

REASONS FOR DECISION OF THE ADMINISTRATIVE PENALTY TRIBUNAL

Form 10

Date of Hearing: Friday, November 18, 2022

Hearing Officer: Cheryl Gaster

Re: PG118776

City's Representative: None

Owner's Representative: Yiwen Guan / Jonathan Kwan

INTRODUCTION – On May 5, 2022, at 16:16, a Parking Violation Notice (PVN) was issued to plate number BXCM167 citing that the vehicle was parked on a signed highway at a prohibited day and time in contravention of the *Toronto Municipal Code Chapter 950-405A*, near 184 Glen Rd. The penalty levied at first instance was in the amount of \$50.00. The Recipient/Plate Owner (Recipient) is Mr. Yiwen Guan whose chosen name is Mr. Jonathan Kwan.

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 – In their written decision dated September 16, 2022, the Screening Officer affirmed the original penalty of \$50.00 noting, in part, the following reasons: “No evidence forwarded to contradict the information in the parking violation notice. Explanation does not warrant reduction / cancellation. No Parking sign posted. ALL streets are referred to as Highways, under the Highway Traffic Act.”

CITY REPRESENTATIVE'S EVIDENCE – No city Representative appeared at the hearing.

RECIPIENT'S EVIDENCE – On May 6, 2022, the Recipient submitted to the APS Screening Office, two photographs taken from Google street view labelled “184

Glen Rd". I note that the Google street view photos referenced and relied on by the Recipient are dated May, 2016.

Further, on November 8, 2022, the Recipient submitted to the APT a map which indicate poles and their assigned numbers in the vicinity of 184 Glen Road. The Recipient provides the accompanying explanation: "The map above shows the details of this case. Yellow square is 184 Glen Rd, green square is where I parked. Red dots are hydro poles, and they are numbered, from 150 to 158. The spot I parked is somewhere between hydro pole 156 and 158. The following photos show the hydro pole and signs attached to each pole. I am using this to prove that between pole 152 to 158, not a single "No Parking" sign posted."

A second notation provided by the Recipient states: "As shown from these photos, none of them carries "No Parking" sign, and people living nearby park here all the time without any issue."

A third notation states: "The only "No Parking" sign in this area is on pole 150. As below (from Google Street view). This is the evidence that the parking officer presented in the disclosure."

CITY REPRESENTATIVE'S SUBMISSIONS

The City, not being present, did not make any submissions.

RECIPIENT'S SUBMISSIONS - The Recipient offers the following summation: "My objection is:

1. The area I parked (184 Glen Rd) has no parking restriction.
2. Between pole 152 and 158, no parking restriction either.
3. Pole 150 is over 100 meters down the road from 184 Glen Rd, parking enforcement officer's photo evidence was not supporting the spot of parking violation (184 Glen Rd), where poles 158, 156 and 154 are nearby."

REASONS FOR DECISION – Pursuant to the *Toronto Municipal Code, Chapter 610, Sections 1.2 and 2.3*, the PVN is considered to be 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, Chapter 950-405A*, that is the vehicle was parked on a highway at the side and between limits set out in *Schedule XIII in Chapter 950-1312* during the times and/or days set out in *Schedule XIII*.

The presumption that a violation occurred can be displaced but only where the Recipient, Mr. Kwan, 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

Date Issued: November 28, 2022

Recipient once the PVN has been issued. In this case, the burden rests with Mr. Kwan to provide credible evidence that his vehicle was parked in compliance with the requirements of the By-law.

In addition to the PVN, the PEO submitted three photographs taken at the material time including one of an unobstructed No Parking sign with clearly displayed arrows pointing in both directions. The relevant PVN and the photographs evinced a violation of *Toronto Municipal Code Chapter 950-405A*.

The Hearing Officer considered the documentary evidence of the PEO, the *Toronto Municipal Code Chapter 950-405A*, the decision of the Screening Officer, as well as the oral and documentary evidence provided by the Recipient and determined on the balance of probabilities that the Recipient's evidence failed to meet the burden of persuasion. Specifically, the Recipient did not provide evidence that in fact the vehicle was parked in accordance with the posted requirements of the By-law.

DECISION – Accordingly, the Hearing Officer affirms the penalty of \$50.00 and provides thirty days within which to pay.

Cheryl Gaster
Hearing Officer

Date Signed: November 28, 2022