

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

D27403
H/kmg

_____AD3d_____

Submitted - February 22, 2010

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
ARIEL E. BELEN, JJ.

2009-09587

DECISION & JUDGMENT

In the Matter of Daniel P. D'Antonio, petitioner, v State
of New York Department of Motor Vehicles, respondent.

(Index No. 910/09)

Mark S. Friedlander, New York, N.Y. (Monica Parsley of counsel), for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Peter Karanjia and Marion
R. Buchbinder of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the State of New York Department of Motor Vehicles Appeals Board dated October 3, 2008, which affirmed a determination of an administrative law judge dated February 7, 2008, made after a hearing, that the petitioner violated New York City Traffic Rules and Regulations (34 RCNY) § 4-04(b)(1), and imposed a penalty.

ADJUDGED that the determination dated October 3, 2008, is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The determination that the petitioner violated New York City Traffic Rules and Regulations (34 RCNY) § 4-04(b)(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 primarily for the fact-finder to resolve (*see Matter of Berenhaus v Ward*, 70 NY2d 436, 444-445; *Matter of Fischer v Appeals Bd. of N.Y. State Dept. of*

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Motor Vehs., 49 AD3d 643, 644; *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 this Court or without merit.

RIVERA, J.P., FLORIO, ANGIOLILLO and BELEN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court