

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
AGENCY DKT. NUMBER: GXXXX XXXXX 10742
OAL DOCKET NUMBER: M.V.H. 11158-16**

IN THE MATTER OF :
MICHAEL A. GOROKHOVICH : **FINAL DECISION**

The Motor Vehicle Commission (“Commission”) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **MICHAEL A. GOROKHOVICH**, respondent, for driving during a period of suspension in violation of N.J.S.A. 39:3-40, N.J.S.A. 39:5-30 and N.J.A.C. 13:19-10.8. Pursuant to N.J.A.C. 13:19-10.8, respondent’s New Jersey driving privilege is subject to suspension for a period of 180 days. Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge (“ALJ”) and the letter of exceptions filed on behalf of respondent in this matter. Based upon an independent de novo review of the record presented, I modify the recommendation of the ALJ to an order that respondent’s driving privilege not be suspended based on the reasons below.

In her Initial Decision, the ALJ recommends that respondent’s New Jersey driving privilege be suspended for ninety days, rather than the 180 days as proposed for having operated a motor vehicle during a period of suspension. Initial Decision at 4. The ALJ found that respondent operated a motor vehicle on March 24, 2015 within the time period (March 20, 2015 until April 24, 2015) during which he was suspended.

In his letter of exceptions, respondent primarily argues that he was not provided with prior notice that his privileges were suspended for a failure to answer a municipal court summons (which is denoted on the Certified Abstract as an “FSFA” event identifier,

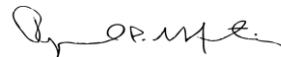
with event description “Failure to Appear”). He indicates that he only learned of that suspension after the Commission had mailed the confirming Order of Suspension for that “FSFA” suspension, which, according to the Commission’s document in the evidential record, was prepared April 5, 2015 and mailed on April 14, 2015. Respondent testified that he did not receive the prior generated “Scheduled Suspension Notice” (“D36-S-FSFA” Failure to Appear Notice, with Date Prepared 01/20/15, and an effective date of 03/20/2015 noted), which would have provided advance notice of the effective date of the suspension. Respondent notes that the Commission did not provide as part of the evidential record in this matter a Certification of Mailing for that Scheduled Suspension Notice, and rather provided a copy of the document from its records which had been stamped “Driver’s Name Not Found On Mail List”.

Based on review of this particular record which specifically involves only a single underlying “FSFA”-type court-initiated (but not directly court-ordered) suspension¹ and no other underlying suspensions, it is herein determined that the Commission was not able to meet its burden of proof as to legally sufficient notice for that FSFA suspension. This is because the Commission was not able to provide for this particular matter the Certification of Mailing for the Scheduled Suspension Notice for the FSFA suspension

¹ It is noted that this matter is distinguishable from other types of court-ordered suspensions for which the Commission is not charged with providing the prior notice of suspension, as for example, where it is the court itself that either provides and/or confirms that legally sufficient prior notice of suspension was given, which is the case for various court-ordered suspensions such as: Parking Offenses Adjudication Act (POAA) orders; child-support related court orders; direct court orders for failure to appear which are denoted as “COFA” suspensions; as well as a variety of other directly court-ordered suspensions. Thus, this determination is limited to the particular and precise facts in this record.

which would confirm that the Scheduled Suspension Notice was mailed to respondent's last address of record on file with the Commission prior to the triggering offense date. Accordingly, no action will be taken by the Commission against respondent's New Jersey driving privilege as a result of the proposed suspension dated July 14, 2015 (SUS-S-0340), for driving while suspended on March 24, 2015.

It is, therefore, on this 15th day of December, 2016, **ORDERED** that no action be taken on the proposed suspension of the New Jersey driving privilege of **MICHAEL A. GOROKHOVICH** for driving during a period of suspension on March 24, 2015.



Raymond P. Martinez
Chairman and Chief Administrator

RPM:kw



A F F I R M E D
MOTOR VEHICLE COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW Date 12-19-16

INITIAL DECISION

OAL DKT NO. MVH 02662-16

AGENCY DKT. NO. CXXXX XXXXX 06662

MOTOR VEHICLE COMMISSION,

Petitioner,

v

VICTOR CASTRO,

Respondent

Motor Vehicle Commission, petitioner, appearing on the papers only, pursuant to

N.J.A.C. 17:27-5.6(a)

Jason E. Foy, Esq., appearing on behalf of respondent Victor Castro (Foy & Sepowitz, attorneys)

Record Closed October 27, 2016

Decided November 3, 2016

BEFORE **GAIL M. COOKSON**, ALJ.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This proceeding is brought under N.J.S.A. 39:3-10.1 and N.J.A.C. 17:27-14.5(a) and (c)(12) to suspend indefinitely the New Jersey passenger endorsement on the Commercial Driver License (CDL) of respondent Victor Castro. The issues are whether respondent committed a disqualifying crime or offense within the meaning of N.J.A.C.

