

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

D23558
C/hu

_____AD3d_____

Argued - May 11, 2009

PETER B. SKELOS, J.P.
FRED T. SANTUCCI
ARIEL E. BELEN
CHERYL E. CHAMBERS, JJ.

2009-00411

DECISION & JUDGMENT

In the Matter of Heinz Hahne, petitioner, v New York
State Department of Motor Vehicles, et al.,
respondents.

(Index No. 25075/08)

Gary N. Weintraub, Huntington, N.Y., for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek
and Richard O. Jackson of counsel), for respondent New York State Department
of Motor Vehicles.

Proceeding pursuant to CPLR article 78 to review a determination of the
Administrative Appeals Board of the respondent New York State Department of Motor Vehicles
dated March 25, 2008, confirming a determination of an Administrative Law Judge, dated November
20, 2007, which, after a hearing, found that the petitioner had refused to submit to a chemical test
in violation of Vehicle and Traffic Law § 1194, and revoked his driver's license.

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

There is no merit to the petitioner's contention that Vehicle and Traffic Law §
1194(2)(f) requires, as a threshold of admissibility in an administrative hearing convened pursuant to
Vehicle and Traffic Law § 1194(2)(c), that evidence of persistent refusal to submit to a chemical test,
rather than merely a single refusal to submit, must be shown. Vehicle and Traffic Law § 1194(2)(f)
specifically sets forth that it applies only to "any trial, proceeding or hearing *based upon a violation*

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of the provisions of section eleven hundred ninety-two of this article” (emphasis added), i.e., a criminal proceeding (*see Bazza v Banscher*, 143 AD2d 715). In contrast, here, the administrative hearing was based on the petitioner’s violation of Vehicle and Traffic Law § 1194, arising from his refusal to submit to a chemical test (*see Vehicle and Traffic Law § 1194[2][b], [c]*). Accordingly, the only evidence of refusal necessary was that the petitioner refused at least once to submit to a chemical test (*see Matter of Scaccia v Martinez*, 9 AD3d 882; *Matter of Eyrich v Jackson*, 267 AD2d 237; *Matter of Galante v Commissioner of Motor Vehs. of State of N.Y.*, 253 AD2d 763; *Matter of Gatto v Adduci*, 182 AD2d 760), which the petitioner concedes was established by substantial evidence at the subject hearing.

As the petitioner concedes that the other required findings at the administrative hearing were based on substantial evidence (*see CPLR 7803[4]; Vehicle and Traffic Law § 1194[2][c]*), the determination must be confirmed, the petition denied, and the proceeding dismissed on the merits.

SKELOS, J.P., SANTUCCI, BELEN and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court