

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

D30433
Y/ct

_____AD3d_____

Argued - February 2, 2011

PETER B. SKELOS, J.P.
RANDALL T. ENG
ARIEL E. BELEN
PLUMMER E. LOTT, JJ.

2010-05212

DECISION & JUDGMENT

In the Matter of Steven Robinson, petitioner,
v David J. Swarts, etc., respondent.

(Index No. 29900/09)

Tilem & Campbell, White Plains, N.Y. (John Campbell and Howard R. Birnbach of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael S. Belohavek and Marion R. Buchbinder of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the Administrative Appeals Board of the New York State Department of Motor Vehicles dated August 25, 2009, confirming a determination of an administrative law judge, dated August 25, 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.

The record 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; *Matter of Sharf v New York State Depart. of Motor Vehicles*, 74 AD3d 978). The evidence adduced at the hearing demonstrated that the police had reasonable grounds to believe that the petitioner had been

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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]; *Matter of Sharf v New York State Dept. of Motor Vehicles*, 74 AD3d at 978; *Matter of Liebel v Jackson*, 261 AD2d 474). The variance between the testimony of the arresting officer and that of the petitioner presented an issue of credibility to be resolved by the administrative law judge (*see generally* *Matter of Berenhaus v Ward*, 70 NY2d 436, 443-444; *Matter of Eyrich v Jackson*, 267 AD2d 237; *Matter of Galante v Commissioner of Motor Veh. of State of N.Y.*, 253 AD2d 763, 764).

SKELOS, J.P., ENG, BELEN and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court