

**Guilbet v New York State Dept. of Motor Vehs.**

2026 NY Slip Op 31213(U)

January 15, 2026

Supreme Court, New York County

Docket Number: Index No. 100698/2025

Judge: Phaedra F. Perry-Bond

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA PERRY-BOND PART 35

Justice

ROBERTO A. GUILBET, Petitioner
- v -
NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, Respondent
INDEX NO. 100698/2025
MOTION DATE 11/5/2025
MOTION SEQ. NO. 001

NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES

DECISION + ORDER ON MOTION

Respondent

The following papers, numbered 1 - 2, were read on this application to/for Article 78
Notice of Motion/ Petition/ OSC - Affidavits - Exhibits No(s) 1
Answering Affidavits - Exhibits No(s) 2
Replying No(s)

FILED
JAN 20 2026
NEW YORK COUNTY CLERK

Petitioner, Roberto A. Guilbet moves pursuant to Article 78 to annul the Defendant, New York State Department of Motor Vehicles' (Respondent or DMV) final determination, and to vacate the conviction in the DMV Case No. B18N016238.

As an initial matter, Petitioner argues that the Court does not have jurisdiction over the instant matter, as Respondent alleges that Petitioner did not effectuate proper service on them. A review of the record demonstrates that the Petitioner's service was improper, rendering this Court without personal jurisdiction over the Respondent (CPLR 307(2) and 7804(c).

BACKGROUND

Petitioner received a speeding ticket on September 18, 2018. An administrative hearing was held on July 23, 2024, with Petitioner appearing with counsel and the police officer appearing to provide testimony. The Administrative Law Judge concluded the hearing and sustained the charge. Thereafter, Petitioner submitted an appeal form to the appeals board on August 20, 2024,

and a full appeal on November 4, 2024, citing unclear speed limitations due to the absence of posted signs, margin of error in speed detection and inconsistencies in citation location.

On March 17, 2025, a Notice of Appeals Board Decision letter confirming Petitioner's conviction was issued to Petitioner. Petitioner then filed a "formal Request for Reconsideration of Appeal Decision on April 13, 2025, which was not reviewed. Thereafter, Petitioner commenced the instant action.

### LEGAL DISCUSSION

Pursuant to CPLR 7804(c), where an article 78 proceeding is commenced against a "state body or officers," the notice of petition must be served upon the Attorney General (*Matter of Reillo v New York State Thruway Auth*, 159 AD3d 993, 994 [2d Dept 2018] [court properly denied petition and dismissed proceeding against state body for failure to serve Attorney General]). Failure to effect proper service will prevent a court from acquiring personal jurisdiction over a respondent and warrant dismissal of the claim (*Matter of Golden's Bridge Fire Dist. v Westchester County Dept. of Health/Board of Health*, 82 AD3d 1236 [2d Dept 2011]; *Randazzo v Neufeld*, 277 AD2d 387, 388 [2d Dept 2000]).

Respondent submits the Affirmation of Kathleen A. McDonald, a Senior Attorney for the DMV, who affirms that Petitioner served the DMV Counsel's Office through USPS Priority Mail on June 30, 2025, through certified mail, with return receipt requested on September 26, 2025, and on November 4, 202, by certified mail return receipt requested, without the legend "URGENT LEGAL MAIL". Petitioner failed to serve the Attorney General on any of the three occasions he attempted to serve the DMV Counsel's Office. Here, it is undisputed that petitioner never served the Attorney General's Office, although obligated to do so by CPLR 7804(c). Thus, dismissal of the petitioner is warranted on that basis.

Even if Petitioner now seeks to correct the service error, the general rule is that the statute of limitations for review of an agency determination runs from the date the determination "becomes final and binding upon the petitioner" (CPLR § 217 [1]), i.e. when petitioner received notice of the determination and was aggrieved by it (*Community Counseling & Mediation Servs. v New York City Dept. of Health & Mental Hygiene*, 45 AD3d 315, 845 N.Y.S.2d 257 [1st Dept 2007]; *Triway Realty Corp. v City of New York*, 218 AD2d 592, [1st Dept 1995]). The statutory period commenced as soon as the aggrieved party is notified, which, in the case of mailing, is considered from the date of mailing. (*Matter of McQuaige v New York City Hous. Auth.*, 2013 N.Y. Misc. LEXIS 4992). Here, Respondent submits the Affirmation of Tanya L. Davis, an attorney, and the Chair of the New York State Department of Motor Vehicles Appeals Board. She affirms the procedures of the Appeals Board and specifically, the processing system as it relates to mailing procures and a review of the files of the DMV. She states that the date of the Notice of Appeals Decision Letter is the same date the letter is put in the out basket for mail pick up and the same day the letter is picked up. She further states that mail is picked up from the Appeals Board twice a business day, in the morning and in the afternoon. In addition, she further states that under the Commissioners' Regulations, 15 N.Y.C.R.R. § 126.2(f), there is a presumption that the mailing of notices, which includes Notice of Appeals Board Decision, occurred on the date shown in the records of the Appeals Board as the date on the notice.

Here, the four-month statute of limitations began to run after March 17, 2025, when the Notice of Decision letter was issued, expiring on July 17, 2025.

[INTENTIONALLY LEFT BLANK]

Accordingly, it is

ORDERED and Adjudged that the petition is denied, and the proceeding is dismissed.

The foregoing constitutes the decision, order and judgment of this Court.

**FILED**  
JAN 20 2026  
NEW YORK COUNTY  
COUNTY CLERK

1/15/26  
DATE

  
HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

REFERENCE

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT