

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

Date 8-4-14

INITIAL DECISION

OAL DKT. NO. MVH 3603-14

AGENCY DKT. NO. 05652

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v.

LOUIS K. MARUT,

Respondent.

Scharkner Michaud, Driver Improvement Analyst 2, appearing pursuant to
N.J.A.C. 1:1-5.4(a)(2), for petitioner

Louis Marut, respondent, pro se

Record Closed: May 6, 2014

Decided: June 20, 2014

BEFORE **LINDA M. KASSEKERT**, ALJ:

STATEMENT OF THE CASE

The New Jersey Motor Vehicle Commission (Commission) proposes to suspend the driving privileges of respondent, Louis K. Marut, for a total of 570 days. The Commission proposes to suspend respondent's driving privileges for 390 days, or thirteen months, pursuant to N.J.S.A. 39:5-30, N.J.S.A. 39:5-30.8 and N.J.A.C. 13:19-

10.1, because he had twelve or more points on his driving record, and for 180 days, or six months, pursuant to N.J.S.A. 39:3-40, N.J.S.A. 39:5-30 and N.J.A.C. 13:19-10.8, because he operated a motor vehicle during a period of driving-privilege suspension and was charged with speeding. Respondent contends that he had personal issues that contributed to his irresponsibility. The only issue is whether the respondent has demonstrated sufficient "good cause" for the reduction of the suggested terms of the suspension specified in the regulations.

PROCEDURAL HISTORY

On January 30, 2013, the Commission prepared two Scheduled Suspension Notices proposing the suspension of respondent's driving privileges for thirteen months for points and six months for driving while suspended. Respondent filed a timely appeal. On July 1, 2013, the Commission held a settlement conference, which was unsuccessful.

On March 26, 2014, the matter was transmitted to the Office of Administrative Law for determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The hearing was held on May 6, 2014, at which time the record was closed.

FACTUAL DISCUSSION

The following is not in dispute and is found as **FACT**:

Louis K. Marut is forty-eight years old and divorced. He has one son who is seventeen years old. He has two other children, ages twenty-one and nineteen, from whom he is estranged. He stated that he was in a damaging marriage. This led to him not paying his mortgage (Exhibit R-A); not being able to pay his bills, including his utility bill (Exhibit R-B); losing his house through foreclosure in 2010; filing for bankruptcy (Exhibit R-C); and, ultimately, becoming homeless. He stated that he has had to go on welfare. As a result of losing his house, he was not getting his mail. Additionally, his mailbox was damaged on or about August 9, 2012, he believes by his son. He filed a police report on the damage (Exhibit R-D). He believes this also contributed to his not

receiving his mail and not paying his surcharges. He asked for leniency and stated that he understands he was irresponsible. He stated that he has had no moving violations in the last two years. He also indicated that he had issues with alcohol, and was charged with driving while intoxicated in 2011. He attended the Intoxicated Driver Resource Center (IDRC) twelve-hour program. He stated that he is currently employed by NINI Building Enterprises in sales. He is responsible for the entire state of New Jersey. As part of his position, he handles direct mail and must drive to various post offices to mail items. If he cannot drive, he will lose his job, and with it the opportunity to continue turning his life around.

Respondent does not dispute his driving record. He has held a New Jersey driver's license for thirty years. On January 29, 2013, respondent was cited for operating a vehicle during a suspension period. On that same date, he was suspended because of points. Respondent has a total of fifty-eight points on his driver history record.

On October 24, 2012, respondent was stopped while out of state on a two-point speeding violation. This violation then triggered multiple scheduled suspensions. His last infraction prior to this violation was again for speeding and occurred on May 4, 2012. Prior to this he had speeding infractions on March 24, 2008, August 16, 2007, August 6, 2004, January 19, 2004, September 9, 2003, June 9, 1999, November 8, 1998, January 19, 1997, December 13, 1993, July 9, 1992, April 12, 1991, October 16, 1988, September 26, 1987, August 6, 1987, June 15, 1987, October 14, 1985, June 14, 1985, February 20, 1984, October 7, 1983, and February 13, 1983, all of which carried points. Respondent also had points on his license for the following violations: January 19, 2004—improper operation; March 5, 1999—disregard of stop sign regulations; September 18, 1992—careless driving; June 17, 1991—disregard of stop sign regulations; August 8, 1989—illegal backing/turning in street; February 24, 1989—careless driving; and, December 28, 1985—failure to observe traffic control device.

