

REASONS FOR DECISION OF THE
ADMINISTRATIVE PENALTY TRIBUNAL

Form 10

Date of Hearing: Monday, November 1, 2021
Hearing Officer: Barbara A. Cappell
Re: PD562277
City's Representative: None
Owner's Representative: Alexander Cieslak

INTRODUCTION

On March 26, 2021, at 12:13 p.m., a Parking Violation Notice (“PVN”) was issued to licence plate number BPXN875 citing that the vehicle was parked during a prohibited time in contravention of the *Toronto Municipal Code*. Peter J. Chandler (the “Owner”) is the registered owner of the vehicle. Alexander Cieslak (the “Agent”) appeared as agent for the Owner. 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 a decision dated May 5, 2021, determined that a parking violation had occurred, but varied the penalty to \$25.00 as a onetime consideration.

CITY REPRESENTATIVE’S EVIDENCE

No City Representative appeared at the hearing. Pursuant to the *Toronto Municipal Code*, the PVN is a certified statement of the parking enforcement officer and is evidence of the facts stated therein, in the absence of evidence to the contrary. In this case, the PVN gives evidence of a violation that the vehicle was parked on a signed highway during a prohibited day or time in contravention of the *Toronto Municipal Code*

Date Issued: December 2, 2021, 2021

Chapter 950-405A. The parking enforcement officer noted separately that the vehicle was encroaching a left turn lane but did not cite this as an infraction on the PVN.

OWNER'S EVIDENCE

The Agent submitted a photograph of the sign in question, a photograph of the PVN, and excerpts from the Toronto Municipal Code.

CITY REPRESENTATIVE'S SUBMISSIONS

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

AGENT'S SUBMISSIONS

According to the Agent, the car was parked on the left hand side of the road, which was permitted on this one-way street. He noted two signs regarding parking restrictions. One sign prohibits parking between the hours of 12:01AM and 10AM without a permit. The second sign prohibits parking between April 1 and November 30, except on Thursdays. The Agent noted that the time and date of the PVN were not during the prohibited periods and therefore the PVN was issued incorrectly.

REASONS FOR DECISION

The Tribunal's jurisdiction is governed by Chapter 620 of the Toronto Municipal Code. 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 or Agent is able to convince the Hearing Officer that on a balance of probabilities the offence did not occur. The governing legislation also stipulates that 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 and submissions of the Agent. The Agent does not dispute that the vehicle was parked as indicated in the PVN. He disputes that doing so was in violation of the parking restrictions in effect at the time.

The photograph of the no parking signs submitted by the Agent conforms with the photograph provided by the parking enforcement officer. I accept the Agent's submission that the vehicle was parked at a time when parking is permitted. Further, it

Date Issued: December 2, 2021, 2021

is clear from the photograph provided by the officer that the vehicle was not parked past the post demarcating where parking is permitted at certain times and on certain days.

Both the City's and the Agent's evidence establish that the Owner's vehicle was parked at a time which was not in violation of the no parking restrictions. The Agent has provided evidence to establish, on the balance of probabilities, that the PVN was issued in error.

DECISION

Accordingly, the Administrative Penalty of \$50.00 and any associated fees are cancelled.

A handwritten signature in black ink that reads "B.A. Cappell". The signature is written in a cursive style with a large initial "B" and "A".

Barbara A. Cappell

Hearing Officer

Date Signed: December 2, 2021