



HOW TO CHALLENGE A BUFFALO, NY SCHOOL ZONE SPEED CAMERA TICKET

The Buffalo Parking Violations Bureau (“PVB”) hears disputes of school zone speed camera tickets that were issued in Buffalo. Below are steps you can follow that may help you get your tickets dismissed *even without a lawyer*. While this does not guarantee that you will win your hearing, the following approach has been successful in several other cases.

STEP 1: REQUEST A HEARING

Note the deadline to request a hearing

- In the bottom left-hand corner of your Notice of Violation (the “ticket”), there should be a citation number, the amount due, and a due date. **You have until the due date on your ticket to request a hearing.**

How to request a hearing

- Follow the instructions on the 2nd page of your ticket to request a hearing, which can be held either in-person or by-mail. **We recommend that you contact the PVB number listed, and select an in-person hearing to contest your ticket.** The number to schedule a hearing is 1-855-370-4229. It is also a good idea to send in a hearing request by mail, so that you have a written record of your hearing request. If possible, get tracking information for your mail-in hearing request so that you have proof that you sent it in and it was received.
- If you select an in-person hearing, the PVB is supposed to send you a notice by mail confirming your hearing date, time, and location.

IMPORTANT!

- *Request to schedule your hearing for 20-30 days after the due date* in order to give the city time to respond to your Freedom of Information Law Request (see instructions below for this part). **This is easier to ask for if you request your hearing over the phone at the number on your ticket.** If the PVB cannot schedule your hearing this far in advance, *let them know that you will need to follow up to reschedule the hearing if the city does not respond to your FOIL request in time.*
- **Caution:** It is possible that if you request your hearing very close to the due date, the city’s computer system might be slow to reflect your hearing request. Because of that, the city might send you an automatic notice saying that you have failed to respond to your ticket on time *even though this is not true*. If you requested a hearing on or before the ticket’s due date, you should call the Parking Violations Bureau’s hearing scheduling line

at 1-855-370-4229 to explain the situation and make sure that your hearing is, in fact, scheduled.

STEP 2: SUBMIT A FREEDOM OF INFORMATION LAW REQUEST TO THE PVB

1. Prepare your Freedom of Information Law Request

- Immediately after scheduling your hearing date, prepare a Freedom of Information Law (“FOIL”) request to get information about your case. New York’s FOIL laws provides the public right to access to records maintained by government agencies.
- In this case, a FOIL request allows you to ask for information that the city has in its records about the school zone speed camera program and about your specific ticket(s). **See pages 6-7 of this guide for a sample FOIL request.** The request should list information about whether the city complied with New York State Vehicle & Traffic Law section 1180-d in issuing your ticket, including:
 - Proof of whether the city conducted “Self-Tests” of the cameras that recorded the alleged speeding violation
 - Proof of whether the speed camera was calibrated at the time of the alleged speeding violation
 - Copies of speed camera operators’ Daily Set-Up logs
 - Records of whether any speed camera operators completed training for setting up, testing, and operating the cameras
 - Proof of whether school zone speed limit signs were posted in accordance with the National Manual on Uniform Traffic Control Devices and whether the car had sufficient time and distance to slow down

2. Submit your FOIL request to the Parking Violations Bureau

- You can submit your FOIL request online or by mail. Instructions are available here: <https://www.buffalony.gov/420/FOIL---Freedom-Of-Information-Law>
- OR you can email your FOIL request directly to the Parking Violations Bureau at pvboffice@buffalony.gov

STEP 3: PREPARE YOUR ARGUMENTS FOR YOUR HEARING

IMPORTANT!

If the city still has not responded to your FOIL request 5-7 days before your hearing is scheduled, call the PVB at 1-855-370-4229 to request to reschedule your hearing for a later date. Let the representative know that you are waiting for important documents from the city that you need to support your case.

After the city responds to your FOIL request, review its response and any documents they send you to determine which legal arguments you will make during your hearing to try to dismiss your ticket(s). **Here is what to look for to help you prepare and present your arguments to dismiss the ticket(s), and what you may argue:**

1. **Review any documents the city provides in response to your request for information about the training of speed camera operators AND the speed camera operators' daily logs.**

- a. According to a response NCLEJ received from the Parking Violations Bureau Commissioner Kevin Helfer (see page 10 below), THE CITY DOES NOT HAVE SPEED CAMERA OPERATORS OR DAILY LOGS, SO THEY SHOULD NOT HAVE ANY DOCUMENTS TO RESPOND TO THIS REQUEST. **Because of this, request that the hearing officer presiding over your case dismiss your ticket because the city is not complying with New York Vehicle & Traffic Law § 1180-d(a)(2) and (a)(3),** which provides for Buffalo to have school zone speed camera operators who perform daily “self-tests” of each camera and keep daily logs that show that the operator performed, and the system successfully passed, these legally required tests.
 - i. At the hearing, tell the hearing officer that the city has admitted that they do not have any speed camera operators and that they do not have the “daily logs” required by the statute, which means your ticket may be dismissed because it does not comply with the statute. You can rely on the City’s response to your FOIL, or the response that they provided to NCLEJ as your evidence.
 - ii. **Also request that the hearing officer dismiss your case because the city’s failure to provide speed camera operators or their daily testing logs violates your constitutional right to due process.** Tell the hearing officer that because the city cannot prove that the camera equipment was properly tested on the day it allegedly recorded you speeding, that means there is no foundation in evidence to show that the camera recordings were accurate. This means that your ticket may be dismissed.
- b. **NOTE:** see pages 11-12 of this guide for records of another PVB case where these arguments succeeded. You can show this to the hearing officer to support your argument that the city is violating the law by failing to have speed camera operators or daily logs, because another hearing officer already agreed with this argument.

2. **Review any documents the city provides showing results of any “Self-Tests”**

- a. The statute also requires that the speed cameras are self-tested before they can issue a ticket. If the city DOES NOT provide any documents showing that the camera passed a “self-test” on the day your car was allegedly recorded, **request that the hearing officer dismiss your ticket because the city’s failure to provide proof that the camera passed a self-test violates New York Vehicle & Traffic Law § 1180-d(a)(2).**
- b. If the city DOES provide documents to show that the camera passed a “self-test” on the day your car was allegedly recorded, find the time that the test happened on that report and compare it to the time of the violation on your ticket (which is in a small box on the left). **If the time of violation is EARLIER than the time that the self-test was done, then request that the hearing officer presiding over your case dismiss your ticket because the city violated New York Vehicle & Traffic Law sections 1180-d(a)(2) and (a)(3), which require that the camera**

must pass a self-test every day BEFORE it records any license plates. Tell the hearing officer that the city cannot prove that the camera was working when your ticket was generated because the camera had not been tested yet, which means your ticket may be dismissed.

3. **Check for any Certificate of Calibration provided to you by the city**
 - a. If the city does not provide you with this certificate, **request that the hearing officer dismiss your case because the city failed to show that the camera was calibrated at the time of the alleged violation in violation of New York Vehicle & Traffic Law section 1180-d(a)(2) and (a)(4).**

Also make sure you check the information on your ticket to see if the ticket is invalid for other reasons. The ticket is invalid if it contains errors, such as a missing “Camera ID” number (which should be in a box on the left side of your ticket), a missing camera technician signature and/or ID number (which should be right underneath the license plate photos), or the camera technician signature is not notarized (aka verified by a notary public).

- **If the camera ID number is missing:**
 - Request that the hearing officer presiding over your case dismiss your ticket on the grounds that the Camera ID is missing. This number is required to appear on every ticket under New York State Vehicle and Traffic Law section 1180-d(g)(2). Tell the hearing officer that this error means the ticket may be invalid.
- **If the camera technician’s signature or ID number is missing:**
 - Request that the hearing officer presiding over your case dismiss your ticket on the grounds that the camera technician’s signature and/or ID number is missing. This number is required to appear on every ticket under New York State Vehicle and Traffic Law section 1180-d(d). Tell the hearing officer that this error means the ticket may be invalid.
- **If the camera technician’s signature is not notarized:**
 - Request that the hearing officer presiding over your case dismiss your ticket on the grounds that the signature of the speed camera technician on your ticket is not notarized. A New York County court case called *Matter of Street v. City of New York*, 2020 Slip Op 326445(U) (N.Y. Sup. Ct. 2020) held that an un-notarized camera technician’s certification of a notice of violation has no probative value and cannot support a case against the driver. Tell the hearing officer that this decision means that your ticket cannot support a case against you because the camera technician’s signature is not notarized, and that your ticket may be dismissed. You can show the hearing officer a copy of the *Matter of Street* case, which is included on pages 13-20 of this guide.

Additionally, unless the city changes its practices, it is **unlikely** that the city will have a speed camera technician or a camera operator that you can question at your hearing. **In the event that there is no speed camera technician or other person at your hearing who can testify about the camera system, then request that the hearing officer dismiss your ticket because it is a violation of your constitutional due process right to confront and challenge the evidence**

being used against you under *Jensen v. New York City Dep't of Fin.*, 75 N.Y.S.3d 876 (Sup. Ct. 2018). A copy of the *Jensen* case is included on pages 21-25 of this guide.

STEP 4: PRESENT YOUR CASE AT YOUR HEARING

- **Gather the documents you need to support your case.** Bring your original ticket, and **PRINT** your FOIL request, the city's response to your FOIL request, and the documents that the city gave you in their response. **Present these documents to the hearing officer during your hearing to support your legal arguments.**
- Attend your hearing at the location, date, and time that you scheduled with the PVB. You have a constitutional right to have this hearing, so don't feel rushed by the hearing officer. **Take your time presenting your arguments and make sure you say everything you want to say, referring to the arguments in Step 3.**

You will receive a decision about your ticket in the mail. With the tools in this guide, if Buffalo's practices remain unchanged, you may be able to get your ticket(s) dismissed!