Respondent was also cited for operating under the influence on May 10, 2011, and December 31, 2010. As a result, he attended the Intoxicated Driver Resource Center program on February 11–12, 2014, in Hunterdon County.

Respondent also had his license suspended a number of times as a persistent violator, specifically, on March 7, 2008, February 19, 2007, August 23, 2005, June 26, 2004, March 10, 2004, January 7, 2003, May 19, 1994, December 12, 1991, December 14, 1989, February 15, 1988, and November 30, 1985. He was also suspended for points on January 17, 2013, May 12, 2009, October 21, 1999, October 16, 1999, June 11, 1997, May 18, 1994, December 14, 1989, February 15, 1988, and April 30, 1986. He had his license suspended for operating a vehicle while suspended or revoked on March 3, 2005. Respondent was cited as an unlicensed driver on January 9, 2011, July 24, 2010, June 22, 2010, June 5, 2010, November 10, 2009, March 24, 2008, January 18, 2008, August 16, 2007, August 6, 2004, August 10, 2000, April 12, 2000, September 6, 1999, November 8, 1998, June 26, 1997, and April 14, 1995. He was also cited for obstructing passage of other vehicles on January 21, 2011, June 5, 2010, January 18, 2008, and April 12, 2000, and for the unsafe operation of a motor vehicle on November 3, 2010, September 9, 2002, and June 27, 2002.

Respondent also had violations for improper display/fictitious plates on January 9, 2011, December 31, 2010, August 3, 1996, September 30, 1995, June 25, 1995, November 18, 1992, June 18, 1992, April 14, 1992, October 24, 1991, May 4, 1991, May 3, 1991, September 26, 1990, and May 16, 1990. On March 5, 2011, and June 19, 2010, he was cited for using a hand-held cell phone while driving. On October 8, 2013, he was cited for failure to wear a seat belt.

Finally, respondent's driving privileges were suspended for a number of administrative violations: for nonpayment of insurance surcharges on September 9, 2012, August 14, 2011, October 17, 2010, September 5, 2004, April 16, 2000, November 14, 1999, October 3, 1999, November 1, 1998, April 12, 1998, January 14, 1996, June 30, 1991, August 26, 1990, January 14, 1990, and January 11, 1985; for failure to appear on August 15, 2008, August 2, 2008, July 13, 2003, November 12, 1999, July 31, 1999, November 29, 1997, October 24, 1997, January 20, 1997, and November 25, 1994; and for failure to comply with a court install order on September 7, 2011, August 23, 2011, July 19, 2011, and September 15, 2010.

Respondent did receive three-point credits for safe driving on September 29, 2006, October 10, 2002, October 10, 2001, and September 18, 1993. He received credit for attending a driver improvement program class on June 6, 2002, and August 13, 1984.

LEGAL DISCUSSION

N.J.S.A. 39:5-30.8 provides that, except for good cause, the chief administrator shall suspend the license of any driver who accumulates twelve or more points in a period of two years or less, or fifteen or more points in a period greater than two years. N.J.A.C. 13:19-10.2 establishes the period of suspension based on point accumulation. An accumulation of thirty-six points in a period greater than two years requires a suspension of not less than 180 days (N.J.A.C. 13:19-10.2(a)(12)). In this matter, the respondent has accumulated fifty-eight points, and the Commission seeks to suspend his license for 390 days, or thirteen months.

The schedule of suggested suspensions should be followed in the interest of uniformity, unless an individual licensee is able to demonstrate extraordinary circumstances justifying a reduction or waiver. Administrative suspensions are remedial in nature, designed to promote public safety rather than to punish wrongdoers. Atkinson v. Parsekian, 37 N.J. 143, 155 (1962). It is the chief administrator's function to impose suspensions for the purpose of reforming the particular motorist, and not for the purpose of frightening or deterring others, even though that may be an incidental result. Cresse v. Parsekian, 81 N.J. Super. 536, 549 (App. Div. 1963), aff'd, 43 N.J. 326 (1964).

