83 A.D.3d 838
Supreme Court, Appellate Division,
Second Department, **New York**.

In the **Matter of** Wilbur **HILDRETH**, petitioner,
v.
NEW YORK STATE DEPARTMENT OF MOTOR **VEHICLES APPEALS BOARD**, et al., respondents.

April 12, **2011**.

Synopsis

Background: Motorist brought article 78 proceeding to review a determination of the State Department of Motor **Vehicles Appeals Board**, upholding revocation of his driver's license for refusal to submit to a chemical blood-alcohol test.

Holdings: The Supreme Court, Appellate Division, held that:

[1] evidence was sufficient to support ALJ's finding that motorist was driving on a "public highway," and

[2] motorist was not prejudiced by delay of more than six months in holding chemical test refusal hearing following his arrest.

Determination confirmed and proceeding dismissed.

West Headnotes (9)

[1] Administrative Law and Procedure
Substantial evidence

In order to annul an administrative determination made after a hearing, a court must conclude that the record lacks substantial evidence to support the determination.

2 Cases that cite this headnote

[2] Administrative Law and Procedure
Substantial evidence

"Substantial evidence" necessary to annul an administrative determination made after a hearing is such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact.

3 Cases that cite this headnote

[3] Administrative Law and Procedure
Conflicting evidence

Administrative Law and Procedure
Weight of evidence

Courts may not weigh the evidence or reject the choice made by an administrative agency where the evidence is conflicting and room for choice exists.

3 Cases that cite this headnote

[4] Automobiles
Intoxication

Arresting officer's testimony that he observed motorist pull into a parking lot was sufficient to support ALJ's finding that motorist was driving on a "public highway," as required to establish that there were reasonable grounds to arrest motorist for driving while intoxicated; it was reasonable to infer that prior to pulling into the parking lot, the motorist had been driving on public roadway. McKinney's **Vehicle** and Traffic Law §§ 1192(7), 1194.

Cases that cite this headnote

[5] Administrative Law and Procedure
Proceedings in General

Time limitations imposed on administrative agencies by their own regulations are not mandatory.

Cases that cite this headnote

[6] Administrative Law and Procedure
Harmless or Prejudicial Error

Absent a showing of substantial prejudice, a petitioner is not entitled to relief for an agency's noncompliance with its own time limitations.

Cases that cite this headnote

[7] **Automobiles**
Administrative procedure in general

A petitioner must demonstrate substantial prejudice in order to challenge a delayed chemical test refusal hearing under the State Administrative Procedure Act. McKinney's State Administrative Procedure Act § 301(1); McKinney's **Vehicle** and Traffic Law § 1194(2)(b)(3); 15 NYCRR 127.2(b)(2).

Cases that cite this headnote

[8] **Automobiles**
Administrative procedure in general

Motorist was not prejudiced by delay of more than six months in holding chemical test refusal hearing following his arrest for driving while intoxicated, where he retained his driving privileges while awaiting the hearing. 15 NYCRR 127.2(b)(2).

Cases that cite this headnote

[9] **Administrative Law and Procedure**
Witnesses

Administrative Law and Procedure
Production and reception of evidence in general

Constitutional Law
Hearings and adjudications

Unlike the constitutional right to confrontation in criminal matters, parties in administrative proceedings have only a limited right to cross-examine adverse witnesses as a **matter** **of** due process. U.S.C.A. Const.Amends. 6, 14.

Cases that cite this headnote

Attorneys and Law Firms

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Eric T. Schneiderman, Attorney General, **New** **York**, N.Y. (Michael S. Belohlavek and Sudarsana Srinivasan of counsel), for respondent.

REINALDO E. RIVERA, J.P., THOMAS A. DICKERSON, PLUMMER E. LOTT, and JEFFREY A. COHEN, JJ.

Opinion

***839** Proceeding pursuant to CPLR article 78 to review a determination of the respondent **New** **York** **State** Department of Motor **Vehicles** **Appeals** **Board** dated September 29, 2009, which affirmed a decision of an Administrative Law Judge dated January 9, 2009, following a hearing, to revoke the petitioner's driver's license pursuant to **Vehicle** and Traffic Law § 1194 for refusal to submit to a chemical blood-alcohol test.

****139** ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

On May 24, 2008, the petitioner was arraigned on charges of refusal to submit to a chemical blood-alcohol test (*see* **Vehicle** and Traffic Law § 1194[2]) following his arrest on suspicion of driving while intoxicated. Pursuant to **Vehicle** and Traffic Law § 1194(2)(b)(3), the petitioner's driver's license was suspended pending a revocation hearing; however, the next day, the **New** **York** **State** Department of Motor **Vehicles** (hereinafter the DMV) stayed the suspension until the hearing date. On January 9, 2009, after a hearing, an Administrative Law Judge (hereinafter the ALJ) found that the statutory conditions mandating administrative revocation of the petitioner's license were met (*see* **Vehicle** and Traffic Law § 1194[2][c]), and revoked the petitioner's driving privileges for a period of one year. The petitioner appealed to the DMV's **Appeals** **Board**, and the revocation of his license was again stayed pending the determination. The **Appeals** **Board** upheld the ALJ's decision. Thereafter, the petitioner commenced this CPLR article 78 proceeding to review the determination revoking the license. We deny the petition and dismiss the proceeding.