This guide was written and compiled by Karina Tefft, Staff Attorney at the National Center for Law and Economic Justice (NCLEJ) and Steering Committee Member of the Fair Fines and Fees Coalition, and edited by NCLEJ staff. Some of the information in this guide is based on information provided by attorney Peter Reese.

Disclaimer: This guide provides general and legal information for individuals who received a Buffalo, NY school zone speed camera ticket. **This guide is NOT legal advice**, which you can only get directly from an attorney.

SAMPLE FOIL REQUEST

[date]

[your name]

[your address]

Buffalo Parking Enforcement Division; Buffalo Parking Violations Bureau
65 Niagara Square
Buffalo, NY 14202

Dear Buffalo Parking Enforcement Division and Buffalo Parking Violations Bureau:

Under the New York Freedom of Information Law, N.Y. Pub. Off. Law sec. 84 et seq., **I am requesting an opportunity to inspect or obtain copies of the following public records for school zone speed camera violation number [enter citation number on your ticket] (dated [date of ticket]):**

1. All documents or other records that the speed cameras involved in each violation successfully passed a "Self-Test" of their functions on the dates of the alleged violations as required by Paragraph (a)2(i) of NYS Vehicle & Traffic Law 1180-D.
2. Copies of the Certificate of Calibration for each of the speed cameras involved in the above violations that were in effect at the time of the alleged violations in accordance with Paragraphs (a)2(ii) and (a)4 of NYS Vehicle & Traffic Law 1180-D.
3. Copies of the speed camera operators' Daily Set-up Log, for each speed camera that he or she operates, which:
 - i. State the date, time, and location where the systems were set up on the date of the alleged violations according to Paragraph (a)3(i) of the NYS Vehicle & Traffic Law 1180-D; and
 - ii. State that the speed camera operator(s) successfully performed, and the speed cameras passed, the required self-test on the date of the alleged violations before the violations were recorded according to Paragraph (a)3(ii) of NYS Vehicle & Traffic Law 1180-D.
4. Any documents or other records that the speed camera operator(s) completed "training in the procedures for setting up, testing, and operating" according to Paragraph (a)3 of NYS Vehicle & Traffic Law 1180-D, including training certificates, training dates, duration, and contents of the training classes attended, as well as hands-on training and supervision.
5. Documents, photographs, or other records demonstrating the exact path of travel of the vehicle at issue in the above violations before entering the enforcement zones of the subject speed cameras, including proof that the driver of the vehicle (1) definitively passed an "R2-1" school zone speed limit sign properly posted in accordance with the National Manual on Uniform Traffic Control Devices, and (2) had sufficient time and distance to slow the vehicle to the posted speed limit by the time the vehicle passed the subject sign.

SAMPLE FOIL REQUEST

If there are any fees for searching or copying these records, please inform me of the cost. However, I would also like to request a waiver of all fees. This information is not being sought for commercial purposes, but for purposes of an individual hearing before the Buffalo Parking Violations Bureau.

The New York Freedom of Information Law requires a response time of five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Please send all records you provide via email to: [your email address].

Thank you for considering my request.

Sincerely,

[your name]

[your email address and phone number]

Karina Tefft
275 7th Avenue, Suite 1506
New York, NY 10001

May 21, 2021

Buffalo Parking Enforcement Division; Buffalo Parking Violations Bureau
65 Niagara Square
Buffalo, NY 14202

Dear Buffalo Parking Enforcement Division and Buffalo Parking Violations Bureau:

Under the New York Freedom of Information Law, N.Y. Pub. Off. Law sec. 84 et seq., **I am requesting an opportunity to inspect or obtain copies of the following public records for EACH of two alleged school zone speed camera violations, numbers 049.0005865911 (dated 3/10/2021) and 049.0005878561 (dated 3/12/2021):**

1. All documents or other records that the speed cameras involved in each violation successfully passed a "Self-Test" of their functions on the dates of the alleged violations as required by Paragraph (a)2(i) of NYS Vehicle & Traffic Law 1180-D.
2. Copies of the Certificate of Calibration for each of the speed cameras involved in the above violations that were in effect at the time of the alleged violations in accordance with Paragraphs (a)2(ii) and (a)4 of NYS Vehicle & Traffic Law 1180-D.
3. Copies of the speed camera operators' Daily Set-up Log, for each speed camera that he or she operates, which:
 - i. State the date, time, and location where the systems were set up on the date of the alleged violations according to Paragraph (a)3(i) of the NYS Vehicle & Traffic Law 1180-D; and
 - ii. State that the speed camera operator(s) successfully performed, and the speed cameras passed, the required self-test on the date of the alleged violations before the violations were recorded according to Paragraph (a)3(ii) of NYS Vehicle & Traffic Law 1180-D.
4. Any documents or other records that the speed camera operator(s) completed "training in the procedures for setting up, testing, and operating" according to Paragraph (a)3 of NYS Vehicle & Traffic Law 1180-D, including training certificates, training dates, duration, and contents of the training classes attended, as well as hands-on training and supervision.
5. Documents, photographs, or other records demonstrating the exact path of travel of the vehicle at issue in the above violations before entering the enforcement zones of the subject speed cameras, including proof that the driver of the vehicle (1) definitively passed an "R2-1" school

zone speed limit sign properly posted in accordance with the National Manual on Uniform Traffic Control Devices, and (2) had sufficient time and distance to slow the vehicle to the posted speed limit by the time the vehicle passed the subject sign.

If there are any fees for searching or copying these records, please inform me of the cost. However, I would also like to request a waiver of all fees. This information is not being sought for commercial purposes, but for purposes of an individual hearing before the Buffalo Parking Violations Bureau.

The New York Freedom of Information Law requires a response time of five business days. If access to the records I am requesting will take longer than this amount of time, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Please send all records you provide via email to: tefft@nclej.org.

Thank you for considering my request.

Sincerely,

Karina Tefft

Staff Attorney

National Center for Law and Economic Justice

275 7th Ave, Suite 1506

New York, NY 10001

tefft@nclej.org

603-969-8389



CITY OF BUFFALO
DEPARTMENT OF PARKING
DIVISION OF PARKING ENFORCEMENT



BYRON W. BROWN
Mayor

KEVIN J. HELFER
Commissioner

Karina Tefft
Staff Attorney
National Center for Law and Economic Justice
275 7th Ave, Suite 1506
New York, NY 10001
tefft@nclej.org

6/22/2021

FOIL Request – School Zone Safety Program Hearing

The City of Buffalo has received your request for records pursuant to the Freedom of Information Law (FOIL), Public Officers Law §87, et seq.

The City of Buffalo has conducted a diligent search for records responsive to your Freedom of Information Law (FOIL) request.

Attached are the following documents;

- Daily Self-Test Records for the School Zone Cameras located at 1413 Sycamore St (EB) for 3/12/21 and 1132 Jefferson Ave (SB) for 3/10/21.
- Certificates of Calibration for the above mentioned School Zone Cameras.

Please be advised that the cameras are automated, there is no “speed camera operator”. As such we are unable to provide any information in regards to request #3 or #4.

Please be advised that New York State Law does not require that the City track the path of travel a vehicle takes prior to entering a school zone. Additionally, all signage has been installed per NYS law and the NYS Manual on Uniform Traffic Control Devices for Streets and Highways. We have no further information to provide in regards to request #5.

Very truly yours,

Kevin J. Helfer
Commissioner of Parking Enforcement



HEARING RESULT

SCHOOL ZONE SAFETY PROGRAM

Generated on 06/30/2021

CITY OF BUFFALO

Citations Processing Center, BFLO
PO BOX 7200
Beverly MA 01915

Buffalo, Petitioner
v.

Citation #049.0005878561
Decision and Order

Not Guilty



This matter coming for hearing, notice having been given and the Hearing officer being fully advised in the premises, having considered any motions, evidence and arguments presented, IT IS ORDERED: As to the count(s), this Hearing officer finds by a preponderance of the evidence and rules as follows:

Ruling	Date of Violation	Type of Violation	Civil Penalty
Not Guilty	03/12/2021 at 09:07 AM	Automated Speed Enforcement	\$0.00
Disposition Reason:			
Evidence shown could not prove the citizen's fault No operator, certificate not notarized, no daily log.			
JUDGMENT TOTAL: \$0.00			

This ruling constitutes the final decision by the City of Buffalo.
Please retain this document as a receipt acknowledging the outcome of this hearing.

FritzGerald Tondreau
Adminstrative Hearing Officer



HEARING RESULT

SCHOOL ZONE SAFETY PROGRAM

Generated on 06/30/2021

CITY OF BUFFALO

Citations Processing Center, BFLO
PO BOX 7200
Beverly MA 01915

Buffalo, Petitioner

v.

Citation #049.0005865911
Decision and Order

Not Guilty



This matter coming for hearing, notice having been given and the Hearing officer being fully advised in the premises, having considered any motions, evidence and arguments presented, IT IS ORDERED: As to the count(s), this Hearing officer finds by a preponderance of the evidence and rules as follows:

Ruling	Date of Violation	Type of Violation	Civil Penalty
Not Guilty	03/10/2021 at 03:57 PM	Automated Speed Enforcement	\$0.00
Disposition Reason:			
Evidence shown could not prove the citizen's fault No operator, certificate not notarized, no daily log.			
JUDGMENT TOTAL: \$0.00			

This ruling constitutes the final decision by the City of Buffalo.
Please retain this document as a receipt acknowledging the outcome of this hearing.