Respondent has the burden of proving "good cause" for a special exception to the usual suspension imposed in similar cases. Good cause is a flexible concept which appears in many statutes and rules. "The very essence of the phrase is its ability to afford relief in exceptional situations." Hovland v. Dir., Div. of Taxation, 204 N.J. Super. 595, 600 (App. Div. 1985). "It is impossible to lay down a universal definition of good cause for disclosure and inspection, or an all-inclusive and definitive catalogue of all of the circumstances to be considered by a court in determining whether there is good

cause. Each case must be decided upon its own facts.” Ullman v. Hartford Fire Ins. Co., 87 N.J. Super. 409, 414 (App. Div. 1965).

Factors that may be relevant in determining the appropriateness of any suspension include the individual's past driving record, length of time licensed, receipt of proper warnings or prior attendance at driver improvement school, attitude and maturity level, evidence of recent improvement, need for a license and other aggravating or mitigating circumstances. N.J.A.C. 13:19-10.2(b); Cresse, supra, 81 N.J. Super. at 549. Need alone cannot be the deciding factor, since in today's motorized society virtually everyone needs a driver's license to earn a living and perform normal daily activities. See Div. of Motor Vehicles v. Morton, 4 N.J.A.R. 95 (Dir. of Motor Vehicles 1982).

With respect to this matter, respondent was cited for a speeding violation on October 24, 2012, which triggered the points suspension. Prior to this, he was stopped for speeding on May 4, 2012. Prior to this, there were speeding infractions in 2008, 2007, 2004 and 2003, as well as a point violation in 2004 for improper operation. It should be noted that there have been no point violations following the October 24, 2012, speeding violation. Respondent's remaining forty-two points were incurred in 1999 or before.

The respondent asks for leniency and argues that his driving privileges should not be suspended for thirteen months for points. He states that he was experiencing personal problems because of his divorce, he lost his house and became homeless, and he had to go on welfare. He states that he will lose his job if he is unable to drive. He also states that he has not had a violation since he was cited for the speeding violation on October 24, 2012, triggering the points suspension. Respondent was credible in his testimony and did seem to exhibit a positive attitude and a satisfactory maturity level. However, beyond this, he has done little else to mitigate his situation. His driving record, even before the unfortunate personal events he cited, was not stellar. He had fifty-eight points on his driving record, along with numerous non-point violations. The last time he attended a driver improvement program class was in 2002.

As a result, weighing the aggravating and mitigating circumstances, I **CONCLUDE** that a suspension of respondent's driving privileges for 390 days, or thirteen months, would serve a remedial purpose and should be imposed.

The Commission also seeks to suspend respondent's license for a period of 180 days, or six months, because he drove his vehicle during a period of suspension. Pursuant to N.J.S.A. 39:5-30(a), the Commission may suspend an individual's driving privilege for a violation of any Title 39 provision or on any other reasonable grounds. In pertinent part, N.J.A.C. 13:19-10.8 provides:

(a) Whenever the driving privileges of an individual have been suspended or revoked for any reason, either judicially or administratively:

1. The operation of a motor vehicle by the individual during the period of suspension or revocation shall be cause for extending the period of revocation or suspension for an additional six months, or for some other period determined by the Chief Administrator.

Further, it is sufficient that the notice and order of suspension were sent to respondent's address of record when no change of address was reported; a would-be violator does not have to intentionally drive knowing that he is on the suspended list in order to violate N.J.S.A. 39:3-40, the operating-while-suspended statute. State v. Wenof, 102 N.J. Super., 370, 375–77 (Law Div. 1968), overruled on other grounds, State v. Ferrier, 294 N.J. Super. 198 (App. Div. 1996).

In the present matter, respondent operated his vehicle on October 24, 2012, during a period when his driver's license was suspended for nonpayment of an insurance surcharge. He states that he may not have received the July 27, 2012, notice of proposed suspension or the September 9, 2012, order of suspension because of the damage to his mailbox or, in the alternative, because he was homeless due to his financial issues. Respondent submitted a police report that showed that his mailbox was damaged on or about August 9, 2012. However, the Commission has provided a certification of mailing showing that the notice of proposed suspension related to

surcharges was mailed on July 27, 2012. Since such notices are mailed first class, respondent certainly would have received it prior to August 9, 2012. Moreover, since respondent reported the mailbox damage to the police, he was either living at the house at this time or receiving mail there. The Commission also provided a certification of mailing showing that the order of suspension was mailed on September 19, 2012, suspending respondent's driving privileges as of September 9, 2012, indefinitely. There was no evidence submitted that respondent had notified the Commission of any address change or that he was homeless.

