

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the application of GIUSEPPE MANCUSO,

Petitioner,

- against -

Index No. _____

VERIFIED PETITION

NEW YORK STATE DEPARTMENT OF MOTOR
VEHICLES and the COMMISSIONER OF THE NEW
YORK STATE DEPARTMENT OF MOTOR VEHICLES,
in his Official Capacity Only.

Respondents.

For a judgment pursuant to Article 78 of the CPLR
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Petitioner GIUSEPPE MANCUSO, a resident of the State of New York, by and through his attorneys, Georgiou Law Firm, as and for his Verified Petition pursuant to Article 78 of the Civil Practice Law and Rules, respectfully alleges as follows:

PARTIES

1. Petitioner GIUSEPPE MANCUSO is an individual and a resident of the State of New York.

2. Respondent NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES is a governmental agency in the State of New York and is a “body” within the meaning of CPLR 7802(a). DMV has its principal office at 6 Empire State Plaza, Albany, New York 12228, and has field offices in, among other places, Kings County, New York.

3. Respondent COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES is the chief executive officer of Respondent DMV with the statutory

authority to approve or deny applications for drivers' licenses. Commissioner is an "officer" within the meaning of CPLR 7802(a). Commissioner has a principal office at 6 Empire Plaza, Albany, New York 12228, and has field offices under his or her supervision in, among other places, Kings County, New York.

4. Respondents are hereafter jointly and severally referred to as "DMV" or "Respondents."

JURISDICTION AND VENUE

5. Jurisdiction is proper in New York under CPLR 301.

6. Venue is set in Kings County under CPLR 7804(b) and CPLR 506(b) because Kings County is the county in which petitioner resides and where respondent authority made the determination complained of in this proceeding.

7. Petitioner has standing to maintain this proceeding because he is an aggrieved party within the meaning of Article 78 of the CPLR.

FACTS

8. Mr. Mancuso has had an impeccable driving history during the past 19 years, with no driving offenses, either alcohol-related or otherwise.

9. Prior to the past 19 years, Mr. Mancuso did have a total of six alcohol-related offenses, listed as follows:

VIOLATION	ALCOHOL CONVICTIONS
08/05/2000	Driving with .10% or more alcohol in blood
12/19/1992	Driving with .10% or more alcohol in blood
10/25/1992	Driving while intoxicated
09/25/1992	Driving while intoxicated
09/15/1992	Driving under the influence out of state
05/27/1990	Driving while ability impaired by alcohol

10. Mr. Mancuso accepted his punishment for these offenses and voluntarily went through a rehabilitation program to improve his life and to become a safer and more responsible driver. His unblemished driving record during the 18-year period before the DMV's recent revocation is a testament to his rehabilitation.

11. The DMV reissued a driver's license to him on May 8, 2003 and renewed it on September 9, 2011 and on October 12, 2018, for a continuous and uninterrupted period of over 16 years.

12. On November 16, 2018, the DMV revoked Mr. Mancuso's driver's license on the grounds that he was a lifetime repeat alcohol offender, with his last offense more than 18 years earlier.

13. The DMV did not notify Mr. Mancuso of his license revocation.

14. In or around March, 2019, Mr. Mancuso was notified by his automobile insurance carrier that his driver's license was revoked. Mr. Mancuso then promptly applied to the DMV for re-licensing.

15. By letter dated May 2, 2019, the DMV's Driver Improvement Bureau notified Mr. Mancuso that his application for a New York State driver license was denied pursuant to Sections 136.5(a)(4) and 136.5(b)(1) of the Regulations of the Commissioner of Motor Vehicles. A copy of that letter is attached at **Exhibit A**.

16. On May 19, 2019, Mr. Mancuso timely submitted an Administrative Appeal Form requesting that the decision to permanently revoke his driver's license be rescinded. A copy of the Administrative Appeal Form is attached at **Exhibit B**.

