

**Matter of AAC Auto Serv. v New York State Dept. of
Motor Vehs.**

2016 NY Slip Op 30238(U)

January 22, 2016

Supreme Court, Bronx County

Docket Number: 260997/2014

Judge: Alison Y. Tuitt

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

NEW YORK SUPREME COURT-----COUNTY OF BRONX

PART IA-5

In the Matter of the Article 78 Petition of AAC AUTO SERVICE and ARISTO ARTEAGA as Petitioners, for a Judgment pursuant to Article 78 of the New York Civil Practice Law and Rules

INDEX NUMBER: 260997/2014

Petitioners,

-against-

Present:
HON. ALISON Y. TUITT

NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, Barbara J. Fiala, as Commissioner of the New York State Department of Motor Vehicles and Deborah Dugan, Chairperson of the Appeals Board of the New York State Department of Motor Vehicles,

Respondents

The following papers numbered 1-2,

Read on this Article 78 Petition

On Calendar of 4/27/15

Notice of Petition, Exhibits, Affirmation _____ 1

Verified Answer _____ 2

Upon the foregoing papers, the petition pursuant to Article 78 of the CPLR is granted in part and dismissed in part for the reasons set forth herein.

Petitioner brings this Article 78 petition seeking an order from this Court staying the suspension of petitioners' Public Inspection Station License and Certified Motor Vehicle Inspector's License pursuant to CPLR §7805, pending a determination of this proceeding; a final judgment annulling the determination which suspended petitioners' Public Inspection Station License and Certified Motor Vehicle Inspector's License;

voiding of the double penalty imposed upon petitioner Aristo Arteaga (hereinafter "Arteaga"); and, removal of the matter to respondents for the imposition of a finding consistent with the determination of this Court or, in the alternative, a final judgment annulling the determination.

This petition seeks to compel respondent New York State Department of Motor Vehicles (hereinafter "DMV") to annul an August 27, 2013 determination by Administrative Law Judge Walter Zukowski (hereinafter "ALJ") after an administrative hearing concerning the public inspection station license of petitioners AAC Auto Service (hereinafter "AAC") and Arteaga. Cases identified as 2IP300131 (Public Inspection Station AAC) and 2IN300132 (Motor Vehicle Inspector Arteaga) are failure to follow OBD II test procedure cases involving 77 motor vehicle inspections. The charges are typically imposed both against the inspector and the facility. Arteaga is the owner of AAC which is engaged in the business of operating an automotive inspection and automotive repair facility. AAC was licensed by DMV to perform repairs and inspections of motor vehicles and to issue inspection stickers in accordance with the DMV Commissioner's Rules and Regulations. Arteaga was licensed by DMV as a Certified Motor Vehicle Inspector to perform inspections of motor vehicles and to issue inspection stickers in accordance with the DMV Commissioner's Regulations. Section 303(e) of the Vehicle and Traffic Law authorizes the DMV to suspend or revoke an inspection facility license and/or an inspector's license. Section 303(h) provides that in lieu of, or in addition to such suspension or revocation, the DMV can impose a monetary fine per violation. Automotive Facilities Inspector Daryl Robertucci, an employee of DMV, brought the charges against petitioners alleging that Arteaga conducted all of the 79 charge violations which were all inspections conducted at AAC.

A hearing was held on August 27, 2013 and Arteaga did not dispute the charges against him. In fact, he admitted to the charges stating that he was only trying to help his customers. He further stated that he had learned his lesson and would not do it again. After the hearing, the ALJ issued a written decision where he found that Arteaga would use one vehicle for another when the exhaust emissions test was done during inspection which allowed vehicles that would otherwise not pass inspection to obtain certificates of inspections. Petitioner AAC was convicted of 77 violations of 15 NYCRR §79.24(b)(1) for failing to follow OBD II test procedures in fraudulently issuing 77 certificates of inspection by substituting vehicles or using an electronic device for exhaust emissions testing. Petitioner Arteaga was also convicted of violating §79.24(b)(1) for failing as an emissions inspector to follow OBD II test procedures in conducting fraudulent inspections on 77 separate

occasions. The ALJ imposed a fine of \$100 for each violation as against AAC and Arteaga separately. Consequently, AAC was fined \$7,700 and Arteaga was fined \$7,700. AAC's emissions inspection station license was revoked as was Arteaga's inspector's certification. Petitioners appealed the ALJ ruling and the DMV Appeal Board denied the appeal finding "[t]he penalty should only be set aside where it is so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness... Given the findings in this case, the penalties imposed were not an abuse of discretion."

