Date of mailing: October 24, 2016

STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
AGENCY DKT. NUMBER: CXXXX XXXXX 10902
OAL DOCKET NUMBER: M.V.H. 06425-16

IN THE MATTER OF :

SERGE CORPORAN :

FINAL DECISION

The Motor Vehicle Commission ("Commission") hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **SERGE CORPORAN**, respondent, for two proposed suspension notices: one notice for the accumulation of an excessive number of points in violation of N.J.S.A. 39:5-30.8 and N.J.A.C. 13:19-10.1 et seq.; as well as one for operating a motor vehicle during a period of suspension in violation of N.J.S.A. 39:3-40 and N.J.A.C. 13:19-10.8. Pursuant to N.J.A.C. 13:19-10.2(a)(2), for the "points" violation, respondent's New Jersey driving privilege is subject to a 60-day suspension period. For the operating-while-suspended violation, the proposed suspension period is 180 days.

Prior to this final agency determination, I have reviewed and considered the Initial Decision rendered by the Administrative Law Judge ("ALJ") in this matter and the hearing record. No exceptions have been filed. Based upon an independent de novo review of the record presented, I shall affirm and adopt the findings of the ALJ made with respect to the establishment of the elements for proving both administrative charges and incorporate those as if set forth in full herein; however, I shall modify the ALJ's recommendations for the administrative sanctions to a thirty (30) day suspension for the driving-while-suspended violation and a requirement of a Commission Driver

Improvement Program class ("DIP" class) for the points matter, based on the reasons as indicated below.

In her Initial Decision, the ALJ finds that it was established on the record that: (1) respondent did operate a vehicle during a period of suspension (as evidenced by the moving violation for speeding in New York which occurred on August 26, 2014 and for which he was later convicted in late May of 2015; which undisputed operation of a vehicle occurred during a valid period of suspension that ran from April 27, 2014 to June 16, 2015, during which respondent had been subject to five separate suspension orders); and (2) that his driving history record reflects that he had accumulated eighteen points in a period of two years or less upon the posting, after conviction, of that out-of-state two-point speeding offense, in contravention of N.J.S.A. 39:5-30.8(a). Initial Decision at 3-4. Based on the documentary evidence in the record as well as the testimony presented, I concur with these findings that confirm that the Commission met its burden to prove both administrative charges at issue.

In support of these ultimate findings, this Final Decision shall also explicitly clarify that respondent's purported "defective notice" argument, as suggested in his testimony, as to the numerous underlying suspensions in connection with the driving-while-suspended charge is utterly without merit. At the outset, it is noted that respondent did not even address the first of the five proposed suspension notices ("Proposed Suspension" notice dated: 03/14/2014, with Certification of Mailing- Insurance Surcharge System, dated: 03/14/2014) and the corresponding suspension order for his having failed to pay insurance surcharges, which suspension order ("SUS O ISNP" as indicated on the Certified Abstract of Driver History; see also "Order of Suspension"

dated: 04/27/14) became effective April 27, 2014 (as previously specified in the proposed suspension notice). This failure to pay insurance surcharges was only rectified by respondent fulfilling the requirements for a restoration of driving privileges on June 16, 2015, despite the Commission's mailing of legally sufficient notice to his address of record as provided to the Commission by respondent[1].

This Final Decision shall once again confirm that, under the controlling case of State v. Wenof, 102 N.J. Super. 370, 376 (Law Div. 1968), *overruled on a jurisdictional question* (but not on the notice requirements) by State v. Ferrier, 294 N.J. Super. 198 (App. Div. 1996), *certif. denied* 148 N.J. 461 (1997), actual receipt of the notice is not required to meet the due process notice requirement contained in N.J.S.A. 39:5-30. As the Wenof court cautioned, "[i]f such requirement [of actual notice] existed the scofflaw would have it in his power to thwart the revocation proceedings." Ibid. The Wenof decision held that legally sufficient notice is provided when the notice was sent through ordinary mail to the last address of record provided by the driver, as this is "reasonably calculated to reach the intended part[y]." Id. at 375-376. As amply established by the documentary evidence in the record, this is what was done here. Moreover, it is what was done here with regard to both sets of suspension notices/orders for respondent's having failed to pay insurance surcharges (SUS O ISNP, effective 04/27/2014, and SUS O ISNP, effective 8/10/2014; with its corresponding Proposed Suspension Notice and Certification of Mailing- Insurance Surcharge System dated: 06/27/2014) .

In this case, the record establishes that the Commission mailed, on March 14, 2014, the first of such Notices of Proposed Suspension for failing to pay insurance

[1] It is noted that respondent's address had not changed and has not changed throughout the course of this matter and remains the same to the present time.

surcharges to respondent Corporan at the last address of record as specified by him, and, on June 27, 2014, similarly mailed to his last address of record the additional surcharge-related Notice of Proposed Suspension. Thus, under the controlling case law, the mailing of these notices to the address of record as provided by respondent to the Commission constituted legally sufficient notice of those two suspensions for failing to pay insurance surcharges.

Both of these surcharge-related notices provided in this matter fully complied with the requirements of N.J.S.A. 17:29A-35, which instructs: "[i]f, upon written notification from the commission or its designee, mailed to the last address of record with the commission, a driver fails to pay a surcharge levied [under N.J.S.A. 17:29A-35] and collectible by the commission, the driving privilege of the driver shall be suspended forthwith until at least five percent of each outstanding surcharge assessment that has resulted in suspension is paid to the commission; except that the commission may authorize payment of the surcharge on an installment basis . . . ." See also, N.J.A.C. 13:19-12.1 to -13.2. Hence, as of the clearly specified date in the proposed suspension notice, April 27, 2014 (and again on August 10, 2014), the respondent's failure to pay the surcharges (or at least the installment amount) mandated that the Commission suspend his driving privileges indefinitely until such time as respondent became current on his obligation and his privileges were officially restored following satisfaction of all restoration requirements.

It is noted and I find that the fact that one of the confirming Orders of Suspension, prepared on August 10, 2014 (the first date it could possibly be determined

that payment was not yet made by that very date), was mailed five days later[2] on August 15, 2014, does not render defective the prior Notice of Proposed Suspension, nor does it change the effective date of the suspension which had been clearly established in the prior Notice. That Notice of Proposed Suspension states definitively that respondent's privileges "will be indefinitely suspended" on a date certain – August 10, 2014.[3] The notice is not in any way unclear or ambiguous. The respondent is informed in clear terms that his privileges will be suspended on a certain date if he does not fulfill the condition stated – that is, payment of at least the installment amount due, which amount is also clearly stated on the notice, by that specified date. The condition of "payment" by the respondent is fully within the knowledge (and control) of the respondent. Thus, any driver who was mailed this standard Notice of Proposed Suspension/Insurance Surcharge Bill and who has not provided such payment by that due date cannot be said to have any reasonable doubt that his/her privileges have been suspended on the date spelled-out in the notice.[4] Indeed, it is noteworthy and conclusive as to the driving-while-suspended charge in this particular case, that the very first confirming Order of Suspension for failing to pay surcharges was mailed May 6, 2014, more than five months prior to the triggering moving violation date of August 27,

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[2] The number of days elapsed during the course of the mailing process is attributable to the enormous volume of mailings undertaken by the Commission in fulfilling its legislatively-delegated obligations under the surcharge and suspension statutory schemes.

[3] The date specified as the suspension effective date even incorporates an additional "grace period" beyond the specified "date due" for the surcharge payment, thus allowing more than ample time for respondent to have avoided the consequence of indefinite suspension.

[4] It is noted that respondent does not dispute that he did not make a required payment for these surcharges before the suspension effective dates.

2014, which established that he drove while suspended. The additional four separate Orders of Suspension[5], thus, are not even necessary for proving this charge. To put it simply, in total the Commission properly provided legally sufficient notice in the form of nine separate documents mailed to respondent at his address of record prior to respondent's decision to drive on August 27, 2014. It is beyond question that respondent disobeyed valid Orders of Suspension and should not have been driving on that date. Thus, respondent's attempts at arguing deficiency in notice for these suspensions to defeat the administrative driving-while-suspended charge were properly rejected by the ALJ.

