

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

D18325
G/hu

_____AD3d_____

Submitted - February 14, 2008

STEVEN W. FISHER, J.P.
MARK C. DILLON
WILLIAM E. McCARTHY
ARIEL E. BELEN, JJ.

2007-02490

DECISION & JUDGMENT

In the Matter of Joseph Fischer, petitioner, v Appeals
Board of New York State Department of Motor
Vehicles, respondent.

(Index No. 22502/06)

Ernest H. Hammer, New York, N.Y., for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohavek and
David Lawrence III 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 June 14, 2006, which affirmed the
determination of an Administrative Law Judge dated April 15, 2005, after a hearing, that the
petitioner violated Vehicle and Traffic Law § 1111(d)(1), and imposed a penalty.

ADJUDGED that the determination dated June 14, 2006, is confirmed, the petition
is denied, and the proceeding is dismissed on the merits, with costs.

The determination that the petitioner violated Vehicle and Traffic Law § 1111(d)(1)
is supported by substantial evidence and must be confirmed (*see 300 Gramatan Ave. Assoc. v State
Div. of Human Rights*, 45 NY2d 176, 179; *Matter of Resciniti v Department of Motor Vehs. of State
of N.Y.*, 255 AD2d 589; *Matter of Ballen v Commissioner of Motor Vehs.*, 147 AD2d 560, 561). The
petitioner's challenge to the administrative determination rests upon an issue of credibility which was

March 11, 2008

Page 1.

MATTER OF FISCHER v APPEALS BOARD OF NEW YORK STATE
DEPARTMENT OF MOTOR VEHICLES

primarily for the fact-finder to resolve (*see Matter of J. Bruno Sons, Inc. v Martinez*, 15 AD3d 485, 486; *Matter of Kahn v State of N.Y. Dept. of Motor Vehs.*, 134 AD2d 594).

The petitioner's remaining contentions are either not properly before us or without merit.

FISHER, J.P., DILLON, McCARTHY and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court