

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

D32477
C/prt

_____AD3d_____

Argued - September 19, 2011

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-08935

DECISION & ORDER

In the Matter of Karen N. Parker, respondent, v State
of New York, Department of Motor Vehicles, appellant.

(Index No. 547/10)

Eric T. Schneiderman, Attorney General, New York, N.Y. (Michael S. Belohlavek
and David Lawrence III of counsel), for appellant.

Karen N. Parker, Brooklyn, N.Y., respondent pro se.

In a 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 June 22, 2009, which affirmed a determination of an administrative law judge dated September 4, 2008, made after a hearing, that the petitioner violated Vehicle and Traffic Law § 1225-c(2)(a), and imposing a fine of \$40 plus a surcharge, the State of New York, Department of Motor Vehicles appeals from an order and judgment (one paper) of the Supreme Court, Kings County (Ruchelsman, J.), dated June 15, 2010, which, in effect, denied that branch of its cross motion which was pursuant to CPLR 3211(a)(5) to dismiss the petition as time-barred, granted the petition, and annulled the determination.

ORDERED that the order and judgment is reversed, on the law, with costs, that branch of the appellant's cross motion which was pursuant to CPLR 3211(a)(5) to dismiss the petition as time-barred is granted, and the proceeding is dismissed.

The petitioner commenced the instant proceeding pursuant to CPLR article 78 more than four months after the determination of the Appeals Board of the State of New York, Department

October 11, 2011

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of Motor Vehicles (hereinafter the Appeals Board) became final and binding upon her (*see* CPLR 217[1]; *Matter of Best Payphones, Inc. v Department of Info. Tech & Telecom. of City of N.Y.*, 5 NY3d 30, 34). Moreover, contrary to the Supreme Court's determination, the Appeals Board did not create an ambiguity as to whether a final and binding determination had been issued (*see Matter of Carter v State of N.Y., Exec. Dept., Div. of Parole*, 95 NY2d 267, 271; *Matter of Hill Park Health Care Ctr., Inc. v Novello*, 12 AD3d 1010, 1011-1012). Consequently, the proceeding was time-barred (*see Matter of Cohen v Suffolk County Bd. of Elections*, 83 AD3d 1063; *Matter of Miritello v Nassau County*, 70 AD3d 1041).

In light of our determination, we need not reach the appellant's remaining contention.

RIVERA, J.P., BALKIN, HALL and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court