Cartagena v Egan
2019 NY Slip Op 31036(U)
April 2, 2019
Supreme Court, New York County
Docket Number: 159987/2017
Judge: Nancy M. Bannon

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. NANCY M. BANNON** **PART** **IAS MOTION 42EFM**

Justice

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CHRISTOPHER CARTAGENA,

Petitioner,

- v -

THERESA EGAN, THE NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES

Respondent.

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INDEX NO. 159987/2017

MOTION DATE 11/15/2018

MOTION SEQ. NO. 001

DECISION AND ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 12, 13, 14, 15, 16, 17, 18, 20, 24

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

In this proceeding pursuant to CPLR article 78, the petitioner, Christopher Cartagena, asks the court to review a determination of the New York State Department of Motor Vehicles (DMV) Administrative Appeals Board dated June 27, 2017, affirming a decision by an administrative law judge (ALJ), made after a hearing, that the officer who pulled the petitioner over and arrested him had reasonable suspicion for the traffic stop and probable cause to arrest the petitioner for Driving While Intoxicated (DWI), and thereupon revoking his driver license effective August 14, 2017. The respondents oppose the petition, denying all allegations that the petitioner is entitled to substantive relief and requesting that the matter be transferred to the Appellate Division, First Department. The respondents submit the administrative record of proceedings. The respondents' transfer request is denied, the petition is denied, and the proceeding is dismissed.

Pursuant to CPLR 7803, the petitioner may challenge the respondent's determination on the ground, inter alia, that it was made "as a result of a hearing held, and at which evidence was taken, pursuant to direction by law" (CPLR 7803[4]) and is not supported by "substantial evidence" (id.). Indeed, judicial review of an administrative determination made after a trial-type hearing directed by law is limited to whether the determination is supported by substantial evidence. See Matter of Verdell v Lincoln Amsterdam House, Inc., 27 AD3d 388 (1st Dept. 2006); CPLR 7803(4). Pursuant to CPLR 7804(g),

> "[w]here the substantial evidence issue . . . is not raised, the court in which the proceeding is commenced shall itself dispose of the issues in the proceeding. Where such an issue is raised, the court shall first dispose of such other objections as could terminate the proceeding including, but not limited to lack of jurisdiction, statute of limitations and res judicata, without reaching the substantial evidence issue. If the determination of the other

objections does not terminate the proceeding, the court shall make an order directing that it be transferred for disposition to a term of the appellate division within the judicial department embracing the county in which the proceeding was commenced."

The substantial evidence question is raised where a petitioner challenges a determination of the DMV's Administrative Appeals Board that affirms an ALJ's decision, made after a hearing, that the petitioner violated a provision of the Vehicle and Traffic Law (VTL). See Matter of Gibbs v New York State Dept. of Motor Vehs., 156 AD3d 505 (1st Dept. 2017).

However, where there are no contested issues of fact, and the only question raised is whether the ALJ's application of the law to the undisputed facts was arbitrary and capricious or an abuse of discretion, the substantial evidence question does not arise, and transfer to the appellate division is not required. See Rubenstein v Metropolitan Transp. Authority, 145 AD3d 453 (1st Dept. 2016); Manz v County of Suffolk, 95 AD3d 1015 (2nd Dept. 2012). A determination is arbitrary and capricious where is not rationally based, or has no support in the record (see Matter of Gorelik v New York City Dept. of Bldgs., 128 AD3d 624 [1st Dept. 2015]), or where the decision-making agency fails to consider all of the factors it is required by statute to consider and weigh. See Matter of Kaufman v Incorporated Vil. of Kings Point, 52 AD3d 604 (2nd Dept. 2008). The court must give deference to an agency's interpretation of the statutes, rules, and regulations governing its own operations. See Matter of Terrace Ct., LLC v New York State Div. of Hous. & Comm. Renewal, 18 NY3d 446 (2012); Matter of 60 E. 12th St. Tenants' Assn. v New York State Div. of Housing & Comm. Renewal, 134 AD3d 586 (1st Dept. 2015).

As the evidence at the hearing before the ALJ revealed, the petitioner was directed to pull over upon the arresting officer's observation that his windshield was so excessively tinted that neither he nor his partner could tell how many passengers, if any, were in the vehicle. Upon speaking to the petitioner, the arresting officer then observed that the petitioner had a strong odor of alcohol on his breath, slurred speech, flushed face, and glassy, watery eyes. The petitioner told the officer that he had one glass of wine, but refused to submit to a pre-screen breath test. The officer arrested the petitioner for DWI and took him to a police station, where a highway officer read the petitioner the DWI refusal warnings from the Intoxicated Driver Examination Instruction Sheet. The petitioner persisted in refusing to submit to a breathalyzer test.

