

IN THE CIRCUIT COURT OF THE 12th JUDICIAL CIRCUIT,
IN AND FOR MANATEE COUNTY, FLORIDA

CASE NO.:

,
Petitioner,

v.

STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND MOTOR
VEHICLES,

Respondent.
_____/

PETITION FOR WRIT OF CERTIORARI

Petitioner, , ("Petitioner"), hereby petitions¹ this court to issue a Writ of Certiorari, quashing the final order issued by the Department of Highway Safety and Motor Vehicles administrative hearing officer ("Department") in accord with Chapter 322.31, Florida Statutes. (PA.1).

JURISDICTION

Jurisdiction to review this matter is based upon Chapter 322.31, Florida Statutes, Rule 9.030(c)(1)(c), Florida Rules of Appellate Procedure, and Article V, Section 5(b) of the Florida Constitution.

STATEMENT OF FACTS

Petitioner was arrested for DUI on _____ after being stopped at a DUI checkpoint in Sarasota, Florida. Officer _____

¹ Petitioner's Appendix and corresponding exhibits are referred to as "PA.____." The transcript of the administrative proceeding is referred to as "T at p.____, lines____."

of the Sarasota Police Department made contact with Petitioner and asked him to perform Field Sobriety Exercises and submit to a breath test. Petitioner refused to submit to a breath test and was arrested for DUI. (PA.1,2).

Petitioner hired Finebloom & Haenel, herein referred to as "Counsel", to represent him at a formal review hearing. Since Counsel for the Defendant was going to be in the Orlando area for New Year's Day, n December 31, 2007, Counsel faxed AND dropped off the appropriate paperwork to elect a formal review hearing with the Bureau of Administrative Reviews office in Orlando, FL. On the same date the Bureau of Administrative Reviews issued Petitioner a Temporary Driving Permit. (PA. 2-5).

Officer submitted a Complaint/Arrest Affidavit ("PCA") to the Department. At the administrative hearing Petitioner did not subpoena any witnesses and did not object to any documents being entered in to evidence. (PA.6, T at p. 2, line(s) 7-8 .").

Petitioner entered into evidence two documents; the Temporary Driving Permit which was marked as Driver's Exhibit 1, and an Administrative Suspension/Disqualification Application for Formal Review received by the Bureau of Administrative Review on December 31, 2007. (PA.6, T at p. 2, line(s) 10-18 .").

Petitioner moved to invalidate the suspension for failure to comply with Florida Administrative Code 15-A-6.013. (PA.6, T at p. 3, line(s) 1-11.”).

Petitioner now timely seeks review of the administrative final order, issued on February 11, 2008, as provided in Chapter 322.31, Florida Statutes challenging the suspension of his driver's license. (PA.7).

RELIEF SOUGHT

The Petitioner requests this Court to issue a Writ of Certiorari and quash the Department's administrative final order and direct the Department to reinstate Petitioner's driver's license.

STANDARD OF REVIEW

This Court's scope of review is to determine whether the Department's actions accorded procedural due process; observed the essential requirements of law; and were supported by substantial competent evidence. See, Campbell v. Vetter, 392 So. 2d 6 (Fla. 4th DCA 1980), petition for review denied, 399 So.2d 1140 (Fla. 1981). Since the Petitioner can show the Department failed to comply with any of these requirements, this Court must grant the petition.

Under Chapter 322.2615, Florida Statutes, the hearing officer must determine by a preponderance of the evidence whether sufficient cause exists to sustain the suspension limited to the following issues: a) Whether the arresting

law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances; b) Whether the person was placed under lawful arrest for a violation of Chapter 316.193; and c) Whether the person had an unlawful blood alcohol level as provided in 316.193. See, Chapter 322.2615(7) (a), Florida Statutes.

ARGUMENT

THE HEARING OFFICER FAILED TO FOLLOW THE LAW AND AFFORD PETITIONER DUE PROCESS AT THE ADMINISTRATIVE HEARING DESPITE THE OBJECTIONS BY PETITIONER AT THE ADMINISTRATIVE HEARING

As Respondent did not follow the Florida Administrative Code by holding the formal review hearing within thirty days, the license suspension should be dismissed.

I. THE SUSPENSION OF PETITIONER'S LICENSE SHOULD HAVE BEEN INVALIDATED AS RESPONDANT FAILED TO COMPLY WITH FLORIDA ADMINISTRATIVE CODE

Chapter 15-A-6.013(1) states, "Upon receipt of a timely request for formal review, the division shall schedule a hearing to be held within 30 days after the request is received by the division, unless waived by the driver. Florida Administrative Code, 15-A-6.013 (1). Petitioner requested his formal review in a timely manner and did NOT waive the 30 day requirement. (PA. 2-5). Chapter 15-A-6.013(1(a) states in pertinent part, "If the division is unable to schedule a hearing within the 30-day period, the

division shall invalidate the suspension or disqualification." Florida Administrative Code, 15-A-6.013 (1(a). The hearing did not take place until February 6, 2008, thirty-seven days after the formal review request. (PA.6, T at p. 1, line(s) 3).

Petitioner faxed and hand delivered the documents required for a formal review hearing to The Bureau of Administrative Reviews office in Orlando on December 31, 2007. The documents were delivered to a clerk with the Bureau of Administrative Reviews who accepted the documents, as evidenced by the date stamp. Counsel for petitioner explained to the clerk that she will need to fax the documents to the BAR office in Clearwater so they can set a hearing for petitioner. The clerk at the Department then issued driver a temporary driving permit which shows an issue date of 12/31/2007. At no point did Counsel waive petitioner's right to a hearing within thirty days nor did he waive venue.

In denying the motion to invalidate the suspension the Bureau of Administrative Reviews stated the paper work was filed with the wrong "division", Orlando, Florida. In its order, the Department claims that Clearwater, Florida was the correct "division" office. The Department argues that because the Clearwater office did not receive the fax from Orlando until January 6, 2008, that office properly scheduled

the hearing within 30 days. Therefore, according to the Bureau of Administrative Reviews the hearing was held within the thirty day time limit.

However, the Bureau of Administrative Reviews is not following the definition of "division" as listed in Florida Administrative Code chapter 15A-6.002(3). "The term "division" means the Division of Drivers Licenses of the Department of Highway Safety and Motor Vehicles." Florida Administrative Code 15A-6.002(3). Nowhere in the definition does it mention anything about geographic location or filing the paperwork in the same county as the incident took place. The paperwork was filed with the Bureau of Administrative Reviews which is the special office that conducts formal review hearings. Attached please find a printout from the Department's own website(PA). It clearly states that there are separate "divisions" within the Department, including Division of Driver's License, Florida Highway Patrol, and Motor Vehicles. In addition please find two additional documents from its own internet website describing their organizational "divisions" and naming the "division" directors. Counsel for petitioner asserts that when Florida Administrative Code 15A was enacted, the legislature intended the "division" to mean the appropriate office within the Department. It was never the intent of the legislature to allow someone to request a formal review at the local Driver

license office. Instead, the legislature created a special "division" called the Bureau of Administrative Review. The Bureau of Administrative Review is located within the Division of Driver License. Its sole purpose is to assist driver's with suspension issues, including drivers that are requesting hardship hearings following DUI arrests.

Therefore, pursuant to 15A-6.002(3) the paperwork was filed with the appropriate division, filed in a timely manner, and Petitioner did not waive his right to a hearing within thirty days. It was NEVER the intent of the rule-makers to consider the "division" to be a geographic division within the State of Florida. Instead it was their intent to make sure that the paperwork was filed with the Bureau of Administrative Review within the required time period. Because the hearing did not take place within thirty days pursuant to Chapter 15A, the suspension should have been invalidated.

CONCLUSION

Based on the foregoing, Petitioner respectfully requests this Honorable Court to grant the Writ and quash the Department's final administrative order suspending Petitioner's driver's license.

Respectfully submitted,

, Esq.
Law Offices of Finebloom &
Haenel
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U.S. mail this ____ day of February, 2008 to Department of Highway Safety & Motor Vehicles, 2900 Apalachee Parkway, Tallahassee, FL 32399.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing has been generated in Courier New 12-point font and complies with the requirements of Rules 9.100(1) and 9.210(a)(2), Fla. R. App. Proc.

Jonathan S Kerr
Finebloom & Haenel
Attorney for Petitioner
Florida Bar No. 22658
100 Wallace Ave.
Sarasota, FL 34237
PH: 941-953-2622