

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

SANFORD F. YOUNG,

Petitioner,

Index No. 111675/06

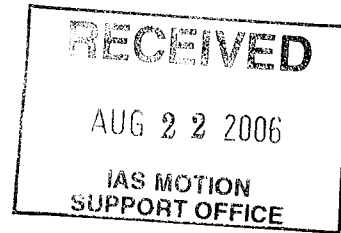
-against-

NOTICE OF PETITION

**CITY OF NEW YORK DEPARTMENT OF FINANCE
PARKING VIOLATIONS ADJUDICATIONS**

Respondents.

**For a Judgment Under Article 78 of
The Civil Practice Law and Rules to
Vacate the Final Adjudication and
Administrative Appeal against Petitioner**



CITY OF N.Y. LAW DEPART.
OFFICE OF CORP. COUNSEL
COMMUNICATIONS SECTION
2006 AUG 22 PM 11:47

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S I R S/MADAMS:

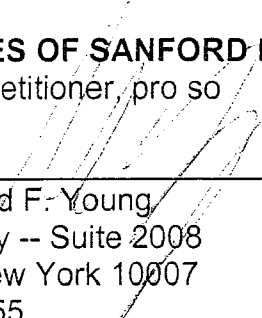
PLEASE TAKE NOTICE that upon the annexed Verified Petition of Sanford F. Young verified on the 21st day of August 2006, and upon the exhibits annexed thereto, including the Respondent's Decision dated May 22, 2006, and all the underlying papers and proceedings had in this matter, the undersigned will move this Court on October 5, 2006, at 9:30 in the forenoon, or as soon thereafter as counsel can be heard, at the Motion Support Part, Room 130, at the Courthouse, 60 Centre Street, New York, New York 10007 for an order and judgment pursuant to CPLR Article 78 vacating and setting aside the aforesaid decision on the grounds that the decision is arbitrary and capricious and contrary to law and for such other and further relief as may be just and proper, together with the costs and disbursements of this proceeding.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR §2214(b), answering affidavits, if any, must be served upon the undersigned at least seven (7) days prior to the

return date of this motion.

Dated: New York, New York
August 21, 2006

LAW OFFICES OF SANFORD F. YOUNG, P.C.
Counsel for Petitioner, pro se

By: 
Sanford F. Young
225 Broadway -- Suite 2008
New York, New York 10007
(212) 227-9755

TO:
CLERK OF COURT

NEW YORK CITY DEPARTMENT OF FINANCE
Parking Violations Adjudication Division
66 John Street
New York, New York 10038
(212) 361-8250

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

SANFORD F. YOUNG,

Petitioner,

Index No. _____

-against-

VERIFIED PETITION

**CITY OF NEW YORK DEPARTMENT OF FINANCE
PARKING VIOLATIONS ADJUDICATIONS,**

Respondents.

**For a Judgment Under Article 78 of
The Civil Practice Law and Rules to
Vacate the Final Adjudication and Administrative
Appeal against Petitioner**

-----X

TO THE SUPREME COURT HELD IN AND FOR THE
COUNTY OF NEW YORK:

2006 NOV 22 05 11 17
CITY OF N.Y. LAW DEPT.
OFFICE OF CORP. GOVT. AFF.
COMMUNICATIONS SECTION

Petitioner **SANFORD F. YOUNG**, *pro se*, alleges as his Petition against Respondent

**CITY OF NEW YORK DEPARTMENT OF FINANCE PARKING VIOLATIONS
ADJUDICATIONS**, the following:

INTRODUCTORY

1. This is a Proceeding pursuant to Article 78 of the CPLR for judicial review of an a final decision, dated May 22, 2006, made upon an administrative appeal to City of New York Department of Finance Parking Violations Adjudications Bureau. That appeal relates to a parking summons issued on November 29, 2005 (Summons No.7332058390).

2. The grounds for this appeal is that the alleged conviction for the parking infraction at issue -- **that Petitioner's vehicle was parked one minute or less prior to the allowed time** -- was not supported by competent (nor any) evidence; was arbitrary, capricious and

illogical; and by so adjudicating, without the showing of any evidence by Respondent, deprived Petitioner of his basic and constitutional rights.

3. As will be discussed at greater length below, the accusation that Petitioner's automobile was parked one minute or less before the allowed time is not supported by any evidence, and therefore, Respondent has failed to meet its burden of proving that offense, which raises issues of how Respondent's officer determined the exact time of the offense, which allegedly took place anywhere between 1 and 60 seconds prior to the allowed time.

FACTUAL BACKGROUND

4. On November 29, 2005, a summons affixed to Petitioner's automobile. A copy of the summons which is annexed hereto as Exhibit "A."

5. The summons describes the infraction as:

**No Parking (d)
DAYS/HRS: MON - FRI / 4P-7P.**

6. The summons goes on to describe the "Date/Time of Offense" as:

11/29/05 06:59 PM.

7. The summons goes on to state Date/Time 1st Observed" as:

N/A.

8. Within the required time, on December 9, 2005, the undersigned pled not guilty and requested a hearing via the Respondent's website. A copy of Respondent's submission is annexed hereto as Exhibit "B."

9. Thereafter, the Respondent mailed the undersigned a written acknowledgment, dated December 21, 2005, of receipt of the request for hearing. That notice also advised Petitioner of an offer to accept a reduced fine. A copy of that acknowledgment is annexed

hereto as Exhibit "C." Petitioner did not accept that offer.

10. By notice dated March 10, 2006, and without holding an actual hearing, Respondent issued a Decision and Order finding Petitioner "guilty". A copy of the Decision and Order is annexed hereto as Exhibit "D."

11. That Decision and Order stated the reasoning as following: "The respondent [Petitioner in this Article 78, Sanford F. Young] has been charged with violating Traffic Rule 4-08(d) which prohibits parking a vehicle in violation of the restrictions posted on signs, markings or traffic control devices. Respondent is not persuasive that he did not park until after the restriction ended. Guilty"

12. Notably, in that Decision and Order makes no reference to Petitioner's defense with respect to the time of the infraction -- allegedly 60 seconds or less -- and makes no reference to any proof being submitted by Respondent.

13. On March 28, 2006, Petitioner filed a timely administrative appeal with the Respondent. A copy of that appeal is annexed hereto as Exhibit "E."

14. On or about May 22, 2006, Respondent issued a decision on appeal upholding the Decision and Order dated March 10, 2006. A copy of that decision on appeal is annexed hereto as Exhibit "F." Like the Decision and Order appealed from, that decision on appeal makes no reference to Respondent's arguments or legal authorities, or the lack of any proof by Respondent.

15. Petitioner has thus exhausted his administrative remedies and seeks judicial review via this Article 78 proceeding.

16. Petitioner therefore has no adequate remedy at law.

POINTS AND AUTHORITIES

17. It is respectfully submitted that the Respondent has not met its burden of proving that Petitioner was illegally parked for the one minute or less of illegal parking that he is charged with ("06:59" in a no parking 4-7 area), and in any event, the charge was not "established .. by substantial credible evidence" Chapter 39 of the N.Y.C. Compilation of Rules §39-08(e). Here, in view of the fact that the alleged infraction involves one minute or less -- which is unknown since the summons does not include seconds -- the claim is dubious at best. Moreover, in view of Petitioner's statement of denial, based upon his own timepieces (car and cell phone), the burden shifted to Respondent to establish its claim. That it has not done.

18. Vehicle and Traffic Law Section 240(b) provides that "No charge may be established except upon proof by substantial evidence." Likewise, "Chapter 39 of the N.Y.C. Compilation of Rules §39-08(e) provides that "No charge may be established except upon proof by substantial credible evidence." Thus, as has been well established by case law, the burden is upon Respondent to prove "that the charge be established by a fair preponderance of the credible evidence." *Silverstein v. Appeals Board of the Parking Violations Bureau*, 100 App.Div.2d 778, 779, 474 N.Y.S.2d 60 (1st Dept. 1984). As thus held by the First Department in the landmark case of *Gruen v. Parking Violations Bureau of the City of New York*, 58 App.Div.2d 48, 395 N.Y.S. 202,204 (1977), while the summons:

was, under respondent's regulations, sufficient to establish a prima facie case... the establishment of a prima facie case does not create a presumption of guilt; it merely shifts to the defendant the burden of going forward with evidence. Here petitioner did go forward with evidence his own sworn testimony. His testimony, patently not incredible, created a bona fide issue of fact ***. The prima facie case evidenced merely by the naked summons, could not, without more, preponderate over the sworn refutation by petitioner. Since respondent produced no additional evidence, it failed to sustain, as a matter of law,

its burden of proving by a "preponderance of the credible evidence," as the regulations require, that petitioner in fact violated a parking regulation [***ellipses in original].

See also, *Heisler v. Atlas*, 69 Misc.2d 911, 331 N.Y.S.2d 131 (Sup. Ct., N.Y.Co. 1972).

19. In the instance case, in contrast to the bare-bones allegation of the "naked summons" alleging that it was issued at "**06:59 PM**" while Petitioner was parked in a "**No Parking -- 4P - 7P**" area, Petitioner stated in his electronic hearing that:

I did not park my car until a couple of mins past 7:00. I am certain it was past 7:00 because I was watching my car clock -- which is in the instrument panel. I also know that the clock is accurate because I synchronize it with my cell phone which time is set by Verizon and by my watch.

20. Clearly, Petitioner's statement -- which refuted the bare bones charge that he was illegally parked for the alleged **one minute or less** -- is "not patently incredible," and thus the burden shifted to the Respondent to prove its case. That it has not done.

21. In addition, other than the summons, there is nothing to establish the correctness of the purported time of the summons, or to refute the statement of Petitioner. Indeed, the insufficiency of the alleged one-minute infraction is heightened by the fact that the summons does not set forth the exact time it was issued -- i.e. it does not state the time by seconds. Hence, according to the parking officer's source of time (i.e. clock), the ticket could have been issued anywhere between "6:59 plus 0 seconds" and "6:59 plus 59.99 seconds."

22. Indeed, there is nothing indicating what the officer's time source was, or proving the accuracy or calibration of that time device, especially where, as here, the margin of time between guilt and innocence is so minuscule.¹ In considering the fact that Respondent is

¹ There is nothing in the summons or regulations that informs Petitioner of what time device the officer uses. Whatever that may be, it was incumbent upon Respondent

basing this entire charge upon a super-hyper technicality of time, it stands to reason that Respondent's summons and proof should match its charge with a precise reading and proof of the exact time.

23. Accordingly, it is submitted that Respondent's decision on appeal and adjudication of guilty are arbitrary, capricious and illogical, as well as contrary to law, in that Respondent has not submitted a scintilla of evidence to meet its burden of proof with respect to the alleged time of the infraction, which time period of 1-60 seconds has been disputed by Petitioner.

24. It is further submitted that the manner in which Respondent decided this case, at the initial plea stage and administrative appellate stage, evince a total lack of regard for the rights of Petitioner to confront the evidence against him, to be charged with an infraction whereby Respondent at least makes some attempt to meet its burden of proof, and failing any such attempt, that Respondent fess up to the fact that the summons must be dismissed.

25. It is also submitted, upon information and belief, that Respondent maintains a quota system, whether formalized or ad hoc, whereby it monitors the adjudications of those who decide the initial pleas, as well as those who decide the appeals.

26. Indeed, it is also apparent that Respondent, who maintains such a system to assure that guilty pleas are routinely upheld, takes purposeful advantage of the fact that the

to meet its burden by proving the accuracy of that device. By analogy, proper testing of radar consists of a series of tests with tuning forks and internal calibration devices within reasonable time periods both before and after the summons at issue was issued, sometimes coupled with verification against the speedometer of a companion police vehicle or the testing officer's own vehicle. *People v. Maniscalco*, 94 Misc.2d 915, 916, 405 N.Y.S.2d 888; *People v. Lynch*, 61 Misc.2d 117, 119, 304 N.Y.S.2d 985; *People v. Stephens*, 52 Misc.2d 1070, 1072, 277 N.Y.S.2d 567. See also: *Mtr. of Lovenheim v. Foschio*, 93 A.D.2d 986, 987, 461 N.Y.S.2d 638.

cost of seeking judicial review is prohibitive and exceeds by several-fold the cost of the summons.

27. For that reason, Petitioner also seeks discovery and the costs, disbursements and reasonable legal fees of this proceeding.

CONCLUSION

28. No prior application for this or similar relief has been made to this or any other Court.

WHEREFORE, Petitioner respectfully prays for an Order granting this Petition: (1) vacating and setting aside the aforesaid decisions and orders, and vacating the guilty determination and dismissing the summons; (2) granting Petitioner discovery; (3) the cost and disbursements of this proceeding, including reasonable attorneys fees; and (4) for such other and additional relief as the Court may deem just and proper.

Dated: New York, New York
August 21, 2006

Respectfully submitted,
LAW OFFICES OF SANFORD F. YOUNG, P.C.
Appellant Pro se

By: _____
Sanford F. Young
225 Broadway -- Suite 2008
New York, New York 10007
(212) 227-9755

TO: CLERK OF THE COURT

NYC Department of Finance
Adjudication Division -- Appeals
Respondent
66 John Street, 3rd Floor
New York, New York 10038

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

SANFORD F. YOUNG, being duly sworn, deposes and says:

I am the Petitioner herein and as such am familiar with the facts and circumstances set forth in the foregoing Petition. I have read the foregoing Petition and know the contents thereof; the same is true to my own knowledge, except as to those matters stated upon information and belief, which are believed to be true.



SANFORD F. YOUNG

Sworn to before me this
21st day of August, 2006



NOTARY PUBLIC

Steven B. Kauiman
Notary Public State of New York
No. 02KA4862330
Qualified in New York County
Commission Expires 05/19/20

EXHIBIT A

The City of New York Notice of Parking Violation

THE NYC DEPARTMENT OF FINANCE MUST RECEIVE YOUR ANSWER TO THIS NOTICE WITHIN THIRTY (30) DAYS FROM THE DATE OF OFFENSE OR YOU WILL BE SUBJECT TO AN ADDITIONAL \$10 PENALTY. YOU CAN RESPOND BY MAIL THROUGH THE INTERNET OR IN PERSON. FAILURE TO ANSWER AS REQUESTED SHALL BE DEEMED AN ADMISSION OF LIABILITY. ADDITIONAL PENALTIES WILL BE CHARGED AND A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU. VEHICLES OWNED BY PERSONS WITH OUTSTANDING DEFAULT JUDGMENTS MAY BE TOWED.

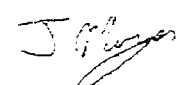
Permit Displayed	Permit Number	Type
N/S	N/A	N/A
Name of the Operator (if present, if not present): OWNER OF THE VEHICLE BEARING LICENSE		
Plate	OD	Exp. Date
Make	Color	Year
VIN #		

THE OPERATOR AND OWNER OF THE ABOVE VEHICLE ARE CHARGED AS FOLLOWS:

in Violation of Sect. 4-08 (Subsect. Below) of NYC Traffic Rules	
No Parking (d)	
DAYS/HRS: MON-FRI / 4P-7P	
Place of Occurrence	
Opposite 1330 1st Ave	
VC	Meter #
20	
Operational	Limit
County	Pct.
NY	019
Date/Time of Offense	Date/Time 1st Observed
11/29/03 06:59PM	N/A

Complainant's Comments:

FINE AMOUNT: \$65.00

Agency	Command	Tax Reg #
TRAFFIC	T-103	343435
Complainant's Name		
J. MORGAN		
Signature of Complainant		
<small>I affirm under penalty of perjury, Penal Law §10.51 that I personally observed the offense charged above, if the operator was present, I indicated the operator's name or indicated "D Refused" and personally served this Notice upon him/her. If the operator was not present or refused to accept personal service of this Notice, I affixed this Notice to the vehicle.</small>		
		
X		

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

EXHIBIT B



Thank You For Filling Out This Form

Shown below is your submission to NYC.gov on Friday, December 9, 2005 at 16:00:11

This form resides at

http://nyc.gov/html/dof/html/contact/contact_app_hearbyweb.s

Name of Fields	Data
THANK YOU:	FOR SUBMISSION OF YOUR REQUEST FOR A HEARING BY A NEW YORK CITY DEPARTMENT OF FINANCE ADMINISTRATIVE LAW JUDGE. PLEASE PRINT THIS PAGE AND SAVE IT AS PROOF OF THIS SUBMISSION. CLICK ON THE LINK BELOW TO RETURN TO THE HEARING REQUEST PAGE TO REQUEST ADDITIONAL HEARINGS
- FIRST NAME:	Sanford
MIDDLE INITIAL:	F
- LAST NAME:	Young
- STREET ADDRESS 1:	225 Broadway; Suite 225
- CITY:	New York
STATE/PROVINCE:	NY - New York
- ZIP / POSTAL CODE:	10007
- COUNTRY:	USA
- TICKET	7332058390

NUMBER:	
VIOLATION CODE:	20
- PLATE NUMBER:	
PLATE STATE:	
- PLATE TYPE:	PASS
- DEFENSE:	"A New York Minute" The ticket, which says I was parked at 6:59 PM in a "No Parking... 4P-7P" area is absurd and wrong! Knowing full well -- as a life long New Yorker and lawyer -- that it is not legal to park on the Avenues until 7:00 PM, and that some officers write tickets in the last few, I did not park my car until a couple of mins past 7:00. I am certain it was past 7:00 because I was watching my car clock -- which is in the instrument panel. I also know that the clock is accurate because I synchronize it with my cell phone which time is set by Verizon and my watch. Therefore, I respectfully ask that the summons be dismissed. Thank you.

- [Click Here to Request a Hearing for Additional Summonses](#)

Use the BACK button of your browser to return to the referring City agency

EXHIBIT C



New York City
Department of Finance
ADJUDICATION DIVISION

DECEMBER 21, 2005

**IF ACCEPTING REDUCED FINE
RESPOND BY: 01/20/06**



Dear SANFORD F YOUNG:

We received your request for a hearing by mail on the summons shown below.

Based on the violation described, we are offering you the opportunity to pay a reduced fine in the amount shown. If you accept this reduction offer, RETURN THE COUPON with your payment by the due date above. If you pay the reduced fine, a judge will not review your case.

SUMMONS NUMBER: 7332058390	VIOLATION CODE: 20	DESCRIPTION: NO PRKG-LIMITS
ORIGINAL AMOUNT DUE: \$65.00	REDUCED AMOUNT DUE: \$43.00	

Alternatively, if you do not wish to accept this reduction offer and want an Administrative Law Judge to review your case, YOU DO NOT HAVE TO DO ANYTHING. You will either be found guilty and you will have to pay the full balance or the summons will be dismissed and you will not have to pay anything. The Administrative Law Judge will not be able to offer you a reduction. A decision will be mailed to you after a judge decides your case.

PAYMENT INSTRUCTIONS IF ACCEPTING REDUCED FINE:

BY MAIL: Please follow the instructions below and USE THE PAYMENT COUPON. Send check or money order only. DO NOT SEND CASH.

BY PHONE, ON THE INTERNET OR IN PERSON and for additional information, please see next page.

PAYMENT COUPON - HBMS

- Make your check or money order payable to the NYC Department of Finance. Do NOT mail cash.
- Payment MUST be made in U.S. Dollars drawn on a U.S. Financial Institution.
- Write on the front of your check or money order:
 - Notice Number
- Insert this tear-off coupon in the enclosed envelope and make sure that the City's address can be seen through the envelope window.



E 0 5 4 5 6 0 7 3 5 0 0 0 0 4 3 0 0 2 0 0 3 I

<u>NOTICE NO.</u>	<u>PLATE</u>	<u>STATE</u>	<u>TYPE</u>
E054560735			AS

<u>SUMMONS NO.</u>	<u>REDUCED AMOUNT</u>
7332058390	43.00

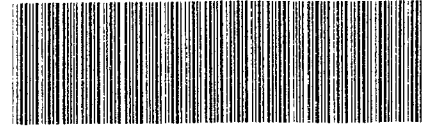
NYC DEPARTMENT OF FINANCE
PARKING VIOLATIONS ADJUDICATIONS
PECK SLIP STATION
PO BOX 2023
NEW YORK NY 10272-2023



EXHIBIT D



**FINANCE
NEW YORK**
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE



2542531109E5C4D2AA

DECISION AND ORDER

Respondent		Plate Information		
Name	SANFORD F YOUNG	Plate ID	State: NJ	Type: PAS
Role	Respondent	Owner ID: Y68116906611514		
Address				

NOTICE OF VIOLATION DECISION SUMMARY

Violation Number: 7332058390 Date Issued: 11/29/2005 Violation Code: 20
Disposition: 3 GUILTY - HEARING Reason: RNOG
Fine: \$65.00 Penalty: \$0.00 Interest: \$0.00 Reduction: \$0.00 Paid: \$0.00 Amount Due: \$65.00

VIOLATION DECISIONS:

Violation Number: 7332058390

The respondent has been charged with violating Traffic Rule 4-08(d) which prohibits parking a vehicle in violation of the restrictions posted on signs, markings or traffic control devices. Respondent is not persuasive that he did not park until after the restriction ended. Guilty.

