

NEW JERSEY DIVISION OF MOTOR VEHICLES,
Petitioner
v.
EDMUND D. JOHNSON,
Respondent.

Initial Decision: February 11, 1987

Final Agency Decision: April 3, 1987

Superior Court Appellate Division Decision Appears at:
226 *N.J. Super.* 1 (App. Div. 1988)

Selected for publication in *N.J.A.R.* because the court appeal of this case was published.

SYNOPSIS

Respondent was convicted of drunk driving in New York State. At the time, he had both New York and New Jersey driver's licenses. Based on the conviction, the Division of Motor Vehicles sought to impose a surcharge pursuant to the New Jersey Automobile Insurance Reform Act. Respondent requested a hearing and the matter was transmitted to the Office of Administrative Law.

The administrative law judge assigned to the case found that respondent was a New York resident with a New York driver's license. This license was suspended by New York because of the conviction. Respondent had lived in New Jersey briefly and still had a New Jersey license. However, respondent's contact with New Jersey was not sufficient to warrant imposing a surcharge.

Upon review, the Director of the Division of Motor Vehicles rejected this initial decision. Respondent had in his possession at the time of his arrest a valid New Jersey driver's license. The traffic summons was written against the New Jersey license because respondent inadvertently presented that license. Respondent's status as a New Jersey licensed driver on the date of the offense subjects him to the surcharge law. Accordingly, respondent was ordered to pay the surcharge.

The Appellate Division affirmed.

George F. Surgent, Esq., for respondent
Division of Motor Vehicles, appearing pursuant to *N.J.A.C.* 1:1-3.13

DWYER, ALJ:

The petitioner, Division of Motor Vehicles, is seeking to impose upon respondent a surcharge in the amount of \$1,000 for the billing year 1986, pursuant to the New Jersey Automobile Insurance Reform Act of 1982, *N.J.S.A.* 17:29A-33 *et seq.* and the regulations promulgated thereunder, *N.J.A.C.* 13:19-12.1 *et seq.* and 13:19-13.1 *et seq.*

PROCEDURAL HISTORY

On May 12, 1986, the Division mailed an insurance surcharge bill to respondent. On June 10, 1986, respondent requested a hearing. On October 27, 1986, the Division conducted an unsuccessful settlement conference at which time respondent chose to appear in person at a hearing before the Office of Administrative Law. On December 5, 1986, the Division transmitted the matter to the Office of Administrative Law for determination as a contested case pursuant to *N.J.S.A.* 52:14B-1 *et seq.*, and *N.J.S.A.* 52:14F-1 *et seq.* The hearing was held on February 9, 1987, at which time the record was closed.

UNDISPUTED FACTS

The Division's documentary evidence reflects that respondent was convicted of a drinking-driving violation in Suffern, New York, on July 25, 1985, and his driving privileges were suspended for a total period of 90 days and he was fined \$250 plus \$10 court costs. The Division of Motor Vehicles forwarded to the Office of Administrative Law two documents; an order of suspension and revocation and a certificate concerning violation of law relating to vehicles, No. 360696. The certificate reflects that respondent presented the arresting officer on the date of the incident, May 7, 1985, with a New Jersey driver's license. The foregoing facts are substantially undisputed, credible and are **THUS FOUND AS FACT.**

DISPUTED FACTS

Respondent testified that when this episode occurred he was a New York resident residing at 65 Doxbury Lane, Suffern, New York. Respondent had both New Jersey and New York licenses in his possession. Respondent had lived in Suffern, New York, for four and one-half years, moved to Ringwood, New Jersey, for a brief period of time until he and his wife separated, and then he moved back to

Suffern, New York. When this episode occurred, respondent got out of his vehicle and tripped on an embankment and the entire contents of his wallet fell to the ground. In the resulting confusion, a New Jersey license was surrendered to the arresting officer. The officer issued a summons in error based upon his New Jersey driver's license. Respondent conceded that some time prior to this episode, an attorney advised him to turn in his New Jersey license when he obtained his New York license, but he inadvertently failed to do so.

Respondent's counsel pointed out to the administrative law judge two significant aspects of this case. First, the order of suspension or revocation contains respondent's correct New York driver's license which is J15305 55617 327177 56. Counsel also pointed out that respondent's address is correctly listed as 65 Doxbury Lane, Suffern, New York 10901, where he had resided for an appreciable period of time prior to the arrest on the evening in question. Counsel then presented the administrative law judge with a document from the Ramapo Justice Court, Ramapo Town Hall, Route 59, Suffern, New York, which involves respondent and it reads in full as follows:

Please be advised that the above defendant pled guilty to driving while impaired (D.W.A.I.) 1192-1, was fined \$250 and \$10 surcharge. Please note that his New York State driver's license was suspended and sent to Albany on July 25, 1985. The fine was paid on July 25, 1985. Defendant was directed to attend a drinking and driving program in New York State.

