".

The Recipient did not speak to the fact that her vehicle was parked beside and parallel to another parked vehicle.

## **REASONS FOR DECISION**

Pursuant to the *Toronto Municipal Code, Chapter 610, Sections 1.2 and 2.3*, the PVN is to be considered the certified statement of the PEO, 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 950-400B(6)*, that is the vehicle was stopped at the road side of a stopped/parked vehicle. In addition, the PEO 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, one the vehicle's license plate, and one of the plate owner's vehicle parked beside and parallel to a parked vehicle.

The presumption that a violation occurred can be displaced, but only where the Recipient, Ms. Graham, 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. Graham to provide credible evidence that her vehicle was parked in compliance with posted parking signage and the requirements of the By-law.

The Hearing Officer considered the documentary evidence of the PEO, the *Toronto Municipal Code, 950-400B(6)*, 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. The Recipient's documentary evidence corroborated that of the PEO and their oral evidence was not persuasive on a balance of probabilities. Specifically, the Recipient did not provide evidence that in fact the vehicle was parked in accordance with posted parking signage and the requirements of the By-law.

After considering all the evidence and the applicable legislation, the Hearing Officer exercised her discretion and varied the penalty, reducing it from \$150.00 to \$100.00. At that point, the Recipient introduced oral evidence of financial hardship which the Hearing Officer accepted on a balance of probabilities and further varied the penalty to \$75.00 and, as well, provided an extended period of time within which to pay, specifically ninety (90) days.

The Recipient asked for the Hearing Officer's name and the citation of the *Toronto Municipal Code, 950-400B(6)* to which the Hearing Officer spelled out their name and informed that the citation of the By-law and her name will both be in the written decision.

## **DECISION**

Accordingly, the Hearing Officer varies the penalty to \$75.00 and provides an extended period of time within which to pay, specifically, ninety days.

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Cheryl Gaster

Hearing Officer

Decision of the Tribunal: Re: PD181094

Date Issued: December 10, 2021

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**Date Signed: 10/12/2021**

Attachments: