

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1642

CA 09-01127

PRESENT: HURLBUTT, J.P., FAHEY, PERADOTTO, GREEN, AND GORSKI, JJ.

IN THE MATTER OF MICHAEL DIGEORGIO, DOING
BUSINESS AS DIGEORGIO ENTERPRISES,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

DAVID J. SWARTS, COMMISSIONER, DEPARTMENT
OF MOTOR VEHICLES OF STATE OF NEW YORK,
RESPONDENT-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (OWEN DEMUTH OF COUNSEL),
FOR RESPONDENT-APPELLANT.

PETER BERESKIN, UTICA, FOR PETITIONER-RESPONDENT.

Appeal from a judgment (denominated order) of the Supreme Court, Herkimer County (Michael E. Daley, J.), entered August 12, 2008 in a proceeding pursuant to CPLR article 78. The judgment granted the petition and ordered respondent to approve petitioner's application for an inspection station license.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs and the petition is dismissed.

Memorandum: Respondent appeals from a judgment in this CPLR article 78 proceeding that, inter alia, ordered him to "approve" petitioner's application for an inspection station license. We agree with respondent that there was a rational basis for his denial of petitioner's application and that judicial intervention therefore was not warranted (*see Matter of Blake Bus. School v Sobol*, 176 AD2d 1139, 1140, *appeal dismissed* 80 NY2d 825; *Matter of Berger v Leach*, 103 AD2d 1018). Contrary to petitioner's contention, respondent was entitled to consider past violations of inspection laws and regulations by all of the owners and employees of the prospective inspection station in determining whether to grant the application, i.e., he should issue the license "only when satisfied that the station is properly equipped and has competent personnel to make such inspections and that such inspections will be properly conducted" (Vehicle and Traffic Law § 303 [a] [1]; *see generally Spencer v NYC Taxi & Limousine Commn.*, 30 AD3d 300; *Matter of New York City Tr. Auth. v Pierrot*, 144 AD2d 814, 816).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court