I hereby certify that the matter recorded above reflects a hearing conducted by the undersigned Administrative Law Judge (ALJ) on proof submitted by the Respondent and the City of New York, and that said determination was made by me based on that hearing.

ALJ Name: John F. MacKay, Jr.

ALJ Signature:

Date: 03/10/2006

Fri Mar 2006 09/10/06 15:07:21

Control 113

Payment Instructions and Additional Information

Total Amount Due: \$65.00

Payment of non-judgment summonses must be made within thirty (30) days. Summonses in judgment must be paid immediately. You have thirty (30) days to appeal a guilty determination. The amounts reflected on this document may not include recent transactions, which have not yet been applied to the system.

*Total amount due applies to the current date. Interest will continue to accrue on judgment summonses from the date of this decision. Amounts Due does not reflect prior payments.

Retain this record of your hearing for 8 years and 3 months. This is not a receipt for payment of fine.

Please send PAYMENTS ONLY to the below address:

THE CITY OF NEW YORK • DEPARTMENT OF FINANCE
PARKING VIOLATIONS OPERATIONS • PECK SLIP STATION • PO BOX 2030 • NEW YORK • NY 10272-2127
WORLD WIDE WEB PAGE: <http://nyc.gov/finance>

If you have questions, call 311 (24 hours/7 days a week). If you are outside of New York City, call (212) NEW-YORK. For TTY service for the hearing impaired, call (212) 504-4115.

EXHIBIT E

LAW OFFICES OF
SANFORD F. YOUNG, P.C.

225 BROADWAY - SUITE 2008
NEW YORK, NEW YORK 10007
TELEPHONE (212) 227-9755
FACSIMILE (212) 732-4157

www.nylitigator.com

SANFORD F. YOUNG
(ADMITTED IN NY, NJ & PA)

JAN B ROTHMAN

OF COUNSEL
STEPHEN N. DRATCH
(ADMITTED IN NY & NJ)

March 28, 2006

NYC Department of Finance
Adjudication Division -- Appeals
P.O. Box 2030; Peck Slip Station
New York, New York 10272-2030

Appeal from Summons No. 7332058390

Dear Sir/Madam:

I am hereby submitting my appeal from the Decision and Order postmarked on March 14, 2006. Accordingly, I am enclosing:

1. My Application for Appeal.
2. Memorandum in Support of Appeal.
3. Copy of Decision and Order.
4. My check for \$65.
5. Copy of summons.
6. Copy of electronic hearing.

If there are any questions or problems, please do not hesitate to call.

Very truly yours,

Sanford F. Young





FINANCE
NEW YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE
nyc.gov/finance

NEW YORK CITY DEPARTMENT OF FINANCE • PARKING VIOLATIONS • ADJUDICATIONS DIVISION

APPLICATION FOR APPEAL

Use this form *only* if you want to request an appeal of your hearing decision. If you accept the judge's decision and will pay the fine imposed, you should *not* submit this form.

1. RESPONDENT INFORMATION (Please Print)

Name: Sanford F. Young
 Address: _____
 City: _____ State: _____
 Zip Code: _____ Daytime phone: 212-227-9755

2. VEHICLE & TICKET INFORMATION

I am: the registrant the operator
 (check one) a representative of the registrant or operator
 Vehicle plate #: _____
 State of registration: NJ
 Vehicle make: _____
 WHAT WAS THE ORIGINAL HEARING DATE: Emailed 12 19 105
 AMOUNT PAID: \$ 65

3. YOU CAN APPEAL YOUR HEARING DECISION BY MAIL OR IN PERSON.

Please indicate how you wish to appeal: (check one)
 In person By mail
 For in-person appeals please check the day and time you would prefer:
 Monday Tuesday Wednesday
 Thursday Friday
 Between: 9am-10am 10am-11am 11am-12pm
IF YOU DO NOT APPEAR ON THE DAY YOUR APPOINTMENT IS SCHEDULED, YOUR APPEAL WILL BE CONSIDERED ABANDONED AND WILL NOT BE REVIEWED.

NUMBER OF TICKETS BEING APPEALED: 1
 Fill in each ticket number below. If you are appealing more than 7 tickets, attach a separate sheet listing the additional ones.

7	3	3	2	0	5	8	3	9	0

4. REASONS WHY YOU BELIEVE THE JUDGE'S DECISION SHOULD BE REVIEWED

Print clearly, and use additional sheets if needed.
See attached

5. APPELLANT'S SIGNATURE (The person appealing)

[Signature] Date: 3/28/05

6. ACKNOWLEDGEMENT

Registrant's signature (if different from person appealing) _____ Date: _____

7. REFUND INFORMATION

If your appeal is successful, your payment(s) will be refunded to the address in Section 1. You will receive a check or other notification approximately 30 days from the decision date.

