

REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

Form 10

Date of Hearing: Friday, October 14, 2022

Hearing Officer: Paul Sommerville

Re: Parking Violation Notice ("PVN) PG074903 issued to Omer Sen Owner of License Plate # CHES009 ("the Owner" or "the Recipient") on April 29, 2022 near 6 Elmwood Avenue in the City of Toronto

City's Representative: None

Owner's Representative: None, Self-Represented

INTRODUCTION

The PVN evidenced a violation of Chapter 400 D(2) of the Toronto Municipal Code- Park Within 3 Metres of a Fire Hydrant. The stipulated penalty for this violation is \$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

On August 8, 2022 the Screening Officer made the following finding:

"As per bylaw 950-400D(2): No person shall on any highway park any vehicle within three metres of a point on the curb or edge of the roadway adjacent to any fire hydrant. Photographs provided by parking officer show vehicle in contravention of the bylaw. Penalty affirmed." The Penalty affirmed was \$100.00, which was payable within 15 days of the Screening Decision.

CITY REPRESENTATIVE'S EVIDENCE:

The PVN represents the City's evidence pursuant to Chapter 610 1.2 F, 2.3 M and N. In addition, the Enforcement Officer submitted photographs taken at the time the PVN was issued evidencing the violation.

RECIPIENT'S EVIDENCE

In addition to his vive voce evidence the Recipient submitted photographs and certain income tax documentation.

CITY REPRESENTATIVE'S SUBMISSIONS: None

RECIPIENT'S SUBMISSIONS:

The Recipient submitted that his vehicle was not parked in contravention of Chapter 950 400 D(2), and that the PVN should be cancelled. In the alternative, he also requested a reduction in the amount of the penalty, and an extended time to pay.

DECISION:

In the Hearing Officer's judgement there was ample evidence to establish that the violation had occurred, none of which was competently rebutted by the Owner. Pursuant to the governing legislation cited above, the Owner has the onus of proof to demonstrate on the balance of probabilities that the violation did not occur, once the PVN has been issued. In addition to the PVN itself, the Enforcement Officer's photographs clearly showed the Owner's vehicle parked at the curb within the 3 meter limit. The Owner's photographs which showed his vehicle distant from the hydrant could not be confidently relied upon. They could easily have been taken after the PVN had been issued, which is not credibly possible with respect to the Enforcement Officer's photographs. In the Hearing Officer's view the violation had been proven.

The Hearing Officer reduced the amount of the penalty to \$70.00 in light of the evidence of Financial Hardship submitted by the Owner, and provided a period of 30 days within which to pay the penalty.

The Owner, in correspondence with the Tribunal, complained that in a previous case, also carrying a penalty of \$100, no reduction of the penalty had been made. As is explicitly noted on each of the Decision letters sent to the Owner, cases are decided on a case-by-case basis and Decisions have no precedential effect. Tribunal Members are independent adjudicators who exercise their discretion independently on the evidence

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before them in any specific case. Having said that, it is noteworthy that the financial information the Owner filed in the instant case was not filed in the previous case.

Paul Sommerville

Hearing Officer

Date Signed: 31/10/2022

Attachments: