

\*Date of mailing: September 14 , 2016

**STATE OF NEW JERSEY  
MOTOR VEHICLE COMMISSION  
CASE FILE NUMBER: MXXXX XXXXX 09702  
OAL DOCKET NUMBER: MVH 17616-15**

**IN THE MATTER OF** :  
**PERRY E. MAIO** : **FINAL DECISION**

The Motor Vehicle Commission (MVC or Commission) hereby determines the matter of the proposed suspension of the New Jersey driving privilege of **PERRY E. MAIO**, respondent, on the charge of making an intentional misstatement of material fact on an application for the registration of a motor vehicle in violation of N.J.S.A. 39:3-37. Pursuant to N.J.S.A. 39:3-37 and 39:5-30, the Commission proposed a suspension of respondent's New Jersey driving privilege for a period of seven hundred thirty (730) days.

Prior to issuing this final agency determination, I reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ) and the letter of exceptions to the Initial Decision, which was filed with the Commission by counsel for respondent, as well as the reply to exceptions, which was filed by counsel for the MVC. Based upon a de novo review of the record presented, I shall accept and adopt the factual findings and legal conclusions contained in the Initial Decision. For the reasons stated herein, I am reducing the term of suspension recommended by the ALJ from seven hundred thirty (730) days to two hundred ten (210) days.

In the Initial Decision, the ALJ concluded, after a thorough and careful examination of the evidence and a comprehensive analysis of the applicable legal

principles, that the Commission met its burden of proof with regard to the charge of respondent's making an intentional misstatement of material fact on a motor vehicle registration application. In consideration of the facts set forth in the record, the ALJ ultimately concluded that "there is no basis to reduce the proposed suspension" of seven hundred thirty (730) days. Initial Decision at 7.

Counsel for respondent filed a letter of exceptions to the ALJ's Initial Decision. The letter recounted respondent's testimony and raised the issue that the Commission's case was predicated on hearsay testimony. The rule on the admission of hearsay evidence states that

(a) Subject to the judge's discretion . . . or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

[N.J.A.C. 1:1-15.5.]

In short, "for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it." Weston v. State, 60 N.J. 36, 51 (1972).

In this case, the key issue in contention was whether respondent made an intentional misstatement of a material fact when he transferred title to a motor vehicle and registered it in his name. The ALJ found that respondent's actions were

“completely inconsistent” with the proposition that the car was legitimately conveyed to him. Initial Decision at 6. The ALJ based this finding in part on the demeanor of respondent and on the credibility of respondent’s own testimony. Id. at 4.

In reviewing the Initial Decision, “it is the ALJ's credibility findings that control, unless they are arbitrary or not based on sufficient credible evidence in the record as a whole.” Cavalieri v. Board of Trustees of Public Employees Retirement System, 368 N.J. Super. 527, 537 (App. Div. 2004). This allows “due regard to the opportunity of the one who heard the witnesses to judge of their credibility.” Close v. Kordulak Bros., 44 N.J. 589, 599 (1965). See also Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 587 (1988) (Court gave no deference to agency’s findings that rejected the ALJ’s findings of witnesses’ credibility).

In this matter, I find that the ALJ’s credibility findings were not arbitrary and were based on sufficient credible evidence in the record, much of which was based on respondent’s own testimony and not hearsay evidence. As found by the ALJ, during the incident on September 4, 2014, when the Bogota Police responded to the altercation between respondent and Mr. James Nilsen, the evidence presented did not indicate that respondent asserted his ownership of the car despite his testimony that he held the signed title at that time. Initial Decision at 6. Additionally, the ALJ found respondent’s towing of the vehicle from a parking lot without Mr. Nilsen’s knowledge or consent, six days after transferring the title and registration, to be inconsistent with respondent’s testimony that he was the rightful owner. Ibid.

Respondent further objected that the ALJ’s credibility findings were based on the finding that respondent’s witnesses had a vested interest in their testimony. It is a well-

established principle that

[t]he credibility of a witness and the weight to be given to his testimony involve the consideration of many other matters, such as his personal interest in the subject-matter in controversy, his opportunity of observation or knowledge of the subject about which he is testifying, the influences under which he may be testifying, his demeanor on the witness stand, etc., all of which are circumstances for a [trier of fact], who see[s] the witness, to consider in determining what credit and weight should be given to the witness and his testimony.