This Final Decision also must address the assertion made by respondent that "[h]ad that [New York speeding] ticket been posted in a timely manner, he would have

[5] The documentary evidence on this record also establishes that the Commission properly provided legally sufficient notices to respondent with respect to not only the two surcharge-payment related suspensions, but also three other valid suspensions: (1) an excessive points suspension (thirty-day term), with "Scheduled Suspension Notice" and Certification of Mailing List providing proof of mailing on May 6, 2014 (suspension effective date: May 23, 2014) and the confirming Order of Suspension, with Certification of Mailing List providing proof of mailing on June 11, 2014); (2) a failure to answer a municipal court summons (Palisades Park Municipal Court) with "Scheduled Suspension Notice" and Certification of Mailing List providing proof of mailing on May 20, 2014 (suspension effective date: July 11, 2014) and the confirming Order of Suspension, with Certification of Mailing List providing proof of mailing on August 4, 2014); and (3) a failure to answer a foreign state court summons (New York) with "Scheduled Suspension Notice" and Certification of Mailing List providing proof of mailing on July 1, 2014 (suspension effective date: August 23, 2014) and the confirming Order of Suspension, with Certification of Mailing List providing proof of mailing on September 16, 2014). It is noted that even though the thirty-day term for the "points" suspension (#1 above) had already run by the date of the triggering violation, respondent had not fulfilled the requirements of restoration (had not paid the statutorily required restoration fee) and thus, under controlling case law, State v. Zalta, 217 N.J. Super. 209 (App. Div. 1987) (for purposes of driving-while-suspended violation, suspension continues until actual restoration of license), was properly considered still administratively suspended and prohibited from operating a motor vehicle under his New Jersey home state license.

had an opportunity to address it prior to full restoration nearly a year later" and the ALJ's misguided characterization of the posting of the New York "ticket" as being "ten (10) months late" and thus a "stale violation" as these statements must be rejected as inaccurate. The short answer as to why these statements are incorrect is that respondent was not yet convicted until late May of 2015 of the New York speeding summons which had been issued on August 27, 2014, and the New York courts/DMV then promptly manually reported this out-of-state conviction to NJMVC which then expeditiously processed and data entered such conviction[6] onto the driver history record on June 10, 2015. Thus, it is not reasonable or accurate to view this as an "untimely" posting of the conviction as the conviction itself did not occur until more than eight months after the offense date. "Tickets" are not posted (nor are these "alleged" violations even reported to the Commission as they are only "alleged" at that stage); it is only convictions (represented by the "V" violation entry on the Driver History Abstract) that are reported to the Commission and are posted to the driver history record.

Here, from respondent's driver history record it is also apparent that he had failed to answer/appear in connection with his New York summons thus causing further delay to the ultimate resolution of that summons. Clearly, it cannot be appropriate from the standpoint of public safety or public policy to reward someone whose adjudicatory process was a lengthy one, especially in the case of a scofflaw who dodges disposition by failing to answer the summons, by simply discounting the offense as "stale" despite having been ultimately convicted of the offense. To do so would create the untenable

[6] It is noted that there are more than one million motor vehicle offense convictions (from in-state and out-of-state) that are entered onto driver history records each year and thus, the out-of-state convictions that must be manually data-entered when received are batched for processing.

result that purposeful delaying tactics may be used to avoid legitimate sanctions for the problematic driving behavior that was in fact found to be proven. Additionally, here the assertion that the "full restoration" that was accomplished by respondent on June 16, 2015, could have somehow included fulfilling the two subject "proposed" suspension actions at issue here is inaccurate as well. These two proposed suspension actions would have to have been either served in full or adjudicated before they could be considered satisfied, thus it is not the case that respondent could "have taken care of" these two proposed matters on June 16, 2015 as part of the restoration process for the indefinite suspensions (and one "term-eligible") that remained open at that time. This is the case even if he was advised of their triggering on that date when he was able to "clear" and satisfy the requirements of the indefinite suspension orders that were "open" at the time he obtained restoration on June 16, 2015. To put it plainly, he would not have been able to simply have them "considered" as part of those restoration steps that he completed on that date. Thus, this portion of the ALJ's Initial Decision is modified accordingly and thus is rejected as providing any rationale for concluding that respondent should receive no sanction for having committed the driving while suspended violation and for having accumulated eighteen points in less than a two year period.

