

*Date of mailing: July 7, 2017

**STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE NUMBER: MXXXX XXXXX 09922
OAL DOCKET NUMBER: MVH 12355-15**

IN THE MATTER OF : **FINAL DECISION AND ORDER**
ERIC D. MALTZ :

The Motor Vehicle Commission (MVC or Commission) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **ERIC D. MALTZ**, respondent, for his involvement in a motor vehicle accident which resulted in the death of James S. Diamond. Pursuant to N.J.S.A. 39:5-30, the Commission proposed an administrative suspension of respondent's New Jersey driving privilege for a period of 73 months. The administrative charges in the notice of proposed suspension tracked those motor vehicle charges which had been issued as police summonses: reckless driving; careless driving; failure to keep right; speeding; unsafe operation of a motor vehicle; operating under the influence; driving while intoxicated within 1000 feet of a school; and underage driver with BAC 0.01% to 0.07%. As a result of the preliminary hearing order entered by ALJ Robert Bingham, II, at the start of this administrative matter, respondent's New Jersey driving privileges were suspended indefinitely pending final administrative resolution.

It is noted that, as a separate and independent matter from this administrative agency action, each of those Title 39 Motor Vehicle charges, in addition to criminal charges pursuant to N.J.S.A. 2C:11-5a, First Degree Aggravated Manslaughter; N.J.S.A. 2C:11-5a, Second Degree Death By Auto; and N.J.S.A. 2C:12-1(c), Fourth Degree

Assault by Auto, were all prosecuted as part of a non-jury trial arising from this same March 28, 2013 fatal accident. The Honorable Robert C. Billmeier, J.S.C. presided over that trial. Initial Decision at 4. The court's order issued December 23, 2014, found respondent not guilty by reason of insanity in connection with all of the stated criminal and motor vehicle charges. Ibid.

The extensive additional proceedings and conditions imposed pursuant to that court's Order entered by Judge Billmeier are outlined in Administrative Law Judge (ALJ) John S. Kennedy's Initial Decision. See, Initial Decision at 4-7. The ALJ's factual findings provide details regarding the nature and sequence of the forensic psychiatric evaluation conducted by a State forensic psychiatrist, Dr. Evan Feibusch, M.D., during respondent's initial commitment period, as well as ongoing reports by the respondent's treating psychiatrist, Dr. Adam Hauser, M.D., and his treating psychotherapists, Hilary Herbold, L.C.S.W. and Kristina Rago-Salomita, M.S.W, L.C.S.W., which are submitted to Judge Billmeier as part of the continuing required periodic Krol review hearings, pursuant to N.J.S.A. 2C:4-8. Ibid. Judge Billmeier's court-ordered conditions for respondent include that he "is not permitted to drive any motor vehicle without the approval of this Court." Id. at 7.

This court-ordered condition will continue until it is rescinded by a subsequent order of the court, as part of the ongoing Krol review. See, State v. Ortiz, 193 N.J. 278, 282, 289-91 (2008) (the New Jersey Supreme Court held that the requirement of mandatory periodic reviews under Krol includes all defendants acquitted by reason of insanity save for those released entirely without supervision or conditions; thus those who are released subject to supervision or conditions pursuant to N.J.S.A. 2C:4-8(b)(2) must

have periodic review hearings at which the supervision/conditions are reviewed with specific attention to the issue as to whether the defendant is a danger to themselves or to others). In the ALJ's factual discussion concerning the ongoing Krol hearings, the Initial Decision contains the specific finding that respondent has not driven a motor vehicle since the date of the accident, March 28, 2013, noting that the Princeton Township Police Department had confiscated respondent's driver's license on that date and has not returned it to him, throughout his two periods of involuntary commitment and his continuing treatment and supervision pursuant to Judge Billmeier's Order. Initial Decision at 4-7.

With respect to the subject administrative action, the governing statute, N.J.S.A. 39:5-30, provides the MVC Chief Administrator (formerly Director) authority to review New Jersey fatal traffic accidents, based on police-reported investigations, and propose administrative suspension action where Title 39 offenses are allegedly committed and have resulted in the death of another individual. Within this statute, the Legislature specifically provided that "[a]ny determination resulting from any preliminary or plenary hearing held pursuant to [the fatal accident subsections of the statute] shall not be admissible at any criminal or quasi-criminal proceedings on the alleged violation or violations." N.J.S.A. 39:5-30(f). Thus, this provision indicates that the Legislature contemplated that the MVC's administrative action may be in addition to separate criminal and/or quasi-criminal court action(s) arising from the same incident.

