

**Matter of Wilson v Parking Violations Bur. Sheriff's  
Off.**

2010 NY Slip Op 31600(U)

June 18, 2010

Supreme Court, New York County

Docket Number: 400910/10

Judge: Alice Schlesinger

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PRESENT: SCHLESINGER  
**Alice Schlesinger**  
Justice

PART 16

Wilson, Stephanie

INDEX NO. 400910/10

PARKING VIOLATIONS BUREAU

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 01

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion Article 78 petition is granted in accordance with the accompanying memorandum decision. The Clerk (shall) proceed accordingly.

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

JUN 18 2010

Dated: June 18, 2010

Alice Schlesinger  
**Alice Schlesinger** S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

In the Matter of the Application of  
STEPHANIE WILSON,

Petitioner,

Index No. 400910/10  
Motion Seq. No. 001

For Judgment Pursuant to Article 78 of the  
Civil Practice Law & Rules

-against-

PARKING VIOLATIONS BUREAU SHERIFF'S OFFICE,

Respondent.

-----X

SCHLESINGER, J.:

Petitioner Sharon Wilson has commenced this Article 78 petition against the Parking Violations Bureau Sheriff's Office ("PVB"), seeking the return of her impounded vehicle and the waiver of related fees. Respondent opposes the petition, claiming that because petitioner had accumulated over \$350 in judgments based on parking tickets, the PVB had the right to tow her car.

Background Facts

The following factual background is taken from the papers submitted by the parties, as elaborated upon at oral argument.

Petitioner Stephanie Wilson was issued several traffic citations in 2009. Notice of Violation number 7172130819, issued on July 8, 2009, alleged that Ms. Wilson's vehicle was illegally parked in front of a fire hydrant (NOV 19); Notice of Violation number 7172553408, issued on August 22, 2009, alleged that Ms. Wilson had stopped her vehicle in a bus stop (NOV 08); and Notice of Violation number 7346777360, issued on October 3, 2009, alleged that Ms. Wilson had parked her vehicle in a "No Standing" zone (NOV 60). (Pet. Exh. B.)

Although Ms. Wilson, having recently lost her job, was unable to immediately pay the assessed fines, she diligently sought to meet her obligations, while simultaneously appealing the various NOV's. Specifically, on January 4, 2010, Ms. Wilson went to the PVB and requested that a payment plan be arranged for her. The PVB declined, explaining that the amount due for her violations totaled slightly less than \$500, the minimum amount for which the PVB will allow a payment plan.

Nevertheless, the PVB representative undertook to assist Ms. Wilson in her good faith effort to make good on her obligations. According to Ms. Wilson, when she explained that she had parked in the "No Standing" zone temporarily due to a medical emergency with her son, the PVB agreed to vacate the penalty related to NOV 60. To confirm that understanding, Ms. Wilson obtained on that date and has submitted to this Court a PVB computer printout dated January 4, 2010, listing the outstanding fines and penalties on her account. (Pet. Exh. B). Significantly, no mention of NOV 60 is included in the printout; the printout refers only to NOV19 and NOV 08, with fines and penalties totaling \$300.47. Thus, the printout does tend to corroborate Ms. Wilson's statement that she understood that the PVB had adjusted her account on January 4 so as to decrease the monies due to less than the \$350 minimum for towing.

Nevertheless, on January 27, 2010, Ms. Wilson's vehicle was towed away and impounded by the Sheriff. The records submitted by the PVB in opposition to the petition differ from those offered by Ms. Wilson; the PVB computer printout, dated January 27, 2010, lists NOV 60 (which Ms. Wilson thought had been vacated and which was not listed on her printout) and NOV 19 as outstanding. However, the PVB printout makes no mention of NOV 08, which had been listed on Ms. Wilson's printout. (Answer

Exh. J.) According to the PVB, the total amount due on January 27 when the car was towed was \$351.73, less than two dollars (\$2.00) above the threshold for towing.

The Sheriff's Report of Impound Vehicle (Answer Exh. K) also indicates that Ms. Wilson's vehicle was seized based on outstanding penalties totaling only \$351.73, implying that the Sheriff was relying on NOV's 60 and NOV 19 and the \$350.00 threshold set forth in §19-212 of the New York City Administrative Code. That section states in relevant part that:

Notwithstanding any other provision of law, a motor vehicle shall not be removed from any street or public area solely for the purpose of satisfying an outstanding judgment or judgments for parking violations against the owner unless the total amount of such judgment or judgments, including interest, is greater than three hundred fifty dollars [\$350].

The breakdown of the \$351.73 balance that led the PVB to tow Ms. Wilson's car is significant; it consisted of \$175.26 due on NOV 60 and \$176.47 due on NOV 19. (Answer Exh. J). The NOV 60 amount included the \$115 principal fine, a \$60 penalty for nonpayment of the fine, and \$0.26 in interest.

