

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

D21619
W/hu

_____AD3d_____

Argued - December 5, 2008

ROBERT A. SPOLZINO, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2008-01202

DECISION & ORDER

In the Matter of Yehuda Herskovic, appellant,
v New York State Department of Motor Vehicles,
respondent.

(Index No. 37269/07)

Yehuda Herskovic, Brooklyn, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek,
Robert C. Weisz, and Richard Jackson of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review so much of a determination of an Administrative Law Judge of the New York State Department of Motor Vehicles dated July 12, 2006, as, after a hearing, found that the petitioner violated Vehicle and Traffic Law § 1111, and a determination of the New York State Department of Motor Vehicles Appeals Board dated February 1, 2007, which limited the petitioner's administrative appeal from the determination dated July 12, 2006, to the issue of whether the penalty imposed was excessive, the petitioner appeals from a judgment of the Supreme Court, Kings County (Dabiri, J.), dated January 14, 2008, which, inter alia, in effect, denied that branch of the petition which was to annul the determination dated February 1, 2007, dismissed, on the ground of lack of subject matter jurisdiction, that branch of the petition which was to review so much of the determination dated July 12, 2006, as found that he violated Vehicle and Traffic Law § 1111, and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

December 30, 2008

Page 1.

MATTER OF HERSKOVIC v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES

No basis exists for annulling the determination of the New York State Department of Motor Vehicles Appeals Board (hereinafter the Appeals Board) limiting the petitioner's administrative appeal from a determination of an Administrative Law Judge (hereinafter the ALJ) to whether the penalty imposed was excessive (*see* CPLR 7803[3]; *see also* Vehicle and Traffic Law § 228[2][b], [c]; 15 NYCRR 126.2[c]). Accordingly, the Supreme Court properly denied that branch of the petition which was to annul the Appeals Board's determination limiting the petitioner's administrative appeal to the issue of whether the penalty imposed was excessive.

Since the petitioner's administrative appeal was properly limited to the ALJ's determination concerning the propriety of the penalty imposed, judicial review of the ALJ's determination that the petitioner violated the Vehicle and Traffic Law is unavailable (*see* Vehicle and Traffic Law § 228[9][a]; *cf. Matter of Brady v Department of Motor Vehs.*, 98 NY2d 625, 626). Accordingly, the Supreme Court properly dismissed, on the ground of lack of subject matter jurisdiction, that branch of the petition which was to review so much of the ALJ's determination as concluded that the petitioner violated the Vehicle and Traffic Law.

The petitioner's remaining contentions are without merit.

SPOLZINO, J.P., COVELLO, BALKIN and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court