

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

D25258
W/cb

_____AD3d_____

Argued - October 27, 2009

MARK C. DILLON, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2008-11359

DECISION & ORDER

In the Matter of David Feder, respondent, v New York
State Department of Motor Vehicles, appellant.

(Index No. 2040/08)

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and
David Lawrence III of counsel), for appellant.

Regosin, Edwards, Stone & Feder, New York, N.Y. (Saul E. Feder of counsel), for
respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the New York State Department of Motor Vehicles dated November 28, 2007, which revoked the petitioner's driver's license pursuant to Vehicle and Traffic Law § 510.2, imposed a driver responsibility assessment in the sum of \$450 upon the petitioner pursuant to Vehicle and Traffic Law § 503(4), and found that the petitioner was not eligible for a restricted use license, and a determination of the New York State Department of Motor Vehicles Appeals Board dated January 4, 2008, which dismissed the petitioner's administrative appeal from the determination dated November 28, 2007, on the ground that the petitioner improperly sought to vacate his underlying convictions for violating Vehicle and Traffic Law § 1180, the New York State Department of Motor Vehicles appeals from a judgment of the Supreme Court, Nassau County (Parga, J.), entered October 22, 2008, which granted that branch of the petition which was to review so much of the determination dated November 28, 2007, as found that the petitioner was not eligible for a restricted use license, to the extent of annulling that portion of the determination.

December 1, 2009

Page 1.

MATTER OF FEDER v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES

ORDERED that the judgment is affirmed, with costs.

Vehicle and Traffic Law § 510(2)(a)(iv) provides that the New York State Department of Motor Vehicles (hereinafter the DMV) is to issue a mandatory driver's license revocation where the holder is convicted "of a third or subsequent violation, committed within a period of eighteen months, of any provision of section eleven hundred eighty of this chapter [speeding], any ordinance or regulation limiting the speed of motor vehicles."

The petitioner was issued speeding tickets on August 21, 2005, February 10, 2006, and July 26, 2006, respectively. On or about November 27, 2007, the petitioner entered a plea of guilty with respect to the ticket issued on August 21, 2005. On November 28, 2007, the DMV revoked the petitioner's driver's license for at least 6 months pursuant to Vehicle and Traffic Law § 510(2)(a)(iv) on the ground that the petitioner had been convicted of three speeding violations within 18 months. The DMV further informed the petitioner that he was not entitled to the issuance of a restricted use license (*see* Vehicle and Traffic Law § 530; 15 NYCRR 135.2) because he had been issued a restricted use license within the past three years (*see* 15 NYCRR 135.7[a][7]).

On November 28, 2007, the date of the subject revocation, the petitioner had not yet been convicted of three speeding violations during an 18 month period. As a result, the DMV's determination that the petitioner's driver's license was subject to a mandatory revocation pursuant to Vehicle Traffic Law § 510(2)(a)(iv) did not have a rational basis, and the imposition of that penalty constituted an abuse of discretion (*see generally* CPLR 7803[3]; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231). Accordingly, under the circumstances, the Supreme Court properly determined that the petitioner was not prohibited from obtaining a restricted use license.

DILLON, J.P., FLORIO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court