I now turn to a review of the appropriate administrative sanctions to impose for the two violations established on this record. In reviewing the totality of the circumstances of this matter, including respondent's driving record and his asserted need for his driving privilege as well as the mitigating factors presented, I concur with the ALJ that there has been good cause shown for modifying the originally proposed

suspension periods. With respect to the driving-while-suspended infraction, I shall modify it to a thirty (30) day suspension period, and with respect to the accumulated points matter, I shall modify it to a Commission Driving Improvement Program requirement ("DIP" class). This reduction is warranted in light of the mitigating factors noted in the Initial Decision, which are augmented by the recent improvement shown in respondent's driving record (no violations in greater than fourteen months), as well as the respondent's having taken the initiative to successfully complete a defensive driving program (reducing his cumulative point-total). Following restoration from the suspension period, it is also noted that respondent will be placed on a one-year probationary period pursuant to N.J.A.C. 13:19-10.6, which shall subject him to a period of suspension for any subsequent violation of the Motor Vehicle and Traffic Law of the State of New Jersey (or other states) committed within that one-year period.

As specifically noted in the Initial Decision, the ALJ did take respondent's personal circumstances and demeanor/character and attitude into consideration when she rendered her Initial Decision and recommended the remedial sanction of a 30 day suspension as being appropriate. I concur with the ALJ's findings that good cause exists to allow for a reduction in the proposed suspension terms, but in my judgment feel it more appropriate to impose a somewhat modified sanction to include a further Driver Improvement Program ("DIP" class) and a remedial suspension period for the very serious violation of operating a vehicle while suspended to reflect a reasoned balancing of respondent's interest against that of the public. This is done with appropriate deference to the ALJ's ability to observe the respondent as he testified and is in light of the ALJ's assessment of respondent's demeanor/attitude at the hearing as it

relates to his driving behavior and his overall driver history record, as well as "his efforts and progress toward improvement", "his personal background, including his family and employment situation." The ALJ has specifically noted her assessment that respondent "clearly recognized the mistakes of the past, and appears to be very contrite" and additionally "has taken steps, by way of a driver safety course ten days after his restoration, to demonstrate responsibility in dealing with his driving record." Initial Decision at 5.

I, like the ALJ, have taken respondent's circumstances into consideration when arriving at my decision, but I also have a responsibility to impress upon respondent that drivers of motor vehicles have an obligation to operate such vehicles with reasonable care and in accordance with all the motor vehicle laws and regulations of this State (or other states), and to at all times obey the orders imposed by the courts as well as the Commission. While I am sympathetic regarding the hardship that respondent may suffer as a result of his New Jersey driving privilege being suspended, respondent must nevertheless appreciate the responsibility that he owes to the public under the motor vehicle laws. Motor vehicle license suspensions are primarily intended to protect the safety of the public by temporarily removing offenders from the highways of New Jersey. David v. Strelecki, 51 N.J. 563, 566 (1968); Cresse v. Parsekian, 43 N.J. 326, 328-29 (1964). Moreover, the respondent is reminded that the operation of a motor vehicle on New Jersey roads is a privilege, not a right. State v. Nunez, 139 N.J. Super. 28, 30 (Law Div. 1976); State v. Kabayama, 94 N.J. Super. 78, 82-83 (Law Div.), aff'd, 98 N.J. Super. 85 (App. Div. 1967), aff'd, 52 N.J. 507 (1968). A thirty-day period of suspension along with a requirement to successfully complete a Commission Driver

Improvement Program is both warranted and reasonable in the present case when public safety is balanced against respondent's need to maintain his driving privilege. The Commission notes that respondent's proposed suspension is intended to be rehabilitative rather than punitive in nature.

I specifically note that a review of respondent's record reveals that he has never attended the Commission's Driver Improvement Program ("DIP"). Respondent's satisfactory completion of the Commission's approved Driver Improvement Program will redound to his benefit by reinforcing his need to continue with his driving skills improvement. Therefore, I shall require respondent to attend and successfully complete the Commission's approved Driver Improvement Program in lieu of the proposed suspension for the excessive points violation here. See, N.J.S.A. 39:5-30.2 and N.J.A.C. 13:19-10.2(b). In the event of respondent's failure to fulfill the requirements of the Driver Improvement Program, the 60-day proposed suspension in the Scheduled Suspension Notice prepared on June 11, 2015, shall be imposed (in addition to the thirty-day suspension for driving-while-suspended). Following completion of the DIP program, it is also noted that respondent will be placed on a one-year probationary period pursuant to N.J.A.C. 13:19-10.6, which shall subject him to a period of suspension for any subsequent violation of the Motor Vehicle and Traffic Law of the State of New Jersey (or other states) committed within that one-year period.

Based on the foregoing, it is, therefore, on this 21st day of October 2016, with respect to the two notices of proposed suspension dated June 11, 2015:

ORDERED that the New Jersey driving privilege of **SERGE CORPORAN** be suspended for a period of thirty (30) days for having driven during a period of suspension on August 26, 2014, and additionally

It is **ORDERED** that **SERGE CORPORAN** attend and successfully complete a Driver Improvement Program (approved by the Commission). **SERGE CORPORAN** will be contacted by the Commission by separate mailing with instructions to schedule program attendance for the DIP class. In the event **SERGE CORPORAN** fails to fulfill the requirements of the Driver Improvement Program, the originally proposed 60-day suspension shall automatically be imposed for the excessive accumulation of points charge (in addition to the thirty-day suspension for driving-while-suspended).

NOTE: The **effective date** of this suspension is set forth in the enclosed "Order of Suspension."

Raymond P. Martinez
Chairman and Chief Administrator

RPM: kw
cc: Louis G. DeAngelis, Esq. (w/encl.)

Enclosure: Order of Suspension

INITIAL DECISION

OAL DKT NO MVH 11171-16

AGENCY DKT NO. EXXXX- XXXX-12655

MOTOR VEHICLE COMMISSION,

Petitioner,

v

DAVID M. ENGLAND,

Respondent

Kenneth Vercammen, Esq , for petitioner, New Jersey Motor Vehicle Commission (Kenneth Vercammen & Associates)

Todd C. Rubenstein, Esq , appearing on behalf of respondent

Record Closed September 13, 2016 Decided September 16, 2016

BEFORE **KIMBERLY A. MOSS,** ALJ.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, New Jersey Motor Vehicle Commission (MVC) alleges that respondent David M England's (England) New Jersey driving privileges' should be suspended for three hundred and thirty days because he was involved in a fatal accident MVC sent a scheduled suspension notice to respondent dated April 19, 2016 Respondent contested the suspension The matter was transmitted to the Office of

Administrative Law (OAL) and filed on July 20, 2016. A hearing was held on September 1, 2016. Petitioner's witness, a state trooper refused to take his gun off before entering the hearing room, therefore petitioner did not call him as a witness I heard the matter at that time Petitioner submitted closing brief on September 5, 2016. Respondent submitted a closing brief on September 13, 2016 at which time I closed the record

FACTUAL DISCUSSION

Based upon a review of the entire record as well as the testimony of respondent and evidence offered, I **FIND** the following to be **FACTS**

England is employed by New England Motor Freight (NEMF) as a Line Haul Driver, driving tractor trailers He has had a CDL since 2007. He is married with three children, two of whom are minors living with him and his wife, who does not work The route that he drives is from North East Maryland to Newburg, New York His shift generally begins at 10.00 pm. He drives this route five nights a week

On June 16, 2015, at approximately 12:10 am England was driving a NEMF tractor trailer northbound on the New Jersey Turnpike. The tractor was a MAC 2003 The seat of the tractor is higher than the seat of a passenger car. The weather was clear and the road was dry. He was traveling between sixty-to sixty-five miles per hour in the middle lane of the Turnpike At that time England observed a Dodge Caliber ahead of him in the middle lane with no lights on that was stopped There were no other vehicles on the Turnpike in that area There were no lights in that area of the turnpike The lights on the Turnpike are near the exits.

When England saw the Dodge Caliber, he pressed the clutch to disengage the drive of the tractor to stop his vehicle He tried to swerve to the right to avoid the Dodge Caliber He did not try to swerve to the left because commercial vehicles are not

allowed in that lane He could not avoid the collision The left front of the tractor struck the right rear of the Dodge Caliber. After the impact the tractor landed upside down and separated from the trailer It took police and emergency workers three hours to extract him from the tractor His leg was seriously injured in the accident He was hospitalized for fourteen days and had five surgeries The driver of the Dodge Caliber, Richard Hill, was pronounced dead at the scene of the accident When England was being extracted from the tractor, he told the state trooper that he did not see the Dodge Caliber car until it was illuminated by the lights of his vehicle The state trooper then told England that they had received a call about a disabled vehicle England did not have any further communication with the state police after that limited conversation.