FritzGerald Tondreau
Adminstrative Hearing Officer

Matter of Street v City of New York
2020 NY Slip Op 32645(U)
August 12, 2020
Supreme Court, New York County
Docket Number: 158466/2019
Judge: Eileen A. Rakower
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

In the Matter of the Application of

MONROE STREET, individually, and on behalf
of all others similarly situated,

Plaintiff-Petitioner,

For a Judgment and Order pursuant to Article 78
of the CPLR,

-against-

THE CITY OF NEW YORK, COMMISSIONER
POLLY TROTTERBERG, in her individual and
personal capacity, COMMISSIONER JACQUES JIHA,
in his individual and personal capacity,
DEPUTY COMMISSIONER JEFFREY SHEAR,
in his individual and personal capacity,
JOHN and JANE DOE CITY OF NEW YORK
EMPLOYEES, in their individual and personal capacities,
JOHN and JANE DOE NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
EMPLOYEES, in their individual and personal capacities,
JOHN and JANE DOE NEW YORK CITY
DEPARTMENT OF FINANCE EMPLOYEES,
in their individual and personal capacities,
JOHN and JANE DOE NEW YORK CITY
PARKING VIOLATIONS BUREAU EMPLOYEES,
in their individual and personal capacities, and
JOHN and JANE DOE PARKING VIOLATIONS
BUREAU ADMINISTRATIVE LAW JUDGES,
in their individual and personal capacities,

Defendants-Respondents.

The following papers, numbered 1 to _____ were read on this motion for/to

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answer — Affidavits — Exhibits _____

Replying Affidavits

PAPERS NUMBERED

■
■
■

Cross-Motion: Yes ☒ No

This case arises out of a Notice of Liability (“NOL”) issued to Plaintiff-Petitioner on March 18, 2019 for violating New York Vehicle and Traffic Law (“NYVTL”) §1111(d). The NOL states that on March 7, 2019, on Classon Avenue and Flushing Avenue in Brooklyn, New York, a Red Light Camera observed Plaintiff-Petitioner’s vehicle enter an intersection upon a red light traffic signal.

Plaintiff-Petitioner contested the NOL by submitting a request for a hearing online. Plaintiff-Petitioner's challenge was based on the grounds that "[t]he technician certificate is not notarized and is therefore invalid" and he has "been deprived of [his] right to face [his] accuser as a camera is unable to stand up to questioning in court." On April 4, 2019, Administrative Law Judge Barbara J. Simmons ("ALJ") found Plaintiff-Petitioner liable for the NOL.

Plaintiff-Petitioner claims on April 4, 2019, the ALJ disregarded Plaintiff-Petitioner's "claims as to the legal insufficiency of his alleged Red Light Camera Violation and entered a guilty verdict against Petitioner." Although Plaintiff-Petitioner appealed the ALJ determination to the Appeals Board, Plaintiff-Petitioner paid the \$50.00 fine for the violation. On April 30, 2019, the Appeals Board upheld the ALJ's determination.

Plaintiff-Petitioner brings this Article 78 proceeding, individually and on behalf of all others similarly situated. Plaintiff-Petitioner seeks an Order:

(a) declaring that all alleged violations of Section 1111(d) of the NYVTL issued pursuant to NYVTL Section 1111-a from August 26, 2013, to the present, and continuing, are legally invalid; (b) declaring that all Technician's Certificates issued from August 26, 2013, to the present, and continuing, for alleged violations of NYVTL Section 1111(d) issued pursuant to NYVTL Section 1111-a are legally insufficient and do not constitute prima facie evidence of the alleged violations because they are not notarized; (c) declaring that Plaintiff-Petitioner and Class members were deprived of a meaningful opportunity to face their accusers; (d) declaring that New York City administrative law judges have improperly disregarded and ignored Plaintiff-Petitioner's and Class members' valid claims contesting their alleged violations of NYVTL Section 1111(d) issued pursuant to NYVTL Section 1111-a; (e) declaring that Defendants-Respondents deprived Plaintiff-Petitioner and Class members of their property without due process of law; (f) declaring that Defendants-Respondents made material false representations and/or omissions in connection with all alleged violations of NYVTL Section 1111(d) issued pursuant to NYVTL Section 1111-a from August 26, 2013, to the present, and continuing; (g) declaring that Defendants-Respondents were unjustly enriched by collecting fines for legally

