

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

1287

TP 15-00834

PRESENT: SCUDDER, P.J., CENTRA, LINDLEY, VALENTINO, AND WHALEN, JJ.

IN THE MATTER OF ELAINE D. FISHER, PETITIONER,

V

MEMORANDUM AND ORDER

ADMINISTRATIVE APPEALS BOARD OF NEW YORK STATE
DEPARTMENT OF MOTOR VEHICLES, ET AL., RESPONDENTS.

WARD & KUTZUBA, ARCADE (ROBERT D. STRASSEL OF COUNSEL), FOR
PETITIONER.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (OWEN DEMUTH OF
COUNSEL), FOR RESPONDENTS.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Erie County [Diane Y. Devlin, J.], entered April 10, 2015) to review a determination of respondent Administrative Appeals Board of New York State Department of Motor Vehicles. The determination dismissed petitioner's administrative appeal and denied petitioner's request to stay an order of the New York State Department of Motor Vehicles, which suspended her driver's license.

It is hereby ORDERED that the order transferring this proceeding is unanimously vacated without costs and the matter is remitted to Supreme Court, Erie County, for further proceedings in accordance with the following memorandum: Petitioner commenced this CPLR article 78 proceeding challenging the suspension of her driver's license after she failed or refused to submit to an examination to determine her qualifications to operate a motor vehicle pursuant to Vehicle and Traffic Law § 506 (1) and (3). " '[T]his CPLR article 78 proceeding was improperly transferred to this Court inasmuch as petitioner does not challenge a determination made as a result of an evidentiary hearing directed by law' " (*Matter of Femia v Administrative Appeals Bd. of N.Y. State Dept. of Motor Vehs.*, 42 AD3d 951, 951). We therefore vacate the order transferring the proceeding to this Court, and we remit the matter to Supreme Court for disposition on the merits.

Entered: December 23, 2015

Frances E. Cafarell
Clerk of the Court