Again, respondent has provided little to mitigate his situation. While I am sympathetic to his situation and the hardship this will cause with respect to his employment, I **CONCLUDE** that a suspension of respondent's driving privileges for 180 days, or six months, would serve a remedial purpose and should be imposed.

ORDER

It is **ORDERED** that the Commission's decision to suspend respondent's driving privileges for a total of 570 days is hereby **AFFIRMED**, effective on such date as shall be set forth in an Order of Suspension which the Commission will send to respondent.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

6/20/14
DATE

Linda M. Kassekert
LINDA M. KASSEKERT, ALJ

Date Received at Agency:

6/20/14

Date Mailed to Parties:

6/23/14

/lam

WITNESSES

For Petitioner:

None

For Respondent:

Louis K. Marut

EXHIBITS

For Petitioner:

- P-1 Motor Vehicle Abstract of Louis K. Marut
- P-2 Scheduled Suspension Notice—points
- P-3 Scheduled Suspension Notice—operating of a motor vehicle during a period of suspension
- P-4 Order of Suspension prepared September 9, 2012
- P-5 Surcharge Suspension
- P-6 Restoration Notice

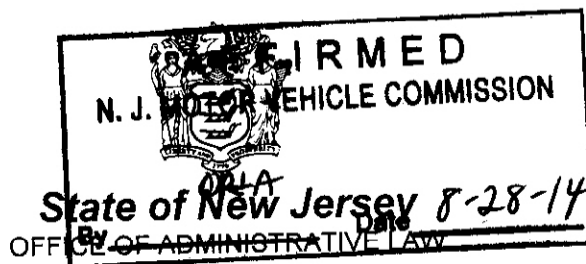
For Respondent:

- R-1 Exhibit A—Monthly Mortgage Statement
- Exhibit B—JCP&L shut-off notice
- Exhibit C—bankruptcy filing
- Exhibit D—Hopewell Police Department reports
- Exhibit E—Hunterdon County Department of Human Services, Work First New Jersey, Appointment Letter
- Exhibit F—Passaic County IDRC correspondence
- Exhibit G—Hopewell Township court notices

Exhibit H—NJ Motor Vehicle Commission Order of Suspension

Exhibit I—Mercer County IDRC rescheduling notice

Exhibit J—Hunterdon County IDRC scheduling notice



INITIAL DECISION

OAL DKT. NO. MVH 12432-2013

AGENCY DKT. NO. 08452

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v.

NICHOLAS DAMELIO,

Respondent.

Kenneth Vercammen, Esq., for petitioner

Barbara E. Riefberg, Esq., (Shimberg & Friel PC) for respondent

Record Closed: May 28, 2014

Decided: July 14, 2014

BEFORE **PATRICIA M. KERINS, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Nicholas Damelio (Damelio) appeals from the decision of the Motor Vehicle Commission (Commission) to suspend his license for a period of 330 days (or eleven months) due to his involvement in an accident resulting in the death of an individual. By letter of May 29, 2013, the Commission notified Damelio of its action to suspend his license pursuant to N.J.S.A. 39:5-30, based on "other reasonable grounds", citing

N.J.S.A. 39:4-144 for a failure to yield or stop. Respondent appealed that decision by letter of June 3, 2013. The matter was transmitted to the Office of Administrative Law (OAL) on August 27, 2013, where it was filed for a hearing as a contested case.

The hearing was held at the offices of the OAL in Mercerville, New Jersey, on November 1, 2013, and April 24, 2014. The record remained open for the submission of post-hearing submissions. The record closed on May 28, 2014.

