

<b>Shabsels v Schroeder</b>
2020 NY Slip Op 32936(U)
September 8, 2020
Supreme Court, New York County
Docket Number: 154320/2020
Judge: Arthur F. Engoron
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT:** HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

*Justice*

-----X

MICHAEL SHABSELS

Petitioner,

- v -

MARK SCHROEDER,

Respondent.

-----X

INDEX NO. 154320/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 18, 19, 20 were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

Upon the foregoing documents, it is

Upon the foregoing documents, the instant CPLR Article 78 petition is denied and dismissed, and the prior stay on enforcement of the Suspension Notice is hereby vacated for the reasons stated hereinbelow.

Background

On July 3, 2018, petitioner, Michael Shabsels, received traffic ticket no. AAX6318981 (the “8981 Ticket”) for disobeying a traffic device (Exhibit E, NYSCEF Doc. 6). On November 29, 2018, petitioner received traffic ticket no. AAX9581530 (the “1530 Ticket”) for an improper turn (Exhibit D, NYSCEF Doc. 5). (The 8981 Ticket and 1530 Ticket 3, collectively, the “Traffic Tickets”). Petitioner appealed the convictions of traffic violations from which the Traffic Tickets arose.

On February 7, 2019, a hearing was held on the 1530 Ticket, and on June 26, 2019, a hearing was held on the 8981 Ticket. During the hearing on the 1530 Ticket, the court noted that petitioner had accrued seventeen points in eighteen months (NYSCEF Doc. 11, at 22).

Upon receiving transcripts of the aforementioned hearings, petitioner submitted the “Additional Appeals Arguments” (Exhibits H and I). In said document for the 8981 Ticket, petitioner asserted that he did not see the “no right turn” sign because a large truck obstructed his view (NYSCEF Doc. 10); petitioner asserted that 17 NYCRR 200.1.e. and its successor state that such traffic control device must “command attention and give adequate time for a proper response” (NYSCEF Doc. 10). In said document for the 1530 Ticket, petitioner addressed various points, among which were the Appeals Board’s emphasis on the age of the subject ticket; its reliance on “a Police Officer’s reconstruction of his notes that he had taken years earlier;” the Hearing Officer’s prejudice and favoritism, which plaintiff asserted arose when the court forbade petitioner from photographing the police officer’s notes; and the Hearing Officer’s misreading of

petitioner's driving records as sixteen suspensions, a number of which were apparently administrative notations rather than suspensions (NYSCEF Doc. 9).

In early June 2020, petitioner received an updated notice (the "Suspension Notice," Exhibit A, NYSCEF Doc. 2), suspending his driver's license under the Vehicle and Traffic Law ("V & T Law") Section 510(2-a) for "at least sixty days," effective June 13, 2020 (NYSCEF Doc. 1, at 3). The Suspension Notice states that petitioner is eligible for a "restricted use license in a non-commercial class." The Suspension Notice also states that one can pay the required \$50.00 "suspension termination fee" by credit card on the New York Department of Motor Vehicles ("DMV") website or in person at a local DMV office (NYSCEF Doc. 2).

Petitioner asserted that he could not obtain the "restricted use license" because DMV offices were closed due to the Covid-19 pandemic at the time that he commenced the instant special proceeding (NYSCEF Doc. 1 and 2). In an email dated June 5, 2020, petitioner asked DMV counsel ([dmv.sm.legal@dmv.ny.gov](mailto:dmv.sm.legal@dmv.ny.gov)), "is there a way for my client to obtain a restricted use license before June 13, 2020 [when petitioner's license suspension became effective] or can the effective date of the license suspension be put off, in light of the unusual circumstances?" On the same day, DMV counsel responded that "restricted use licenses require an in office visit," and he noted that such visits were scheduled to resume by appointment during reopening "Phase 3," pursuant to the New York State Governor's Executive Orders. DMV counsel also provided petitioner with links to information about DMV's reopening guidance and information on responding to pending Traffic Violations Bureau tickets. (NYSCEF Doc. 4.)