17. Mr. Mancuso filled out the Administrative Appeal Form he submitted without any assistance from legal counsel. The basis of his appeal was that the DMV's decision to revoke his

driver’s license more than 18 years after his offense, during which he had no violations, lacked a rational basis and was contrary to the DMV’s own general policy. “I was issued a license May 8, 2003. Since then I have not committed another DWI or other violation.”

18. With a written decision dated June 25, 2019, the Department of Motor Vehicles Administrative Appeals Board denied Mr. Mancuso’s appeal. A copy of the Decision of Appeal is attached at **Exhibit C**.

19. The Administrative Appeals Board mailed its Decision of Appeal to Mr. Mancuso with a notice dated July 9, 2019. A copy of the Notice of Appeal Decision is attached at **Exhibit D**.

20. In the present Petition, Mr. Mancuso respectfully requests that the Court review the Decision of Appeal by the Department of Motor Vehicles Administrative Appeals Board and overturn it as arbitrary and capricious in that it lacks a rational basis.

21. The revocation of Mr. Mancuso’s driver’s license has resulted in his taking the subway during the midnight hours from his home in Brooklyn to his work in the Bronx, requiring two changes of trains each way during midnight hours. The round trip commuting time exceeds five hours each day. He also has had to turn down jobs because most of them require the use of a motor vehicle.

22. No previous application has been made to this or any other court for the relief requested herein.

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ARGUMENT

THE DMV'S DECISION TO REVOKE PETITIONER'S DRIVER'S LICENCE IS NOT SUPPORTED BY THE EVIDENCE, DOES NOT HAVE A RATIONAL BASIS AND IS ARBITRARY AND CAPRICIOUS.

23. Courts must set aside an agency action if “there is no rational basis for the exercise of discretion or the action complained of is ‘arbitrary or capricious.’” *Pell v. Board of Educ.*, 34 N.Y.2d 222, 231 (1974). An administrative action “is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts.” *Peckham v. Calogero*, 12 N.Y.3d 424, 431 (2009).

24. “Each case ... must be considered in the light of the particular circumstances there involved. In reviewing administrative determinations, a court must consider on the one hand that such determinations may not be disturbed where there is substantial evidence to support them — evidence sufficient to satisfy a reasonable man, and on the other hand a reviewing court must also consider that insufficiency of evidence is, in the eyes of the law, no evidence — certainly no evidence of any substantial character... A reviewing court has more than a passive, acquiescent function to perform when it passes upon the determinations of administrative agencies; it has a real judicial function to exercise where it reviews the sufficiency and the substantiality of the evidence upon which those agencies have acted.” *Reynolds v. Triborough Bridge & Tunnel Auth.*, 276 A.D. 388, 392 (1st Dep’t 1950).

25. In the broadest sense, 15 NYCRR Part 136 was promulgated to “establish[] criteria to identify individual problem drivers,” that is, applicants for new licenses who “ha[ve] had a series of convictions, incidents and/or accidents... which in the judgment of the [C]ommissioner... upon review of the applicant’s entire driving history, establishes that the

person would be an unusual and immediate risk upon the highways” (15 NYCRR 136.1 [a], [b] [1]).”

26. In developing these regulations, the Commissioner considered empirical data, which indicated that drivers with three or more alcohol – or drug-related driving convictions are involved in a disproportionate number of motor vehicle accidents. Accordingly, the Commissioner rationally determined that such drivers “pose the highest risk to the general population.” (NY Reg, Mar. 13, 2013 at 43) and, thus, should not be granted new, unrestricted licenses until after a *waiting period of several years* (see 15 NYCRR 136.5 [b] [3], [4]) *[emphasis added]*.” Respondents thus recognize that a waiting period of several years is an indicator that the driver is less likely to commit alcohol-related offenses.

27. The governing regulation, 15 NYCRR part 136, has a twofold purpose of rehabilitating a “problem driver” and, when necessary, taking appropriate disciplinary action to protect that driver “and the public alike” (15 NYCRR 136.1[a], [b]).