Pursuant to VTL § 1194(2)(c), an individual's driver's license must be revoked after a hearing wherein it is found that there has been (1) a lawful arrest, (2) evidence of intoxication, and (3) refusal to submit to a chemical test in spite of explicit warnings of the consequences of a refusal. After the hearing, at which the petitioner did not testify, the ALJ determined that each of these requirements had been met. The ALJ based that determination on testimony from the arresting officer and documentary evidence.

The petitioner argued at his hearing and to the DMV Administrative Appeals Board that his initial stop was unlawful because the arresting officer allegedly did not understand the excessive tinting statute, and that the report of the petitioner's refusal written on the day of his

arrest (the Refusal Report) was jurisdictionally defective. He raises the same arguments in the instant petition. He does not contest that his windshield was tinted, that he displayed signs of intoxication, or that he refused to submit to a breathalyzer test despite repeated warnings following his traffic stop. Instead, the petitioner states that the arresting officer lacked reasonable suspicion to stop him on the basis of excessive window tinting in violation of VTL § 375(12-a)(b)(1) because the officer testified at the hearing that he believed VTL § 375(12-a)(b)(1) prohibited *any* window tinting on certain parts of the windshield, rather than *excessive* tinting as described in the statute. As to the Refusal Report, the petitioner states that jurisdiction to conduct a refusal hearing is premised on the existence of properly completed refusal report. He alleges that while the Refusal Report in this case included statements as to the petitioner's intoxicated appearance and listed the petitioner as the vehicle operator, it was defective insofar as it failed to state that the petitioner was the driver of the vehicle at the time of the stop under Section A and listed only "excessive window tinting" in the section requiring an explanation of "reasonable ground to make the arrest based on information indicating vehicle operation."

The petitioner contends that these challenges to the determination of the DMV Administrative Appeals Board to revoke his license amount to claims that the respondents erroneously applied the law to undisputed facts and do not raise a question of substantial evidence. Since the petitioner does not contest the facts surrounding his traffic stop, the court agrees. To that end, the only question that arises is whether the respondents' findings that there was reasonable suspicion to make a traffic stop and that they had jurisdiction to revoke the petitioner's license were arbitrary and capricious.

As to the first finding, it was not irrational for the respondents to determine that the arresting officer's misunderstanding of the specific requirements of VTL § 375(12-a)(b)(1) failed to alter the conclusion that the arresting officer had reasonable suspicion to stop the petitioner based on the petitioner's suspected violation of that provision. The arresting officer made clear that he stopped the petitioner because "the windows on the windshield were dark enough where [he and his partner] couldn't tell how many passengers were in the car." This was sufficient to establish that the stop was made based on the officers' reasonable suspicion that the petitioner was acting in violation of the statute as it is written.

The court likewise rejects the petitioner's argument that defects in the Refusal Report stripped the DMV of jurisdiction to revoke the petitioner's license. The only caselaw the petitioner cites in support of this proposition derives from a Supreme Court, Westchester County decision rendered in 2007, a case which involved a refusal report that left the areas relating to grounds for arrest and indicia of intoxication entirely blank. See Violi v NYS Dept. of Motor Vehicles, 15 Misc 3d 1044 (Sup. Ct. Westchester Cnty. 2007). No controlling authority has imposed a requirement on the DMV that it produce proof of a correctly completed refusal report in order to acquire jurisdiction to revoke the petitioner's license at a hearing held pursuant to VTL § 1194(2)(c), and the court declines to impose such a requirement at present. Moreover, the Refusal Report at issue here was not left blank, and was properly completed. While the petitioner objects to the Refusal Report because Section A of the Report does not state the

petition was the driver of the vehicle at the time of the stop, the top of the Refusal Report lists the petitioner as the driver of the vehicle, under "Operator's Name," and the petitioner does not dispute that he was, in fact, the driver of the vehicle. In light of the foregoing, the DMV's rejection of the petitioner's argument that the Refusal Report was jurisdictionally defective was rationally based.

Accordingly, it is

ORDERED and ADJUDGED that the petition is denied, and the proceeding is dismissed; and it is further,

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

4/2/2019
DATE

NANCY M. BANNON, J.S.C.

HON. NANCY M. BANNON

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE

159987/2017 CARTAGENA, CHRISTOPHER vs. EGAN, THERESA L.
Motion No. 001