FACTUAL DISCUSSION

Uncontested Facts

Many of the material facts in this matter are undisputed. The accident that led to the fatality in this matter took place on January 18, 2013, at approximately 4:00 p.m. on a clear, sunny afternoon with dry road conditions. On that afternoon Damelio was driving a Pennsauken Township school bus with an aide and four preschool children on board. At the intersection of 43rd Street and Westfield Avenue (County Road 610) in Pennsauken, he entered the intersection to make a left turn onto Westfield Avenue southbound. Damelio's bus was subject to the stop sign at the intersection. As the bus was making its turn onto Westfield Avenue, the bus struck a bicyclist, Ronald Boone (Boone), trapping him underneath the rear axle of the bus. Boone had been riding his bicycle southbound along Westfield Avenue on the sidewalk and entered the roadway at 43rd street outside of the crosswalk to cross the intersection. After the collision Damelio continued operating the bus down Westfield Avenue for several blocks with Boone trapped underneath the bus. As the bus continued down Westfield Avenue witnesses to the accident attempted to gain Damelio's attention to stop the bus. He finally stopped near 40th Street and Westfield Avenue in Camden after the aide alerted him to the bystanders' attempts to gain his attention.

When extricated from underneath the bus, Boone was transported to Cooper University Medical Center where he died from his injuries later that night. After an

investigation by the Pennsauken Police Department, Damelio was not charged with any violations.

Testimony

Testimony in this matter was taken on two days of hearing. Petitioner presented the testimony of Yanikka Jones, a witness to the accident, Steven R. Reese, the investigating Pennsauken police officer and Damelio himself. Respondent called as witnesses Damelio and Juan Ramon Algarin, another witness to the accident who testified through an interpreter.

Officer Reese is a traffic investigator for Pennsauken and has been employed as an officer there since 1995. In this matter he was not the first officer on the scene as Camden Police first responded to the accident since its jurisdiction begins at 42nd Street and Westfield Avenue. When he arrived, emergency medical responders were working with the victim at the rear of the bus. At that point Boone was still alive. Reese proceeded to interview the witnesses, review the scene and prepare his report (P-6). Taped statements were taken from Damelio and Jones (R-2) and (P-3). Reese stated he found no evidence of cell phone use by Damelio, which he confirmed in an interview with the bus aide, Leanne Nickolson. Nor did he find evidence of excessive speed. After his investigation, Pennsauken police determined that the collision resulted from unsafe actions by Boone when he entered the roadway as the bus was making its left turn.

The first eyewitness to the collision to testify was Yanikka Jones. A licensed driver for ten years, she had left work that afternoon. She was proceeding northbound on Westfield Avenue when she stopped at the intersection of 43rd and Westfield to allow the bus to make its left turn. She testified that the front of the full sized bus was out in the intersection so she stopped to let it make its turn. She stated the bus was stopped with its signal on and then it made a quick left turn, with Damelio looking both ways. She did not see the bicyclist stop as he entered the roadway. Jones then saw the bus strike the cyclist with his body being dragged underneath the bus as it kept

going. She noticed that Damelio was using what she described as a cell phone as he was turning and that he was looking at traffic in the direction away from the approaching cyclist.

After the bus struck Boone, she beeped her horn loudly and long to get the bus to stop but it did not. She put her car in park and got out, signaling for Damelio to stop, but he did not. Jones testified she made eye contact with him but his reaction was as though she was crazy. She saw other cars stopped and beeping at the bus to get Damelio's attention as Boone's body was being dragged underneath the bus. She heard the body being dragged along with the bicycle and a sound like metal striking against a rock.

The other eyewitness to testify was Juan Ramon Algarin (Algarin). He stopped at the intersection to allow the bus to proceed and testified that he did not see the bus come to a complete stop at the intersection. He did see the driver look both ways and then the cyclist crossed in front of the bus. Algarin testified that Boone was on a low riding cycle, did not stop before entering the intersection from the sidewalk and that his hood was up. After the bus struck Boone, Algarin saw him stuck by the rear tire with his hands extended out toward him as he was being dragged by the bus. He stated he began honking his horn to get Damelio's attention and flashed his blinkers. When that did not work he tried to pass him on the side of the bus three times to get his attention as Damelio continued down Westfield Avenue. He testified that although he made eye contact with Damelio during these attempts, the bus did not stop for at least three blocks. When the bus finally stopped he exited his car and banged on the bus window telling Damelio that someone was under his bus. Damelio then stayed in the bus and called someone on either a radio or a cell phone. Algarin then waited for an ambulance to come and was interviewed by the police. He noted that during the entire time, Damelio did not leave the inside of the bus.