13 21-14.5(a) and (c), and, if so, whether respondent has affirmatively demonstrated sufficient rehabilitation to justify a waiver under N.J.A.C. 13 21-14 5(d)

By Scheduled Suspension Notice dated September 15, 2015, the Motor Vehicle Commission (Commission) proposed to suspend respondent's passenger endorsement indefinitely because he failed to satisfy the requirements for the endorsement on his CDL based on information that he had a disqualifying criminal arrest. By letter dated on or about October 15, 2015, respondent requested a hearing. The Commission transmitted the matter to the Office of Administrative Law (OAL) where it was filed on February 12, 2016, for determination as a contested case. Case Management conferences were held telephonically because of the pending collateral legal proceedings. Respondent's counsel kept the Commission and the undersigned advised of developments.

The undersigned held a hearing on October 27, 2016, and, after the conclusion of testimony, the record closed. The Commission relied upon the packet of discovery materials in support of its Notice and chose not to appear or present testimony at the hearing.

FINDINGS OF FACT

The relevant facts are not disputed. Based upon a review of the testimony and the documentary evidence presented, I **FIND** the following **FACTS**:

1. Respondent is currently fifty years of age and, together with his wife, financially supports his family of five. Respondent has several jobs including being a limousine and Uber driver, and a service technician and driver for irrigation systems.

2. Respondent holds a commercial driver's license with a passenger endorsement. N.J.A.C. 13 21-23.12

3. The Commission submitted documents in support of its contention that respondent had a disqualifying arrest on or about June 5, 2015. The indictment charged

respondent with possession and possession with intent to distribute Controlled Dangerous Substances (CDS), charges ranging from 4th degree to 2nd degree crimes

4. Specifically, when law enforcement executed a search warrant on respondent at his home based upon information obtained from a confidential informant, they did not find the drugs alleged to have been there but rather they found and confiscated a large amount of prescription pills. As testified to by respondent, whose testimony I **FIND** to have been credible, he also voluntarily advised them of a small amount of marijuana he kept next to his bed for personal use in pain management.

5. Respondent has a number of medical issues relating to a serious accident he had a number of years ago, including, but not limited to, plates in his cervical spine, which cause him to suffer in pain every day. Respondent has been prescribed pain medications, anti-anxiety medications, and sleep aids by his medical professionals. However, he did not want to take a lot of medications and most days did not take them because he did not like their effects and he needed to be able to drive.

6. As a result, respondent ended up accumulating the prescribed medications. He never sold them but he had been warned by his doctor not to dispose of them down the toilet etc. Respondent intended to return them to the doctor's office as the preferred methodology of disposal.

7. On or about August 29, 2016, after satisfying the prosecutor's office as to the reasons he had in his house a quantity of prescription medications, entered a guilty plea to a disorderly persons offence only of possession of less than fifty grams of marijuana. All of the original criminal charges were dismissed. Respondent was assessed a fine \$500.00, and some miscellaneous court fees, which he satisfied.

8. At no time has respondent sold any pills or marijuana. At no time has respondent driven while under the influence of prescription pills or other CDS. I so **FIND**

9. Respondent's Abstract of Driver History indicates that he has no points against his license at this time. In fact, this might be the cleanest abstract the undersigned has ever had to review.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

Under the police authority of the State, the Administrator of the Commission has the right to impose reasonable restrictions on the issuance of licenses for various occupations in order to protect the public health and safety. Sanders v. Division of Motor Vehicles, 131 N.J. Super. 95, 97 (App. Div. 1974). It further has been said that the primary objective of administrative proceedings before the Director "is to foster safety on the highway." Atkinson v. Parsekian, 37 N.J. 143, 155 (1962).

In 1986, the federal Commercial Motor Vehicle Safety Act was enacted at 49 U.S.C. §2701 to 2718. Section 2708 of the federal act required the states to adopt commercial driver licensing laws in compliance with federal standards or have their highway funds withheld. In response, the legislature enacted the New Jersey Commercial Driver License Act in 1990, N.J.S.A. 39:3-10.9 to 10.31. Under rules promulgated by the Commission regarding the right of a commercial driver to have a passenger endorsement, N.J.A.C. 13:21-14 et seq., the Administrator --

may not issue a passenger endorsement, or may revoke or suspend the passenger endorsement of any person when it is determined that the applicant or holder of such license has:

12. A criminal record that is disqualifying. The phrase "crime or other offense" as used hereinafter shall include crimes, disorderly persons offenses or petty disorderly persons offenses as defined in the "New Jersey Code of Criminal Justice" and any offenses defined by any other statute of this State. A driver has a disqualifying record if

i. He or she has been convicted of, or forfeited bond or collateral upon, any of the following:

(1) An offense involving the manufacture, transportation, possession, sale or habitual use of a "controlled dangerous substance" as defined in the "New Jersey Controlled Substance Act",

[N.J.A.C. 13:21-14:5(c)]

In addition, there are these general requirements for a person to hold such an endorsement: "Applicants shall be at least 21 years of age, have a minimum of three years driving experience, be of good character and physically fit and possess a valid New Jersey driver license." N.J.A.C. 13-21-14 5(a). The Commission charged respondent with respect to these disqualifying provisions.

Respondent argues that he has not incurred a disqualifying offense under the Motor Vehicle regulations because he was not adjudicated of any offense involving the manufacture, transportation, possession, sale or habitual use of a controlled dangerous substance. Rather, he was only found guilty of a disorderly persons offense under a plea arrangement of the following offense:

(a) It is unlawful for any person, knowingly or purposely, to obtain, or to possess, actually or constructively, a controlled dangerous substance or controlled substance analog, unless the substance was obtained directly, or pursuant to a valid prescription or order form from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by P.L. 1970, c.226 (C 24-21-1 et seq.). Any person who violates this section with respect to:

(4) Possession of 50 grams or less of marijuana, including any adulterants or dilutants, or five grams or less of hashish is a disorderly person.

[N.J.S.A. 2C 35-10(a)(4)]

As set forth above, the plain language of the motor vehicle regulations does encompass a disorderly or petty disorderly person offense involving possession of CDS. Accordingly, I **CONCLUDE** that respondent does have a disqualifying criminal record. Nevertheless, the regulation is not mandatory but permissive. In addition, the Chief Administrator has reserved the right to waive any portion of the disqualifying regulation "[if] sufficient and reasonable grounds are established at a hearing." N.J.A.C. 13-21-14.5(d). Proof of rehabilitation establishes grounds to waive the regulation. Sanders, supra, 131 N.J. Super. at 98. The standards set forth in the Rehabilitated Convicted Offenders Act provide guidance in assessing whether the proofs are sufficient to justify a waiver of a disqualifying condition. See N.J.S.A. 2A:168A-1 to -3. As a matter of

policy, "it is in the public interest to assist the rehabilitation of convicted offenders by removing impediments and restrictions upon their ability to obtain employment or to participate in vocational or educational rehabilitation programs based solely on the existence of a criminal record" N.J.S.A. 2A:168A-1. Various factors are enumerated in N.J.S.A. 2A:168A-2 to determine whether a conviction for a crime relates adversely to a particular occupation. The factors include: (1) the nature and duties of the occupation, (2) the nature and seriousness of the crime, (3) the circumstances under which the crime occurred, (4) the date of the crime; (5) the age of the person when the crime was committed, (6) whether the crime was an isolated or repeated incident; (7) social conditions which may have contributed to the crime, and (8) any evidence of rehabilitation, including good conduct in the community, counseling or psychiatric treatment received; acquisition of additional academic or vocational schooling, or the recommendation of persons who have or have had the person under their supervision.

I **CONCLUDE** that respondent should be deemed to come within the discretionary waiver of the suspension regulation in light of the minor nature of the possessory offense, its use for personal pain management, and the lack of any nexus with driving or other motor vehicular activity. In addition, he should be found to have demonstrated rehabilitation and other mitigating factors in support of retaining his commercial passenger endorsement including, but not limited to, his currently clean abstract, the isolated nature of the offense, the support of his community as to his character, and the fact that he has been financially supporting his family with his passenger endorsement.

ORDER

It is **ORDERED** that the Scheduled Suspension Notice issued against the passenger endorsement on respondent Victor Castro Commercial Driver License be and hereby is **REVERSED**.

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.

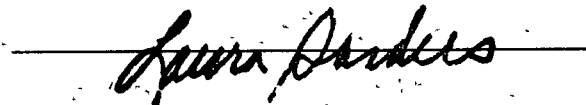
November 3, 2016

DATE



GAIL M. COOKSON, ALJ

Date Received at Agency



Date Mailed to Parties

NOV 7 2016

id

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

LIST OF WITNESSES

For Petitioner:

None.

For Respondent:

Victor Castro

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

P-1 Packet of Documents from Agency

For Respondent:

R-1 Judgment of Conviction, dated September 22, 2016

R-2 Change of Judgment of Conviction, dated September 27, 2016



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

This decision was mailed to the parties

on NOV 7 2016



AFFIRME

N. J. MOTOR VEHICLE COMMISSION

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

Date 12-22-16

INITIAL DECISION

OAL DKT. NO. MVH 11737-16

AGENCY REF. NO 003951

NEW JERSEY MOTOR VEHICLE COMMISSION,

Petitioner

vs

**ASHRAF AYAD (MAGIC CARPET DRIVING
SCHOOL),**

Respondent

David Kahler, Deputy Attorney General, for Petitioner (Christopher S. Porrino,
Attorney General of New Jersey, attorney)

Ihab A. Ibrahim, Esq , for Respondent

Record Closed: November 3, 2016

Decided November 7, 2016

BEFORE **THOMAS R. BETANCOURT**, ALJ.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, New Jersey Motor Vehicle Commission (MVC), proposes to deny respondent's application for a Driving School License by Notice of Proposed Denial-Amended, dated October 2, 2015, and, to revoke his Driving Instructor's License by Notice of Proposed Revocation dated October 2, 2015.

The Motor Vehicle Commission transmitted the matter to the Office of Administrative Law (OAL), where it was filed on July 29, 2016, as contested case N J S A 52 14B-1 to -15, N J S.A. 52.14F-1 to -13.

A hearing was held on the matter on November 3, 2016, at which time the record was closed

SUMMARY OF RELEVANT TESTIMONY

Ernest DiStefano testified as follows:

He is employed by the New Jersey Motor Vehicle Commission (NJMVC) as a Compliance Officer. He has held that position for three years. He was previously employed as a New Jersey State Trooper and a Police Officer with the New York City Police Department

He reviews applications for licenses that are flagged due to a prior conviction. He attempts to mediate disputes prior to the matter being transferred to the OAL.

He is familiar with the regulations governing licensure. Any criminal conviction for a sexual offense would be considered. Also considered would be the nature of the crime, and the character and history of the applicant.

Mr. DiStefano met with Respondent at a Pre-Hearing Conference regarding his application for a driving school Instructor's License. At that conference Respondent agreed to provide additional information to NJMVC. That information included notification of a pending criminal complaint arising out of a November 17, 2011 incident in Jersey City, New Jersey. Mr. DiStefano stated that Respondent never advised NJMVC that he entered a plea of guilty pursuant to a plea agreement.

Respondent had applied for a Driving School License in May 2016. NJMVC proposed to deny that license application, and suspend Respondent's Instructor's

License The basis for the denial was a prior arrest for Criminal Sexual Contact where Respondent entered into, and successfully completed, a Pre-Trial Intervention (PTI) program, and, Respondent's arrest and conviction, via a guilty plea to a charge of Criminal Sexual Contact. Also considered was Respondent's failure to advise NJMVC that he was convicted of the second offense. Mr. DiStefano also noted that nothing supplied to NJMVC by Respondent was sufficient to show he was rehabilitated.

He considered the second offense, which occurred in 2011, to be in close proximity to the present time. He noted that Respondent's Instructor's License was renewed through 2016. He stated that the renewal of this license is akin to the renewal of a driver's license. It is done by clerks. He also noted that during the Pre-Hearing Conference Respondent was to also provide the police report regarding his arrest on November 17, 2011. Respondent did not provide this report. NJMVC has not received any complaints regarding Respondent arising out of his Instructor's License.