28. Section 136.5 (b) (1) provides in pertinent part that

Upon receipt of a person’s application for relicensing, the commissioner shall conduct a lifetime review of such person’s driving record. If the record review shows that:

- (1) the person has five or more alcohol- or drug-related driving convictions or incidents in any combination within his or her lifetime, then the commissioner shall deny the application.

29. The language of the regulation does not expressly require the Commissioner to take into account the period of time that has passed from the most recent conviction or incident to the time that the license is revoked. It appears to treat incidents that occurred decades ago by persons who are completely rehabilitated the same as more recent incidents. The regulation,

however, provides a mechanism to prevent such gravely unjust outcomes. The broad discretion given to the Commissioner by Section 136.5(d) provides, in pertinent part, that

While it is the commissioner's general policy to act on applications in accordance with this section, the commissioner shall not be foreclosed from consideration of unusual, extenuating and compelling circumstances that may be presented for review and which may form a valid basis to deviate from the general policy, as set forth above, in the exercise of discretionary authority granted under sections 510 and 1193 of the Vehicle and Traffic Law. ...

30. Mr. Mancuso's 18 continuous years of sobriety and an unblemished driving record with no offenses is an obvious case of unusual, extenuating and compelling circumstances. The lengthy period that has passed since Mr. Mancuso's last offense in the year 2000 is a glaring aspect of the lifetime driving record that was reviewed by the DMV before reaching its decision to revoke the license. Although these unusual, extenuating and compelling circumstances do not come from extrinsic evidence, they are very much a part of Mr. Mancuso's lifetime driving record.

31. When the Commissioner does consider unusual, extenuating and compelling circumstances in reaching a decision, she must expressly state it in her decision. Section 136.5(d) provides, in pertinent part:

If an application is approved based upon the exercise of such discretionary authority, the reasons for approval shall be set forth in writing and recorded. If an approval is granted based upon unusual, extenuating and compelling circumstances, the applicant may be issued a license or permit with a problem driver restriction, as set forth in section 3.2(c)(4) of this Title, and may be required to install an ignition interlock device in any motor vehicle owned or operated by such person for a period of five years.

32. In the case at bar, neither the DMV Driver Improvement Bureau's decision nor the subsequent administrative appeal decision expressly state that Mr. Mancuso's 18-year good

driver record with no offenses was taken into consideration as an unusual, extenuating and compelling circumstance.

33. In a recent case, the Appellate Division, Second Department, ruled that the DMV's denial of an application for a new driver license was arbitrary and capricious where the Justice Court delayed for nearly six years reporting that it had ordered the revocation of applicant's driver license to the Department of Motor Vehicles. *Resto v. State, Dept. of Motor Vehicles*, 135 A.D.3d 772, 22 N.Y.S.3d 584 (2nd Dep't 2016). Mr. Mancuso's case involves not six but 18 years since the date of his most recent offense.

34. By disregarding Mr. Mancuso's rehabilitation as evidenced by his commendable driving record over the most recent 18 years, the DMV's decision lacks a rational basis and is therefore arbitrary and capricious.

* * *

WHEREFORE, the Petitioner seeks:

1. An Order reviewing and determining the findings of the New York State Department of Motor Vehicles dated June 25, 2019 were not based upon the evidence, lacked rational basis, and were arbitrary and capricious;
2. An Order vacating the Department of Motor Vehicles' decision to revoke Petitioner's driver's license;
3. An Order directing the Department of Motor Vehicle to issue a driver's license to Petitioner; and

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4. for such further relief as the Court deems just, equitable and proper.

Dated: New York, NY
November 4, 2019

By: 
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Commissioner of
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Albany, New York 12228

New York State Attorney General
55 Hanson Place, #1080
Brooklyn, NY 11217

VERIFICATION

I, GIUSEPPE MANCUSO, petitioner in this Special Proceeding, hereby affirm under penalty of perjury that the foregoing Verified Petition is true and correct to the best of my knowledge, except as to matters stated upon information and belief, and as to such matters, I believe them to be true.

Giuseppe Mancuso
Giuseppe Mancuso

Sworn to before me this
4th day of November, 2019.

V. Georgiou

Notary Public

