

Matter of Kuza v New York City Dept. of Fin.
2021 NY Slip Op 32685(U)
December 16, 2021
Supreme Court, New York County
Docket Number: Index No. 100785/2021
Judge: John J. Kelley
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JOHN J. KELLEY

PART

56M*Justice*

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In the Matter of

KRZYSZTOF KUZA,

Petitioner,

- v -

NEW YORK CITY DEPARTMENT OF FINANCE and NEW
YORK CITY DEPARTMENT OF TRANSPORTATION,

Respondents.

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The following e-filed documents, listed by unnumbered documents A, B, C, D, E, F, G, H, I, J, K, L, M, and N that were filed in hard-copy paper form, and numbered NYSCEF document numbers 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14, 16, 1, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27 (Motion 001)

were read on this motion to/for

CPLR ART 78

**DECISION + ORDER ON
MOTION**

In this proceeding pursuant to CPLR article 78, the petitioner seeks judicial review of a February 24, 2021 determination of the New York City Department of Finance (DOF) Parking Violations Adjudication Division Appeals Board, affirming the initial January 14, 2021 determination of a DOF administrative law judge, made after a hearing, that the petitioner operated his vehicle in excess of the applicable speed limit. The respondents answer the petition and file the administrative record. The proceeding is transferred to the Appellate Division, First Department, for consideration and disposition.

Pursuant to CPLR 7803, the petitioner may challenge the DOF'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.*). Pursuant to CPLR 7804(g),

"[w]here the substantial evidence 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."

As set forth in paragraphs 31 to 36 of the petition, the petitioner alleges that the DOF's determinations here "were not supported by substantial evidence upon the entire record" and that the evidence relied upon by the DOF was insufficient to rise to the level of "substantial evidence." The substantial evidence question is raised where, as here, the petitioner challenges the factual findings set forth in a DOF determination, made after a hearing conducted by an administrative law judge, that the driver of a motor vehicle operated it in excess of the speed limit, as recorded by a camera (*see Chandler v New York City Dept. of Fin.*, 2017 NY Slip Op 51921[U], 2-3*, 58 Misc 3d 1204[A] [Sup Ct, Kings County, Jul. 7, 2017] [Wooten, J.]). Specifically, the petitioner challenges the DOF's factual determinations that the relevant speed camera was properly calibrated and that maintenance of the camera was properly accounted for in the relevant Department of Transportation log books. Indeed, judicial review of the factual basis for a substantive 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 Delgrande v Greenville Fire Dist.*, 132 AD3d 987 [2d Dept 2015]; *Matter of Moss Electric Air Conditioning Corp. v Goldin*, 120 AD2d 409 [1st Dept 1986]; CPLR 7803[4]).

Since there were no objections in point of law asserted by the respondents that would dispose of the proceeding prior to transfer, the matter must be transferred to the Appellate Division. "When the proceeding comes before it, whether by appeal or transfer the appellate division shall dispose of all issues in the proceeding" (CPLR 7804[g]; *see Matter of Rossi v New York City Dept. of Parks & Recreation*, 127 AD3d 463, 467 [1st Dept 2015]). Thus, the Appellate Division has the authority to address and dispose of the petitioner's contention that the DOF misinterpreted the Vehicle and Traffic Law provision authorizing a speed camera

technician to certify to his or her qualifications and other issues of fact by means of an affirmation (see Vehicle and Traffic Law § 1180-b[d]) so as to permit the submission of an unnotarized affirmation.

The court notes that, in accordance with applicable court rules, in order to place the transferred proceeding on the calendar of the Appellate Division, First Department, so that it may be heard, the petitioner in a transferred CPLR article 78 proceeding must "perfect" the transferred proceeding either

- (1) upon the full record reproduced (see 22 NYCRR 1250.5[b], 1250.6, 1250.7, 1250.9[a][1]), in which case the petitioner must, within six months of the date of this order, file, with the Clerk of the Appellate Division, First Department, 27 Madison Avenue, New York, NY 10010, an original and five hard copies of a reproduced full record, consisting of all papers previously filed with this court in this proceeding, an original and five hard copies of a petitioner's brief explaining the reasons why the petitioner contends that the DOF's determination should be annulled, and one digital copy of the record and brief, with proof of service of one hard copy of the record and brief upon each other party to the appeal, or
- (2) by the appendix method (see 22 NYCRR 1250.5[c]), or
- (3) on the original record (see 22 NYCRR 1250.5[5]).

If the petitioner elects to perfect the transferred proceeding either by the appendix method or on the original record, he is obligated to

- (a) subpoena the case file from the New York County Clerk, located at 60 Centre Street, Room 103B/141B, New York, NY 10007, to the Clerk of the Appellate Division, First Department, 27 Madison Avenue, New York, NY 10010, in order to permit the Appellate Division to consider the proceeding,
- (b) file an original and five copies of a petitioner's brief with the Clerk of the Appellate Division, First Department, within six months of the date of this order, explaining the reasons why the petitioner contends that the DOF's determination should be annulled, and
- (c) file, with the clerk the Appellate Division, First Department, proof of service, in the form of an affidavit, stating that someone on his behalf served the subpoena upon the New York County Clerk (see 22 NYCRR 1250.9[a][4]; see also 22 NYCRR 1250.5[e][4], 1250.12[a]).

The court further notes that forms for the necessary subpoena are available from the New York County Clerk's Office, and must be filled out and delivered to the New York County Clerk, along

with a copy of this order, before that office will transfer the case file to the Clerk of the Appellate Division. Should the New York County Clerk require this court to sign and "so order" the subpoena before he shall accept it, the petitioner shall submit a completed subpoena form directly to this court at 71 Thomas Street, Room 304, New York, NY 10013, or by e-mail to LAGOLDBE@nycourts.gov, for the Justice's signature.

Accordingly, it is

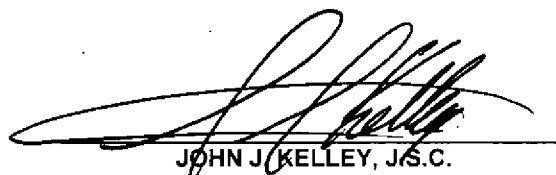
ORDERED that, pursuant to CPLR 7804(g), the proceeding is transferred to the Appellate Division, First Department, for disposition; and it is further,

ORDERED that the petitioner shall serve a copy of this order with notice of entry upon the County Clerk, and, if electing to perfect the transferred proceeding using the appendix method or on the original record, shall also serve a completed and, if required, so-ordered subpoena upon the County Clerk directing the County Clerk to transfer the case file to the Clerk of the Appellate Division, First Department.

This constitutes the Decision and Order of this court.

12/16/2021

DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE