

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

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_____AD3d_____

Argued - May 14, 2010

WILLIAM F. MASTRO, J.P.
RANDALL T. ENG
JOHN M. LEVENTHAL
SHERI S. ROMAN, JJ.

2009-08713

DECISION & JUDGMENT

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

(Index No. 12315/09)

Weinstein Group, P.C., Hauppauge, N.Y. (Lloyd J. Weinstein of counsel), for petitioner.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Richard Dearing and Sudarsana Srinivasan of counsel), for respondents.

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 April 28, 2009, confirming a determination of an Administrative Law Judge, dated December 12, 2008, 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.

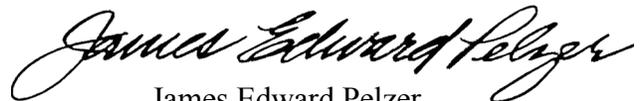
A review of the record clearly demonstrates that the findings of the administrative law judge are supported by substantial evidence (*see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231-232). The evidence adduced at the hearing demonstrated that the police had reasonable grounds to believe that the petitioner had been driving in violation of Vehicle and Traffic Law § 1192, that the

police lawfully arrested the petitioner, that the police gave the petitioner sufficient warning of the consequences of refusing to submit to a chemical test, and that the petitioner refused to submit to the chemical test (*see* Vehicle and Traffic Law § 1194[2][c]; *Liebel v Jackson*, 261 AD2d 474).

The petitioner's remaining contention is not properly before this Court, as it was not raised at the administrative hearing (*see Matter of Gonzalez v State Liq. Auth.*, 30 NY2d 108, 112; *Matter of Myles v Doar*, 24 AD3d 677, 678; *Matter of Ambery v Board of Trustees of N.Y. City Fire Dept., Art. 1-B Pension Fund*, 298 AD2d 582).

MASTRO, J.P., ENG, LEVENTHAL and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court