

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**

**IN AND FOR SUSSEX COUNTY**

DAVID J. BUCHANAN,	)	
	)	C.P. U6-12-001026
Appellant,	)	
	)	
vs.	)	
	)	
JENNIFER L. COHAN,	)	
Director, Division of	)	
Motor Vehicles,	)	
	)	
Appellee.	)	

Submitted: September 6, 2012  
Decided: September 19, 2012

*David Buchanan, Self-Represented Appellant*  
*Frederick Schranck, Esquire, Attorney for Appellee*

**DECISION ON APPEAL OF COMMISSIONER’S ORDER**

This is an appeal by David J. Buchanan (“Buchanan”) from the Commissioner’s Recommendation dismissing an Appeal of the Department of Motor Vehicle’s Order revoking his driver’s license pursuant to 21 *Del. C.* §§ 2733 and 2744.

**FACTS**

On January 24, 2008, the Division of Motor Vehicles (“DMV”) revoked Buchanan’s driver’s license pursuant to 21 *Del. C.* §§ 2733 and 2744, for failing to “comply with a citation, summons, [or] ticket” issued to Buchanan in White Plains, New York. Following the suspension of his license, Appellant provided DMV with a new court date for the matter pending in New York, paid a \$25.00 fee and, in turn, DMV lifted the license suspension on March 19, 2008. On June 26, 2009, Delaware DMV received a second notice from the New York State Department of Motor Vehicles regarding Appellant’s failure to answer and pay fines on two (2) separate traffic tickets.

On September 28, 2009, DMV sent a letter to Appellant informing him that his license would be suspended effective October 12, 2009.

On July 2, 2012, Buchanan filed with this Court a Notice of Appeal “from the Order of Suspension . . . dated January 24, 2008 . . .” On August 15, 2012 the Commissioner of this Court recommended that the appeal be dismissed as untimely filed. Buchanan has appealed that recommendation.

## **STANDARD OF REVIEW**

### **Review of a Commissioner’s Recommendation**

The dismissal of an appeal is case-dispositive. The standard of review of a Commissioner’s Recommendation for case-dispositive matters is *de novo*.<sup>1</sup> The judge may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the Commissioner.”<sup>2</sup>

### **Discussion**

The Court has reviewed the arguments made by Mr. Buchanan in his motion, and finds them without merit. As noted above, the specific Order of Suspension Mr. Buchanan has appealed is non-existent. That suspension was lifted, and Mr. Buchanan’s license reinstated, on March 28, 2008. Thus, the matter appealed is moot, and may not be addressed by this Court.

Even if Buchanan intended to appeal the October 12, 2009 suspension of his license which remains in effect ( and which the Court doubts was his intent), the Commissioner correctly held that the Court’s Civil Rule 72.1 requires than an appeal of

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<sup>1</sup> *Court of Common Pleas Civil Rule 112(A)(4)(iv).*

<sup>2</sup> *Id.*

this DMV suspension must be filed within fifteen (15) days from the entry of the order. Appellant filed this appeal nearly three years after the entry of that DMV suspension.

Finally, although Appellant raises certain due process arguments regarding the issuance of the suspension, they may only be addressed, if addressable at all, by writ of certiorari to the Superior Court.<sup>3</sup>

### CONCLUSION

After a *de novo* review of the law and facts, I find that the Commissioner was correct in recommending dismissal of the appeal. The Commissioner's decision is **AFFIRMED**. The appeal is **DISMISSED**.

**IT IS SO ORDERED.**

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**Kenneth S. Clark, Jr., Judge**

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<sup>3</sup> *Wynne v. Shahan, supra* (citing *Desantis v. Shahan*, 1995 WL 339175 at \*2 (Del. Super. Ct.)).