insufficient alleged violations of NYVTL Section 1111(d) issued pursuant to NYVTL Section 1111-a without satisfying their burden of establishing Petitioner's and Class members' prima facie guilt; (h) issuing notice to the Class of this action; (i) appointing Plaintiff-Petitioner as the representative of the Class and his counsel as Class counsel; (j) Granting an injunction against Defendants-Respondents prohibiting Defendants Respondents from issuing Technician's Certificates for alleged violations of NYVTL Section 1111(d) issued pursuant to NYVTL Section 1111-a that are not notarized; (k) vacating all guilty pleas entered by members of the Class from August 26, 2013, to the present, and continuing for alleged violations of NYVTL Section 1111(d) issued pursuant to NYVTL Section 1111-a; (l) Vacating all guilty verdicts and judgments entered against Petitioner and members of the Class from August 26, 2013, to the present, and continuing for alleged violations of NYVTL Section 1111(d) issued pursuant to NYVTL Section 1111-a; (m) granting damages, including actual, general, special, incidental, statutory, punitive, treble and consequential, in an amount to be determined at trial; and (n) granting pre-judgment and post-judgment.

Defendants-Respondents cross move pursuant to Article 78 of the CPLR for an Order dismissing the Complaint and Verified Petition pursuant to CPLR § 3211(a)(7).

The motion and cross motion were filed before the pandemic but were not fully submitted at the time that the Court paused filings. Once the pause was lifted, Plaintiff-Petitioner was given an opportunity to submit papers in opposition to Defendants-Respondents' cross motion to dismiss and in further support of the Petition. Defendants-Respondents were given an opportunity to submit a reply in further support of their cross motion to dismiss.

Discussion

1. Challenge brought on Plaintiff-Petitioner's behalf

"Article 78 proceedings exist for the relief of parties personally aggrieved by governmental action." *Dunne v. Harnett*, 399 NYS 2d 562, 563 (Sup Ct, NY County 1977). Judicial review is limited to questions expressly identified by CPLR § 7803.

Featherstone v. Franco, 95 NY2d 550, 554 (2000). One such question is “whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed.” See CPLR § 7803(3). An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts.” *Testwell, Inc. v. New York City Dept. of Bldgs.*, 80 AD3d 266, 276 (1st Dept 2010). Where “the issues of law in dispute here are limited to whether the challenged determinations were made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, an abuse of discretion, or irrational, they are subject to review only pursuant to CPLR Article 78 ...,” the causes of action for a judgment declaring that the same determinations are illegal is “render[ed] unnecessary.” *Matter of E. Moriches Prop. Owners’ Ass’n, Inc. v Planning Bd. of Town of Brookhaven*, 66 AD3d 895, 897 (2d Dept 2009).

NYVTL § 1111-a(d) provides that “[a] certificate, sworn to or affirmed by a technician employed by the city in which the charged violation occurred ... shall be prima facie evidence of the facts contained therein.”

The Court of Appeals in *Slavenburg Corp. v Opus Apparel, Inc.*, 53 NY2d 799, 801 [1981], stated:

Only an attorney, physician, osteopath or dentist authorized to practice within this State can serve and file an affirmation bearing his signature alone in lieu of and with the same force and effect as an affidavit. (CPLR 2106.) Moreover, even those persons who are statutorily allowed to use such affirmations cannot do so when they are a party to an action. (See *Schutzer v. Suss-Kolyer*, 57 A.D.2d 613, 393 N.Y.S.2d 776.) It is also true, of course, that any person who, for religious or other reasons, wishes to use an affirmation as an alternative to a sworn statement may do so. However, to be effective such an affirmation must be made before a notary public or other authorized official. (CPLR 2309.) Otherwise, the affirmation would be of no probative value because the affirmant would not be answerable for the crime of perjury should he make a false statement. (Penal Law, § 210.00, subd. 1.)

In *People v. Eisenstadt*, 48 Misc. 3d 56, 57 (App. Term, 2d Dept, 9th and 10th Judicial Districts 2015), the Court, citing to the *Slavenburg* decision, held that the Technician Certificate that was introduced by the State of New York against the

defendant “was without probative value and should have been disregarded by the court” because “the certificate was not in authorized form since it was neither sworn to nor affirmed before a notary public or other authorized individual (see CPLR 2309[a]).” The Court held that “the People failed to establish a prima facie case against defendant” under NYVTL. *See also People v. Perez-Klein*, 54 Misc. 3d 139(A), at *1 (App. Term, 2d Dept, 9th and 10th Judicial Districts 2017).

Here, the Technician Certificate issued in connection with Plaintiff-Petitioner’s NOL was neither sworn to nor affirmed before a notary public or other authorized official.

The ALJ’s determination found Plaintiff-Petitioner liable for the NOL and held “respondent’s [Petitioner’s] unsubstantiated, and therefore unpersuasive denial claim that, the violation is invalid, fails to provide a legal basis for dismissal, in this instance, because the evidence submitted at the hearing (an unsupported denial claim) fails to verify respondent’s [Petitioner’s] defense or to prove that respondent’s [Petitioner’s] vehicle was in fact operation in compliance with all relevant regulations at the time and place of the violation issuance.” The ALJ’s determination did not address Plaintiff-Petitioner’s claim that the Technician Certificate issued for his Red Light Camera violation was not notarized and should not be considered prima facie evidence of his guilt, pursuant to NYVTL § 1111-a(d) and the CPLR.