On June 11, 2020, petitioner commenced the instant CPLR Article 78 special proceeding against respondent, Mark J. F. Schroeder, Commissioner of Motor Vehicles of the State of New York, seeking an order (1) staying, pending the hearing and decision on the instant petition, the enforcement of the Suspension Notice, "so that petitioner does not suffer the penalty and punishment of a suspension before he can obtain relief;" (2) directing respondent to cancel and rescind the Suspension Notice and to restore petitioner's driving privileges; and (3) reversing and overturning petitioner's subject convictions for the violations from which the Traffic Tickets arose (NYSCEF Doc. 1, at 6).

Petitioner asserts that the DMV should cancel the Suspension Notice because (1) plaintiff has been deprived of his right to obtain a restricted use license, as he cannot make the personal appearance at DMV offices while they are closed; (2) the Suspension Notice is invalid, as it fails to identify traffic tickets representing V & T Law violations; (3) the Suspension Notice is impermissively vague, as it states that the subject license suspension is for "at least 60 days" rather than for a finite duration; and (4) the Suspension Notice is invalid, as it references V & T Law Section 510(2-a), which applies to mandatory revocations rather than mandatory suspensions (NYSCEF Doc. 1, at 4). Petitioner also asserts that the Suspension Notice fails to specify which of the many subsections of V & T Law Section 510(2-a) it references. Additionally, petitioner claims that the Appeals Board failed to address the various specific grounds for overturning the subject convictions that petitioner submitted in the Additional Appeals Arguments (Exhibits H and I).

On June 30, 2020, this Court signed an Order to Show Cause, pursuant to CPLR Article 7805, staying the enforcement of the Suspension Notice, pending the hearing of the instant special proceeding (NYSCEF Doc. 18).

On July 13, 2020, respondent answered, requesting that this Court (1) lift the stay on the enforcement of the Suspension Notice; and (2) pursuant to CPLR 7804(g), transfer the instant petition to the Appellate Division, First Department, “where it should be dismissed,” as petitioner’s challenges to the underlying traffic convictions constitute an issue of substantial evidence (NYSCEF Doc. 19). Respondent asserts that it did not have an opportunity to be heard prior to the issuance of the June 30, 2020 temporary restraining order because said TRO was issued ex parte, without notice to DMV (NYSCEF Doc. 19, at 4-5). Additionally, respondent asserts that, at the time of respondent’s answer, petitioner had accrued “thirty-eight lifetime convictions” (NYSCEF Doc. 19, at 9).

### Discussion

#### Relevant CPLR Sections and Statutes

It is well-settled that in a CPLR Article 78 proceeding, the scope of judicial review is limited to the issue of whether the administrative action is rational. Pell v Board of Educ., 34 NY2d 222, 230-231 (1974). This Court may not disturb respondents’ determination unless there is no rational basis for the exercise of discretion or it was arbitrary and capricious. Id. at 231. “The arbitrary or capricious test chiefly relates to ... whether the administrative action is without foundation in fact. Arbitrary action is without sound basis in reason and is generally taken without regard to the facts.” Id. This Court may not simply second-guess respondents.

CPLR Article 7804(g) states:

Hearing and determination; transfer to appellate division. Where the substantial evidence issue specified in question four of section 7803 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 held within the judicial department embracing the county in which the proceeding was commenced. When the proceeding comes before it, whether by appeal or transfer, the appellate division shall dispose of all issues in the proceeding, or, if the papers are insufficient, it may remit the proceeding.

Question four of CPLR Article 7803 states, “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.”

Pursuant to 15 NYCRR 131.4(c and d):

(c) A motorist may be required to attend a formal hearing to investigate habitual or persistent violation of the provisions of the Vehicle and Traffic Law or of any lawful ordinance, rule or regulation made by local authorities in relation to traffic at which suspension or revocation action may be taken against his license when he has accumulated:

- (1) eleven or more points within an 18-month period;
- (2) nine or more points resulting from speeding violations within an 18-month period; or
- (3) four or more additional points within a 12-month period after having attended a formal hearing.