Ashraf Ayad, Respondent, testified as follows:

He has been a citizen of the United States for twenty-four years. He was born in Egypt. He entered into the PTI program stemming from a charge of criminal sexual contact in the fourth degree. He denies committing the offense. He stated he merely accepted the "deal" arranged by his attorney. He also entered a plea of guilty to a charge of criminal sexual contact pursuant to a plea agreement. Again he denied having committed the offense. He stated again he merely accepted the deal arranged by his attorney. He admitted that he lied to the judge who accepted his guilty plea.

He has performed countless hours of driving instruction. He has never received a complaint from any student.

He is married and has two children. He is the main support for his family. His wife works part-time. He also receives \$1,100 per month in social security.

He is active in his church where he serves as a deacon. He is also in the choir and performs much service for the church.

As part of his application for a Driving School License, Respondent submitted a letter of recommendation from Betro Tawadrous. Respondent admitted he does not know much about Mr Tawadrous. The letter was written at Respondent's request

FINDINGS OF FACT

Based upon a review of the testimony and the documentary evidence presented, I **FIND** the following **FACTS**:

1 Respondent was arrested for alleged violations of N.J.S.A. 2C 13-2, False Imprisonment, and N.J.S.A. 2C 14-3, Criminal Sexual Contact, on September 3, 2009. (P-1 and P-3)

2 Respondent was placed into PTI for two years on June 12, 2009. Respondent completed his term and his case was closed on January 14, 2015. (P-7)

3. Respondent was arrested on November 17, 2011, for alleged violations of N.J.S.A. 2C 14-3C, Criminal Sexual Contact, and 2C.13-7, Luring/Enticing an Adult. (P-1, P-3, P-4, P-10, P-12 and P-13)

4 Respondent entered a plea of guilty to charge of N.J.S.A. 2C 14-3, Criminal Sexual Contact, and was placed on probation. Respondent completed probation and his case was closed on February 4, 2015. (P-3, P-4 and P-13)

5. Respondent applied for an Instructor's License and a Pre- Conference Hearing was held regarding the application on September 19, 2012. (P-1)

6 At the time Respondent applied for an Instructor's License the charges stemming from the November 17, 2011 arrest were still pending.

7 At the Pre-Conference Hearing Respondent agreed, in writing, to advise NJMVC as to the outcome of the pending charges. Respondent did not advise NJMVC that he entered a guilty to plea to N.J.S.A. 2C 14-3, Criminal Sexual Contact until he made application for Driving School License in May 2015 (P-2)

8. Respondent entered his guilty plea to N.J.S.A. 2C:14-3, Criminal Sexual Contact, on January 11, 2013. (P-4 and P-13)
- 9 Respondent did not notify NJMVC of his plea of guilty until he applied for a Driving School License in May 2015. (P-2)
- 10 NJMVC issued a Notice of Proposed Denial, dated July 10, 2015, regarding Respondent's application for a Driving School License (P-5)
11. NJMVC issued a Notice of Proposed Denial -Amended, dated October 2, 2015, regarding Respondent's application for a Driving School License (P-14)
12. NJMVC issued a Notice or Proposed Revocation, dated October 2, 2015, regarding Respondent's Instructor's License. (P-15)
- 13 A Pre-Hearing Conference Report was prepared regarding the proposed denial and suspension, dated November 9, 2015, wherein the NJMVC (R-17)
- 14 Respondent requested a hearing regarding the first proposed denial by letter dated July 16, 2015. (P-6)
15. Respondent requested a hearing regarding the amended proposed denial and the proposed suspension by letter from his attorney, dated October 14, 2015
- 16 Respondent was issued an Instructor's License in 2012 Said license was renewed in 2013, 2014, 2015, and 2016. (R-1, R-2, R-3, R-4 and R-5)
17. Respondent attended New Jersey City University for defensive driving classes, which he completed and earned a GPA of 4.0 (R-8)
- 18 Petitioner also submitted to NJMVC two letters. one from his parish priest dated December 19, 2011; and, one from a Betro Tawadrous dated August 11, 2015 (R-7 and P-8)

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 13-23-2.12(a) states After due notice in writing thereof, in accordance with the provisions of N.J.S.A. 39.12-1 et seq and the "Administrative Procedure Act," N.J.S.A. 52-14B-1 et seq , the Chief Administrator may deny issuance or renewal

of a driving school license or may suspend or revoke such license on the basis of any of the following criteria

2 Failure of the applicant or licensee to provide information or documentation required by N.J.S.A. 39:12-1 et seq. or this chapter or requested by the Chief Administrator, or concealment of a material fact by the applicant or licensee, or the supplying of information that is untrue or misleading as to a material fact;

3. The conviction of any proprietor, partner, officer, director or stockholder of a licensed driving school, or of an entity seeking such licensure, of any offense in any jurisdiction which would be:

i. Any of the following offenses under the "New Jersey Code of Criminal Justice," P L 1978, c.95 (Title 2C of the New Jersey Statutes) as amended and supplemented:

ii

N.J.S.A. 2C:14-1 et seq. (sexual offenses).