[1] **[2]** **[3]** " 'In order to annul an administrative determination made after a hearing, a court must conclude that the record lacks substantial evidence to support the determination' " (***Matter*** ***of*** *Ammann v. Odestick*, 73 **A.D.3d** 915, 915, 899 **N.Y.S.2d** 880, quoting ***Matter*** ***of*** *Ward v. Juettner*, 63 **A.D.3d** 748, 748, 880 **N.Y.S.2d** 163; *see* ***Matter*** ***of*** *Kelly v. Safir*, 96 N.Y.2d 32, 38, 724 **N.Y.S.2d** 680, 747

N.E.2d 1280). Substantial evidence is "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (*300 Gramatan Ave. Assoc. v. State Div. of Human Rights*, 45 N.Y.2d 176, 180, 408 N.Y.S.2d 54, 379 N.E.2d 1183). " 'The courts may not weigh the evidence or reject the choice made by [an administrative agency] where the evidence is conflicting and room for choice exists' " (*Matter of Berenhaus v. Ward*, 70 N.Y.2d 436, 444, 522 N.Y.S.2d 478, 517 N.E.2d 193, quoting *Matter of Stork Rest. v. Boland*, 282 N.Y. 256, 267, 26 N.E.2d 247; *see Matter of Scara–Mix, Inc. v. Martinez*, 305 A.D.2d 418, 758 N.Y.S.2d 507).

[4] ***840** Here, the petitioner argues that the ALJ's finding that the arresting officer had reasonable grounds to believe that the petitioner was driving in violation of Vehicle and Traffic Law § 1192 is unsupported by the record, asserting that there was no proof that he was driving on a "public highway" or in a "parking lot" within the purview of the statute (Vehicle and Traffic Law § 1192[7]). Contrary to the petitioner's contention, the record does contain such evidence. The arresting officer testified at the hearing that he observed the petitioner pull into a parking lot. Under the circumstances, it was reasonable to infer that prior to pulling into the parking lot, the petitioner had been driving on the public roadway. Accordingly, the officer's testimony was sufficient to sustain the ALJ's determination (*see Matter of Craig v. Swarts*, 68 A.D.3d 1407, 1409, 891 N.Y.S.2d 204; *Matter of Pernick v. New York State Dept. of Motor Vehs.*, 217 A.D.2d 630, 630, 629 N.Y.S.2d 783; *Matter of Miranda v. Adduci*, 172 A.D.2d 526, 567 N.Y.S.2d 869).

[5] **[6]** **[7]** **[8]** We also reject the petitioner's claim that the proceeding should have been dismissed for failure to hold a hearing within a reasonable time as required under the State Administrative Procedure Act § 301 or within six months from the date the DMV received notice of his chemical ****140** test refusal as required under 15 NYCRR 127.2(b)(2). Time limitations imposed on administrative agencies by their own regulations are not mandatory (*see Matter of Dickinson v. Daines*, 15 N.Y.3d 571, 575, 915 N.Y.S.2d 200, 940 N.E.2d 905). Absent a showing of substantial prejudice, a petitioner is not entitled to relief for an agency's noncompliance (*id.* at 577, 915 N.Y.S.2d 200, 940 N.E.2d 905). Accordingly, a petitioner must demonstrate substantial prejudice in order to challenge a delayed chemical test refusal hearing under section 301(1) of the State Administrative Procedure Act (*see Matter of Geary v. Commissioner of Motor Vehs. of State of N.Y.*, 92 A.D.2d 38, 40, 459 N.Y.S.2d 494, *affd.* 59 N.Y.2d 950, 466 N.Y.S.2d 304, 453 N.E.2d 533; *Matter of Pitta v. Commissioner of Motor Vehs. of State of N.Y.*, 121 A.D.2d 545, 503 N.Y.S.2d 604; *Matter of Correale v. Passidomo*, 120 A.D.2d 525, 501 N.Y.S.2d 724). As the petitioner retained his driving privileges while awaiting the hearing, he was not prejudiced by the delay (*see Matter of Geary v. Commissioner of Motor Vehs. of State of N.Y.*, 92 A.D.2d at 40, 459 N.Y.S.2d 494, *affd.* 59 N.Y.2d 950, 466 N.Y.S.2d 304, 453 N.E.2d 533; *Matter of Pitta v. Commissioner of Motor Vehs. of State of N.Y.*, 121 A.D.2d at 545, 503 N.Y.S.2d 604; *Matter of Mullen v. New York State Dept. of Motor Vehs.*, 144 A.D.2d 886, 888, 535 N.Y.S.2d 206).

[9] Unlike the constitutional right to confrontation in criminal matters, parties in administrative proceedings have only a limited right to cross-examine adverse witnesses as a matter of due process (*see Matter of Gordon v. Brown*, 84 N.Y.2d 574, 578, 620 N.Y.S.2d 749, 644 N.E.2d 1305; *Matter of Sookhu v. Commissioner of Health of State of* ***841** *N.Y.*, 31 A.D.3d 1012, 1014, 820 N.Y.S.2d 146). The ALJ providently exercised her discretion in limiting the petitioner's cross examination of the arresting officer on questions that he had previously answered or were irrelevant to the proceeding (*see Matter of Friedel v. Board of Regents of Univ. of State of N.Y.*, 296 N.Y. 347, 352–353, 73 N.E.2d 545; *Matter of Yoonessi v. State Bd. for Professional Med. Conduct*, 2 A.D.3d 1070, 1072, 769 N.Y.S.2d 326).

The petitioner's remaining contention is without merit.

Parallel Citations

83 A.D.3d 838, 921 N.Y.S.2d 137, 2011 N.Y. Slip Op. 03066

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