8. REQUIRED ATTACHMENTS

In order to process your Application for Appeal, we require the following documents (one set for each license plate). Please be sure this form is completed and signed.

- A. A copy of the original Hearing Determination (also called the decision) and a copy of the Motion to Vacate Judgment (if applicable);
- B. Payment, if it has not already been made;
- C. The original ticket(s) or a copy of each; and,
- D. If you are an **unpaid representative** of the registrant and the **tickets are in judgment**: you must submit either a notarized Motion To Vacate Judgment signed by the registrant or a notarized letter of authorization from that registrant.
- E. If you are an **unpaid representative** of the registrant and the **tickets are not in judgment**: you must submit written authorization from the registrant.

CITY OF NEW YORK -- DEPARTMENT OF FINANCE
ADJUDICATION DIVISION: APPEALS BOARD

Matter of **SANFORD F. YOUNG**,

Appellant.

Summons No. 7332058390

MEMORANDUM IN SUPPORT OF APPEAL

Sanford F. Young, hereby states as the basis for his appeal, the following:

Preliminary Statement

It is respectfully submitted that the City has not met its burden of proving that Appellant was illegally parked for the **one minute or less** of illegal parking that he is charged with ("06.59" in a no parking 4-7 area), and in any event, the charge was not "established .. by substantial credible evidence" Chapter 39 of the N.Y.C. Compilation of Rules §39-08(e). Here, in view of the fact that the alleged infraction involves one minute or less -- which is unknown since the summons does not include seconds -- the claim is dubious at best. Moreover, in view of Appellant's statement of denial, based upon his own timepieces (car and cell phone), the burden shifted to the City to establish its claim. That it has not done.

Argument

Vehicle and Traffic Law Section 240(b) provides that "No charge may be established except upon proof by substantial evidence." Likewise, "Chapter 39 of the N.Y.C. Compilation of Rules §39-08(e) provides that "No charge may be established except upon proof by substantial credible evidence." Thus, as has been well established by case law, the burden is upon the City to prove "that the charge be established by a fair preponderance of the credible evidence." *Silverstein v. Appeals Board of the Parking Violations Bureau*, 100

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was, under respondent's regulations, sufficient to establish a prima facie case... the establishment of a prima facie case does not create a presumption of guilt; it merely shifts to the defendant the burden of going forward with evidence. Here petitioner did go forward with evidence his own sworn testimony. His testimony, patently not incredible, created a bona fide issue of fact ***. The prima facie case evidenced merely by the naked summons, could not, without more, preponderate over the sworn refutation by petitioner. Since respondent produced no additional evidence, it failed to sustain, as a matter of law, its burden of proving by a "preponderance of the credible evidence," as the regulations require, that petitioner in fact violated a parking regulation [***ellipses in original].

See also, Heisler v. Atlas, 69 Misc.2d 911, 331 N.Y.S.2d 131 (Sup. Ct., N.Y.Co. 1972).

In the instance case, in contrast to the bare-bones allegation of the "naked summons" alleging that it was issued at "**06:59 PM**" while Appellant was parked in a "**No Parking -- 4P - 7P**" area, Appellant stated in his electronic hearing that:

I did not park my car until a couple of mins past 7:00. I am certain it was past 7:00 because I was watching my car clock -- which is in the instrument panel. I also know that the clock is accurate because I synchronize it with my cell pone which time is set by Verizon and by my watch.

Clearly, Appellant's statement -- which refuted the bare bones charge that he was illegally parked for the alleged **one minute or less** -- is "not patently incredible," and thus the burden shifted to the City to prove its case. That it has not done.

In addition, other than the summons, there is nothing to establish the correctness of the purported time of the summons, or to refute the statement of the Appellant. Indeed, the insufficiency of the alleged one-minute infraction is heightened by the fact that the summons

does not set forth the exact time it was issued -- i.e. it does not state the time by seconds. Hence, according to the parking officer's source of time (i.e. clock), the ticket could have been issued anywhere between "6:59 plus 0 seconds" and "6:59 plus 59.99 seconds."

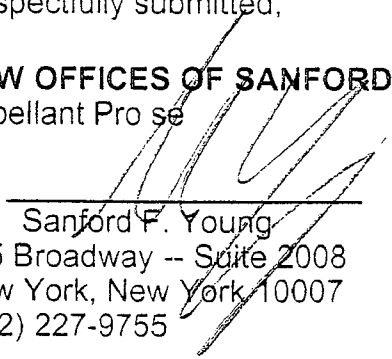
Indeed, there is nothing indicating what the officer's time source was, or proving the accuracy or calibration of that time device, especially where, as here, the margin of time between guilt and innocence is so minuscule.¹ In considering the fact that the City is basing this entire charge upon a super-hyper technicality of time, it stands to reason that the City's summons and proof should match its charge with a precise reading and proof of the exact time.

Conclusion

Therefore, it is respectfully submitted that the decision appealed from be reversed and vacated, and the summons be dismissed.