N.J.A.C. 13.23-3 13(a) states: (a) The Chief Administrator or his or her designee may deny, suspend, or revoke an instructor's license, or refuse to issue an instructor's license or a renewal thereof, for any of the reasons specified in N.J.S.A. 39:12-1 et seq or N.J.A.C. 13.23-2 12, or for failure to comply with any of the provisions of this subchapter, or for other good cause, after due notice in writing thereof, in accordance with the provisions of N.J.S.A. 39:12-1 et seq and the "Administrative Procedure Act," N.J.S.A. 52:14B-1 et seq

Respondent admits that he was twice arrested for criminal sexual contact. In the first instance he entered into, and successfully completed, PTI. In the second instance he entered a plea of guilty to criminal sexual contact and was placed on probation. The first arrest occurred in 2008. The second arrest occurred in 2011. Criminal Sexual Contact is a violation of N.J.S.A. 2C:14-3. This clearly is one of the proscribed offenses set forth in N.J.A.C. 13:23-2.12 et seq

Further, I found as **FACT** that Respondent did not apprise the NJMVC of his conviction for criminal sexual contact until he applied for a Driving School License. He was obligated to do so pursuant to his agreement in the Pre-Conference Hearing Report he signed (P-1)

A court should not overturn a final agency decision "in the absence of a showing that it was arbitrary, capricious or unreasonable, or that it lacked fair support in the evidence " In re Carter, 191 N.J. 474, 482 (2007) (quoting Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)) As the Court observed in Carter, a reviewing panel

must defer to an agency's expertise and superior knowledge of a particular field. Although an appellate court is "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue," if substantial evidence supports the agency's decision, "a court may not substitute its own judgment for the agency's even though the court might have reached a different result "

[Id. at 483 (citations omitted).]

Nothing contained in the record evinces that the NJMVC acted in an arbitrary, capricious or unreasonable manner in proposing to deny Respondent's application for a Driving School License, or in proposing to revoke his Instructor's License. Rather, there is ample evidence in the record to support action of NJMVC

I **CONCLUDE** that the Notice of Proposed Denial – Amended regarding Respondent's application for a Driving School License, dated October 2, 2015, and, the Notice of Proposed Revocation regarding Respondent's Instructor's License, dated October 2, 2015, should be **AFFIRMED**.

ORDER

It is **ORDERED** that the Notice of Proposed Denial – Amended regarding Respondent's application for a Driving School License, dated October 2, 2015; and, the Notice of Proposed Revocation regarding Respondent's Instructor's License, dated October 2, 2015, are **AFFIRMED**

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

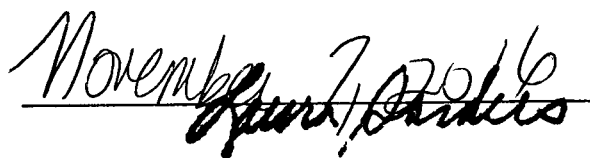
November 7, 2016

DATE



THOMAS R. BETANCOURT, ALJ

Date Received at Agency



Date Mailed to Parties.

NOV 9 2016

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

db

APPENDIX

List of Witnesses

For Petitioner

Ernest DiStefano, Compliance Officer

For Respondent:

Ashraf Ayad, Respondent

List of Exhibits

For Petitioner

- P-1 NJMVC Pre-Hearing Conference Report, September 19, 2012
- P-2 Application for License – May 6, 2015
- P-3 New Jersey National Requestor Noncriminal Justice Record, June 29, 2015
- P-4 Judgment of Conviction, Superior Court of New Jersey, Hudson County, January 11, 2013
- P-5 NJMVC Notice of Proposed Denial, July 10, 2015
- P-6 Hearing Request Letter, July 16, 2015
- P-7 Hudson County Probation Division letter, July 15, 2015
- P-8 Character reference letter from Betro Tawadrous, August 11, 2015
- P-9 Certificate of Bensi-Suef University Faculty of Law from Prof Dr. Shawky Farag, August 20, 2014
- P-10 Port Authority of NY and NJ Arrest Record for arrest date – September 4, 2008
- P-11 NJMVC Pre-Hearing Conference Report, August 10, 2015