[Gorczynski v. Public Service Interstate Transp. Co., 5 N.J. Super. 191, 194 (App. Div. 1949) (quoting Floersch v. Donnell, 82 N.J.L. 357 (Sup. Ct. 1912)).]

In this matter the ALJ's finding, therefore, is entirely proper in assessing the witnesses' credibility.

In addition, respondent's letter of exceptions indicated that the ALJ erred in assessing the credibility of the Commission's witnesses on the issue of whether the title was fraudulently signed based on conflicting hearsay statements by Mr. Nilsen. I do not find this to be problematic as the ALJ did not find that respondent forged Mr. Nilsen's signature and the issue of forgery was not a factor in the Initial Decision.

Lastly, respondent's letter of exceptions took issue with the ALJ's not making a finding with respect to the two impoundments of the vehicle and respondent's fronting the money to pay for the releases. Contrary to respondent's assertions, I do not find this to be a critical factor especially in light of respondent's testimony that he considered these payments to be separate from the purchase of the vehicle. T280- 2-11.

Respondent's letter of exceptions did not raise any objection to the term of suspension, however, I will address the ALJ's recommendation in conjunction with de

novo review of this matter. By statute, for an intentional misstatement of material fact on a motor vehicle registration application, “[t]he [Commissioner] shall, upon proper evidence not limited to a conviction, revoke the registration of the motor vehicle or driver's license of a person who violates this section for a period of not less than six months or more than two years.” N.J.S.A. 39:3-37. In this matter, the Commission proposed, and the ALJ recommended that respondent’s driving privileges be suspended for the statutory maximum of two years (seven hundred thirty (730) days). Initial Decision at 6-7.

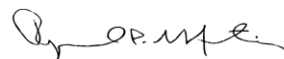
“[T]he test in reviewing administrative sanctions is ‘whether such punishment is “so disproportionate to the offense, in the light of all the circumstances, as to be shocking to one's sense of fairness.”’” In re Polk, 90 N.J. 550 (1982) (citations omitted). In the instant case, the ALJ’s recommended term of suspension is within the statutory guidelines, therefore, it cannot be claimed to be shocking to one’s sense of fairness. Nevertheless, in determining the appropriate term of suspension within the statutory guidelines, it is instructive to look at similar matters for consistent treatment of this type of offense, even if they are non-precedential. Recently, in an unpublished decision, the Appellate Division upheld the MVC’s final decision to suspend the license of an individual for violation of N.J.S.A. 39:3-37 for one hundred eighty (180) days, the statutory minimum. In re Jusino, No. A-1240-14T3 (App. Div. March 1, 2016) (slip op. at 1). In that decision, the term of suspension was mitigated due to the MVC’s adoption of the ALJ’s finding that the intentional misstatements were not part of a sophisticated operation to defraud. Id. at 5. I find that similar mitigation of the term of suspension is warranted here. However, the Commission will adopt, as an aggravating factor, the

finding of the ALJ that respondent lacked “remorse for his intentional misrepresentation or for the unlawful manner in which he obtained possession of a vehicle for which he held no lien.” Initial Decision at 6-7.

Accordingly, I hereby determine that respondent made an intentional misstatement of material fact on an application for the registration of a motor vehicle in violation of N.J.S.A. 39:3-37. Based on an independent review of the record and evaluation of the aggravating and mitigating factors within the statutory guidelines, I shall impose a suspension of respondent’s driving privileges for a period of two hundred ten (210) days.

It is, therefore, on this 14<sup>th</sup> day of September, 2016, **ORDERED** that the New Jersey driving privilege of **PERRY E. MAIO** be suspended for a period of two hundred ten (210) days.

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



Raymond P. Martinez  
Chairman and Chief Administrator

RPM: rdd  
Encl.

cc: Robert L. Galantucci, Esq. (w/encl.)  
Jennifer R. Jaremback, DAG (w/encl.)