Respectfully submitted,

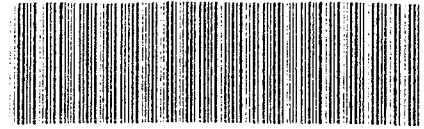
LAW OFFICES OF SANFORD F. YOUNG, P.C.
Appellant Pro se

By: 
Sanford F. Young
225 Broadway -- Suite 2008
New York, New York 10007
(212) 227-9755

¹ There is nothing in the summons or regulations that informs Appellant of what time device the officer uses. Whatever that may be, it was incumbent upon the City to meet its burden by proving the accuracy of that device. By analogy, proper testing of radar consists of a series of tests with tuning forks and internal calibration devices within reasonable time periods both before and after the summons at issue was issued, sometimes coupled with verification against the speedometer of a companion police vehicle or the testing officer's own vehicle. *People v. Maniscalco*, 94 Misc.2d 915, 916, 405 N.Y.S.2d 888; *People v. Lynch*, 61 Misc.2d 117, 119, 304 N.Y.S.2d 985; *People v. Stephens*, 52 Misc.2d 1070, 1072, 277 N.Y.S.2d 567. See also: *Mtr. of Lovenheim v. Foschio*, 93 A.D.2d 986, 987, 461 N.Y.S.2d 638.



**FINANCE
NEW YORK**
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE



3542531103850402AA

DECISION AND ORDER

Respondent		Plate Information	
Name	SANFORD F YOUNG	Plate ID	Type: PAS
Role	Respondent	Owner ID: Y68116906611514	
Address			

NOTICE OF VIOLATION DECISION SUMMARY

Violation Number: 7332058390 Date Issued: 11/29/2005 Violation Code: 20
Disposition: 3 GUILTY - HEARING Reason: RNOG
Fine: \$65.00 Penalty: \$0.00 Interest: \$0.00 Reduction: \$0.00 Paid: \$0.00 Amount Due: \$65.00

VIOLATION DECISIONS:

Violation Number: 7332058390

The respondent has been charged with violating Traffic Rule 4-08(d) which prohibits parking a vehicle in violation of the restrictions posted on signs, markings or traffic control devices. Respondent is not persuasive that he did not park until after the restriction ended. Guilty.

I hereby certify that the matter recorded above reflects a hearing conducted by the undersigned Administrative Law Judge (ALJ) on proof submitted by the Respondent the City of New York, and that said determination was made by me based on that hearing.

ALJ Name: John F. MacKay, Jr.

ALJ Signature:

Date: 03/10/2006

Fri Mar 2006 25:10:06 15:07:21

Control 113

Payment Instructions and Additional Information

Total Amount Due: \$65.00

Payment of non-judgment summonses must be made within thirty (30) days. Summonses in judgment must be paid immediately. You have thirty (30) days to appeal guilty determination. The amounts reflected on this document may not include recent transactions, which have not yet been applied to the system.

*Total amount due applies to the current date. Interest will continue to accrue on judgment summonses from the date of this decision. Amounts Due does not reflect payments.

Retain this record of your hearing for 8 years and 3 months. This is not a receipt for payment of fine.

Please send PAYMENTS ONLY to the below address:

THE CITY OF NEW YORK • DEPARTMENT OF FINANCE
PARKING VIOLATIONS OPERATIONS • PECK SLIP STATION • PO BOX 2030 • NEW YORK • NY 10272-2127
WORLD WIDE WEB PAGE: <http://nyc.gov/finance>

If you have questions, call 311 (24 hours/7 days a week). If you are outside of New York City, call (212) NEW-YORK. For TTY service for the hearing impact call (212) 504-4115.

The City of New York Notice of Parking Violation

THE NYC DEPARTMENT OF FINANCE MUST RECEIVE YOUR ANSWER TO THIS NOTICE WITHIN THIRTY (30) DAYS FROM THE DATE OF OFFENSE OR YOU WILL BE SUBJECT TO AN ADDITIONAL \$10 PENALTY. YOU CAN RESPOND BY MAIL THROUGH THE INTERNET OR IN PERSON. FAILURE TO ANSWER AS REQUESTED SHALL BE DEEMED AN ADMISSION OF LIABILITY. ADDITIONAL PENALTIES WILL BE CHARGED AND A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU. VEHICLES OWNED BY PERSONS WITH OUTSTANDING DEFAULT JUDGMENTS MAY BE TOWED.

US 51021
MA 5082 4

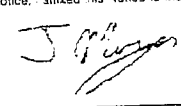
Permit Displayed	Permit Number	Type
N/S	N/A	N/A
Name of the Operator, if present. If not present: OWNER OF THE VEHICLE BEARING LICENSE		
Plate	CD	Exp. Date
		N/S
State	Plate Type	
	PAS	
Make	Color	Year
	N/S	
Body Type		
		4DSD
VIN #		

THE OPERATOR AND OWNER OF THE ABOVE VEHICLE ARE CHARGED AS FOLLOWS:

In Violation of Sect. 4-08 (Subsect. Below) of NYC Traffic Rules					
No Parking (d)					
DAYS/HRS: MON-FRI / 4P-7P					
Place of Occurrence					
Opposite 1330 1st Ave					
VC	Meter #	Operational	Limit	County	Pct.
20				NY	019
Date/Time of Offense			Date/Time 1st Observed		
11/29/05 06:59PM			N/A		