P-12 Uniform Defendant Intake, Superior Court of New Jersey, August 12, 2015

P-13 Letter from Hudson County Probation, August 12, 2015

P-14 NJMVC Amended Notice of Proposed Denial, October 2, 2015

P-15 NJMVC Notice of Proposed Suspension, October 2, 2015

P-16 Hearing Request letter from Ihab A Ibrahim, Esq , October 14, 2015

P-17 NJMVC Pre-Hearing Conference Report, November 9, 2015

For Respondent:

R-1 Instructor License 2012

R-2 Instructor License 2013

R-3 Instructor License 2014

R-4 Instructor License 2015

R-5 Instructor License 2016

R-6 marked but not in evidence

R-7 Letter from Fr Markos Ayoub, December 19, 2011

R-8 Undergraduate Record New Jersey City University for Respondent

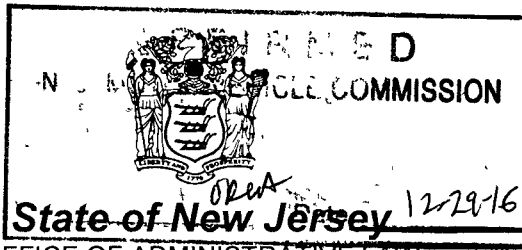


State of New Jersey
OFFICE OF ADMINISTRATIVE LAW
33 Washington Street
Newark, NJ 07102
(973) 648-6008

**A copy of the administrative law
judge's decision is enclosed.**

This decision was mailed to the parties

on NOV 9 2016



OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. MVH 7767-16

AGENCY DKT # LXXXX 10702

MOTOR VEHICLE COMMISSION,

Petitioner,

v

KENNETH LEWIS,

Respondent

Motor Vehicle Commission, petitioner, appearing on the papers only, pursuant to
N J A C 11-56(a)

Andre Norwood, Jr., Esq., for respondent

Record Closed September 26, 2016

Decided November 10, 2016

BEFORE **LISA JAMES-BEAVERS, ALJ**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This proceeding is brought under N J S A. 39.3-10.1 and N J A C 13 21-14.5(a) and (c)(12) that respondent Kenneth Lewis failed to satisfy the requirements for a Business/Commercial Driver License (CDL). The issue is whether respondent committed a disqualifying crime or offense within the meaning of N J A C 13 21-14.5(a) and (c), and, if so, whether respondent has affirmatively demonstrated sufficient rehabilitation to justify a waiver under N J A C. 13 21-14.5(d)

* passenger endorsement on CDL

By Scheduled Suspension Notice dated February 19, 2014, the Motor Vehicle Commission (Commission) proposed to suspend respondent's passenger endorsement indefinitely because he failed to satisfy the requirements for the endorsement on his CDL based on information that he had a disqualifying criminal arrest and/or conviction record. By undated letter, respondent requested a hearing, which was granted. Respondent and his attorney failed to appear at a proceeding on February 1, 2016, scheduled under the docket number MVH 11090-15. Respondent's attorney claimed that he did not receive notice and the case was re-transmitted to the OAL for a hearing.

The Commission re-transmitted the matter to the Office of Administrative Law (OAL) where it was filed on May 11, 2016, for determination as a contested case.

Administrative Law Judge Morgan Hurley held a hearing on July 8, 2016, and, after the conclusion of testimony, the record remained open for additional information. The Commission relied upon the packet of discovery materials in support of its Notice and chose not to appear or present testimony at the hearing. Judge Hurley left the OAL before rendering a decision and the file was transferred to the undersigned. I once again gave respondent a chance to supplement the record with the disposition of the criminal charges by September 20, 2016. I closed the record after I received the documents on September 26, 2016.

FINDINGS OF FACT

The relevant facts are not disputed. Based upon a review of the testimony and the documentary evidence presented, I **FIND** the following **FACTS**:

1 Respondent holds a commercial driver's license with a passenger endorsement. N.J.A.C. 13-21-23.12

2 The Commission submitted documents in support of its contention that respondent had a disqualifying arrest on or about February 2, 2014. Respondent was charged with possession of a firearm for an unlawful purpose, N.J.S.A. 2C-39-4A, and Aggravated assault with a firearm, N.J.S.A. 2C-12-1(b)(9).

