

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - March 16, 2007

ROBERT W. SCHMIDT, J.P.
WILLIAM F. MASTRO
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2006-01980

DECISION & JUDGMENT

In the Matter of J. Scaramella Trucking,
petitioner, v Raymond P. Martinez, respondent.

(Index No. 80349/05)

Eric Nelson, Staten Island, N.Y., for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Robert H. Easton and Carol Fischer of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the New York State Department of Motor Vehicles Appeals Board dated August 25, 2005, which confirmed the findings of an Administrative Law Judge, made after a hearing, that the petitioner violated Vehicle and Traffic Law § 401(7)(F)(b) and Rules of City of New York Department of Transportation (34 RCNY) §§ 4-15(b)(9) and 4-15(b)(10), and imposed a penalty.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

Judicial review of an administrative determination made after a hearing at which evidence was taken is limited to whether the determination is supported by substantial evidence based upon the entire record (*see* CPLR 7803[4]; *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 180; *Matter of L. Camino Trucking v Martinez*, 5 AD3d 597). Moreover, “the courts may not weigh the evidence or reject the choice made by [an administrative agency] where the evidence is conflicting and room for choice exists” (*Matter of Berenhaus v Ward*, 70 NY2d 436,

April 24, 2007

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444, quoting *Matter of Stork Rest. v Boland*, 282 NY 256, 267; see *Matter of River Ave. Contr. Corp. v Martinez*, 22 AD3d 761; *Matter of Scara-Mix, Inc. v Martinez*, 305 AD2d 418).

Here, the testimony of the officer who issued the summonses regarding the condition of the roadway where the vehicle weighing scales were placed, his training, the accuracy of the scales used, and the manner in which he weighed the petitioner's vehicle, provided substantial evidence supporting the determination of the Administrative Law Judge (see *Matter of Mo's Carting Corp. v Martinez*, 28 AD3d 560; *Matter of El Camino Trucking Corp. v Martinez*, 21 AD3d 491; *Matter of Valente Equip. Leasing Corp. v Martinez*, 19 AD3d 701; *Matter of Metro Demolition Contr. Corp. v Martinez*, 12 AD3d 513; *Matter of Sprint Recycling, Inc. v Martinez*, 12 AD3d 451; *Matter of Quality Concrete of NY, Inc. v Martinez*, 11 AD3d 697; *Matter of Omni Waste Servs., Inc. v Martinez*, 11 AD3d 696; *Matter of Mastronardi Masons v Martinez*, 8 AD3d 671; *Matter of Maspeth Operating Corp. v Martinez*, 8 AD3d 670; *Matter of Clinton Ave. Constr. Corp. v Martinez*, 8 AD3d 273; *Matter of L. Camino Trucking v Martinez*, *supra*; *Matter of City Hawk Indus. v Martinez*, 2 AD3d 635).

SCHMIDT, J.P., MASTRO, CARNI and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court