Damelio was called as a witness by petitioner and further testified on his own behalf under direct examination by his counsel. Sixty-eight years old at the time of the accident, he is employed by the Pennsauken Board of Education as a bus driver. A

licensed driver for forty years, he had his CDL class B license for two years prior to the accident. He is diabetic and takes several medications for his condition, as well as blood pressure medicine. He was on his usual afternoon run that day, wearing his "transition bifocal" eyeglasses with the window visor down. In his testimony he did not find sun glare to be a problem that day, however in statements to Officer Reese and in his taped statement he said sun glare was a problem. He denied using a cell phone at any time during the incident. Damelio described stopping at the stop sign at the intersection of 43rd and Westfield. As the stop sign is ten feet from the actual intersection, he said he then moved the bus into the intersection to get a view of the traffic before making his left hand turn. As he turned he heard a thump which he thought came from the rear driver's side. Thinking it was just a bump in the road he continued driving the bus down Westfield Avenue. He denied hearing any honking horns, or seeing people wave at him or flashing lights. After proceeding slowly for several blocks, he stopped when the aide told him something had happened and people were trying to get his attention and when someone caught up to bus and told him there was a man under the bus. He then stopped and called his dispatcher on the radio. He did not leave the bus.

Reviewing the testimony in this matter on whether Damelio stopped at the intersection before making his turn, I found the testimony of Jones and Damelio clearer and more credible on that point. Jones had stopped at the intersection to allow the bus, which was stopped at the time and partway into the intersection, to make its turn. Damelio was credible in his description of his stop at the stop sign and his continuing on toward the intersection to observe the oncoming traffic. Further, both Jones and Damelio agree that he looked both ways before his turn. Algarin's testimony was less clear on whether Damelio stopped at the stop sign prior to his making the turn. While Algarin stated he did not come to a complete stop it was unclear whether he had actually seen Damelio's approach to the intersection or whether he came upon him after he had observed traffic at the intersection and was moving into his turn. I therefore found Jones and Damelio's descriptions more credible on that point. As to whether Damelio was using a cell phone, I found his denial credible. His use was not corroborated by Algarin's eyewitness testimony but his denial was corroborated by the

aide's statement to the police that not only did Damelio not use a cell phone, he did not even own one.

In reviewing the record in this matter, I **FIND** that respondent stopped the school bus at the stop sign at the intersection of 43rd and Westfield Avenue and moved the bus further into the intersection to better observe the oncoming traffic before making his left turn. Jones and Algarin agree that he looked both ways before turning onto Westfield Avenue and further agree in their testimony that Boone was riding on the sidewalk and did not stop before entering the intersection and colliding with the bus. As to the actual collision with Boone I **FIND** that Damelio's actions were not the cause of the initial collision between bus and cyclist. As the large bus went into its turn, Boone failed to stop for its passage and came off the sidewalk into the intersection on a low riding cycle, colliding with the bus.

However, Damelio's actions subsequent to the collision are troubling at best. Even after feeling a "thump", he was either impervious to, or ignored the actions of several individuals who attempted to make him aware of the body underneath the bus. Those actions included the honking of horns, flashing lights and attempts by at least one motorist to pass him and gain his attention. Both Jones and Algarin were credible in their description of their attempts and those of other motorists to get his attention. Their efforts were heard and seen by the aide on the bus and it was only after she brought it to Damelio's attention, and a motorist physically banged on the bus door window that he brought the bus to a stop. By the time that occurred, Damelio had inexplicably driven the bus from 43rd Street until almost 40th Street with Boone trapped underneath. As such I **FIND** that his inattention and failure to stop after the initial collision was a contributing factor to the serious bodily harm that resulted in Boone's death.