Complainant's Comments:

FINE AMOUNT: \$65.00

Agency	Command	Tax Reg #
TRAFFIC	T-103	345485
Complainant's Name		
J. MORGAN		
Signature of Complainant		
I affirm under penalty of perjury, Penal Law 210.45) that I personally observed the offense charged above; if the operator was present I indicated the operator's name or indicated "D Refused" and personally served this Notice upon him/her; if the operator was not present or refused to accept personal service of this Notice, I affixed this Notice to the vehicle.		
X		

SEE REVERSE SIDE FOR IMPORTANT INFORMATION



Thank You For Filling Out This Form

Shown below is your submission to NYC.gov on Friday, December 9 2005 at 16:00:11

This form resides at

http://nyc.gov/html/dof/html/contact/contact_app_hearbyweb..

Name of Fields	Data
THANK YOU:	FOR SUBMISSION OF YOUR REQUEST FOR A HEARING BY A NEW YORK CITY DEPARTMENT OF FINANCE ADMINISTRATIVE LAW JUDGE. PLEASE PRINT THIS PAGE AND SAVE IT AS PROOF OF THIS SUBMISSION. CLICK ON THE LINK BELOW TO RETURN TO THE HEARING REQUEST PAGE TO REQUEST ADDITIONAL HEARINGS
- FIRST NAME:	Sanford
MIDDLE INITIAL:	F
- LAST NAME:	Young
- STREET ADDRESS 1:	225 Broadway; Suite 225
- CITY:	New York
STATE/PROVINCE:	NY - New York
- ZIP / POSTAL CODE:	10007
- COUNTRY:	USA
- TICKET	7332058390

NUMBER:	
VIOLATION CODE:	20
- PLATE NUMBER:	
PLATE STATE:	
- PLATE TYPE:	PASS
- DEFENSE:	"A New York Minute" The ticket, which says I was parked at 6:59 PM in a "No Parking... 4P-7P" area is absurd and wrong! Knowing full well -- as a life long New Yorker and lawyer -- that it is not legal to park on the Avenues until 7:00 PM, and that some officers write tickets in the last few, I did not park my car until a couple of mins past 7:00. I am certain it was past 7:00 because I was watching my car clock -- which is in the instrument panel. I also know that the clock is accurate because I synchronize it with my cell phone which time is set by Verizon and my watch. Therefore, I respectfully ask that the summons be dismissed. Thank you.

- [Click Here to Request a Hearing for Additional Summonses](#)

Use the BACK button of your browser to return to the referring City agency

3122

SANFORD F. YOUNG

JPMORGAN CHASE BANK, N.A.
NEW YORK, NEW YORK 10017
WWW.CHASE.COM
1-2-210

31

DATE 3/27/2006

PAY TO THE ORDER OF NYC Department Of Finance
Sixty-Five and 00/100*****

Date 3/27/2006

\$ **65.00

DO

PAY TO NYC Department Of Finance

AMOUNT \$ 65.00

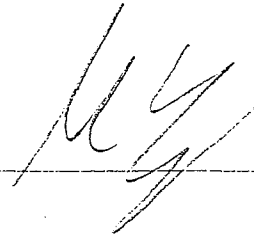
MEMO Summons 7332058390:
11/29/05 NJ: SAY26J

CATEG. Auto

Summons 7332058390: 11/29/05

ACCT. Sanford F. Young - Chase

000033/01/05



7006 0100 0001 3317 6889

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only, No Insurance Coverage Provided)
 For delivery information, visit our website at www.usps.com®

OFFICIAL USE

Postage	\$ 11	Postmark Here
Certified Fee	2.40	
Return Receipt Fee (Endorsement Required)	1.85	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 5.36	

Sent To: NYC Dept of Finance
 Street, Apt. No., or PO Box No.: PO BOX 2030
 City, State, ZIP+4: NY NY 10272

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> X <input type="checkbox"/> Age <input type="checkbox"/> Add</p> <p>B. Received by (Printed Name) <input type="checkbox"/> C. Date of Delivery <input type="checkbox"/></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>NYC Dept of Finance Adjudication Division PO BOX 2030 New York NY 10272</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merch <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>7006 0100 0001 3317 6889</p>	

FINANCE
NEW YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE
66 JOHN STREET
NEW YORK NY 10038

NEW YORK
DEPARTMENT OF FINANCE
66 JOHN STREET
NEW YORK NY 10038

EXHIBIT F



FINANCE
NEW YORK
THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

In the Matter of the Appeal of:

Sanford F. Young

Plate #:

Summons #: 7332058390

Upon review of the entire record before us, we find no error of fact or law. The Judge's decision is upheld.

~~Upon review of the entire record before us, we find error. The decision is reversed and the prior payment will be returned.~~

(A mark has been place next to the applicable decision)

[Signature]
Administrative Law Judge signature

G. V. Piccolo #2371
Print Name ALJ #

[Signature]
Administrative Law Judge signature

S. Heuser 1016
Print Name ALJ #

Administrative Law Judge signature

Print Name ALJ #

Codes: 1. RNO/E 2. 1/1/1
3. 1/1/1 4. 1/1/1
5. 1/1/1 6. 1/1/1

Dissent _____

DAFED: 5/22/06

New York, NY.