

<b>Matter of Teich v DMV Appeals Bd.</b>
2015 NY Slip Op 31022(U)
June 15, 2015
Supreme Court, New York County
Docket Number: 151749/15
Judge: Jr., Alexander W. Hunter
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 33**

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In the Matter of the Application of

STANLEY TEICH,

Index No.: 151749/15

Petitioner,

Decision and Judgment

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

-against-

DMV APPEALS BOARD,

Respondent.

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**HON. ALEXANDER HUNTER, JR.:**

In this Article 78 proceeding, petitioner seeks an order annulling the decision of the New York State Department of Motor Vehicles Administrative Adjudication Bureau's Administrative Law Judge (ALJ), dated January 2, 2014, as confirmed by respondent on October 20, 2014, which found petitioner guilty of violating section 1225-c 2 (a) of the Vehicle and Traffic Law (VTL), on the ground that the determination was made in violation of CPLR 7803 (2).

This proceeding relates to an incident that occurred on April 19, 2012 at the intersection of Sixth Avenue and Canal Street in New York, New York. Petitioner was issued a summons for using a cell phone while driving, pursuant to section 1225-c 2 (a) of the VTL. Petitioner contends that he was experiencing a medical emergency at the time and was answering a call back from his physician. This, he claims, represents an exception to the statute, specifically section 1225-c 3.

On January 2, 2014, the matter was heard before the ALJ, where petitioner pleaded not guilty pursuant to the alleged medical exception. Petitioner argues that his due process rights

were violated at the hearing when the ALJ, in the middle of his cross examination of the police officer who had given him the summons, interrupted him with the comment, "Is there any reason you are not using blue tooth?" and concluded the cross examination. On January 2, 2014, the ALJ determined that petitioner was in violation of the statute and should be fined. On March 16, 2014, petitioner appealed the determination to respondent, which upheld the determination.

Petitioner brings this Article 78 proceeding in order to annul the determination, claiming that respondent acted in an arbitrary and capricious manner, that the determination is in violation of the law, and is an abuse of jurisdiction.

In opposition, respondent contends that this proceeding should be transferred to the Appellate Division, First Department pursuant to CPLR 7804 (g), because it raises the question as to whether the determination is supported by substantial evidence. Alternatively, respondent contends that the determination should be upheld because petitioner's due process rights were not violated and that he had a right to question the ALJ's responses at the hearing. Respondent states that the determination has a rational basis, is not arbitrary or capricious, and is based on substantial evidence.

Petitioner is bringing this proceeding under CPLR 7803 (3), which provides that a determination is alleged to be "made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." Under CPLR 7803 (4), in a proceeding challenging an agency's findings of fact, on the basis that the determination was not supported by substantial evidence, it is mandatory for the court to transfer the proceeding to the Appellate Division. *See Matter of McMillian v Kerik*, 306 AD2d 17, 17-18 (1<sup>st</sup> Dept 2003). The court finds that petitioner has not raised this issue, so the matter shall remain before this court.

Respondent's other defenses are that the determination has a rational basis and that the ALJ committed no errors of law. Respondent submits a copy of the transcript of the hearing. At the hearing, petitioner, a lawyer, represented himself before the ALJ and questioned a witness, Joseph Gutierrez, the police officer who had summoned him at the intersection. Gutierrez testified as to the circumstances which led to the summoning. Petitioner thereafter asked Gutierrez whether petitioner told him about the medical emergency at that time. Gutierrez answered in the affirmative. Petitioner also provided the ALJ with a letter from his physician who affirmed that he received petitioner's call at the time that petitioner was driving. The letter was admitted as evidence and a copy is submitted by respondent.

Though the ALJ promptly decided that petitioner had violated the law, there is no indication in the transcript that he deliberately terminated petitioner's questioning of Gutierrez. The ALJ, in fact, asked petitioner whether there was anything else he wanted to say. At the hearing, the petitioner did not assert that his cross-examination was incomplete.

The letter indicates that petitioner was calling his physician, although his papers state that he was answering a call back from the physician.

The ALJ stated in the transcript that there was clear and convincing evidence that petitioner had violated section 1225-c 2(a) of the VTL. The ALJ accepted the testimony of Gutierrez over petitioner's assertions. Gutierrez stated that he had heard petitioner tell him about the medical emergency exception to the law and that he was aware of the exception. Petitioner did not go into detail about the nature of his emergency. Apparently, Gutierrez found that the medical emergency was not material or relevant enough to exclude a summons.

“In reviewing an administrative agency determination, [courts] must ascertain whether

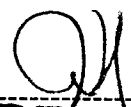
there is a rational basis for the action in question or whether it is arbitrary or capricious (citation omitted).” *Matter of Peckham v Calogero*, 12 NY3d 424, 431 (2009). “An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts.” *Id.* “Where a rational basis exists for an agency’s action, a court may not substitute its judgment for that of the agency, and the agency’s determination, acting pursuant to legal authority and within its area of expertise, is entitled to deference.” *Matter of Roberts v Gavin*, 96 AD3d 669, 671 (1<sup>st</sup> Dept 2012).

Upon examining the transcript, the court concludes that the determination shall be upheld. The court finds that petitioner’s due process rights were not violated during the cross examination. Moreover, the determination, which favored Gutierrez’s testimony over petitioner, was not irrational or unreasonable so as to demonstrate an abuse of discretion or arbitrary conduct.

Accordingly, it is

ORDERED and ADJUDGED that the petition seeking to annul respondent’s determination is denied and the proceeding is dismissed.

DATED: June 15, 2015

ENTER:   
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**ALEXANDER W. HUNTER, JR.**  
J.S.C.