(d) A motorist may be required to attend a formal hearing to investigate habitual or persistent violation of the provisions of the Vehicle and Traffic Law or of any lawful ordinance, rule or regulation made by local authorities in relation to traffic at which suspension or revocation action may be taken against his license even though the motorist has not reached a point total specified in subdivision (c) of this section if he has been charged with three or more violations for which points are assessed within an unusually short period of time, which driving record, in the discretion of the commissioner, would tend to indicate that such person may be a persistent violator of traffic laws or regulations.

Pursuant to V & T Law Section 510(3)(d), “habitual or persistent violation of any of the provisions of this chapter” offers grounds for the DMV Commissioner to suspend a driver’s license.

#### The Covid-19 DMV Closures

This Court notes that, as respondent states in his answer, the first DMV locations to enter “Phase 3” reopening did so on June 12, 2020, prior to the date on which petitioner’s Suspension Notice became effective (June 13, 2020) (NYSCEF Doc. 19, at 10); New York City DMV locations entered “Phase 3” reopening on July 6, 2020.

#### The Instant Special Proceeding

This Court has reviewed the moving papers, among which are the following exhibits: the Traffic Tickets (NYSCEF Doc. 5 and 6); the “Notice of Appeals Board Decisions” for the Traffic Tickets (NYSCEF Doc. 7 and 8); the two hearing transcripts (NYSCEF Doc. 11. and 12); and petitioner’s March 5 and April 2, 2020 “Additional Appeal Arguments” (NYSCEF Doc. 9 and 10). This Court finds that respondent did not act arbitrarily and/or capriciously.

This Court upholds respondent’s assertion that “the availability of a restricted use license to a driver bears no relation to the appropriateness of the suspension” (NYSCEF Doc. 19, at 9).

Additionally, this Court does not find petitioner’s arguments about nonprejudicial errors in the Suspension Notice to be compelling.

#### Substantial Evidence

The Court of Appeals has held that “substantial evidence” requires that “a determination must be supported by sufficient facts or reasonable inferences that can be drawn from the record as a whole and must have a rational basis in the law” (NYSCEF Doc. 17, at 14). E.g. American Tel. & Tel. Co. v State Tax Commn., 61 NY2d 393, 400 (1984).

In his answer, respondent requests that this Court transfer the instant petition to the Appellate Division, First Department, pursuant to CPLR Article 7804(g), “where it should be dismissed” (NYSCEF Doc. 19, at 17). Respondent asserts that petitioner has raised an issue of substantial evidence by challenging the subject traffic convictions (NYSCEF Doc. 19, at 5). In O’Brien v Barnes. Bldg. Co., 85 Misc 2d 424 (Sup Ct, Suffolk County 1974), the court held that the question of whether a substantial evidence issue is present is a question to be decided by the court. Various cases have found that Supreme Court has the authority to determine whether or not an issue of substantial evidence is present. This Court finds that there is no issue as the DMV clearly had substantial evidence in front of it to determine as it did.

Thus, this Court finds that the Appeals Board relied on “sufficient facts or reasonable inferences” from the record in rendering its decisions. This Court holds that the subject determinations arose from and were based on substantial evidence, and a CPLR 7804(g) transfer is not required.

This Court has reviewed petitioner’s other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus, for the reasons stated herein, Michael Shabsels’s instant CPLR Article 78 special proceeding against respondent, Mark J. F. Schroeder, Commissioner of Motor Vehicles of the State of New York, is hereby denied and dismissed without prejudice, and the prior stay on enforcement of the Suspension Notice is hereby vacated. Accordingly, the Clerk is hereby directed to enter judgment denying and dismissing the instant petition.

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9/8/2020  
DATE

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ARTHUR F. ENGORON, J.S.C.

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APPLICATION:

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