Moreover, this provision indicates that the Legislature contemplated that, in some instances, the administrative action may move forward before any related criminal or other court action. However, this is only in some instances, as many times it is the court

action that will proceed to resolution before the administrative action, as it did here with respect to this accident. Indeed, the New Jersey State Police Fatal Accident Investigation Unit's Fatal Accident Report submitted to the MVC in connection with the subject accident contains the following direct instruction: "*** CRIMINAL CHARGES PENDING – No action by the New Jersey Motor Vehicle Commission – Fatal Accident Review Board until completion of criminal case [.] ***" Consequently, the proposed administrative action proceeded after the criminal court matter resolved in this instance.

The order in which the separate actions occurred is important to note for the reason that the Appellate Division in Cresse v. Parsekian, 81 N.J. Super. 536, 549 (App. Div. 1963), aff'd, 43 N.J. 326 (1964), instructs that the MVC "must weigh each case individually", to determine whether a suspension is required at all for the specifically delineated purpose of "reforming the particular motorist, and not for the purpose of frightening and deterring others, even though that may be an incidental result." The court declared that "[t]o impose sanctions beyond what is needed to reform the individual, in order to frighten others, is a function of punishment, beyond the power of the [Chief Administrator]." Ibid. Thus, the controlling Cresse analysis for the MVC's proposed administrative action calls for analysis of the particular facts of the violation in conjunction with an overall analysis of the totality of the circumstances and driver history, including all relevant aggravating and mitigating factors, with the overarching aim that the determination is as to "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." Ibid.

In light of the criminal court proceedings and ongoing court-ordered conditions and court review hearings, consideration of the totality of the circumstances for this matter must appropriately include consideration of the factual findings as stated above that the respondent has not driven to the date of this final administrative determination and continues to be prohibited from driving, which period currently stands at approximately 51 months (four years and three months) in length and will continue until the court rescinds that imposed condition. On this particular and very unique record, this is properly considered as verified by his having had his driver license permanently confiscated by the police and his being immediately involuntarily committed as of the date of the accident and then subject to another period of commitment and to continuing court supervision and court-imposed conditions as part of his “conditional release” which have prohibited him from driving and have continued to so prohibit him from driving. Thus, the Cresse analysis here calls for consideration of these very specific facts which are tied to the criminal court resolution and continuing Krol proceedings/review of respondent. That respondent has been “removed from the highway” as a result of this accident for that period of time already and, furthermore, that respondent will continue to be evaluated by the criminal court as to the need for the driving-prohibition condition in connection with evaluating whether he is a danger to others or himself is appropriately factored into the administrative determination here as to whether an additional suspension term is necessary.

Prior to this final agency determination, I have reviewed and considered the Initial Decision of the Administrative Law Judge and the letter of exceptions to the Initial Decision, which has been filed with the Commission by counsel for respondent. Based

upon a de novo review of the record presented, I shall accept and adopt the findings contained in the Initial Decision (which have not been contested by respondent in his exceptions) and shall clarify and modify the recommendation of the ALJ as stated below.

In the Initial Decision, the ALJ concluded, after a thorough and careful examination of the record presented, that the Commission met its burden of proof with regard to proving a Title 39 violation was committed by respondent which violation was at least a contributing cause of the fatal accident¹, thus authorizing the Commission to consider an administrative suspension sanction here. However, in consideration of the particular facts and analysis set forth in the record, the ALJ ultimately concluded that “the mitigating factors [as noted on page 11] warrant a suspension period less than the seventy-three months originally proposed by the Commission.” Initial Decision at 11. The ALJ concluded that “the purposes for license suspension are fulfilled by a suspension period of forty-eight months” and noted that “[n]othing in this Initial Decision shall affect Judge Billmeier’s *Krol* review or his Order that respondent shall not be permitted to drive any motor vehicle without approval of the that Court.” Initial Decision at 12.