Gerald Kane
Chief Court Clerk

Thus, respondent testified that his New York license ultimately was suspended and sent to Albany after the confusion was straightened out.

I FIND that respondent's testimony is credible, believable and it is **THUS FOUND AS FACT**.

CONCLUSIONS OF LAW

I FIND and CONCLUDE that, notwithstanding the certificate concerning violation relating to vehicles, which shows a New Jersey license listed thereon, that the other documentation in evidence, i.e., the order of suspension and revocation, and the document from the Ramapo Justice Court, Ramapo Town Hall, clearly show that respondent's New York driver's license was suspended by the Ramapo Justice Court as corroborated by Geraldine Kane, Chief Court Clerk. The order of suspension and revocation, which indicates that respon-

dent was suspended for 90 days, lists a New York driver's license number and not the New Jersey driver's license number, as listed on the certificate concerning violation of law relating to vehicles.

I therefore **CONCLUDE** as a **FACT**, that respondent-licensee does not even have minimal contact with the state of New Jersey to warrant the imposition of this surcharge upon him. He is a New York resident, a New York licensee and his New York driver's license was suspended as a result of this incident. Respondent's contact with the state of New Jersey was *de minimus* at the time of the episode, and all of his ties are with the state of New York. Respondent's New Jersey driver's license number appeared on the certificate concerning violation of law relating to motor vehicles due to the confusion at the time of the arrest.

Therefore, I ultimately **CONCLUDE**, that respondent's minimal contact with the state of New Jersey does not warrant the imposition of a surcharge of \$1,000 annually for a three-year period under the New Jersey Merit Rating Plan for operating a motor vehicle while under the influence of alcohol. *See, N.J.S.A. 17:29A-35(b); N.J.A.C. 13:19-13.1 et seq.*

ORDER

It is therefore **ORDERED** that this matter be **DISMISSED WITH PREJUDICE**.

This recommended decision may be affirmed, modified or rejected by the **DIRECTOR OF THE DIVISION OF MOTOR VEHICLES**, Glenn R. Paulsen, who by law is empowered to make a final decision in this matter.

FINAL DECISION BY THE DIRECTOR OF THE DIVISION OF MOTOR VEHICLES, GLENN R. PAULSEN:

The Division of Motor Vehicles hereby determines the matter of the proposed imposition upon the respondent, EDMUND D. JOHNSON, of a surcharge under the bill date of May 12, 1986, pursuant to the Merit Rating Plan authorized by the New Jersey Automobile Insurance Reform Act of 1982, *N.J.S.A. 17:29A-33 et seq.* and the regulations promulgated thereunder, *N.J.A.C. 13:19-12.1 et seq.*

Prior to the final administrative determination herein, I have reviewed the Initial Decision of the Office of Administrative Law (OAL), the material findings of fact and conclusions of law of which

are incorporated herein as if fully set forth. No exceptions were filed in response to the Initial Decision of the Administrative Law Judge (ALJ) by the respondent. Based on the record presented, the Initial Decision of the ALJ will be rejected.

The record indicates that it was undisputed at the respondent's hearing before the OAL that his driving abstract included a New York conviction on July 25, 1985, for a driving while impaired violation on May 7, 1985. The ALJ found that the surcharge could not be imposed because of the respondent's testimony that he was a New York resident and licensee at the time of his latest impaired driving offense. This finding and the concomitant conclusion that the Division surcharge proposal must be dismissed with prejudice shall be rejected. The record in this matter established the fact that the respondent had in his possession a valid New Jersey driver's license at the time of the New York offense. The New York traffic summons (i.e. Certificate Concerning Violation of Law Relating to Vehicles) was in fact written against the New Jersey driver license. Respondent's status as a New Jersey licensed driver on the date of the offense subjects him to the Merit Rating Plan authorized by the New Jersey Automobile Insurance Reform Act of 1982, *N.J.S.A.* 17:29A-33 *et seq.* and the surcharge imposed thereunder.

Based on the foregoing, the respondent shall pay the surcharge imposed. The surcharge shall be paid each year for a three year period. *N.J.S.A.* 17:29A-35b(2). Upon a proper showing of indigency before the Division, the respondent will be permitted to pay the surcharge in prescribed installments. *N.J.A.C.* 13:19-12.11.

It is, therefore, on this 3rd day of April, 1987, **ORDERED** that EDMUND D. JOHNSON pay the surcharge imposed, in accordance with the provisions of the New Jersey Merit Rating Plan. If EDMUND D. JOHNSON fails to make payments as required, his New Jersey driving privileges will be suspended indefinitely.

**You must check the New Jersey Citation Tracker in the companion
looseleaf volume to determine the history of this case
in the New Jersey courts.**