

**IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE**  
**IN AND FOR SUSSEX COUNTY**

NICHOLAS S. SALGADO, :  
 : C.A. No. 03-11-019  
 :  
 Defendant Below, :  
 Appellant, :

vs. :

MICHAEL D. SHAHAN, Director, :  
 Delaware Division of Motor Vehicles, :  
 Department of Public Safety, :  
 :  
 Plaintiff Below,  
 Appellee.

Date Decided: May 27, 2004

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

KENNETH S. CLARK, JR., Judge.

This is an appeal by Nicholas Salgado 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.* §§ 2742(d) and 2744.

## FACTS

The Division of Motor Vehicles (“DMV”) revoked the driver’s license of Nicholas Salgado (“Salgado”) pursuant to 21 *Del. C.* § 2742. Subsection (d) of that statute provides:

No revocation . . . is effective until the Secretary or a police officer or other person acting on the Secretary’s behalf notifies the person of revocation and allows the person a 15-day period to request of the Secretary in writing a hearing as herein provided. If no request is filed in writing with the Division of Motor Vehicles within the 15-day period, the order of revocation becomes effective.

Salgado did not request a hearing within the 15-day period, and subsequently DMV revoked his license. Salgado appealed the revocation of his license to this Court. On February 6, 2004, Commissioner Joseph Whitmore Maybee recommended dismissal of the appeal. The Commissioner held that the Court of Common Pleas lacked jurisdiction to hear the appeal pursuant to 21 *Del. C.* § 2744 since the DMV never conducted a hearing on the matter. Salgado has appealed the Commissioner’s 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*. *Court of Common Pleas Civil Rule* 112(A)(4)(iv.). The judge may “accept, reject, or

modify, in whole or in part, the findings or recommendations made by the Commissioner.” *Id.*

### **Review of the DMV Order**

Appeals to this Court from Orders issued by the DMV are determined on the record. *Civil Rules Governing the Court of Common Pleas*, 72.1(a) and 72.1(g); *Shahan v. Landing*, 643 A.2d 1357, 1359 (Del. 1994). Therefore, the scope of review is limited to correcting errors of law and determining whether the record below supports the lower court’s findings of fact and conclusions of law. *Mills v. Voshell*, 1993 WL 543997 (Del. Super. Ct.) citing *Eskridge v. Voshell*, 593 A.2d 589 (Del. 1991). Thus, while this Court must make a *de novo* review of the Commissioner’s Recommendation, it is also required to limit its review of the DMV Order to the record made below. However, for the reasons set forth below, the Court in the present matter need only review the Commissioner’s recommendation, since it lacks jurisdiction to hear an appeal of the DMV order.

### **APPEALS WITHOUT A DMV HEARING**

Under 21 *Del. C.* § 2744, the Secretary’s decision is final and may not be appealed unless the defendant requests a hearing and the Secretary rules against the defendant at that hearing. If no hearing has been held, the right to appeal the Secretary’s decision has not been perfected, and this Court therefore lacks jurisdiction to entertain the appeal. In *Wynne v. Shahan*, Del. Com. Pl., C.A. No. 03-11-080, Beauregard, J., (May 11, 2004), this Court concluded that the

statute conferring appellate jurisdiction upon it to hear DMV appeals narrowly limits that jurisdiction to appeals of DMV *hearings*. This Court does not have jurisdiction to hear an appeal of a denial or failure to grant a DMV hearing. See *Desantis v. Shahan*, 1995 WL 339175 at \*2 (Del. Super. Ct.).

### DUE PROCESS

Salgado argues that his Constitutional rights to both substantive and procedural due process were violated. He claims that the notice he received of his right to a DMV hearing was inadequate since it was in English and he only speaks Spanish. In addition, he alleges the notice was inadequate because the arresting officer gave him an incomplete form. While these arguments may have merit, it is not within this Court's jurisdiction to decide such matters. The Court of Common Pleas is a court of limited jurisdiction created solely by statute. There is no statutory authority for this Court to hear this appeal. Neither 21 Del. C. § 2744 nor any other statute within the Delaware Code confers such power. Therefore, Salgado's due process claim cannot be addressed by this Court, but may be pursued in Superior Court by writ of certiorari. *Wynne v. Shahan*, *supra* (citing *Desantis v. Shahan*, 1995 WL 339175 at \*2 (Del. Super. Ct.)).

## **CONCLUSION**

After a *de novo* review of the law and facts, I find that the Commissioner's decision to dismiss the appeal was proper, and is **AFFIRMED**. The appeal is **DISMISSED**.

**IT IS SO ORDERED.**

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