

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

D26409
O/kmg

_____AD3d_____

Argued - February 11, 2010

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
CHERYL E. CHAMBERS, JJ.

2009-04597

DECISION & JUDGMENT

In the Matter of Brian Desvignes, petitioner,
v State of New York Department of Motor
Vehicles, respondent.

(Index No. 29417/08)

Gary Schoer, Syosset, N.Y., for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Peter Karanjia and Robert
C. Weisz of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the Appeals Board of the State of New York Department of Motor Vehicles dated October 22, 2008, which affirmed a determination of an administrative law judge dated March 28, 2008, made after a hearing, that the petitioner violated Vehicle and Traffic Law § 1180(d), and imposed a fine of \$90 plus a surcharge.

ADJUDGED that the determination dated October 22, 2008, is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The petitioner contends that the determination of the Administrative Law Judge (hereinafter the ALJ), inter alia, that he violated Vehicle and Traffic Law § 1180(d) was not based on substantial evidence. We disagree.

The determination of the ALJ is supported by substantial evidence (*see Matter of Hall*

March 9, 2010

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v Swartz, 61 AD3d 868), including the testimony of the officer who issued the summons (*see* Vehicle and Traffic Law § 401[4]). To the extent that the petitioner argues that the ALJ should have credited his exculpatory account, there is no basis to set aside the ALJ's credibility finding (*see Matter of Roth v Manhasset Union Free School Dist.*, 60 AD3d 771, 772–773).

The petitioner's remaining contentions are without merit.

FISHER, J.P., SANTUCCI, ENG and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large, stylized initial "J".

James Edward Pelzer
Clerk of the Court