The Technician Certificate issued in connection with Plaintiff-Petitioner’s NOL lacks probative value and should not have been considered by the ALJ. **Defendants-Respondents** failed to establish a prima case against Plaintiff-Petitioner. (See NYVTL §1111-a[d]). The NOL issued to Plaintiff-Petitioner on March 18, 2019 is vacated.

2. Challenge on behalf of Proposed Class

Plaintiff-Petitioner also brings this action on behalf of Class Members. Plaintiff-Petitioner seeks as part of his relief an Order “issuing notice to the Class of this action” and “appointing Plaintiff-Petitioner as the representative of the Class and his counsel as Class counsel.”

The Class Members are defined as all persons in the United States and New York “who from August 26, 2013, to the present, and continuing, paid a fine and/or associated fee for an alleged violation of NYVTL Section 1111(d) issued pursuant to NYVTL Section 1111-a that was not fully refunded by Respondents with interest.”

“Whether the facts presented on a motion for class certification satisfy the statutory criteria is within the sound discretion of the trial court.” *Pludeman v N. Leasing Sys., Inc.*, 74 AD3d 420, 422 (1st Dept 2010).

“The New York Court of Appeals has held that where the agency action could have been challenged in an Article 78 proceeding, a party will be subject to the four-month statute of limitations notwithstanding that the litigation was brought in the form of a declaratory judgment action.” See § 116:10 Statute of limitations-Declaratory judgment actions, 4E N.Y.Prac., Com. Litig. in New York State Courts § 116:10 (4th ed.). “Whether petitioners’ constitutional claims are subject to the four-month statute of limitations period under CPLR article 78 or the residuary six-year limitations period of CPLR 213(1) turns on whether the parties’ rights could have been resolved in an article 78 proceeding.” *Walton v New York State Dept. of Correctional Services*, 8 NY3d 186, 194 (2007). “A petitioner who seeks article 78 review of a determination must commence the proceeding ‘within four months after the determination to be reviewed becomes final and binding upon the petitioner.’” *Walton v New York State Dept. of Correctional Services*, 8 NY3d 186, 194 (2007).

Here, even assuming that Plaintiff-Petitioner met the prerequisites to certifying the class action, the proposed class would be overly broad because it includes individuals who received fines from August 26, 2013 to the present.

Wherefore, it is hereby

ORDERED that Defendants-Respondents’ cross motion to dismiss the Petition is denied; and it is further

ORDERED that the Petition is granted only to the extent that Notice of Liability No. 5105637495 issued to Plaintiff-Petitioner Monroe Street on March 18, 2019 is vacated; and it is further

ORDERED that the portion of the motion seeking class certification is denied.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: August 12, 2020

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION



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Matter of Jensen v New York City Dept. of Fin.

[*1] Matter of Jensen v New York City Dept. of Fin. 2018 NY Slip Op 28154 Decided on May 3, 2018 Supreme Court, New York County Bluth, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the printed Official Reports.

Decided on May 3, 2018
Supreme Court, New York County

In the Matter of the Application of Carl Jensen, Petitioner, For a Judgment Pursuant to
Article 78 of the Civil Practice Law and Rules,

against

New York City Department of Finance, Respondent.

101134/2017

Petitioner: Carl Jensen, Pro Se, Croton-on-Hudson, New York

Respondent: Corporation Counsel of the City of New York, New York, New York
Arlene P. Bluth, J.

The petition seeking to dismiss three traffic tickets issued by respondent is granted only to the extent that the matter is remanded in accordance with the following decision.

Background

This proceeding arises out of tickets issued to petitioner for his car traveling in a bus lane in the Bronx on March 13, March 29 and April 5, 2017. No ticket was written by a person; rather, the tickets were based on a traffic camera's picture. A driver is permitted to enter a bus lane while approaching an intersection as long as he or she makes a right turn. Respondent contends that petitioner did not make a turn and simply continued through the intersection on each occasion. Petitioner contends that at the hearing he was not provided with an opportunity to cross-examine the "photograph expert" and had no chance to question the photographs anywhere during the process.

Discussion

In an article 78 proceeding, "the issue is whether the action taken had a rational basis and was not arbitrary and capricious" (*Ward v City of Long Beach*, 20 NY3d 1042, 1043, 962 NYS2d 587 [2013] [internal quotations and citation omitted]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*id.*). "If the determination [*2] has a rational basis, it will be sustained, even if a different result would not be unreasonable" (*id.*). "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v Board of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231, 356 NYS2d 833 [1974]).

"In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses" (*Goldberg v Kelly*, 397 US 254, 270, 90 SCt 1011 [1970]). "The fundamental requirement of due process

is the opportunity to be heard at a meaningful time and in a meaningful manner" (Mathews v Eldridge, 424 US 319, 333, 96 SCt 893 [1976]).

