

**Matter of Favara v New York State Dept. of Motor
Vehs.**

2020 NY Slip Op 33773(U)

November 9, 2020

Supreme Court, Kings County

Docket Number: 502550/2020

Judge: Loren Baily-Schiffman

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At an IAS Part 65 of the Supreme Court of the State of New York, County of Kings at a Courthouse Located at 360 Adams Street, Brooklyn, New York on the 9th day of ~~October~~ November, 2020.

PRESENT: HON. LOREN BAILY-SCHIFFMAN
JUSTICE

In the Matter of the Application of NUNZIO FAVARA,
Petitioner,

For a Judgment in the Nature of Certiorari and Mandamus
under Article 78

- against -

THE NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES
and, THERESA L. EGAN, as current New York State
Executive Deputy Commissioner of Motor Vehicles,
Respondents.

Index No.: 502550/2020

Motion Seq. # 1

DECISION & ORDER

As required by CPLR 2219(a), the following papers were considered in the review of this motion:

	<u>PAPERS NUMBERED</u>
Notice of Petition, Affidavits, Affirmation and Exhibits	1
Respondents' Answer	2

Upon the foregoing papers, Nunzio Favara ("Petitioner") moves this Court for an Order pursuant to Article 78 of the CPLR: (1) vacating the October 2, 2019 determination of the New York State Department of Motor Vehicles' Appeals Board which affirmed the Driver Improvement Bureau's June 28, 2019 denial of Petitioner's driver's license application; (2) ordering that petitioner's application for a driver's license be granted; and (3) granting such other relief as the Court may find to be just and proper.

Background

On January 19, 2017, Plaintiff was driving on East 14th Street in Brooklyn when he turned left onto Gravesend Neck Road and struck a pedestrian, Wan Yeung. Ms. Yeung, who was 90

years old at the time of the accident, was crossing the street with a shopping cart. The police report is unclear as to whether Ms. Yeung was crossing in the crosswalk or outside of it, in its vicinity. After the accident, Petitioner called the police. Petitioner was not under the influence of alcohol or drugs during the accident. As a result of the accident, Ms. Yeung died.

Petitioner was issued a desk appearance ticket on March 4, 2017 and appeared for an arraignment on March 5, 2017 for two counts of failing to yield the right of way to a pedestrian. On April 17, 2018, Petitioner pleaded guilty to failing to yield the right of way to a pedestrian in exchange for the promised sentence of a conditional discharge on condition that he complete the driver improvement and victim impact programs and pay a \$250 fine.

On December 4, 2018, after the criminal case had concluded, a fatality hearing was conducted in the DMV Division of Safety and Business Hearings before an Administrative Law Judge. The Administrative Law Judge found Petitioner violated section 1146(a) of the VTL for failing to exercise due care for a pedestrian in the roadway and section 4-03(a)(l)(i) of the New York City Traffic Rules and ordered Petitioner's driver license revoked. Until that point, Petitioner's driver license had not been revoked or suspended. Petitioner did not appeal this determination, purportedly assuming his license would only be revoked for 30 days.

Petitioner applied for re-licensing by the Driver Improvement Board in January 2019. On June 28, 2019, the Driver Improvement Board denied Petitioner's re-licensing application. On August 26, 2019, Petitioner appealed the Driver Improvement Board's determination before the DMV Appeals Board. The DMV Appeals Board affirmed the Driver Improvement Board's determination.

Discussion

It is well settled that any individual subject to an administrative decision may challenge such determination pursuant to Article 78 of the CPLR. Moreover, under Article 78 this Court has the power to grant Petitioner the relief he is entitled to. **CPLR § 7806**. The Supreme Court cannot vacate an administrative decision if the result was rational and not arbitrary and capricious. *Matter of Pell v. Board of Education of Union Free School*, 34 N.Y.2d 222 (1974). Additionally, this court can only review whether the conclusions of said hearing are rationally supported. *Matter of Kinsella v. Board of Education*, 64 A.D.2d 738 (3rd Dep't 1978). The Court must uphold an administrative penalty unless it is so disproportionate to the offense as to be shocking to one's sense of fairness. *Matter of Kreisler v. New York City Tr. Auth.*, 2 N.Y.3d 775, 776 (2004). One who objects to an administrative agency's determination must exhaust administrative remedies before commencing litigation under Article 78. *Brunjes v. Nocella*, 40 A.D.3d 1088, 1088-1089 (2d Dep't 2007).

In the instant case, Petitioner raises several issues regarding the initial December 4, 2018 before the Administrative Law Judge. Specifically, Petitioner notes that police documents are ambiguous as to whether Ms. Yeung was inside or outside the crosswalk when Petitioner struck her. Furthermore, the Administrative Law Judge denied Petitioner's request to adjourn the trial to allow Detective Fenley, who drafted these reports, to testify. Additionally, Petitioner maintains that the Administrative Law Judge improperly allowed representatives of Ms. Yeung's estate to testify at the hearing, even though the Administrative Law Judge expressly stated "the representatives of the Estate are invited to appear for the hearing, although legally, Counsel,

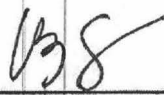
they can't participate in the hearing." *Hearing Transcript P. 7 Lines 12-14.* Finally, Petitioner argues that revocation of Petitioner's driver license is a disproportionate punishment.

Petitioner's arguments are unavailing. Petitioner did not administratively appeal the Administrative Law Judge's initial determination and therefore did not exhaust his administrative remedies. Moreover, Petitioner failed to demonstrate that an exception to the exhaustion of administrative remedies doctrine applies here. Petitioner merely states that he believed that his license would only be revoked for 30 days, even though neither the Decision of the Administrative Law Judge nor the transcript of the hearing support this belief. Accordingly, these issues are not subject to this Court's review. Finally, Petitioner did not provide any authority to support his assertion that revocation of his driver license was so disproportionate as to shock one's sense of fairness in this case, where Petitioner struck a pedestrian crossing the street resulting in her death. Therefore, it is hereby

ORDERED that Petitioner's motion is DENIED in its entirety.

This is the Decision and Order of the Court.

ENTER



LOREN BAILY-SCHIFFMAN
JSC

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KINGS COUNTY CLERK
FILED