3 Specifically, when respondent and his wife were separated, he went to the home of the gentleman she was seeing and sat outside of his house. When he came up to respondent's car, respondent got out of the car and they exchanged words. As testified to by respondent, whose testimony I **FIND** to have been credible, he went back into his car and the gentleman took off running. The gentleman said that respondent pulled a firearm on him, but he did not brandish a gun. He did not have it with him at the time. The gentleman was aware that respondent was a registered gun owner.

4 On or about June 29, 2015, respondent entered a guilty plea to a disorderly persons offense of alarming conduct, N.J.S.A. 2C 33-4C¹. The original criminal charges were dismissed, except alarming conduct. Respondent was sentenced to one year probation, which may terminate upon payment of fines and penalties. He was assessed \$33 court costs, \$50 VCCB and \$75 SNSF, which he satisfied.

5 At no time has respondent brandished a gun for an unlawful purpose and I so **FIND**.

6 Respondent's Abstract of Driver History indicates that he has no points against his license at this time.

LEGAL DISCUSSION AND CONCLUSIONS OF LAW

In 1986, the federal Commercial Motor Vehicle Safety Act was enacted at 49 U.S.C. §2701 to 2718. Section 2708 of the federal act required the states to adopt commercial driver licensing laws in compliance with federal standards or have their highway funds withheld. In response, the Legislature enacted the New Jersey Commercial Driver License Act in 1990 N.J.S.A. 39 3-10 9 to 10 31 Motor Vehicle Comm'n v Victor Castro, MVH-2662-16, Initial Decision (November 3, 2016), <http://njlaw.rutgers.edu/collections/oal/>. Under rules promulgated by the Commission regarding the right of a commercial driver to have a passenger endorsement, N.J.A.C. 13 21-14 5(c), the Chief Administrator --

may not issue a passenger endorsement, or may revoke or suspend the passenger endorsement of any person when it is determined that the applicant or holder of such license has

12 A criminal record that is disqualifying. The phrase "crime or other offense" as used hereinafter shall include crimes, disorderly persons offenses or petty disorderly persons offenses as defined in the "New Jersey Code of Criminal Justice" and any offenses defined by any other statute of this State. A driver has a disqualifying record if

1 He or she has been convicted of, or forfeited bond or collateral upon, any of the following:

(3) A crime or other offense involving the use of force or the threat of force to or upon a person or property, such as armed robbery, assault and arson.

[N J A C 13 21-14 5(c)(12)(i)(3)]

The Commission also charged respondent with N J A C 13 21-14 5(a), which sets forth

Applicants for passenger endorsements shall submit an application as prescribed. Applicants shall be at least 21 years of age, have a minimum of three years driving experience, be of good character and physically fit and possess a valid New Jersey driver license. Fingerprinting will be required.

Respondent argues that he has not incurred a disqualifying offense under the Motor Vehicle regulations because he was not convicted of any offense involving the use of force or threat of force to or upon a person or property. Rather, he was only found guilty of a disorderly persons offense under a plea arrangement of alarming conduct, which he referred to as harassment.

¹ The citation N J S A 2C 33-4C for alarming conduct is quoted from the respondent's Judgment of Conviction. I was unable to find that citation.

As set forth above, the plain language of the motor vehicle regulations does encompass a disorderly or petty disorderly person offense, but it does not include alarming conduct or harassment. Accordingly, I **CONCLUDE** that respondent does not have a disqualifying criminal record requiring the suspension of his ^{passenger endorsement on his} CDL license. Further, I **CONCLUDE** that respondent meets the requirement of good character and the other requirements of N J A C 13 21-14 5(a)

ORDER

It is **ORDERED** that the Scheduled Suspension Notice issued against the passenger endorsement on respondent Kenneth Lewis's Commercial Driver License be and hereby is **REVERSED**.

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

November 10, 2016
DATE


LISA JAMES-BEAVERS, ALJ

Date Received at Agency

November 14, 2016

Date Mailed to Parties

11/15/16

cmo

APPENDIX
WITNESSES

For Petitioner:

None

For Respondent:

Kenneth Lewis

EXHIBITS

For Petitioner:

P-1 Packet of Documents from Agency

For Respondent:

R-1 Judgment of Conviction, dated June 29, 2015