The ALJ’s above-stated recommendation was made in his Initial Decision issued on February 10, 2017, which reflects a period of approximately 47 months from the date of the accident and the date from which respondent had not driven, and corresponds to the anticipated final decision date (had there not been two extensions of time necessitated by a delay in obtaining the transcript/filing of the respondent’s exceptions) which would have been in the 48th month. Thus, it is reasonable to view the ALJ’s recommended

¹ Indeed, the ALJ found it was more than a contributing cause as it was found to be the “direct cause” of the accident and Mr. Diamond’s death. Initial Decision at 11.

administrative sanction to be one that considers the “48 months” during which the respondent was already restricted from driving to be sufficient as time served and not requiring an additional period of suspension. While it is noted that in the ending section of the Initial Decision, within the boilerplate “Order”, the recommendation is phrased as having the respondent’s driving privileges be “suspended for a period of forty-eight months, with due credit for any and all suspension periods served to date since issuance of the Notice” – this additional phrase is the standard boilerplate phrasing that is applicable in the more typical situation, where there has not been a criminal court resolution and conditions/ongoing review such as are detailed here in this unique matter.

If, instead, the ALJ’s recommended “48 month” suspension period were to be viewed as not including the time period found as fact in his findings as part of the time during which respondent had not driven and was prohibited from driving, the recommendation would extend the suspension into August of 2019. This would mean a total period of 77 months, a period of not driving which would be longer than that proposed in the first instance (which was based on the full set of motor vehicle charges listed in the proposed suspension notice).

Thus, in this final agency decision, I will clarify and modify this recommendation to reflect a 51 month period of suspension (to date of this determination) that has been fulfilled as having been served as stated herein. Nevertheless, I shall make the specific further modifications to the recommendation to include the following required conditions that must be met before there can be any future restoration of driving privileges.

As a condition of restoration, respondent shall submit to and successfully pass a three-part Commission Driver Re-examination as mandated pursuant to N.J.S.A. 39:5-

30(f) and N.J.A.C. 13:20-12.2.

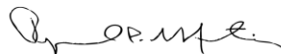
Also as a condition of restoration of his New Jersey driving privilege, in addition to paying the statutorily required restoration fee, respondent shall be required to submit official court documentation as proof to the Commission, that Judge Billmeier has by court order rescinded the condition imposed upon respondent that prohibits respondent from operating a motor vehicle without that Court's approval.

ORDER

It is, therefore, on this 26th day of June, 2017, **ORDERED** that the suspension of the New Jersey driving privilege of **ERIC D. MALTZ** be for a period of 51 months (1530 days) in total with due credit applied for the period during which respondent was prohibited from driving beginning March 28, 2013, as stated in the ALJ's factual findings due to the police department's permanent confiscation of respondent's driver license on that date, as well as the two periods of involuntary commitment and continuing treatment and supervision pursuant to the specific conditions ordered by Judge Billmeier in the criminal court matter arising from this same accident. (However, there shall be no restoration of driving privilege until all the conditions for restoration stated below are satisfied.)

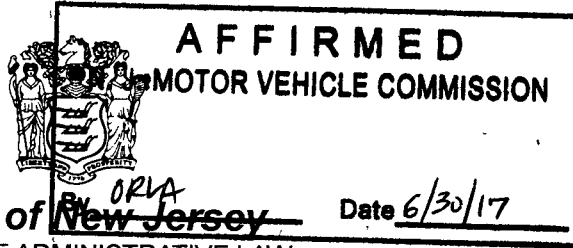
It is further **ORDERED** that **ERIC D. MALTZ**, in addition to paying the statutorily required restoration fee, as a condition for restoration of his New Jersey driving privilege, shall also be required to submit official court documentation as proof to the Commission, that Judge Billmeier has by court order rescinded the condition imposed upon respondent that prohibits respondent from operating a motor vehicle without that Court's approval; and

It is further **ORDERED** that **ERIC D. MALTZ**, as a condition for restoration of his New Jersey driving privilege, must successfully pass the three-part Commission Driver Re-examination pursuant to N.J.S.A. 39:5-30(f) and N.J.A.C. 13:20-12.2.



Raymond P. Martinez
Chairman and Chief Administrator

RPM: kw/eha
cc: Robert E. Lytle, Esq.
Anthony J. Apicelli, Jr., Esq.



