

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

D33852  
C/ct

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 12, 2012

ANITA R. FLORIO, J.P.  
CHERYL E. CHAMBERS  
L. PRISCILLA HALL  
ROBERT J. MILLER, JJ.

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2010-10905

DECISION & JUDGMENT

In the Matter of Elite Ready Mix Corp., petitioner, v  
New York State Department of Motor Vehicles,  
respondent.

(Index No. 15691/10)

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Graber PLLC, New York, N.Y. (Daniel Graber of counsel), for petitioner.

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

Proceeding pursuant to CPLR article 78 to review a determination of the New York State Department of Motor Vehicles Appeals Board dated March 3, 2010, which confirmed the findings of an Administrative Law Judge, made after a hearing, that the petitioner violated Vehicle and Traffic Law § 401(7)(F)(b) and Rules of City of New York Department of Transportation (34 RCNY) § 4-15(b)(8) and (10), and imposed a penalty.

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

Judicial review of an administrative determination made after a hearing at which evidence was taken is limited to whether the determination is supported by substantial evidence based upon the entire record (*see* CPLR 7803[4]). Moreover, “the courts may not weigh the evidence or reject the choice made by [an administrative agency] where the evidence is conflicting and room for choice exists” (*Matter of Berenhaus v Ward*, 70 NY2d 436, 444, quoting *Matter of Stork Rest. v Boland*, 282 NY 256, 267).

February 7, 2012

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MOTOR VEHICLES

Here, the testimony of the officer who issued the summonses to the petitioner regarding the condition of the roadway where vehicle weighing scales were placed, his training, the accuracy of the scales used, and the manner in which he weighed the petitioner's vehicle, provided substantial evidence supporting the determination of the Administrative Law Judge (*see Matter of J. Scaramella Trucking v Martinez*, 39 AD3d 858, 859; *Matter of El Camino Trucking Corp. v Martinez*, 21 AD3d 491, 492; *Matter of Star Rubbish Removal Corp. v Martinez*, 15 AD3d 587, 588-589; *Matter of J. Bruno Sons, Inc. v Martinez*, 15 AD3d 485, 486).

FLORIO, J.P., CHAMBERS, HALL and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court