Petitioners bring the instant application and argue that since there are no "substantial evidence" claims herein, this case may be decided by this Court without the petitioners being subjected to a costly proceeding in the Appellate Division which would have been required had a "substantial evidence" claim be made herein. The two issues raised by petitioners is whether the revocation penalty is too severe and the monetary penalty imposed is a prohibited "double fine".

Administrative agencies enjoy broad discretionary power when making determinations of matters they are empowered to decide. Section 7803 provides in relevant part that "[t]he only questions that may be raised in a proceeding under this article are... (3) whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or (4) whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence." In deciding whether an agency's determination was supported by substantial evidence or was arbitrary, capricious or an abuse of discretion, the reviewing court is limited to assessing whether the agency had a rational basis for its determination and may overturn the agency's decision only if the record reveals that the agency acted without having a rational basis for its decision. See, Heintz v. Brown, 80 N.Y.2d 998, 1001 (1992) citing Pell v. Board of Education, 34 N.Y.2d 222, 230-31 (1974); Sullivan County Harness Racing Association v. Glasser, 30 N.Y.2d 269, 277 (1972). The arbitrary and capricious test "chiefly 'related to whether a particular action should have been taken or is justified... and whether the administrative action is without foundation in fact.'" Pell, *supra*, quoting 1 N.Y. Jur., Administrative Law, §184, p. 609. The reviewing Court does not examine the facts *de novo* to reach an independent determination. Marsh v. Hanley, 50 A.D.2d 687. Furthermore, a Court may not substitute its judgment for that of the board or body it reviews unless the decision under review is arbitrary, unreasonable and an abuse of discretion. Pell, *supra*.

Here, the Appeals Board's determination was not arbitrary, capricious or an abuse of discretion. On Article 78 review, this Court is limited to assessing whether the agency had a rational basis for its determination. Based on the evidence presented, the Appeal Board's determination is rational. In the instant matter, plaintiff admittedly committed the 77 violations for which he was charged. The revocation penalty was not too severe. In San Miguel Auto Repair Corp. v. State Dept. of Motor Vehicles, 974 N.Y.S.2d 386 (1st Dept. 2013), the First Department unanimously confirmed the determination of DMV affirming a decision of the ALJ which revoked the inspection station license of petitioner San Miguel Auto Repair Corp. and imposing a civil fine in the amount of \$15,500, and denied the petition and proceeding brought pursuant to Article 78 holding that "[t]he penalty imposed in connection with 31 separate violations of 'clean scanning' vehicles occurring over a two month period does not shock our sense of fairness." "[T]he test is whether such punishment is 'so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.'" Matter of McDermott v. Murphy, 222 N.Y.S.2d 111 (1st Dept. 1961), *aff'd*, 12 N.Y.2d 780 (1962); Matter of Stolz v. Board of Regents, 165 N.Y.S.2d 179 (3d Dept. 1957); Matter of Pell v. Board of Education, *supra*.

The penalties imposed to petitioners herein do not shock this Court's sense of fairness and have a rational basis. With respect to the revocation of the petitioners' licenses, the violations herein undermine the integrity of the inspection process itself. Furthermore, pursuant to Vehicle and Traffic Law §303(h), \$350 is the minimum penalty that may be imposed per violation and \$1,000 is the maximum. Therefore, the civil fine imposed to the petitioners herein of \$100 per violation is less than the minimum penalty that could have been imposed. However, this Court agrees with petitioners' contention that the civil fines imposed constitute a double fine in that both Arteaga and AAC were both fined for violating DMV Regulations 15 NYCRR §79.24(b)(1). Vehicle and Traffic Law §303(h) provides that the commissioner may order "the licensee or certified inspector to pay a monetary penalty. Under §79.24(b)(1), in addition to or in lieu of suspension or revocation of an official inspection station license, "the commissioner may require suspension or revocation of an official inspection station to pay a civil penalty in accordance with subdivision (h) of section 303 of the Vehicle and Traffic Law." There appears to be no statutory or regulatory authority to uphold respondents' imposition of duplicate monetary fines on both the official inspection station and on the inspector himself for the same exact violation. Accordingly, the petition is granted only to the extent that the imposition of the civil

penalty of \$7,700 as against Arteaga is vacated. In all other respects, the petition is dismissed.

This constitutes the decision and Order of this Court.

Dated: 1/22/16



Hon. Alison Y. Tuitt