**NEW JERSEY MOTOR VEHICLE
COMMISSION,**
Petitioner,
v.
MONICA S. HOLLEY,
Respondent

INITIAL DECISION
OAL DKT. NO MVH 2787-17
AGENCY DKT NO. 56852

Scharkner Michaud, Driver Improvement Analyst 1, for petitioner pursuant to
N.J.A.C. 1.1-5.4(a)(2)

Monica S. Holley, respondent, pro se

Record Closed May 8, 2017

Decided May 16, 2017

BEFORE **MARY ANN BOGAN**, ALJ

STATEMENT OF THE CASE

This contested case involves N.J.S.A. 39.5-30, N.J.S.A. 39.5-30.10, and N.J.A.C. 13.19-10.6, involving point system regulation and violation within a one-year probation period. Respondent's driving privileges were suspended for ninety-days because of this violation. Respondent defends on the basis that she did not believe that her conduct justified the suspension.

PROCEDURAL HISTORY

Respondent requested a fair hearing and the matter was transmitted to the Office of Administrative Law (OAL) on February 27, 2017, for determination as a contested case, pursuant to N J S A. 52:14B-1 to -15; N J S A. 52:14F-1 to -13. The matter was heard on May 8, 2017, and the record was closed.

TESTIMONY AND FACTUAL DISCUSSION

As derived from the testimony and documents submitted, I **FIND** the following **FACTS** undisputed:

- 1 The New Jersey Motor Vehicle Commission (MVC) issued a Warning Notice (Notice) to respondent dated June 16, 2015. The Notice stated that if she committed any violation during a one-year probationary period, her driving privilege may be suspended for various periods that the Notice itemized, in particular, that if the violation was within the first six months, the suspension would be ninety days (P-2.)
- 2 Respondent acknowledges receipt of the warning notice advising of the probation period.
- 3 On October 9, 2015, a speeding violation was posted to her record thereby incurring a persistent violator suspension, posted on January 13, 2016, by the MVC. The notice advised respondent that her license was suspended for ninety days because she received a speeding ticket while in the one-year probationary period (P-3.)
- 4 Respondent's Abstract of Driver's History Record (Abstract) contains eleven years of events including six suspensions as a persistent violator. (P-1)

- 5 During a June 30, 2016, conference with the MVC, respondent reported she was driving in a mall parking lot when the police officer stated she was speeding. She also reported that her daughter is one-year of age. The conference notes also indicate that respondent received a four-point speeding ticket

The only issue in dispute is whether respondent shall be considered to have good cause for the suspension imposed. Petitioner presented documentary evidence to demonstrate that respondent's infraction occurred approximately four months after the start of her one-year probationary period.

Respondent testified on her own behalf. She is a single mother who works at Bayshore Medical Center in Holmdel. She lives in Long Branch. Respondent is also the sole care taker of her four-year old daughter and among her other duties, she drives her to and from school. Respondent testified that she cannot rely upon family support since her family does not live nearby. She asserted that she represented herself in Municipal Court for the speeding ticket, and after being found guilty she filed for an appeal because she was not traveling over the speed limit. Although she paid \$139 to appeal her conviction, she failed to timely file the necessary brief, and her appeal was denied. When she met with the MVC she was not provided with information on how to appeal the prior denial of her appeal. Respondent asserted that she became a persistent violator due to this speeding ticket. She acknowledged, her driving record is "not the best" and she is "trying" and that most of the infractions occurred while she drove to and from school. She finds it difficult to see the "fruits" of her labor and her attempts to stay out of trouble because of the issued probationary periods. She highlighted her "clean record" for this past year, inferring that her record has especially improved since she became a mother, and she noted her credit for three-points for annual safe driving earned this year.

It is my obligation and responsibility to weigh the credibility of the witnesses in order to make a determination. Credibility is the value that a fact-finder gives to a witness's testimony. The word contemplates an overall assessment of a witness's story in light of its

rationality, internal consistency, and manner in which it "hangs together" with other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir 1963). Credible testimony has been defined as testimony that must proceed from the mouth of a credible witness, and must be such as common experience, knowledge, and common observation can accept as probable under the circumstances. State v. Taylor, 38 N.J. Super 6, 24 (App Div. 1955) [quoting In re Perrone's Estate, 5 N.J. 514, 522 (1950)]. In assessing credibility, the interests, motives or bias of a witness are relevant, and a fact-finder is expected to base decisions of credibility on his or her common sense, intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973). Credibility does not depend on the number of witnesses and the finder-of-fact is not bound to believe the testimony of any witness. In re Perrone's Estate, supra, 5 N.J. 514.