England was not issued a ticket as a result of the accident On or about April 19, 2016, England received a notice from the New Jersey Motor Vehicle Commission that it scheduled a suspension of his driving privileges effective May 14, 2014 for eleven months because they determined that he was driving carelessly on June 16, 2015 which resulted in the death of Richard Hill

LEGAL ANALYSIS AND CONCLUSION

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. The Legislature has vested the authority in the Commission, subject to prompt review, to impose a driver 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 of facts essential to such suspension 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". Atkinson, supra, 37 N J at 155, see also David v Strelecki, 51 N J 563 (1968). The determination rests on a finding that "a law of the highway has been violated and that the highway would be a safer place for the public if the violator were removed as a driver for some period of time" Ibid. 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 New Jersey driving privileges for a substantial period due to the death of another motorist during an accident in which MVC alleges that England drove carelessly resulting in the death of Richard Hill, and was the notice of suspension timely sent

In the case of In Re Arndt, 67 NJ 432 (1975), Arndt was arrested on August 22, 1971 for failure to take a breathalyzer test after being arrested on suspicion of driving while intoxicated The police notified the Director of Motor Vehicles on September 2, 1971 A notice of proposed suspension from the Director of Motor Vehicles was sent to Arndt on April 27, 1973 The hearing was held on May 25, 1973 .The hearing officer recommended a suspension on June 14, 1973 The final decision was rendered by the director on April 3, 1974 The Court stated "We conclude that the Division failed to institute the suspension proceedings within a reasonable time and that the proceedings as a whole were conducted with seriously unfair disregard of appellant's rights in the respects noted The order of suspension should be vacated Id at 437

This issue was revisited in In Re Kellan 92 NJ 14(1983) The Court stated

> In In re Arndt, 67 N J 432 (1975), the Director waited 20 months after a driver refused to take a breathalyzer test to notify him of the proposed suspension of his license and nearly 10 months after the hearing to render a final decision We vacated the order of suspension, holding that

> such long delays violated the principles of fundamental fairness imposed on administrative agencies. 67 N J. at 436-37 As a further reason for its decision, this Court opined that the Director's action frustrated public policy, namely, the prompt removal of offending drivers from the road Id at 435-36

However, in In re Garber, 141 N.J Super 87, certif. den 71 N J. 494 (1976), the Appellate Division distinguished Arndt and ruled that the Director's delay of approximately 12 months in rendering his decision did not violate the principles of fundamental procedural fairness It stated "Delay will not generally affect the validity of an administrative determination, particularly where no prejudice is shown" 141 N J Super. at 91

A comparison of Arndt and Garber discloses that there are no simple answers as to what constitutes fundamental fairness in administrative hearings Each case must be considered and evaluated on its own merits Whether an individual has received a hearing that is fundamentally fair depends upon consideration of a number of factors Id at 19

In this matter there was a ten month delay from the date of the accident until the notice of suspension was sent to England There was no reason given for the delay. However England was not prejudiced by the delay He had a clear recall of how, when and why the accident occurred

I **CONCLUDE** that the delay in the notice of suspension did not prejudice England

N J S A 39 4-97 provides

> A person who drives a vehicle carelessly, or without due caution and circumspection, in a manner so as to endanger, or be likely to endanger, a person or property, shall be guilty of careless driving."

In this case The Dodge Caliber was stopped in the middle lane of the New Jersey Turnpike with its lights off in an unlit area of the turnpike Once England saw the Dodge Caliber, he did everything he could to avoid the collision. He disengaged the drive of the tractor and swerved to the right to avoid the collision. The accident was caused by Hill stopping his vehicle, the Dodge Caliber, in the middle lane of the New Jersey Turnpike with none of the cars lights on, in an unlit area of the Turnpike at 12:10 am

I **CONCLUDE** that England was not driving carelessly

ORDER

Accordingly, it is hereby **ORDERED** that proposed suspension of England's New Jersey driving privileges 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

September 16, 2016

DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

September 16, 2016

Date Mailed to Parties SEP 20 2016

ljb

DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

APPENDIX

Witnesses

For Petitioner

None

For Respondent

David England

EXHIBITS

For Petitioner

P-1 New Jersey Crash Investigation Report Dated June 16, 2015

P-2 Death Certificate of Richard Hill,

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 SEP 20 2016