LEGAL ANALYSIS AND CONCLUSIONS

The Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable

grounds.” N.J.S.A. 39:5-30(a). The Legislature has vested authority in the Commission to impose a driver’s license suspension as a preliminary matter prior to a plenary proceeding in a motor vehicle fatality case. N.J.S.A. 39:5-30(e)(3). Where the Commission proposes suspension of driving privileges under N.J.S.A. 39:5-30 as an administrative enforcement of the motor vehicle regulations, it bears the burden of proof by the preponderance of the competent and credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

The primary object of a suspension or revocation of a driver’s license “is to foster safety on the highway and not to impose criminal punishment to vindicate public justice.” Id. at 155; see also David v. Strelecki, 51 N.J. 563 (1968). Suspensions must be imposed only for the purpose of reforming the particular motorist and are not to be imposed administratively for the purpose of deterring others. This matter involves a proposed suspension of respondent’s license for a substantial period due to the death of an individual in an accident where it is alleged by the Commission that respondent failed to yield or stop as set forth in N.J.S.A. 39:4-144. That statutory provision references how a driver proceeds at an intersection. In this matter Damelio proceeded into the intersection after stopping and was not in violation of the statute in the actual collision with the cyclist.

The record shows however, and I **FIND**, that respondent’s actions after the initial collision were a contributing factor in the fatality giving rise to this matter. Damelio’s inattention to what was happening around him on the roadway caused him to drag Boone under the bus for several blocks after the initial collision. As such the Commission has “other reasonable grounds” to suspend him.

Having determined that respondent contributed to the serious bodily harm and fatality in this matter, the length of any suspension must be addressed. In accordance with well-established principles applicable to motor vehicle license suspensions in cases where fatalities occur, respondent does not even have to be the sole cause of the accident that took place to incur a suspension. Cresse v. Parsekian, 81 N.J. Super.

536, 544 (App. Div. 1963). Factors in mitigation and aggravation should be considered in determining the length of the suspension:

The Director must weigh each case individually, to determine whether a suspension is required at all for the purposes above mentioned, and, if so, for how long. Among other things, he should consider the facts which constitute the particular violation; whether the motorist was willful or reckless, or merely negligent, and, if merely negligent, how negligent; how long the motorist has been driving; whether this is his first offense; whether he has been involved in any accidents; his age and physical condition; whether there were any aggravating circumstances, such as drinking, or, on the other hand, whether there were extenuating circumstances. Upon these and all the other facts and circumstances, he should determine whether it reasonably appears, as a matter of prophylaxis and not of punishment, that the motorist should be kept off the highway, and, if so, for how long.

[Cresse, supra, 81 N.J. Super. at 549.]

In this matter respondent's actions contributed to the death of another individual. His inattention to what was occurring around him on the road after the initial collision with Boone contributed to the fatal accident. As such, his conduct warrants a suspension of his license. In mitigation of the term proposed by the Commission, it must be noted that respondent has an otherwise clean driving record, and is gainfully employed.

I **CONCLUDE** that the mitigating factors warrant a suspension period less than the eleven months originally proposed by the Commission. Thus, I **CONCLUDE** that the purposes for license suspension are fulfilled by a suspension period of six months.

ORDER

Accordingly, it is **ORDERED** that the Scheduled Suspension Notice issued by the Motor Vehicle Commission under date of May 29, 2013, to respondent Nicholas Damelio is **AFFIRMED**, but as **MODIFIED** herein. It is further **ORDERED** that

respondent Nicholas Damelio shall have his basic driving privileges suspended for a period of six months, with due credit for any and all suspensions periods served to date since issuance of the Notice.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

July 14, 2014
DATE


PATRICIA M. KERINS, ALJ

Date Received at Agency:

July 14, 2014

Date Mailed to Parties:

July 14, 2014

/lam/bdt

WITNESSES

For Petitioner:

Yanikka Jones
Steven R. Reese

For Respondent:

Nicholas Damelio
Juan Ramon Algarin

EXHIBITS

For Petitioner:

- P-1 Photograph
- P-2 Map
- P-3 Statement of Yanika Jones, dated January 18, 2013
- P-4 Map
- P-5 New Jersey Police Crash Investigation Report, dated January 18, 2-13
- P-6 Pennsauken Township Police Department, dated January 18, 2013
- P-7 Major Incident Report, dated January 18, 2013
- P-8 Abstract of death Certificate Information
- P-9 New Jersey Department of Health Death Certificate, Ronald E. Boone, Sr.
- P-10 State of New Jersey Motor Vehicle Commission, Abstract of Driver History Record, of Nicholas Damelio

For Respondent:

- R-1 Fatal Accident report, dated January 18, 2013
- R-2 Statement of Nicholas Damelio, dated January 18, 2013