Having had an opportunity to observe respondent's appearance and demeanor, assess her credibility, and consider the documentary evidence, I further **FIND as FACT** that respondent did not demonstrate good cause necessary to determine that an exception exists to the suspension.

LEGAL ANALYSIS

Applicable is N.J.A.C. 13-19-10.6 that provides in pertinent part

§ 13:19-10.6 Restoration; official warning; completion of Driver Improvement or Probationary Driver Program

(a) Persons whose licenses are restored after a suspension imposed under N.J.A.C. 13-19-10.2 or after a suspension imposed under this section, persons who are officially warned after an administrative hearing, and persons who successfully complete a Commission Driver Improvement Program or Probationary Driver Program may retain their licenses upon the express condition and understanding that any subsequent violation of the Motor Vehicle and Traffic Law of the State of New Jersey committed within one year of the restoration, official warning, or warning following successful completion of a Driver Improvement or Probationary Driver Program shall, except

for good cause, result in suspension of driving privileges for
the following periods

1 When the subsequent violation occurs within six months of the date of the restoration, official warning or warning following completion of a Driver Improvement or Probationary Driver Program--90 days;

Respondent's infraction occurred approximately four months after the start of her one-year probationary period that commenced June 16, 2015. She acknowledges receipt of the warning notice advising of the probation period. Generally, 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 Commission's function to impose suspensions for the purposes 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 that appears in many statutes and rules. Our courts have held "[t]he 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 construct a "definitive catalogue" of all circumstances to be considered in determining the existence of good cause, and [e]ach case must be decided upon its own facts." Ullmann v Hartford Fire Ins. Co., 87 N.J. Super 409, 414 (App. Div. 1965). Factors which may be relevant in determining the appropriateness of any suspension include the individual's past driving record, length of time licensed, receipt of prior warnings or prior attendance at driver improvement school, attitude and maturity level, evidence of recent improvement, need for a license, and other aggravation 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; however, 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 (Div. of Motor Vehicles 1982)

The respondent over just the last four years¹ has incurred five motor vehicle violations, including a violation for an open container in a motor vehicle. Understanding respondent's pressing need for her driver's license, her Abstract is replete with infractions starting with a speeding ticket in 2005, and six suspensions as a persistent violator. Accordingly, respondent's purported mitigating factors having been carefully considered, are not supported by her driving record and recent improvement has not been demonstrated.

Accordingly, based upon the totality of the circumstances, including respondent's driving record and current personal situation, I **CONCLUDE** the respondent has not met her burden of proving "good cause" for a special exception to the imposed suspension, and the appropriate remedial sanction to be imposed would remain as a ninety-day suspension of the New Jersey driving privileges of the respondent.

ORDER

Based on the foregoing, I **ORDER** that the Commission's action suspending respondent's New Jersey driver's license for ninety days is **AFFIRMED**.

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

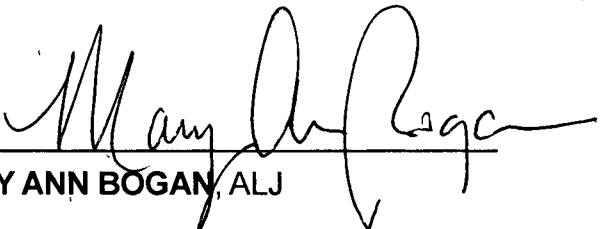
This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days

¹ Respondent testified that her daughter is four years of age. During a conference with MVC on June 30, 2016 respondent reported her daughter being one year of age

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.

May 16, 2017
DATE


MARY ANN BOGAN, ALJ

Date Received at Agency

May 16, 2017

Date Mailed to Parties

5/18/17

/cb

APPENDIX

WITNESSES

For petitioner

None

For respondent

Monica S. Holley

EXHIBITS

For petitioner

P-1 Certified Abstract

P-2 Restoration Notice, dated June 16, 2015

P-3 Suspension Notice, dated January 14, 2016

For respondent

None