

Drayton v NYCPD Traffic Div./Control

2011 NY Slip Op 31771(U)

June 28, 2011

Supreme Court, New York County

Docket Number: 402911/2010

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. ANIL C. SINGH
PRESENT: Singh
SUPREME COURT JUSTICE
Justice

PART 14

2
DONALD LAY DRAYTON
- v -
NYPD TRAFFIC CONTROL

INDEX NO. 402911/10
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision and order

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

FILED

JUN 30 2011

NEW YORK
COUNTY CLERK'S OFFICE

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JUN 30 2011

Dated: 6/28/11

[Signature]
HON. ANIL C. SINGH J.S.C.
SUPREME COURT JUSTICE

Case
dup

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

-----X
DONALLAH DRAYTON,

Petitioner,

-against-

NYCPD TRAFFIC DIVISION/CONTROL,

Respondent.
-----X

DECISION AND
ORDER

Index No.
402911/2010

FILED

JUN 30 2011

HON. ANIL C. SINGH, J.:

Petitioner Donallah Drayton brings this Article 78 proceeding to appeal a ^{NEW YORK} determination of the New York City Department of Finance Parking Violations Bureau COUNTY CLERK'S OFFICE ("PVB") Appeals Board, upholding a finding of guilt for three summonses charging petitioner with parking his car in a prohibited "safety zone." In addition, petitioner moves by order to show cause for an order directing the police department to return to his possession his automobile, which was towed and is currently impounded. Respondent opposes the petition.

The undisputed facts are as follows. Petitioner received parking tickets on August 18, 2010, September 11, 2010, and September 23, 2010. All of the summonses stated that petitioner's vehicle was parked in violation of the regulation prohibiting parking in a "safety zone." The car was parked opposite 3758 Tenth Avenue in Manhattan. The fine amount for each ticket was \$115.00. After the third citation was issued, the police seized

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petitioner's automobile and towed it to an impoundment lot.

Petitioner requested an administrative hearing before the PVB to contest the tickets. He presented testimony and videotape evidence at the hearing.

After considering petitioner's evidence and looking at a map from the Google website, the administrative law judge ("ALJ") issued a determination sustaining the summonses and finding petitioner guilty of violating Section 4-08(f)(6) of the New York City Traffic Rules. The ALJ found that petitioner's vehicle was parked illegally based on her consideration of the videotape, the map and petitioner's sworn testimony.

In a letter dated October 4, 2010, the police department formally notified petitioner that he had 10 days to redeem his vehicle from the impoundment lot. The letter further informed petitioner that, if he failed to claim the vehicle within 10 days, it would be deemed abandoned, become the property of New York City, and sold at auction.

On October 12, 2010, petitioner appealed the determination of the ALJ to the PVB Appeals Board. Subsequently, the Appeals Board upheld the ALJ's decision on all of the summonses, finding no error of fact or law on the record before it.

On October 20, 2010, petitioner commenced the instant Article 78 proceeding by filing a petition and order to show cause with a temporary restraining order ("TRO"). Thereafter, the undersigned issued an order to show cause staying the police department from selling petitioner's car pending the outcome of this proceeding.

Petitioner contends that the sworn testimony and videotape he presented at the hearing showed conclusively that his car was not parked within a “safety zone.” He asserts further that the respondents do not have the authority to declare the location where his car was parked to be a “safety zone.” According to petitioner, he needs his car back because it is his means of supporting himself and getting to medical appointments, but he lacks the financial resources to get his car out of impoundment. Additionally, petitioner alleges that the police department violated his rights under the Fourth, Sixth and Fourteenth Amendments of the Constitution, and he alleges malicious prosecution, negligence and “intentional tort.”

Under New York law, the role of a Court in reviewing the acts of an administrative agency is not to second-guess the agency, and “accordingly, an agency decision should be annulled only if it is arbitrary, capricious, unsupported by substantial evidence, an abuse of discretion, lacking a rational basis, or carried out in violation of lawful procedure or in excess of the agency’s jurisdiction” (6 N.Y. Jur.2d Article 78 section 13 (internal citations omitted)). Furthermore, “in a CPLR article 78 proceeding, the Court’s review is limited to the arguments and record adduced before the agency” (Kaufman v. Incorporated Village of Kings Point, 52 A.D.3d 604, 607 [2d Dept., 2008]).

The New York City Traffic Rules and Regulations comprise Chapter 4 of Title 34 of the Rules of the City of New York. Section 4-08(f) states in pertinent part:

No person shall stand or park a vehicle in any of the following places, unless otherwise indicated by posted signs, markings or other traffic control

devices, or at the direction of a law enforcement officer:

...

(6) Safety zones. In a safety zone, between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone.

The Court has reviewed the record and the written transcript of the hearing carefully. The transcript reflects that the ALJ listened to petitioner's testimony about the location of his car and the location of the "safety zone." Based on that evidence, the ALJ in her discretion found that petitioner's car had, in fact, been parked in a "safety zone," as defined in Traffic Rule 4-08(f)(6).

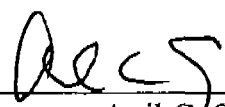
In short, the Court finds that the determination of the ALJ was rational and was not arbitrary nor capricious.

Additionally, the Court finds that petitioner has failed to show that he is entitled to the return of his vehicle. It is clear that the vehicle was impounded because petitioner had failed to pay the parking tickets, and it is undisputed that the tickets remain unpaid.

For the above reasons, the petition is dismissed, and the stay on the auction of petitioner's automobile is hereby lifted.

The foregoing constitutes the decision, order and judgment of the court.

Date: June 28, 2011
New York, New York



Anil C. Singh

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JUN 30 2011