

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

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_____AD3d_____

Submitted - January 6, 2011

JOSEPH COVELLO, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
PLUMMER E. LOTT, JJ.

2010-00644

DECISION & JUDGMENT

In the Matter of Yehuda Tornheim, petitioner, v
Appeals Board of New York State Department
of Motor Vehicles, respondent.

(Index No. 1224/09)

Ernest H. Hammer, New York, N.Y., for petitioner.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael S. Belohlavek
and Patrick J. Walsh of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the Appeals Board of the New York State Department of Motor Vehicles dated December 17, 2008, which affirmed a determination of an administrative law judge dated April 4, 2008, made after a hearing, that the petitioner violated Vehicle and Traffic Law § 1225-c(2)(a), and imposed a fine of \$ 40 plus a surcharge.

ADJUDGED that the determination dated December 17, 2008, is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The determination of the Administrative Law Judge that the petitioner violated Vehicle and Traffic Law § 1225-c(2)(a) is supported by substantial evidence (*see Matter of Desvignes v State of N.Y. Dept. of Motor Vehs.*, 71 AD3d 766; *Matter of Hall v Swartz*, 61 AD3d 868). The Appeals Board of the New York State Department of Motor Vehicles properly declined to consider evidence that was not presented at the hearing, but instead, was presented for the first time on the petitioner's

March 29, 2011

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administrative appeal (*see Matter of Charles Birdoff & Co. v New York State Div. of Hous. & Community Renewal*, 204 AD2d 630, 631).

The petitioner's remaining contentions are without merit.

COVELLO, J.P., DICKERSON, HALL and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court