Here, the question is whether petitioner was provided with the requisite due process. With respect to each ticket, respondent contends that it submitted video and picture evidence for each violation and that the ALJs, after each hearing, found that petitioner was illegally driving in the bus lane (there was a separate hearing for each notice of violation).

However, there is no indication in respondent's answer or in the ALJs' decisions that respondent offered any witnesses. For instance, in one of the ALJ's decisions, the ALJ concluded that "[Petitioner] testifies that they were not in the bus lane at the time of the violation. A review of city records shows clear, video images that said vehicle was in fact in a bus lane, contrary to [Petitioner's] assertion. Violation sustained" (answer, exh Q). The three decisions make no mention of a witness for respondent testifying at the hearing. From the record before this Court, the only possible inference is that only petitioner testified at the hearings and the ALJs simply accepted the records submitted by respondent as true.

This is a unique situation because it involves the issuance of a ticket by a traffic camera rather than from an officer. If an officer were, for instance, to give a driver a ticket for running a red light, then that officer has to show up at the hearing. In fact, the Vehicle and Traffic Law ("VTL") provides that a hearing officer can dismiss a ticket if the officer does not show up for the hearing (see VTL § 227[2]). The notices of violation issued to petitioner do not list any specific person who issued the ticket (see e.g., exh B). The notice also gives the purported violator three options to contest the ticket: an online hearing, a hearing by mail and an in-person hearing (this is what petitioner chose).

In the answer, respondent points to VTL § 1111-c which provides procedures for notices of liability arising out of the issuance of a bus lane ticket. This section also states that contested tickets are handled by the Parking Violations Bureau. VTL 1111-c(d) provides that:

"A certificate, sworn to or affirmed by a technician employed by the city in which the charged violation occurred, or a facsimile there-of, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a bus lane photo device, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to this section."

Respondent also points out that the rules of evidence do not apply at hearings challenging the type of ticket issued to petitioner and that the ticket constitutes "prima facie evidence of the statements contained therein" (19 RCNY 39-08[f]).

But the rules and laws cited by respondent do not necessarily permit the agency issuing the ticket to simply send a stack of documents, images and videos instead of a person to an in person hearing. Documents cannot be cross-examined. Documents do not have a demeanor for the trier of fact to evaluate. Documents cannot correct themselves if there is a misrepresentation or answer any questions.

Not having a person testify leaves the ALJ, who is tasked with making findings of fact and evaluating the credibility of the witnesses, to evaluate respondent's evidence on its own without anyone to offer context or answer objections raised by petitioner. And because there is no live witness testifying in support of respondent, the ALJ is the only person in the room to ask questions or to cross-examine petitioner about the incident. How can the ALJ make credibility findings when only one side is present? How can petitioner poke holes in respondent's proof when there are only documents? How can petitioner argue with documents that the ALJ has already deemed unquestionable? Without a doubt, the appearance is that the ALJ is on the agency's side and the alleged offender has no meaningful opportunity to contest the ticket because the ALJ acts as both the trier of fact and as the prosecutor. That the agency does not even bother to have a live witness, that the ALJ cross-examines the petitioner for the agency and no one cross-examines the agency constitutes a lack of due process.

Of course, this Court has no issue with the use of traffic cameras to issue tickets— the Court is only concerned that drivers might face tickets and not have legitimate chance to challenge the accuracy of that ticket. The principles of due process cannot be satisfied if the ALJ simply accepts respondent's stack of documents (including pictures and videos) and the person receiving the ticket cannot question anyone about the taking of the photos and videos.

Because petitioner admitted in reply that he was driving in the bus lane for the first ticket (on March 13, 2017), the Court finds that petitioner is entitled to a hearing on the subsequent two tickets because he was not afforded due process. At that hearing, respondent must produce a live person to speak about respondent's evidence and to submit to cross examination. The person must be knowledgeable about petitioner's case and about how these traffic cameras work. The most obvious choice would be the technicians who submitted certificates (see exhs C, E, and G). In each certificate, the technician states that "In each of the images that I approved, the photographed vehicle, stood, parked, or entered

the bus only lane during restricted hours and did not make an immediate right hand turn." There is no reason why that person cannot attend an in person hearing to support the issuance of each particular ticket and then perhaps clarify whether this particular vehicle at this particular time was standing in the bus lane, parked in the bus lane, entered the bus lane or something else.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is granted only to the extent that this proceeding is remanded to respondent so that hearings can be conducted for the tickets issued on March 29, 2017 and April 5, 2017 in accordance with this decision and denied to the extent that petitioner seeks to dismiss the first ticket issued on March 13, 2017.

This is the Decision, Order and Judgment of the Court.

Dated: May 3, 2018

New York, New York

ARLENE P. BLUTH, JSC