Shortly after the towing, Ms. Wilson proceeded with her hearing challenging NOV 60. On February 11, 2010, ALJ Hollingsworth of the New York City Department of Finance rendered a decision sustaining the \$115 principal fine, but vacating the \$60.00 penalty and \$0.26 interest. Her decision stated: "Respondent's claim of appearing to address the summons prior to judgment entry and [that NOV 60] did not appear in the records is persuasive (submits copy of paperwork) ... to establish excusable default." (Answer Exh. I). Thus, the ALJ determined that the total amount due on NOV 60 was only \$115, rather than the \$175.26 that had served as the basis for the towing. Ms. Wilson thereafter timely filed the instant Article 78 petition.

## Discussion

In this proceeding, Ms. Wilson seeks the return of her car and the vacatur of all fines, fees and penalties assessed in connection with the towing and impoundment. She argues that she relied in good faith on the PVB's January 4 assurances that she would be given thirty days to address her outstanding violations, but that her vehicle was impounded on January 27, before the thirty days had expired.

This Court is not the first forum in which Ms. Wilson has made this argument; as noted above, she advanced the same argument in her challenge to NOV 60 before ALJ Hollingsworth. The ALJ credited Ms. Wilson's assertion that the PVB had made those assurances to her and that she had relied on them, finding the assertion "persuasive" and corroborated by the PVB document Ms. Wilson presented. What is more, the ALJ expressly relied on this finding to vacate the \$60 penalty and interest on NOV 60. (Answer Exh. I). The decision of ALJ Hollingsworth thus amounts to an agency's finding of fact to which this Court must defer. *See, Lighthouse Pointe Property Associates, LLC v. New York State Dept. of Env'tl Protection*, 14 N.Y.3d 161, 176 (2010), quoting *Kurcsics v Merchants Mut. Ins. Co.*, 49 NY2d 451, 459 (1980) ("Courts 'regularly defer to the governmental agency charged with the responsibility for administration of a statute in those cases where interpretation or application . . . entails an evaluation of factual data and inferences to be drawn therefrom' . . ."). Because the Department of Finance determined that Ms. Wilson properly owed only \$291.47 (the \$115 principal fine on NOV 60 plus \$176.47 on NOV 19), she owed less than the \$350.00 minimum prescribed in New York City Administrative Code §19-212 for towing. Considering all these circumstances – that Ms. Wilson reasonably

understood from the PVB and possessed corroborating documentation that the \$60 penalty regarding NOV 60 had been vacated, that the ALJ found Ms. Wilson's evidence to this effect "persuasive", that the outstanding judgments on the day of the towing (even including NOV 60) exceeded the minimum for towing by less than two dollars, and that the outstanding judgments totaled less than \$350 after the ALJ vacated the \$60 penalty – Ms. Wilson's car should not have been towed. Therefore, this Court is directing the release and return of Ms. Wilson's car and the vacatur of all fees, fines, and penalties assessed in connection with the towing and impoundment, including but not limited to the towing fee, the sheriff's fee, the impound fee, and storage fees.

There are times when a mechanical application of regulatory guidelines leads to injustice. Here, when Ms. Wilson's car was towed, her outstanding balance (as calculated by the PVB) exceeded the minimum amount of New York City Administrative Code §19-212 by only \$1.73. However, as of May 14, 2010 when Ms. Wilson came before this Court, the towing, storage, and related fees totaled \$1,960.09 and have been mounting since. (Answer Exh. L.) Impounding Ms. Wilson's car has imposed an extreme hardship and severe penalty on Ms. Wilson, not justified by the particular facts and circumstances of this case, which include Ms. Wilson's clear and continuing good-faith efforts to resolve the situation and her payment in full of the NOV 60 fine months ago. What is more, as discussed above, once the ALJ vacated the \$60 penalty allocable to NOV 60, Ms. Wilson's outstanding judgments were less than the minimum for towing, so even a strict application of the PVB guidelines would not have justified the towing had it been accomplished on that date.

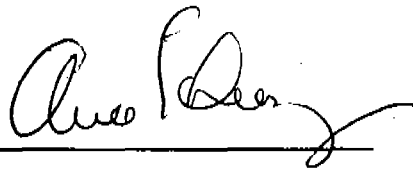
Accordingly, it is hereby

ADJUDGED that the Article 78 petition is granted and; and it is further  
 ORDERED that the petitioner is directed to release Stephanie Wilson's car to her  
 (2005 Ford, license plate # DWU9878, VIN # 1FAFP34N75W105318) and to vacate all  
 fees, fines and penalties incidental to the towing and impoundment, including but not  
 limited to the towing fee, the sheriff's fee, the Impound fee, and the storage fee; and it is  
 further

ORDERED that Stephanie Wilson is awarded the costs and disbursements of  
 this proceeding in an amount to be taxed by the Clerk of the Court upon application by  
 Ms. Wilson to the Clerk.

Dated: June 18, 2010

JUN 18 2010



J.S.C.  
**ALICE SCHLESINGER**

**UNFILED JUDGMENT**

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