

REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

Form 10

Date of Hearing: Tuesday, October 26, 2021

Hearing Officer: Cheryl Gaster

Re: PD685135

City's Representative: None in Attendance

Owner's Representative: Jacqueline Alexis Graham

INTRODUCTION

On May 27, 2021, at 14:22, a Parking Violation Notice (PVN) was issued to plate number BKNY076 citing that the vehicle was stopped at a prohibited time/day, in contravention of the *Toronto Municipal Code Chapter 950-404D*. Ms. Jacqueline Alexis Graham is the Recipient/Plate Owner (Recipient). The penalty levied at first instance was in the amount of \$100.00.

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 July 13, 2021, affirmed the original penalty of \$100.00 citing the following reasons in their decision, "The officer's evidence demonstrates the vehicle was stopped in a clearly marked and signed no stopping zone. These markings ought to have been observed and adhered to."

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 950-405D*, that is the vehicle was stopped at a prohibited time/day. In addition, the PEO submitted five 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 three of the plate owner's vehicle parked in a clearly marked and signed no stopping zone.

RECIPIENT'S EVIDENCE

The Recipient, Ms. Graham, did not submit to the APS Screening Office any documentary evidence but did submit this statement: *"I had pulled over on a busy street on university ave. To look for my address as it was unsafe and difficult to drive and do so. When i found my location not far off, i returned to find a ticket on my dashboard. The officer pointed out to me that i should have pulled up a little more. Either way, i am kindly requesting a hearing as this was truly an error as it was becoming unsafe to drive and find where i was going. I am also requesting a hearing as, while the officer understands my reason for pulling over, it was still in error. I am however, an in receipt of odsp and am not working. This therefore presents as a hardship. Your understanding in this matter is appreciated."*

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 they as they were having a hard time seeing the building numbers, they pulled the car over and walked briefly to find the building. They further stated that they "understood why this ticket was issued" and that where they stopped was "not right".

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 950-405D*, that is the vehicle was stopped at a prohibited time/day. In addition, the PEO submitted five 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 three of the plate owner's vehicle parked in a clearly marked and signed no stopping zone.

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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, 950-405D*, the decision of the Screening Officer, as well as the oral evidence of the Recipient and determined that the Recipient's evidence failed to meet the burden of persuasion. In their oral evidence, the Recipient's admitted to parking their vehicle in a no stopping zone and offered exculpatory evidence. The Recipient's oral evidence was not persuasive on a balance of probabilities.

After considering all the evidence and the applicable legislation, and taking into account the Recipient's earlier oral evidence of financial hardship, which the Hearing Officer accepted on a balance of probabilities, the Hearing Officer varied the penalty to \$35.00 and, as well, provided an extended period of time within which to pay, specifically ninety (90) days.

The Recipient indicated their dissatisfaction with this outcome as well as that of the hearing which immediately preceded this one in an unrelated parking offence, PD181094. They were informed by the Hearing Officer that the Tribunal's contact information would be found on the written decision.

DECISION

Accordingly, the Hearing Officer varies the penalty to \$35.00 and provides an extended period of time within which to pay, specifically, ninety days.

Cheryl Gaster

Hearing Officer

Date Signed: 10/12/2021

Attachments: