

Matter of Faisal v New York State Dept. of Motor Veh.

2013 NY Slip Op 33171(U)

December 2, 2013

Supreme Court, Queens County

Docket Number: 12778/13

Judge: Howard G. Lane

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MEMORANDUM

SUPREME COURT - QUEENS COUNTY
IA PART 6

In the Matter of MUHAMMAD FAISAL,

BY: **LANE, J.**

Petitioner,

DATED: December 2, 2013

INDEX NO.: 12778/13

-against-

MOTION DATE:

August 21, 2013

THE NEW YORK STATE DEPARTMENT OF
MOTOR VEHICLES,

MOTION CAL. NO.: 50

Respondent.

MOTION SEQUENCE NO.: 1

This is an Article 78 proceeding brought for the purpose of, vacating, annulling, and setting aside a determination made by the New York State Department of Motor Vehicles, which determination made after a hearing, adjudged petitioner guilty of speeding and affirmed that judgment on administrative appeal. Petitioner seeks that the speeding conviction and any resulting penalty be expunged from petitioner's driving record.

The Department of Motor Vehicles charged petitioner, Muhammad Faisal with a speeding violation allegedly occurring on November 8, 2010.

The petitioner appeared for an administrative hearing on May 22, 2012, where he was represented by an attorney. After the hearing, the Administrative Law Judge convicted the petitioner of speeding. Because it was petitioner's third

speeding offense within 18 months, the conviction resulted in an automatic revocation of his license for a six-month period.

The petitioner took an administrative appeal of the determination made by the Administrative Law Judge. On or about May 16, 2013, the Appeals Board of the Traffic Violations Bureau issued its decision which essentially upheld all of the findings made by the Administrative Law Judge and the penalties that he imposed.

This Article 78 proceeding ensued. Both sides request that the proceeding be transferred to the Appellate Division pursuant to CPLR 7804(g) because the petitioner has raised a substantial evidence question.

CPLR 7803, "Questions Raised," provides in relevant part: "The only questions that may be raised in a proceeding under this article are: *** 4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence" (see, Jennings v. New York State Office of Mental Health, 90 NY2d 227; Lahey v. Kelly, 71 NY2d 135; Silberfarb v. Board of Co-op. Educational Services, Third Supervisory Dist., Suffolk County, 60 NY2d 979; Jones v. Hudacs, 221 AD2d 531). In the case at bar, the challenged administrative determination was reached after the petitioner received a hearing required by law at which evidence was taken. The proper standard of review is, therefore, whether the administrative determination is supported by substantial evidence (see, Jennings v. New York

State Office of Mental Health, 90 NY2d 227; Abraham v. Cuevas, 41 AD3d 840; Torhan v. Landi, 39 AD3d 657). Where, as here, an Article 78 petition raises a substantial evidence question and the other issues raised are not "objections" (threshold issues) that can terminate the proceeding within the meaning of CPLR 7804(g), the IAS Part must transfer the entire case to the Appellate Division pursuant to CPLR 7804(g) (see, Royster v. Goord, 26 AD3d 503; Matter of Al Turi Landfill v. New York State Dept. of Env'tl. Conservation, 289 AD2d 231, affd 98 NY2d 758). Case law indicates that Article 78 challenges to determinations made by the New York State Department of Motor Vehicles after a hearing should be transferred to the Appellate Division (see e.g., Colao v. New York State Dept. of Motor Vehicles Appeals Bd., 92 AD3d 608; Diaz v. New York State Dept. of Motor Vehicles, 67 AD3d 568; Sureway Towing, Inc. v. Martinez, 8 AD3d 490).

Accordingly, it is ADJUDGED that the petition is granted to the extent that this proceeding is respectfully transferred to the first available term of the Appellate Division, Second Department, pursuant to CPLR 7804(g).

That branch of the order to show cause seeking a preliminary injunction is hereby denied.

To establish entitlement to a preliminary injunction, the moving party must demonstrate "(1) the likelihood of success on the merits, (2) irreparable injury absent the granting of the preliminary injunction, and (3) a balancing of the equities in

the movant's favor" (Schweizer v. Town of Smithtown, 19 AD3d 682, 682, 798 NYS2d 99 [2005]; see also, Miller v. Price, 267 AD2d 363, 364, 700 NYS2d 209 [1999]; Barone v. Frie, 99 AD2d 129, 132, 472 NYS2d 119 [1984])). Preliminary injunctive relief is a drastic remedy which will not be granted unless a clear right is established by undisputed facts and the burden of showing an undisputed right rests upon the movant (Miller, 267 AD2d at 364).

In support of his claim of irreparable injury, petitioner, through his attorney, has asserted that he is a taxi driver who would not be able to continue driving a for-hire vehicle with a restricted licence and this will place his family's financial security in jeopardy. Other than his attorney's representation, petitioner himself has failed to provide the court with any factual support evidencing same. Accordingly, on the papers presently submitted before the court, petitioner has not established irreparable injury in the event he were to lose his driver's license (Cubas v. Martinez, 33 AD3d 96, 106, 819 NYS2d 10 [2006] [plaintiffs' affidavits asserting "economic disadvantage resulting from the inability to operate a motor vehicle, whether as a condition of employment or as a means to commute to a place of employment" did not sufficiently support a showing of irreparable injury]; see also, Neos v. Lacey, 291 AD2d 434, 737 NYS2d 394 [2002]; Kurzban & Son v. Board of Educ. of City of N.Y., 129 AD2d 756, 514 NYS2d 749 [1987])). As petitioner has failed to establish irreparable injury, the court

need not address whether the other factors have been met.

Settle order.

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HOWARD G. LANE, J.S.C.